

Social Dialogue and Tripartism Paradigm at the Level of the European Union

Mihaela Agata Popescu

“Dimitrie Cantemir” Christian University of Bucharest, Romania, av.agata@yahoo.com

ABSTRACT: The problem of social dialogue and conceptual crystallization (Ștefanescu 2017) of this phenomenon was an element of maximum interest for European legal doctrine and specialized practice, especially at the level of the European Union and international bodies with attributions in the field of labor protection. Thus, the International Labor Organization (ILO) proposes a working definition for social dialogue (Popescu 2021, 37), which reflects processes and practices found in different countries and which regards social dialogue as a voluntary act of information, consultation and negotiation of social agreements between partners, as well as negotiation of collective labor contracts. More precisely, according to the definition proposed by the International Labor Organization (ILO), Social Dialogue includes any type of negotiation, consultation or the simple exchange of information between representatives of the government, employers and workers on topics of common interest regarding economic and social policies (Popescu 2021, 36). There can be a tripartite process in which the government formally participates in the dialogue, or it can refer to bipartite relations, involving only representatives of workers and management (or trade unions and employers' associations), in which the government participates indirectly or not.

KEYWORDS: trade unions, employers' associations, social dialogue, partnerships

Social Dialogue at the European Level

Social dialogue can be informal or institutionalized and often presents itself as a combination of the two variants. It can take place at the national, regional, or enterprise level. It can be interprofessional, sectoral, or a combination of these (Dima 2017, 303).

In the concept adopted at the level of the European Union, the social dialogue established by the Treaty of Rome of 1957 is the process of continuous information and consultation between union and employer organizations, with the aim of reaching agreements regarding the control of certain economic and social variables, both at the macroeconomic and microeconomic level. Thus, from the perspective of the European Union, the European social dialogue involves debates, consultations, negotiations and joint actions undertaken by the representative organizations of the social partners, art. 138 of the EC Treaty establishing the consultation of social partners at community level regarding all initiatives in the field of employment and social protection.

A simple analysis of the conceptions and perspectives of the International Labor Organization and the European Union regarding social dialogue, one can observe the existence of two approaches which, without being totally antagonistic, have a relatively divergent character.

Thus, if the ILO promotes tripartite social dialogue (Popescu 2021, 35), involving the state or the public factor anyway, the European Union promotes bipartite social dialogue (Craig 2017, 689), emphasizing the involvement of employee and employer representatives. But, as I have shown, this divergence is only relative, in reality, the two forms of social dialogue coexisting, under the conditions in which they reflect complementary economic and social contexts.

A conceptualization of social dialogue that brings together and reconciles both of the above visions is the one carried out by the International Labor Office (International Labor Office - ILO), in whose vision social dialogue is described as representing: all types of negotiation, consultation or exchange of information between Government representatives

and employees regarding issues of common interest, both economic and social policy (Ștefanescu 2017).

Thus, in the vision of this institution, the social dialogue can be encountered both as a tripartite process, in which the employer, representatives of the employees and the Government intervene, and as a bipartite one, with the participation of the representatives of the employees and the management of the enterprise or the employer. In the European doctrine, a narrow definition has also been proposed, which makes a distinction and a conceptual delimitation between the notion of social dialogue and that of collective negotiation (Dima 2017, 329), a conceptualization according to which social dialogue is not the same thing as negotiation, but it provides a framework for more effective negotiation, helping to differentiate negotiation over the state of the world from negotiation over the allocation of costs and benefits.

In other words, in this vision, social dialogue represents a premise and a general frame of reference for ensuring the conditions that can lead to the effective running of a collective negotiation in which the social partners get involved in negotiating their positions, solving problems and identifying possible solutions.

In any case, as observed, the concept of social dialogue is associated with the transition from a culture of conflict to a culture of partnership, with the consideration of the common interests of the social partners involved, within a wider process of social concertation.

The appearance of the concept of social dialogue was a result of the evolution of the relations between the participants in the labor relations, an evolution which was a winding one marked by the transition from antagonism and confrontation to dialogue, as a means of conciliation and resolving the divergences between the parties (Preduț 2016, 838).

The birth of the principle of social dialogue and collective negotiations, as ways of resolving differences between participants in labor relations, can only be talked about after the creation of the International Labor Organization, a body with a tripartite structure (comprising representatives of governments, unions and employers), which through the adopted conventions, he created the general framework for social dialogue, but also conceptualized this institution.

From a legislative point of view, the act that consecrated and defined the social dialogue (Ștefanescu 2017, 368) was the Declaration of Philadelphia adopted in 1944 as an annex to the Constitution of the International Labor Organization which recorded, among many other positive aspects, the effective recognition of the right to collective bargaining and cooperation between the employer and the workforce, for the continuous improvement of the organization, as well as the collaboration between the worker and the employer for the elaboration and application of the social and economic policy. An international document of utmost importance in imposing and conceptualizing social dialogue as an institution was Convention no. 98/1949 on the application of the principles of the right to organize and collective bargaining, document which, in art. 4, established the fundamental functional principle according to which the aim will be to encourage and promote the large-scale use of the voluntary negotiation procedures of the collective agreement between the social partners, in order to regulate working conditions on a conventional basis (Preduț 2016, 839).

In 1976, the General Conference of the International Labor Organization from the Government adopted on June 2, 1976 Convention no. 144 regarding the tripartite consultations intended to promote the application of international labor standards, according to which member states undertake to put into practice the procedures that ensure effective consultations between representatives of the Government, employers and workers, on issues concerning the activities of the International Labor Organization (Panainte 2017, 172).

Also at the ILO level, Convention no. 154/1981 on the promotion of collective bargaining (ratified by Romania in 1992), through which the democratization of labor relations was pursued through collective bargaining, as it moved from the simple recognition

of the subjective right of the social partners to organize and participate in a negotiation, to the awareness of the importance of the institution of negotiation and Recommendation no. 163/1981 of the ILO, which aimed both at facilitating the concrete implementation of Convention no. 154/1981, as well as its completion (Țiclea and Georgescu 2020, 54).

A particularly important role in the institutionalization and conceptualization of social dialogue was also played by the European Social Charter, adopted by the Council of Europe in Turin in 1961, a document that guarantees 31 fundamental rights and principles of a social nature, including the right to collective bargaining, so implicitly the social dialogue (Popescu 2021, 63).

Social Dialogue in the Vision of the International Labor Organization

As it follows from the definition proposed by the International Labor Organization (ILO), this institution promotes tripartite social dialogue, as a form of interrelation involving the representatives of employees, employers and the state, the principle of tripartism being a creation of the International Labor Organization, still since its establishment in 1919.

The International Labor Organization (<https://www.ilo.org>, <https://snpp.ro>) established the principle of associating employee representatives, employer representatives and Government representatives, in order to jointly search for the most effective ways to achieve social justice, a principle also confirmed by the Philadelphia Declaration of 1944 regarding the aims and objectives of the International Labor Organization, which considers and enshrines tripartism as a permanent foundation of its activity. The Declaration from Philadelphia was later confirmed and validated in the normative activity of the International Labor Organization (Voiculescu 2014, 31) for the adoption of international instruments, but also in the specific activity of controlling their application, the Organization establishing and imposing the need for the involvement of employees and employers in the development and application of social and economic policies in each country.

In continuation of the above, the International Labor Conference adopted in 1971 a resolution by which it requests the states and entities involved to analyze all the measures necessary for the tripartite structures to include as complete a range of activities as possible (Voiculescu 2019, 73).

Consolidation of Social Dialogue (Ștefanescu 2017, 404) is one of the four essential strategic objectives of the ILO for the promotion of decent work, along with the promotion of labor standards, principles and fundamental rights related to work, the creation of wider opportunities for ensuring decent work, for both men and women and an effective social protection system for all.

In this perspective, the Social Dialogue can have different forms, involving collective bargaining, but also other forms of negotiation, consultation or communication between the social partners and them and the public entity, but all these forms have a multilateral character, excluding those with a clearly unilateral character, such as deontological codes, internal or organizational and operational regulations, which cannot be assimilated to forms of Social Dialogue (Popescu 2021, 41).

In terms of means and concrete methods of implementation, the ILO uses a series of specific instruments to promote social dialogue at the national level, including International Labor Standards, Technical Cooperation and Technical Assistance or Policy Recommendations. The ratification and implementation of international labor standards is one of the important means by which the ILO promotes social dialogue, in this sense there are several ILO Conventions and Recommendations that provide for social dialogue as a means to achieve the objectives.

Convention no. 144 as well as Recommendation No. 152 refers directly to social dialogue and tripartism. They promote tripartism and social dialogue, ensuring the involvement of social partners in activities related to ILO standards (Voiculescu 2021, 69).

Furthermore, the International Labor Conference adopted conclusions on tripartite cooperation at the national level regarding economic and social policy in 1996 and a Decision on Tripartism and Social Dialogue in 2002.

In addition to international labor standards, which directly promote social dialogue, there are other ILO Conventions and Recommendations essential for effective social dialogue, which confirm that one of the fundamental activities of the ILO to support Social Dialogue is the establishment of standards. Among these Conventions (Nistor 2004, 108) and Recommendations, the most relevant for Social Dialogue are Convention 144 on tripartite consultations, respectively Recommendation 152, Convention 87 on freedom of association and the protection of trade union rights and Convention 88 on the application of the right to organize and collective bargaining.

By Convention no. 144/1976 regarding the tripartite consultations intended to promote the application of international labor standards, it was provided that any member state of the organization, which ratifies this convention, undertakes to put into practice the procedures that ensure effective consultations between the representatives of the Government, of those who employ and of workers on issues related to the activities of the International Labor Organization (Popescu 2021, 41). The International Labor Organization (Cornescu 2010, 3) implements a number of technical cooperation projects at national and subregional level in which social dialogue is a major component, involving activities for the establishment and improvement of social dialogue processes and institutions.

The International Labor Organization also promotes social dialogue through other forms of technical assistance, which can take various forms, including conferences at national and subregional level, direct policy recommendations at country level, training workshops.

Social Dialogue at the level of the European Union

The issue of social dialogue at the level of the European Union must be seen in the wider context of the Union's social policies, given that the interrelationship between participants in labor relations and the resolution of specific shortcomings is, by definition, a social problem (Popescu 2021, 68).

Social policy is among the competencies shared between the member states and the European Union, in some of its components, the Union being called upon to ensure only the coordination of national policies, while in others it can initiate measures whose concrete application methods are left to the fore member states.

The European Social Charter (both in its initial form, signed in Turin in 1961, and in the revised one in 1996), the European Social Policy White Paper (1993), as well as the Community Charter on Fundamental Social Rights (1989) have the objectives of social policy, objectives that include, among others, ensuring a dialogue between employees and employers (Voiculescu and Berna 2019, 139).

In the context of the social policies of the European Union (Cornescu 2010, 13), the Social Dialogue is part of the European Social Model, or, in other words, the Social Dialogue is a distinctive feature of the European social model, which means that employees and employers (as well as organizations who represent them) have an important role in the coordination of economic and labor market reforms, as well as in the construction of social policies. The role of the social partners is recognized in the Treaty of Amsterdam by art. 137, which requires the member states to ensure a dialogue between employees and employers or in any case the necessary framework for such a dialogue.

At the level of the Union, the European Commission has the task of promoting consultations with employers and unions and taking measures deemed necessary to facilitate dialogue by providing balanced support to the parties (art. 138) (Popescu 2021, 38).

The dialogue with the social partners is the cornerstone of the European social model. Its role was mentioned in the employment strategy and in the European Employment Pact.

In 1970, the Permanent Committee on Employment was established, responsible for ensuring the continuation of the dialogue between the Council, the Commission and the social partners in order to facilitate the coordination of employment policies. The first progress was made with the adoption of Directive no. 96/34/EC (Craig 2017, 1243) on parental leave.

Directive no. 97/81 refers to the agreement between the social partners, by which the representatives of the major industries decided that workers involved in flexible forms of work should receive treatment comparable to those working with full-time employment contracts. In 1998 reforms took place of the committee regarding its composition and way of functioning and sectoral social dialogue committees were established, which replaced the committees expressing common opinions as well as the informal working groups (Decision no. 98/500/CE), and in 1999 a new framework agreement stipulating the principles regarding fixed-term employment contracts (Directive no. 99/70/EC).

The consultation of the European social partners contributes to the elaboration of the European social policy and to the definition of social standards. Thus, pursuant to Art. 152 of the Treaty on the Functioning of the European Union (TFEU), the European Union recognizes and promotes the role of social partners at the European level, facilitates dialogue between social partners, respecting their autonomy.

According to art. 154 of the TFEU, the Commission consults the social partners before making legislative proposals in the field of social policy, and in accordance with art. 155 of the TFEU, consultation with European social partners can lead to contractual relations, including agreements. One of the high-impact forms of social dialogue at the European level is represented by the European Sectoral Dialogue (Popescu 2021, 37), which constitutes a level of discussion and negotiation that allows a better understanding of the problems specific to each sector and which is led by representatives of European employers and workers, grouped by sectors of economic activity.

On a professional level, the European Sectoral Dialogue (Popescu 2006, 265) finds its regulation in Decision 98/500/CE (Craig 2017, 897) of the Commission of May 20, 1998 regarding the establishment of sectoral dialogue committees, committees intended to promote dialogue between social partners at the European level, according to which social partners in a professional sector can submit a joint request for the establishment of a sectoral dialogue committee.

These committees are consulted on developments at the community level that have social implications and promote sectoral social dialogue.

Among the forms of sectoral social dialogue with practical relevance, we can mention those in the railways, shipping or agriculture sectors, forms of social dialogue following which a series of essential elements regarding labor relations were established, such as related to the maximum number of weekly working hours, rest periods, the duration of breaks or the maximum duration of night shifts.

What is not currently found in the primary or secondary legislation of the European Union is a set of imperative European norms and possibly directly applicable in the internal legal systems and which would impose tripartism as a natural factual-legal state and as an indispensable pillar around which to naturally structure the national systems of social dialogue (Popescu 2021, 39).

Conclusions

The full non-acceptance of the idea and paradigm of tripartism at the level of the European Union creates gaps in the entire European Social Dialogue System, gaps that can be speculated by the internal legislator, especially in periods of crisis or financial difficulties, in the sense of giving up the tripartite form of social dialogue.

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From the analysis of the above, a series of conclusions can be drawn with varying degrees of generality, but with undoubted relevance and impact.

Thus, it can be concluded in the sense that the Social Dialogue is a form of communication, information and negotiation between employees and employers, with the participation of the state as a mediator, for the solution of collective problems concerning labor relations and their issues. It has also been proven that Social Dialogue favors social peace and stability in society, economic and social development and contributes to overcoming economic crises and replacing conflictual relations with a climate of trust.

Tripartism (Țiclea and Georgescu 2020, 50) is the most effective and appropriate way to practice social dialogue, bringing together all the factors involved in social policy issues and giving employees an extra guarantee, by involving the state as an arbitrator.

At this moment there are international instruments to ensure tripartism, these being primarily those arising from the legislative instruments and practice of the International Labor Organization (Cornescu 2010, 3-4).

The European Social Dialogue (Ciochină-Barbu and Popescu 2019, 292) can be a powerful tool for improving working conditions and establishing common minimum standards for the whole of Europe through which it has manifested its positive role by creating common practices in this matter (Voiculescu and Berna 2019, 317). However, like any system and that of the European Social Dialogue is perfectible (Popescu 2021, 37), as I have shown, especially in terms of assuming and ensuring mechanisms to guarantee tripartism in the conduct of social dialogue (Dima 2017, 298).

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