

## Case Reports

2017/40

# The right of trade unions acting on a territorial level to represent employees and take part in the information and consultation procedures in the workplace (LI)

CONTRIBUTOR Vida Petrylaite\*

192

## Summary

The Lithuanian Supreme Court ruled that a trade union acting on a territorial level has no right to represent all the employees in a single enterprise or participate in information and consultation procedures, if (i) the majority of the employees have not specifically accorded this function to the trade union or (ii) the trade union is not able to prove that a structural sub-unit has been established in that enterprise.

## Background

Article 50 of the Constitution of the Republic of Lithuania states that trade unions are to be established freely and should function independently. All trade unions have equal rights.

Article 50(1) states that trade unions defend the professional, economic and social rights and interests of employees. Paragraph 1 sets out the dual purpose and function of trade unions: (i) to represent trade union members and defend them and (ii) to defend all the employees of an enterprise, institution or organisation in the ways set out in law.

\* Vida Petrylaite is a partner with CONFIDENCE Law Office, Vilnius, [www.confidence.lt](http://www.confidence.lt).

Paragraph 2 of the Preamble of the Law on Trade Unions provides that “trade unions shall be voluntary, independent and self-acting organisations which represent and defend the professional, labour, economic and social rights and interests of employees.”

Article 10(4) of the Law on Trade Unions sets out the duty of trade unions to defend and represent the rights and interests of their members, as protected by law. However, this duty should be assessed in the context of, for example, Articles 11 and 12, which provide that trade unions can represent other employees as well.

Article 6 of the Law on Trade Unions stipulates that trade unions may be set up on the basis for professional, office, production, territorial or other reasons, as determined by the trade unions themselves, according to their legal statutes. A trade union also has the right to determine its own internal structure.

Article 47 of the Labour Code, which implements Directive 2002/14/EC, provides that employees have the right to information and consultation. The employer or employers’ organisation must give all necessary information relating to labour relations to the representatives of the employees and their organisations, having regard to the level of social partnership.

## Facts

Several employees of the employer concerned joined the ‘SANDRAUGA’ trade union, which acts on a territorial level. After they joined, a structural sub-unit or division of the trade union was created, which acted at the level of the enterprise.

SANDRAUGA, acting on a territorial level, then applied to the court demanding information from the employer concerning its core data (e.g. the number of employees and types of employment contracts) and internal documents concerning systems of payment, job descriptions and working time schedules for all employees. Article 47 of the Labour Code and Article 13 of the Law on Trade Unions provide that the employer must submit this information to the trade union representing the majority of its employees.

The court of first instance and the appellate court both held that a territorial trade union only has the right to participate in information and consultation procedures if either (i) it has established a structural sub-unit at the employer or (ii) it has been granted representation rights by the majority of the employer’s employees. SANDRAUGA did not fulfil either of these requirements.

Following this, SANDRAUGA appealed and the case was heard in the Supreme Court.

## Judgment

The Supreme Court dismissed the appeal. It held that the employer was not obliged to submit information or participate with SANDRAUGA or its division in information and consultation procedures because SANDRAUGA did not have the right to represent all of the employees.

The Court ruled that trade unions have the right, but also an obligation, to represent their members in relations with the employer or a person authorised by the employer. Where an employer violates the rights or interests of a trade union member, the trade union may defend this member under the procedure prescribed in law. This means that the rights of trade union members may be defended by a trade union officer.

However, the law also obliges trade unions to represent *all* those who work in an individual enterprise, provided that the majority of the employees have agreed to this. This means that in order for a trade union to represent the employees on an enterprise level, either: (a) the trade union must be established on an enterprise level according the procedure prescribed by law (and bearing in mind certain minimum requirements for members) or (b) the majority of the employees must actively transfer the right of representation to a trade union acting on a higher level, i.e. sectorial or territorial.

Neither criterion was met by SANDRAUGA: the division in question acting at the enterprise level and the majority of employees working for the employer had not transferred the right of representation to the territorial trade union. Therefore, the employer was not obliged to submit information to SANDRAUGA.

## Commentary

This Supreme Court ruling may be important in future cases between employers and trade unions. It was quite common for individual employees to join trade unions of a higher level (i.e. branch or territorial), which meant that the trade unions acted at the enterprise level without formally being granted the right of employee representation. This judgment provides clarity on this question and on the rights and obligations of both parties.

## Comment from other jurisdiction

*Italy (Caterina Rucci, Bird & Bird)*: In Italy, who represents whom depends on the facts of each case. In general, during collective procedures such as collective dis-

missals and the information and consultation phases for transfers of undertakings, the trade unions who signed the applicable collective agreement do in fact represent all the employees, and are the only ones entitled to receive information and participate into the consultation, whilst the individuals themselves are excluded from these stages. In general, however, Italy has no statutory territorial level for trade unions, since it has never enacted the relevant Constitutional provision: as a consequence, trade union representation depends on various factors, such as the number of members, its presence on a national level and its having negotiated (national) collective agreements. The relationship with its members is based on a blend of individual empowerment and a general assumption of empowerment for collective procedures.

**Subject:** Representation of employees by trade union/information and consultation

**Parties:** Trade union SANDRAUGA (acting on territorial level) – v – Private Company “Diena Media News”

**Court:** Lithuanian Supreme Court (Instance of Cassation)

**Date:** 20 January 2017

**Case number:** e3K-3-96-690/2017

**Internet publication:** <http://eteismai.lt/byla/25524339296643/e3K-3-96-690/2017>