Bulgaria

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1. General Legal Framework for Labour Law

1.1 Implementation of international legislation into domestic law

In its historic development, after gaining independence in 1878, Bulgaria has shaped its legal system based on the systems of Continental European countries. The Civil law (Labour law included) is regulated by a hierarchy of normative acts, adopted by the state through its various bodies. The Constitution (CRB), the Labour code(LC) and various Acts adopted by Parliament are the most important sources of labour law. The Government is also entitled to adopt normative regulations of various rank through explicit delegation in the Acts adopted by the Parliament.

The sources that are not adopted by the state are one of the most significant novelties in the development of the contemporary Bulgarian labour law – collective agreements, internal labour regulations (art 181 LC) and decisions of the Employees' General Assembly (art 6 LC). The development of these sources limits the state» monopoly», enshrines the self-regulation and supplements the regulation of employment relations.

The case law as legal source is a controversial issue in Bulgarian legal theory. Opinions divide as to whether the decisions of the Constitutional Court (CC) concerning the interpretation of the CRB, are sources of law and further on, whether the CC becomes a «positive legislator» through such decision making. There are also discussions whether the interpretative decisions of the Supreme courts – Supreme Administrative Court included, are in fact source of law. Some eminent civil law academicians acknowledge them as source of law as they are formulated in general and abstract manner and are binding the judiciary and the administrative bodies. The leading doctrine in the Bulgarian labour law however denies the character of these acts as source of law.[1]

One of the major problems after the political changes in 1989 was to create a legislative framework within which the new social actors could freely interact among themselves. The LC (adopted in 1986) has been amended, with specific reference to the role of the parties in industrial relations, the creation of mechanisms of tripartite cooperation, the conduct of collective bargaining, the conclusion of collective agreements, the setting up of new forms of workers' participation in undertakings, the regulation of the right to strike and the prevention and settlement of labour disputes.

International law

Special general clause pertaining to the relationship between international law and national law has been included in the Bulgarian constitution - CRB, adopted in 1991. This provision introduces the rule of moderate monism in the relationship between international law and national legislation, establishing precedence in application in case of collision between domestic and international law, however without affecting the Constitution. Art. 5 (4) CRB proclaims *the primacy of international treaties*. International law automatically incorporates through ratification and publication in the State Gazette. All international conventions that are in force are directly binding in case they are *self-executing*. As most of them are not self-executing domestic acts of various rank are adopted in order to implement them depending on the subject matter. In the case of the ILO instruments Bulgaria follows the procedures of art. 19 para 5 of the ILO Constitution.

Bulgaria has ratified the fundamental ILO conventions, the ECHR, the European Social Charter, as well as the two UN Covenants on human rights.

EU legislation

According to the doctrine in Bulgaria the provisions of the CRB, even such regarding fundamental rights, cannot be applied in contravention with the Treaties and the law adopted by the Union.[2] Bulgaria is a new EU member and the EU law enjoys in the Bulgarian legal space a *universal and direct effect and has precedence over national law in case of collision.* The CRB does not provide expressly the primacy of EU law over national constitutional law in case of collision. However, the primacy exists and stems from the transferred constitutional competences in favour of the EU (art. 85(1)1), from the fundamental principles of CRB (art. 4 and 5(4)), and from the existing legislation.

The directives are transposed into domestic law by passing appropriate implementation measures.

The regulations have direct effect.

1.2 Formation of union representation in order to subscribe collective agreements

The industrial relations system in Bulgaria does not entail conditions or restrictions which in practice make it very difficult for large numbers of workers and employers in certain categories to establish organizations for furthering and defending their economic and social interests. The internal legislation at present is based on the international labour standards and includes the CRB (art. 12, 44 and 49 para 1) and the LC (art. 4, 33, 37, 42, 45, 46 and 49). The freedom of association, de facto and de jure, to establish organizations is the foremost among TU rights and is the essential prerequisite without which the other guarantees enunciated in international sources would remain a dead letter. However, the legislation draws a distinction in that regard for certain categories

of occupation or persons such as certain public servants-police and military, judiciary, executive and managerial staff.

The legal status of TUs is based on three groups of issues:

– the TUs as non-profit associations and the recognition of their legal personality. The LC in art 49 stipulates that TU organizations attain the status of legal person upon registration under the procedure established for registration of non-profit associations;

– the TUs being non-profit associations for mutual benefit are set up to represent and protect the interests and rights *of their members*. This is in line with art 49. 1 of the Constitution and art. 4 of the LC and guarantees their autonomy.[3] In previous versions of the LC, given the existing TU monopoly in the past, the TUs represented the interests of all workers;

– the rights of the TU associations.

TU bodies in enterprises are entitled to participate in drafting all internal rules and regulations which pertain to labour relations, the employer being bound to invite them to do so.

The national leaderships of TU organizations or bodies or persons they have authorized, are entitled to participate in the discussion of issues referring to the labour and social security relations of employees of ministries, other institutions, enterprises and local government bodies.

TUs also participate in collective bargaining and conclude collective agreements. According to the LC the union representation in collective bargaining depends on the level of bargaining. Article *51 a* of the LC states that within an enterprise the collective agreement (CA) shall be concluded between the employer and a TU organization.

Where more than one TU organizations exist within one enterprise they have to submit a common draft. Where within the enterprise the TU organizations fail to submit a common draft, the employer shall conclude the CA with that TU organization the draft of which has been approved by the general assembly of the employees by majority of more than 50% thereof.

In the case of CA on industry and branch levels *article 51b* and at municipal level *51 c* provide that the CAs by industries, branches and at municipal level shall be concluded between the respective *representative* organizations of employees and of employers on the basis of an agreement between their national organizations, which shall set forth general provisions in respect of the scope and the procedure framework of the industry and branch level agreements.

The criteria for representative TUs organizations are regulated in the LC. According to article 34 representative organizations of the employees on national level are those that have:

1. at least 50 000 members;
2. at least 50 organizations with not less than 5 members each in more than half

of the industries set forth in the National Classification of Industries;
3. local bodies in more than half of the municipalities in the country and a national managing body;
4. capacity of legal entity, acquired pursuant to article 49 of the LC.
The Council of Ministers- CM has set forth the procedure for verification of compliance with the criteria for representativeness as per articles 34 and 35 LC. Organizations of the employees are recognized by the CM as representative on national level upon their request. The CM issues decision within three months following the receipt of legitimate request by the interested organization. The denial of the CM to recognize as representative an organization of employees must be supported by reasons and shall be notified to the interested organization within 7 days following the issue of such decision. The interested organization may appeal the denial before the Supreme Administrative Court. All divisions of organizations recognized as representative on national level shall be also recognized as representative at the respective level.

Representation before the Court
TU organizations and their divisions are entitled, upon the request of employees (non-menbers as well), to represent them at court in cases of individual labour disputes under art. 357 LC, of collective disputes and on legality of strikes.

1.3 Trade union representation and activity in the workplace
The power and presence of TUs is determined by various factors: the level of membership, in absolute terms and relative to employment; the unity and cooperation inside and outside the union movement; the relationship with employers, governments, political parties and other social organisations; leadership, internal organisation and membership participation; sound finances; a coherent value system or ideology; and the standing of the unions and their leaders in public opinion. The composition of TU and union membership, their representation among different categories defined by skill, sector, gender, sector, age, nationality and status in the labour market is relevant for understanding the policy choices of unions.
TU structures and internal organizational dynamics have been central factors shaping union choices in a time of deep societal transformation. The priorities and behaviour of workers' organizations during transition have been dependent on the origin and identities of the confederations and the relationships among them. The context in which TUs operated and the experience of economic, ideological and political pressures, has in turn intensively influenced internal union restructuring and reforms, as well as inter-union relationships and identities. The former state-controlled TU made the choice of reorientation to convert

itself from «*transmission belt*» (Lenin) into independent and democratic workers' organization through radical internal reforms. In Bulgaria the Constitutional congress of CITUB declared union independence, voluntary membership and the confederative principle as the basis for internal reforms in 1990. The resulting initial proliferation of branch federations within CITUB, which led to fragmented sectoral representation and led to reallocation of power centres, was followed by a degree of consolidation-a process that has helped maintain the unity The new alternative TU which emerged as dissident anticommunist movement had to decide whether to transform into actual labour union. CL Podkrepa combined two roles during the early democratic changes – as TU and as reformist political movement. Few years later, it officially declared its orientation toward the classic model of protection of workers' rights and interests and social dialogue – a difficult process that resulted in a rapid decline of membership. Different identities and political orientations in the early 1990s resulted in a proliferation of TU centres and sharp inter-union confrontation.

In Bulgaria confederation support tends to be focused in the public sector with strong and active federations in education, health, utilities and similar publicly owned or large privatized sectors. A lack of policies for the consolidation of industry organizations in the fast-growing service sector seems to be the weak point.

Present union structures and policies do not adequately reflect the existing composition of membership by social groups, particularly women and youth.

TUs in Bulgaria have applied different approaches towards unprotected workers in the informal economy. Informality is undermining solidarity by replacing possible collective action with individual survival strategies. Results of attempts to organize informal workers are less tangible however, as there are limited organizational capacities to address the needs of this diverse and dispersed segment of the labour force.

The distinctive route from state-controlled to independent unionism maps a trajectory of discontinuity in TU evolution. Bulgarian TUs were not able to rely on past experiences and traditions for their orientation in fundamentally different environment of emerging liberal market economy. The situation in Bulgaria differs substantially from the evolution of TUs in Western Europe as they had in the last 20 years to revisit legacies and traditions to reformulate their goals.

The 1990s witnessed a deep reform in decision making principles and practices at the former state TUs.

At present only *KNSB*[4]*/CITUB (*Confederation of Independent TUs in Bulgaria) and Confederation of labour *CL Podkrepa*[5] have the status of representative unions at national level, although other confederations have also been granted this status in the past. In 2007, the LC was amended, changing the

procedure for establishing representative status. There is now a clear timetable for submitting requests for representative status, including the need to reestablish status every four years, and a clear requirement to ensure the information provided in support of the request is accurate. KNSB has always been larger than Podkrepa and figures complied for the most recent TU census in 2007 show 328,000 members for KNSB and 91,000 for Podkrepa.
Both KNSB and Podkrepa have a similar structure of affiliated industry federations/ unions. There are 35 in the case of KNSB, of which the largest is the teachers' union, with some 75,000 members. KNSB also has five associated organizations representing the self-employed, farmers, home workers and others. CL Podkrepa has in total 24 industry federations and four associated organizations with 2,138 TU sections at company level. It also has 143 municipal structures. Bulgaria also has a few small unions that split from *Podkrepa CL* in the mid 1990s. At certain points, they have been recognised as nationally representative and participated in tripartite social dialogue structures (1994–1997). Although they still have some branch and local organisations, they do not meet the representativeness criteria.
Some TUs are organised on the basis of a kind of professional principle and are not affiliated to any branch or national TU organisation, nor do they have

The activities of the TUs at the
workplace were brodly described in the previous section-1. 2. To these can be added the participation in Health and Safety committees at enterprise level and in the strike committees.
TUs remain unconvinced regarding the relevance of other forms of interest representation as a remedy to the representation gap, particularly at the new private sector. This is partly due to socialist legacies and unsuccessful earlier experiments involving workers in company decision making. This attitude has been further reinforced by attempts of liberal governments to introduce work councils, overcoming collective bargaining rights, which unions perceived as an act of hostility and a step to deliberately undermine their influence. While the lack of representation at private companies and the need to comply with EU directives for works councils both called for action, a mechanical transfer of European practices has been avoided.
This places Bulgaria in the group of European countries like Greece, Malta and the Baltic states with weakly institutionalised bodies of employee representation, alongside or instead of TUs, and with weak rights vis-a-vis management.

1.4 Discipline/Regulation of the collective agreement
The CRB / 1991 introduced in art. 49[6] the freedom of association principle

while the right to collective bargaining is not explicitly regulated but could be derived from the freedom of association. The LC, in Chapter IV – articles 50-60, provides the legal regulation of collective agreements. (CA). CAs regulate issues of labour and social security relations of workers which are not regulated by mandatory provisions of the law. The CA by definition do not contain clauses which are more unfavourable to the employees than the provisions of the law. Only one CA may be concluded at the level of enterprise, branch and industry.

Obligations to negotiate

The individual employer, the group of employers, and their organizations are obliged to:

1. Negotiate with the TUs to conclude a collective agreement;
2. Make available to the TUs:

a) the CA concluded which bind the parties on the basis of sectorial, regional or organizational affiliation;

b) timely, authentic and understandable information on their economic and financial position which is significant for the conclusion of the CA; provision of information the disclosure of which could cause damages to the employer may be refused or granted subject to confidentiality. In case of failure to perform the obligation to provide information the employers owe indemnity for damages inflicted. The employer is deemed to be in delay if he does not fulfil his obligation to negotiate within one month, and to provide information within 15 days after the notice.

The TU organizations in the enterprise, upon request of the employer at the start of negotiations for CA, must provide information on the actual number of their members.

Conclusion and Registration

The CAs are concluded in writing in three copies – one for each of the parties, and one for the respective labour inspectorate, and have to be signed by the representatives of the parties. The written form is a requisite for the validity of the CA. The CA must be registered in a special register with the labour inspectorate in the area where the employers' seat is located. Collective agreements of a sectorial or national relevance must be registered with the Executive Agency «General Labour Inspectorate». The amendments in the LC at the end of 2008 introduced new provisions for sending a copy of CA in the National Institute for Conciliation and Arbitration (NICA) This body is responsible for establishing and maintaining the information system of collective agreements.

Entry into Force and Duration

The CA comes into force as from the date of its conclusion, insofar as it does

not provide otherwise. It is deemed *concluded for a term of one year, insofar as it does not provide otherwise, but not for more than two years.* The parties may agree for shorter terms of validity of individual clauses of the agreement. The negotiations for conclusion of new CA shall start not later than three months prior to the expiry of the term of the current agreement.
The CA is applicable to the employees who are members of the TU organization signatory to it. The employees who are not members of a TU organization that is a party to a CA may accede to a collective agreement concluded by their employer by applications in writing submitted to him or to the leadership of the TU organization which has concluded the agreement, under terms and provisions determined by the parties to the agreement, such as may not be contrary to the law or evading the law, or such that are offensive to the good morals.
Where the CA on industry or branch level has been concluded between all *representative* organizations of the employees and of the employers in the industry or the branch, the Minister of LSP may, upon their joint request, extend the application of the agreement or of individual clauses thereof to all enterprises of that industry or branch.
The special Act on Civil Service does not regulate the right of collective bargaining in the narrow sense of the term, nevertheless under its' section 44(3), TUs are able to represent and defend the rights of civil servants and social security issues through proposals, requests, and participation in the drafting of relevant internal regulations and ordinances, as well as in the discussion of issues of economic and social interest. The TUs have referred the issue to the ILO supervisory mechanism.

1.5 Reflection on the Viking and Laval judgments
There have been no discussions on the possible impact of *Laval* and *Viking* cases in Bulgaria up to now. This might be due to the fact that Bulgaria is the country with the lowest wages in the EU and in practice it is difficult to have the situation which brought to the cited cases.
The minimum wage is settled in Bulgaria by the Government after consultations with the social partners according to art. 244 of the LC. After 2003 the social partners also negotiate the «minimum social insurance thresholds» which actually serve as branch or sectoral minimum wages and which cannot be below the national minimum wage. In case the partners cannot reach an agreement the CM settles the minimum social insurance thresholds by administrative act. This means that foreign employers who operate in Bulgaria would have to take into account the minimum wage on the respective level, set up with mandatory rules. The major part of the Directive 96/71/EC has been transposed into a separate and special regulatory act – the Ordinance of the CM on the

conditions and procedure for posting workers from the MSs or from third countries to the Republic of Bulgaria. This main transposing regulation is accompanied by and supplemented with provisions from the Employment Promotion Law, the LC and the Ordinance on the conditions and procedure for the issue, refusal and revocation of work permits of foreigners in Bulgaria. . According to the data submitted by the Employment Agency, the number of posted workers from MSs of the EU and from third countries in Bulgaria is approximately 120 workers for the period 2007-2009.

1.6 Means of protection in case of violation of the collective agreement
In case of violation of the CA actions in court may be instigated by the parties to the agreement, as well as by any employee who is subject to the application of the agreement. The claim may be filed by the TU-party to the agreement when the violation concerns the TU rights in it or a large group of employees (members or non member who acceded the agreement)
The dispute in case of violation of the CA could be settled under the SCLDA – through negotiations, voluntary arbitration and strike.

1.7. Consultation of workers for signing the collective agreement or for the strike call
No referendum is necessary for signing collective agreement. As mentioned above in case there are two drafts of the CA submitted by different TUs the workers vote in order to decide which draft will be negotiated. A strike can be declared after a vote among workers in case 50% of all workers in the enterprise or the unit concerned vote in favour as per art. 11.2 SCLDA. *The majority vote is calculated on the basis of all workers and employees in the respective enterprise, including those who are absent due to objective grounds- on leave, on sick leave or business trip, etc*.
This rule has been critisized by the ILO CEACR, e.g. in the reports from 2005-2009, as it limits the right to strike.

2. Regulation of the right to strike

2.1 The right to strike as a fundamental right
The CRB adopted in 1991 contains provisions, which constitutionalize labour law, i.e. they permeate its content and determine its development. This «Constitutional block» is expressed in the following: a) building up the social state (paragraph 5 of the Preamble of the CRB); b) protection of labour (article 16); c) the incorporation of the most important labour rights into the Constitution – the right to work and its free exercise, the right to fair labour remuneration, free TU and employers' association, the right to strike, etc. (articles 48, 49, 50, etc.); d) the activity of the Constitutional Court and its jurisprudence in interpreting

the CRB and exercising supervision on the constitutionality of laws and their compliance with the ratified international treaties (article 149, paragraph 1, items 1, 2 and 4).

As for the recognition of the employees' right to strike under article 50 of the CRB, although in this respect the Constitution came later than the Act on Settling Collective Labour Disputes, which was adopted on 6 May 1990, it introduced three essential points in its regulation. First, it raised the juridical rank of this right, turning it from a right under the legislation into a right under the Constitution, with all the favourable consequences for its juridical protection ensuing from that: irrevocability by way of a law, compliance of the law with it, etc. (article 57 CRB). Second, this determined its social purpose as being a right for the protection of the collective economic and social rights and interests of employees. Thus a gap was filled in the legal regulation of the right to strike and, in view of its nature, it was appropriate for this gap to be filled by the Constitution. Third, the Constitutional provision has laid down that the conditions and procedure for the exercise of the right to strike is determined in a separate law- the 1990 Act on Settling Collective Labour Disputes and its subsequent amendments and supplements. In its Decision No 14 dated 24 September 1996 on Constitutional case No 15 of 1995 (OJ, No 84 of 1996), the Constitutional Court gave an obligatory interpretation of article 50 CRB regarding the right to strike. In this Decision the CC has reasonably extended the social purpose of the right to strike, pointing out its role of: «a constitutional guarantee that Bulgaria will develop as a democratic and social state». Along with that, the Court has admitted «by way of exception» a restriction of the right to strike in two cases:

a) for certain civil servants who exercise authoritative powers on behalf of the state and ensure its functioning;

b) for employees in certain branches and activities, such as production, distribution and supply of electric power, communications and healthcare.

According to the court: «the suspension of performance on the part of employees in these spheres through an effective strike would endanger the life and health of large parts of the population, which is inadmissible in view of the state protection of the citizens' life and health – article 4, paragraph 2, article 28, article 52, paragraph 3 and article 57, paragraph 2 of the Constitution».

The above exposition provides grounds for the conclusion that the constitutionalizing of Bulgarian labour law is undergoing a process of being extended and deepened. It contributes to the affirmation of the protective function of labour law, this being its invariably inherent, immanent main function.

2.2 Sources

The legal sources are: the Constitution,1991 the Settlement of Collective Labour

Disputes Act,1990 the Railway Transport Act of 2000 art. 51 on minimum services, the Civil Servants Act art 47 that prohibits the right to strike.

2.3 Persons authorized to proclaim a strike (legal ownership)

The workers are entitled to the right to strike which is considered to be subjective right but executed collectively. This means that it belongs to each worker/employee, who participates personally in the strike. At the same time it is characterized as collective right as it is executed together with other workers and employees. It manifests itself as collective at the stage of taking decision for going on strike. A single worker/employee can not go on strike if his/her activity is not supported by at least 50% of the employees in the enterprise. Individual employee can not proclaim strike in order to defend his/her vested rights.

2.4 Procedures and proclamations

From the viewpoint of conflict settlement, a strike is meant to be the last resort. Thus, all means of negotiation must be exhausted before a strike can be called. The strike is not a single act, but rather a process with the distinct consecutive stages – declaring, course and termination.

The law requires a TU to follow the procedures for resolving collective disputes before initiating a strike. *First*, when, under the collective bargaining an agreement is not reached under art. 3 or art. 4,7 of the SCLDA given that mediation and or voluntary arbitration under art. 58 have been requested, or the employer does not fulfill undertaken obligations, the workers may strike by temporary interrupting the performance of their duties. The law does not specify when, where and on what occasion these duties are not fulfilled. The doctrinal interpretation is that these duties are related to the already existing industrial dispute in the previous phases – during the direct negotiations or during mediation. These two conditions are alternative – any of them is sufficient for declaring a strike. These two conditions are required for *declaring a warning strike* as well.

The solidarity strike is not under the first set of conditions, as with it the workers do not claim their own interests but support other workers/employees in their demands.

Second, the *decision to call a strike, as well as defining its lenght and starting point, must be made* by a *majority vote of the workers/employees*. This is valid for all types of strikes. The majority vote is calculated on the basis of all workers and employees in the respective enterprise, including those who are absent due to objective grounds – on leave, on sick leave or business trip, etc. This rule has been critisized by the ILO CEACR, e.g. in the report from 2005 and 2009, as it limits the right to strike. Participation in the voting does not bind the worker/employee

to participate effectively in the strike. This could bring down the number of effective strikers and vice versa, a worker /employee who did not participate in voting may participate in the strike itself.
Third, *the employer must be notified at least seven days before the strike* regarding the duration of the strike and the body which will lead the strike. The period is calculated in calendar days, not in working days following the general principles of the civil law in Bulgaria. The period is the minimal standard, which means

the notification could be made earlier as well. The purpose of the notification is to give chance to the employer to prepare for the strike, to carry out negotiations in order to agree in writing on the minimum services to be maintained, defined in SCLDA art. 14 para 1.[9] Solidarity strikes may be called in support of a lawful strike. Employees may engage in a one-hour warning strike without prior notification to the employer.

2.5 Limitations on the right to strike
Art. 57 of the CRB envisages that the fundamental civil rights are irrevocable. Rights shall not be abused, nor shall they be exercised to the detriment of the rights or the legitimate interests of others. In this sense the limitations to the right to strike are regulated in the SCLDA. There are categories of public officials who are prohibited from exercising the right to strike as they are denied to certain extent of freedom of association, right to organize and colletive bargaining. These are employees of the Ministry of National Defence and the Ministry of Internal Affairs; the army engineering corps and other armed forces; and employees of the courts, judiciaryt including prosecutors and investigation bodies.10 The civil servants are another group with limitation to the right to strike According to art. 47 (1) of the Civil Servants Act when the requirements connected with the official and insurance relations are not met the civil servants shall be able to declare «strike». The implementing of the strike shall be accomplished *by carrying and mounting appropriate signs and symbols, protest posters, ribbons etc without terminating the fulfilment of the civil service*. During the strike the representatives of the civil servants and the body of appointment shall make efforts for solving the disputed issues.
This rule has been considered as denial of the right to strike and the TUs have filed a collective claim with the Council of Europe.
In cases when the employer is not the only one affected by the discontinuation of work, e.g. strikes in the essential services, certain categories of workers/ employees are restricted from striking or there is enforcement of the obligation to continue to work at a minimum level.

According to article 16 para 4 of the SCLDA, employees in the following categories of work were denied the right to strike: distribution or supply of electric power; communications and health services; SCLDA was amended in 2006 by removing the ban on the strikes in distribution or supply of electric power and in communications and health services after a successful collective complaint of the TUs under the European Social Charter and recommendation from the Council of Europe.
According to article 14 of the SCLDA, in certain areas of activity, the workers and the employer must reach a written agreement on measures that ensure the functioning of services at a satisfactory level during the strike. This applies to the proper functioning of public services, public transport, and radio and television broadcasts. The measures must ensure the avoidance of irreparable damage to public or private property or to the environment, and must not cause a breach of law or public order. The parties must reach such an agreement at least three days before the strike begins. If the parties are unable to reach an agreement, the matter is referred to binding arbitration.
An example of such restriction is section 51 of the Railway Transport Act of 2000, which provides that, where industrial action is taken under the Act, the workers and employers must provide the population with satisfactory transport services corresponding to no less than 50 per cent of the volume of transportation that was provided before the strike. In its observation,[11] the ILO CEACR requested the Government to amend section 51 of the Railway Transport Act. The CEACR estimated that the 50 per cent requirement for minimum service was excessive.
The last limitation is the temporary ban on strikes in case of natural calamity/ earthquakes, floods etc. or the related urgent and indispensable rescuing and restoration operations. The ground of this limitation is in art 57.2 of the Constitution.

2.6 The exercise of the right to strike in different sectors and categories of workers
The Bulgarian labour law does not make difference between private and public sector employment relations. As mentioned above there are special acts on the civil service *strictu sensu*, military and police staff and judiciary which provide specific regulation in certain areas, although the LC serves as subsidiary legal source. *Self-employed* are not considered to have the right to strike as they do not fall into the typical employment relationship pattern. A central feature of the traditional employment relationship in Bulgarian labour law, is the hierarchical power of employers over employees. It combines three related elements: (i) the power to assign tasks and to give orders and directives to employees (*directional power*); (ii) the power to monitor both the performance of such tasks and compliance with orders and directives (*power of control*); and (iii) the

power to sanction both improper or negligent performance of the assigned tasks and given orders and directives (*disciplinary power*). The presence of hierarchical power in a working relationship, has been the element that distinguishes employment from self-employment, and accordingly is the access key to the wide range of regulations set up to protect employees in the different jurisdictions. The workers /employees may be employed in the public or private sector – the regulation is identical. *The self employed and contract workers* are not covered by the LC.

3. Trade union and strike

3.1 Reasons for the strike

According to art. 16 SCLDA the unlawful reasons /according to their objectives/ for strikes are:

1. demands of the workers/employees that contradict the Constitution;
2. purely political demands;
3. settlement of individual labour disputes;

Strikes are not admissible:

1. when the requirements of art. 3, 11, para 2 and 3 and art. 14 SCLDA are not met, as well as on issues on which there is an agreement or an arbitration award;
2. during a natural calamity or the related urgent and indispensable rescuing and restoration operations;

3.1.1 Political strike

These could be strikes demanding changes in state authorities, or the form of government, for the activities of the political parties, etc. These demands could be raised in execution of other constitutional rights – e.g. art. 43 CRB regulates the right to meetings and demonstrations;right to associate in politival partiesart. 11, 12 and 44 CRB. Nonetheless demands for changes in the economic and social policies of the Government are not considered to be purely political, as they protect the economic and social ineterests of workers/employees.

3.1.2 Solidarity strike

According to art. 11. 4 SCLDA the workers may declare solidarity strike in support of a legal strike of other workers. It aims to put more intensive pressure on certain employers, who are facing already real strike and state bodies, in order to enhance the chances for successful outcome of the basic strike. The procedural rules for declaring a solidarity strike are the same as for a normal strike. Solidarity strikes could not last longer than the basic strike.

3.2 Methods of the strike

3.2.1 Anomalous forms of striking
No.

3.2.2 Forms of collective action different from the strike
According to art. 9 SCLDA for satisfying their demands each party to a collective dispute can act upon the other, without interrupting their work, by organizing public meetings, demonstrations after working hours, information to the public through the mass media or another legal way.

3.2.3 Virtual strike
The national legal system and the practice in Bulgaria do not know virtual strikes. There is no legal definition of strikes, but broadly the interpretation of article 50 of the CRB and art. 11. 1 and 2 of SCLDA leads to the following definition – the strike is organized temporary suspension of labour duties for implementing the work assigned by the workers/employees in defense of their collective economic and social interests. Given this understanding «virtual strikes» could not be considered to come under the Constitution or SCLDA.

3.3 Unlawful strikes
Strikes are considered to be unlawful only if the competent court has proclaimed them as such. According to art. 17 of SCLDA the employer, as well as the workers who are not striking, can put up a claim for the establishment of the unlawful character of a declared, proceeding strike or strike that has already ended.
The claim has to be put up at the district court of the habitual residence or headquarters of the employer. The case shall be heard within seven days in an open session, by the order of the Civil Procedures Code, with the participation of a prosecutor. The Court is due to enact its decision within three days from hearing the case. The Court decision is final and it must be announced to the parties immediately.

3.4 Sanctions in the collective conflict
There is no explicit sanction for the TUs in the law. For participating in an illegal strike *the workers* could be disciplinary and property liable according to the provisions of the LC and of the other laws.

4. Adhesion to the strike

4.1 Modalities of adhesion
Industrial or social conflict is an inherent part of industrial relations. The

right to bargain for better conditions implies the right to strike as a means to exert pressure should negotiations reach an impasse or fail. The exercise of this right, constitutes a high-profile aspect of industrial relations in terms of public impact and media coverage. As pointed already the right to strike belongs to the worker but can be exercised only collectively.

4.2 Effects of the lawful strikes on the employment relationship

For the period of striking the individual employment relationship is temporarily changed – the work function and the related to it duties are not performed. However new duties related to the strike are set for the strikers. For the duration of the strike the workers are obliged to be at the premises of the enterprise during the working hours established for them. The strikers cannot undertake activities, which hinder or create additional difficulties for the normal process of activities beyond their duties. Prohibited is the creation of obstacles or difficulties for the workers who do not participate in the strike, to continue their work during the strike. Participation in a legal strike is not a lawful ground for dismissal. The workers do not receive labour remuneration for the time of participating in a strike. For this period they can be compensated through especially created strike fund. The fund is established at the will of the workers, with their own funds or with the funds of the TUs. Block up of the strike funds during a strike is prohibited.

For the time of participation in a legal strike the workers are entitled to benefits from the public insurance funds under the general terms, and if the strike was acknowledged as illegal – only if they have been voluntary insured. The time of participation of the workers in a legal strike shall be considered as insured length of service (art. 18 SCLDA).

4.3 Consequences of the unlawful strike

The consequences of participation in illegal strike are unfavourable for the workers:

– workers could be disciplinary and property liable according to the provisions of the LC[12] and of the other laws. It has to be noted that it is important *to find fault* in participating in the illegal strike;

– the time of participation of the workers/employees in an illegal strike shall not be considered as insured length of service- per argumentum a contrario of art. 18, para 4;

– for the time of participation in an illegal strike the workers/employees are not entitled to general sickness benefit from the public insurance funds under the PAYG pillar. They could receive benefits from the voluntary insurance scheme only if they have been voluntary insured.

The social consequences are related to the lost trust in the organizers of the

strike.

4.4 Wildcat strikes and strikes called by occasionally organized workers
Spontaneous strikes are not explicitly regulated. In the early years of the transition spontaneous protests did occur but later on due to failure to curb the negative consequences of privatization and the shift of power in favour of employers they diminished giving place to regular strikes.

5. Employers during the strike

5.1 Anti-union conduct
The Bulgarian legislation has prohibited the lock-out, either offensive or defensive. Art. 20 SCLDA stipulates that after declaring the strike and during the time of a legal strike, the employer cannot discontinue the activity of the enterprise or a part of it, and fire workers with the purpose of preventing or stopping the strike; frustrating the satisfying of the demands. The prohibition is general and is relevant for all grounds of firing, enumerated in art. 328 and 330 LC (Termination of Employment by Employer With and Without Notice). The SCLDA allows disciplinary action to be taken for participation in an unlawful strike, but in order to impose a disciplinary sanction, the rights and procedures set out in the LC (articles 186 to 198) must be fulfilled. Prior consent of the labour inspectorate for persons who are specifically protected under article 333 of the LC shall be considered. The doctrine however considers when analysing art. 120 LC that the employer can change the place and the nature of work of employees in case of production necessity. This is temporary measure changing already existing employment relationships and it solves only separate, partial issues.

5.2 Lock-out
During a legal strike the employer has no right to employ new workers on the place of the strikers, for the purposes of preventing or stopping the strike or of frustrating the satisfaction of the demands; unless it is necessary for the activities under art. 14,1 – *minimal services*, for the duration of the strike. The strike is considered to be legal until through art. 17 the court has declared its unlawful character. After the court has declared that it is unlawful both firing of workers and employing workers is not done in breach of art 20 and 21 of the SCLDA.

5.3 Consequence of the strike on no-striking workers
Those workers who do not take part in the strike benefit from certain rights: the right to continue working if possible; financial rights, consisting of wages, in the case of continuing work, and certain payments if activity can no longer continue. According to article 18(5) SCLDA «Worker who has not participated in a

strike but due to the strike of other workers was unable to perform his duties, shall receive remuneration as in a case of stoppage beyond his control».[13]

6. External elements linked to the effectiveness of the strike

6.1 External elements impeding the strike

Unions do not have sufficient strike funds. In certain cases there is clear lack of public support for strikes, depending on the sector affected. Passive attitude or lack of solidarity from other TUs also diminishes the relevance of strikes. Official statistics on strikes is scarce and usually not used in debates or negotiations.

6.2 External elements supporting the strike

Media are usually interested in strikes but given their dependence on the Government or on some corporative interests they rarely are neutral. Regulation of media is still developing and self regulation has been started but in practice objectivity and impartiality is not a common feature.

6.3 Forms of international support for union activity

International solidarity and cooperation have traditionally been major dimensions of TU action and at no point in TU history has such cooperation been so central to TU survival and strength. The affiliation to ETUC and ITUC helped unions to direct and accelerate internal reforms. International affiliation has conferred a degree of legitimacy vis-s vis other national social partners and has strengthened the credibility of TUs. They have profited from the support and the expertise of the international TUs in submitting collective claims in the Council of Europe under the European Social Charter and to the supervisory bodies of the ILO.

The Bulgarian TUs have shared experience and knowledge with their counterparts in the Western Balkans through participating in some subregional ILO projects and programmes.

7. Alternative means of dispute resolution

Pursuant to art 4.1 of the SCLDA, in the event of disagreement between employees and employers or their representatives, each of the parties can call for mediation and/or arbitration either under the *aegis* of TU or employers' organizations and/or of the National institute of conciliation and arbitration. In 2001 the SCLA has been amended in order to set up the National Institute for Conciliation and Arbitration- NICA, which aims to promote the voluntary settlement of collective labour disputes between employers and workers. The NICA carries out its activities according to SCLDA and its own Rules. The arbitration disputes are considered on the grounds of a written request by the parties

in an open session with summoned parties. The disputes must be considered in two sessions at the most, as the recess between them cannot be more than 7 days, unless the parties have agreed on different period. The arbitration award has to be declared in correspondence with the acting legislation in writing, within three days from the date of the last session. The arbitration commission must take decision by a common majority.

Notes

[1] Prof. Vassil Mratchkov, *Labour Law*, 7th ed. 2010, Sibi, pp. 99-100.
[2] E. Drumeva, *The Primacy of EU Law over National Law*, in *Juridical World*, 1/2009, pp. 11-24.
[3] LC article 33 (1) Trade union organizations and employers' organizations are entitled, within the bounds of the law, to autonomously draw up and adopt their statutes and rules, to freely elect their bodies and representatives, to organize their leadership, as well as to adopt programmes of action**.** (2) Trade union organizations and employers' organizations shall define their functions
freely, and shall perform them pursuant to their statutes and the law.
[4] KNSB/ КНСБ is the abbreviation of the Bulgarian name - Конфедерация на независимите синдикати в България. It is also used in trade union documents published by ETUC, ITUC or ILO.
[5] Конфедерация на труда «Подкрепа».
many affiliated local organisations. These include the *Free Aviation TU*, which
mainly organises land aviation workers, *the Bank TU, the Academic Union, the National Police TU and the Union of Firefighters*.
[6] Workers and employees shall be free to form trade union organizations and alliances in defense of their interests related to work and social security.
[7] Art 4. (1) (Amended - SG, vol. 25 - 16 03 2001). When no agreement has been reached or some of the parties refuse to negotiate, each one of the might try to settle the agreement through mediation and/or voluntary arbitration with the cooperation of the trade unions, employers organizations and/or the national Institute for conciliation and arbitration. (2) Negotiations under the previous paragraph may last up to 14 days or longer in case the parties have agreed to a longer period.
[8] Art. 5 (1) Besides the order under the preceding article, the dispute can be referred for settlement by a single arbitrator or an arbitration commission, under a written agreement between the parties.
[9] SCLDA art. 14. (1) The workers and the employers are obliged to provide, by a written agreement, conditions for the performance of the activities during the strike, whose failure to fulfill or discontinuation can create a danger for:
– life and health of citizens who are in need of emergent or urgent medical care or of those citizens who are treated in a hospital;
– production, supply distribution, transmission and delivery of gas, electricity and central heating; the satisfactory communal and transport servicing of the population and for stopping the TV and radio broadcasts as well as voicemail telephone services;
– inflicting irreparable damages to the public or personal property or the environment;
– the public order.
[10] See the DECISION No. 14 of September 24, 1996 ON CC No. 15/96 by the Constitutional court in support of the ban.

[11] ILCCR: Examination of individual case concerning Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948 Bulgaria (ratification: 1959) Published: 2008.

[12] Articles 186-198; *Chapter Nine* Work discipline Section III Disciplinary Liability; art 333 LC.

[13] The general rule in the Labour code on labour remuneration in case of stoppage and production necessity is set up in article 267: The employee shall be entitled to his gross labour remuneration for stoppage through no fault of his. An employee shall receive no labour remuneration for the duration of a work stoppage caused through a fault of his. For the time of performing other work due to production necessity the employee shall be entitled to the labour remuneration for the work performed, but not less than the gross labour remuneration for his basic work.