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MUTUAL RELATIONSHIP BETWEEN FREQUENCY OF THE RIGHT TO STRIKE AND RECOGNITION OF THE RIGHT TO LOCKOUT WITHIN THE LEGAL SYSTEMS OF SELECTED EUROPEAN STATES

ABSTRACT

The main objective of this paper is to analyze the mutual relationship between the right to strike as well as its frequency and the opposite guaranteed to employers – right to lockout in accordance with labour law regulations of the selected European States. Subsidiary, the author will also focus on the provisions within the Council of Europe (especially the regulations of the revised version of the European Social Charter and the judicial practice of the European Committee of Social Rights) as well as the provisions enacted by European Union institutions. One of the main thesis of the article hereto is the presumption that the lack of the common standard among the States of the Council of Europe causes significant differences regarding the acceptable scope of the right to strike and lockout. Such differences may adversely impact the domestic and international economy and trade relationships as well as are of particular significance in the light of postulate of economic, social and cultural rights protection. The conducted analysis will present the Constitutional guarantees as well as concrete labour law provisions, regarding not only recognition of the rights to strike or lockout, but also the bargaining system as well as practical dimension of the labour rights, such as for instance days not worked and the number of workers involved in industrial action. To genuinely present the aforesaid data, the author will rely mainly on the database of International Labour Organzation (ILO) and European Trade Union Institute (ETUI), selected conclusions of the European Committee of Social Rights and the statement of the chosen representatives of European labour law doctrine. The principal purpose of the article is therefore

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to attempt to establish an optimal model of future European standard providing an accurate base between rights of workers and interests of employers with the benefit for economy.

Keywords: right to strike, right to lockout, labour, capital, European Committeee of Social Rights, International Labour Organization

1. INTRODUCTION

The object of the conducted analysis are the European standards regarding the balance between the workers' right to strike (associated with the value of labour) and the employers' right to lockout (referred to the value of the capital). An adequate balance between both of the aforementioned values should serve for the protection of the interests of both subjects on the labour market. An article aims at indication of both: common standards of the Council of Europe based upon the article 6(4) of the revised version of the European Social Charter as well as the jurisprudence of the European Committee of Social Rights. As the subsidiary measure, the author will focus on the regulations of the art. 28 of Charter of the Fundamental Rights of European Union as well as the provisions of Community Charter of the Fundamental Social Rights of Workers. It must be indicated that the regulations enacted by the Council of Europe (and to some extend also European Union) provide only a general framework, while the specifics have been stipulated by the domestic regulation of particular member States. Such model enhances the varieties between domestic legal systems which directly influences the practical dimension of both: right to strike and to lockout.

Initially it is essential to establish the definitions of the terms of the strike and *lockout*. according to the Fifteenth International Conference of Labour Statisticians, the term *strike* refers to a temporary work stoppage effected by one or more groups of workers with a view to enforcing or resisting demands or expressing grievances, or supporting other workers in their demands or grievances. Additionally, *the workers directly involved* in the strike are these workers who participated directly by stopping work. Oppositely, *workers indirectly involved* in a strike are those employees of the establishments involved, or self-employed workers in the group involved, who did not participate directly by stopping work but who were prevented from working because of the strike. The explanation of the right to *lockout*. While recalling the definition of the Fifteenth International Conference of Labour Statisticians, it is stipulated that *lockout* is a total or partial temporary closure of one or more places of employment, or the hindering of the normal work activities of employees, by one or more employers with a view to enforcing or resisting demands or expressing grievances, or supporting other employers in their demands or grievances. Consequently, the workers *directly involved* in a lockout are those employees of the establishments involved who were directly concerned by the labour dispute and who were prevented from working by the lockout. Contrary, the workers indirectly involved in a lockout are those employees of the establishments involved who were not directly concerned by the labour dispute, but who were prevented from working by the lockout. In this context it shall be emphasized that while the right to strike is widely recognized in both domestic legislation and international standards, the recognition of the right to lockout has been associated with many controversies. To purport such thesis, one should first take into consideration the regulations enacted

by the Council of Europe and the European Union. Simultaneously, it must be underlined that the primacy of the first of abovementioned institutions in the area of labour disputes resolving does not raise any doubts.

Such phenomenon is justified by the art. 153(5) of the TFEU which states out that the matters of association as well as strike and lockout is excluded from the legislative competences of the European Union. as a result, the resolution of the presented issues belong to the domestic legal systems of particular member States. Nevertheless, it must be stipulated that regulations of the European Union create some recommendation regarding the labour disputes resolutions. for instance, the point 11 of the community charter of the fundamental social rights of workers which constitutes the right to collective bargaining, including strikes. Despite of the lack of explicit mention of the right to lockout, such regulation encompasses the full category of collective bargaining which does not give the precise answer to the presented issue. Analogically, to the provisions of the article 28 of the Charter of Fundamental Rights of the European Union, workers and employers, or their respective organizations, have, in accordance with community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action. The resonance of the last of the presented terms is stronger as employers and their organizations are expressly mentioned among its addressees. As the employers cannot be subject of the right to strike, so consequently they shall be guaranteed the different form of defending their interests.

The fundamental significance for the analyzed theme has the provision of the article 6(4) of the revised version of the European Social Charter. According to presented provision, to recognize the right to efficient execution of the right to collective bargaining, States shall acknowledge the right of the employees and the employers to undertake collective actions in case of conflict of the interests. As comparing to the article 28 of the Charter of the Fundamental Rights of the European Union, such right is guaranteed not only to the employers, but also employees. At the same time as concluded by some representatives of the doctrine, this document does not directly refer to the right of lockout. Nevertheless the assumption of the inadmissibility of the right to lockout will mean that the guarantees towards employers are simply illusory. Such remark has been confirmed by the judicial practice of the European Committee of Social Rights which has recognized lockout as the principle form of the employer interests protection. Nevertheless an aforesaid Committee does not require the member States to regulate the institution of lockout through the national legislation, but simultaneously the situation when lockout would be classified as a delict is considered to be the violation of European Social Charter (Pennings, 2008, p. 330).

According to the Conclusions I of the ECSR, the Committee has admitted that the resonance of the article 6(4) ESC may be applicable to both – strikes and lockouts. The most principle argumentation justifying such statement is the fact that lockout is the only efficient measure to safeguard the interests of the employers in case of collective bargain. Consequently, in 1971 the ESCR held that regulations classifying lockout as the delict of civil law is incompatible with the provisions of European Social Charter. Moreover the employers cannot be held liable to award workers with damages in case of organization the lockout.

In spite of that the precise requirement of the admissibility of right to lockout have been established in 1977 in the case analyzing the French legislation. The French Labour Code

accepted lockout only in case of force majeure, as the response for the illegal strike of the workers or to maintain public order and security. By the virtue of Committee's conclusions, such limitations were the violation of the European Social Charter. The same judgment has been ruled towards the Italian provisions of labour law. The turn of the years 70. and 80. of the XX century can be characterized with the classification of the admissibility of the right to lockout as a general role while its restrictions were deemed to be incompatible with European Social Charter or acceptable only in the minimal scope. This tendency has been overruled in the 1984, when according to the statement of the vast majority of the doctrine, the concept of unlimited right to lockout has been replaced with accurate restrictions. The consequence of such approach is the statement that the competent State authorities may introduce limitations of the enjoyment of the right to organize lockout with the reservation that both: legislations and decisions of the judiciary bodies will not cause the denial of the aforesaid right. The Committee has also indicated the vital difference in comparison with right to lockout such as the state authorities are not obliged to regulate the institution of lockout through the domestic legislation. It can be also restricted by the virtue of the judicial practice.

Concluding this part, it ought to be stated that the main problem of the article hereto is the lack of a common European standard regarding recognition the right of lockout. Although, as proved in prior sections, the regional documents regarding economic, social and cultural rights protection (in particular European Social Charter) refer to the right of lockout, but do not create the binding obligation of its protection in the domestic legislation. As a result, the decision regarding the collective bargains (including right to lockout) have been traditionally reserved for particular member States. Such circumstance has led to the significant differences regarding not only the relation between right to strike and right to lockout, but the practical shape of labour disputes between the European State. As mentioned before, such area may influence two important spheres. The first one is associated with the condition of national economy and partially also with benefits of the consumers. The second touches the issues of human rights protection. Shall exclusively workers (traditionally described as the weaker part to the dispute) be protected against unlawful practices of the employers? Do the legal protection of one party to the dispute create the state of inequality or unjustified special consideration? Shall each party of the dispute be guaranteed the same scope of legal protection? The best resolution for the presented problems will be constitution of the commonly binding standard regarding the right of lockout or at least adjuration to regulate in the legislative procedure. Nevertheless, in the lack of the common solution, one should take into consideration the models implemented in selected European countries to search the standard of an accurate balance between the right of workers and interests of the employers. One shall be aware that only an accurate combination of labour and capital can serve the proper development of the national and international economy with the benefit for all of the subjects on the market.

2. MATERIAL AND METHODS

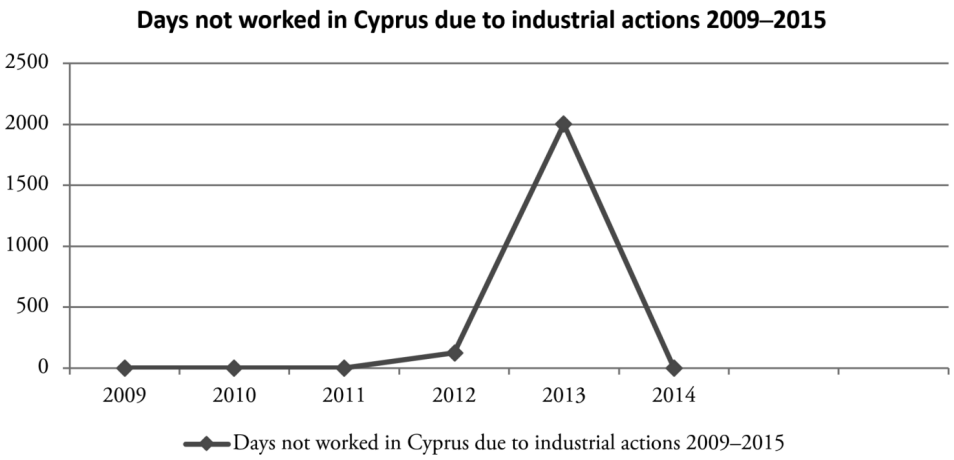
To illustrate the real reliance of the right to strike and right to lockout on the labour market of chosen European States, one should select certain measurable and easily comparable value regarding the situation on the labour market. In the opinion of the author the most

objective value is the average number of days not worked due to industrial actions per 1.000 employees in the particular country within the period between 2009 and 2015. The implemented data are gathered and self-calculated by the European Trade Union Institute (ETUI). An aforesaid data state encompasses statistics from all European countries with the exceptions of: Bulgaria, Croatia, Czech Republic, Greece, Italy, Luxembourg, Romania and Slovenia. Moreover some countries did not present sufficient data regarding selected periods: in case of Cyprus no data available for 2015, in case of Hungary for 2011 and 2013-2015 and in case of Portugal and Poland no data for 2015. It shall be also emphasized that the general and public strikes which occurred in 2010, 2012 and 2013 in Spain as well as strikes in public administration in Portugal are excluded from the database subjected to the analysis. The author will particularly focus on the States, such as Cyprus, Germany to analyze the model of their labour relationships through the prism of right to strike and lockout. The process of proper understanding of the presented data requires few initial remarks. Firstly, it is crucial to compare the weight average of the days not worked due to industrial actions in Europe. While analyzing the dataset from the period of 2000 to 2015, the peak of the days not worked due to labour disputes falls in the 2002 with European weight average of 82 (among 26 European countries). In 2003 the amount of such days gradually fails to 63 (2003) and 46 (2004). It remains approximately constant until 2010 when it reaches 70 (among 22 countries). One year later it radically falls to 38 (among 21 countries). Taking into consideration the overall period of 2009–2015 the weight average equals 38 and the simple average 45 (ETUI, 2016). Secondly, in such context the term weighted average shall be explained. Such term is required to make a correction for the size of the employees in employment. Therefore countries with a large number of employees contributed more to the final average of days not worked than countries with a small number of employees in employment. The weighted average is more accurate compared to the simple average to assess the global development of the days not worked due to industrial action in Europe. Thirdly, it must be emphasized that while comparing the numbers of days not worked one shall be conscious of significant varieties within particular countries. The detailed dataset will be presented in the "Result and discussion part". The aim of this section is to provide an adequate dataset and the brief presentation of industrial conflict resolution for three European States: Cyprus, Germany and France. Such methodology will serve as an appropriate tool to explain the differences in the practical approach to right to strike and lockout as well as search for optimal European model which guarantees the protection of both of analyzed rights.

2.1 CYPRUS LABOUR LAW REGULATIONS REGARDING RIGHT TO STRIKE AND LOCKOUT

In compliance with the abovementioned figure, Cyprus can be characterized as the State with largest among of days not worked due to industrial actions in Europe within the period of 2009–2015. However, while analyzing the exact details regarding the amount of such days in Cyprus in the particular years, the matter seem much more complicated. The detailed data are presented on the diagram below[1]:

[1] Based on ETUI dataset, Interactive map on strikes in Europe, July 2016.



Source: Ineractive map on striking Europe, July 2016, p. 10.

While analyzing the data shown on the figure above, we may observe that during most of the period, Cyprus maintained low stable level of the amount of days not worked due to industrial actions. The rapid increasing of the number of such days has been noted in 2013 when the open-ended strike in the constructions industry has occurred. Such strike has been known as the longest strike in Cyprus history from 1948. In such context, two fundamental questions shall be raised:

1) In what matter through the prism of right to strike and lockout to maintain such a stable and low level of undertaken industrial actions within the period 2009–2012?
2) Which circumstances have led to the drastic enhancement of the numbers of days not worked due to industrial actions in 2013?

The resolution of the two of abovementioned issues will further serve to present strengths and weaknesses of Cypriot labour law regulations.

Initially, it must be stipulated that in accordance with the article 26 of the Cypriot Constitution refers to the possibility for legislation to "provide for collective labour contracts" through it lacks the specific reference to collective bargaining as such. Moreover, article 27 explicitly recognizes the right to strike. In compliance with the aforesaid provision "the right to strike is recognized and its exercise may be regulated by law for the purposes only safeguarding the security of the Republic or the constitutional order or public order or the public safety or the maintenance of supplies and services essential to the life of the inhabitants or the protection of the rights and liberties guaranteed by this Constitution to any person". It must be emphasized that according to Cypriot policy on labour relation it has remained rather stagnant. The rationale for such a philosophy is an assumption that labour disputes shall be approached in voluntary manner, with a minimum of legislative measures governing the relationships between employers and employees. This is a consequence of the deeply rooted approach of the Cypriot government that the regulation of conflict resolution is essential services through the signing of a voluntary agreement by the social partners (European Foundation for the Improvement of Living and Working Conditions, 2004, p. 10 and next). The main effect of the social dialogues in labour relations has been Cypriot Industrial Relations Code signed in 1977 as a gentleman agreement which lays out in details the procedures

of the conflict resolutions. The Industrial Relations Code has been predating by the Basic Agreement from 1962. Such agreement was the set of rules which were further succeeded by the Industrial Relations Code. The strong advantage of both documents was to establish set of the rules of both participating sides in the field of industrial relations. These aforesaid fundamental rights are:

- The right to organize
- The right to collective bargaining, collective agreements and joint consultation
- The definition of issues proper for collective bargaining, joint consultation, and management prerogatives
- Affirmation of the strict adherence to the provisions of international labour conventions which the Government of Cyprus has ratified

While focusing on the right to lockout, it must be stated that there is no specific reference in the Constitution or any other binding law. Simultaneously, in compliance with the opinion of attorney general, one shall be conscious that "in accordance with existing legislation in Cyprus, in lockout, though not recognized by the Constitution, is the right the employer has, provided it is exercised for safeguarding or promoting the lawful interests of the employer during a trade dispute and without committing any penal or illegal act or activity". Moreover, according to the part II, section B, paragraph 1(d) of the Industrial Relations Code "the aggrieved party may resort to any lawful action, including a strike or lockout, in defense of its interests".

In this context one cannot overestimate the significance of collective negotiations. While analyzing the history of Cypriot labour disputes in the period between 1993 and 2002, the yearly average number of the industrial disputes for mediation was 216. In comparison, the average numbers of such disputes between 1998 and 2002 was reduced to 190 (European Foundation for the Improvement of Living and Working Conditions, 2004, p. 15). The direct rationale for such phenomenon is increasing number of collective agreements in force while it is evident that direct negotiations are playing an increasingly vital role and are efficient measure to resolve industrial disputes. Furthermore, the fact that mediations have been on the decrease means that the two sides are showing higher levels of responsibility, with real efforts being made to resolve differences at the direct stage of negotiations in an effect on both sides to preserve industrial peace and to maintain the efficient operation of the involved company or sector. Through this prism we shall understand a rudimentary role of recognition of the right to lockout which enables to establish an appropriate balance between labour and capital and provides both side of the dispute with efficient measure to defend their interests. Such situation causes that any party does not deem to be superior towards another while undertaking joint negotiations. Such observations have been purported by International Monetary Fund which stated that the philosophy behind the promotion of a voluntary system has been the fostering of strong employer and employee' organizations, with a view to maintaining a balance of power between the two sides. Such system, in accordance with IMF opinion, has contributed to maintaining good industrial relations and labour peace in Cyprus and reducing a number of labour disputes and work days lost to conflicts (International Monetary Fund, 2005, p. 220).

Such observations must be modified with the evaluation of the open ended strike from 2013. To clarify such phenomenon, it shall be explained that the newly adopted European Union politics attempted to transform national collective agreement system towards much

more strongly enterprise-oriented negotiating structures. Such attempt has particularly adverse effect on the Southern Europe where majority of the firms are small or medium size. As a consequence, the decline of union density with simultaneous increase of the membership in the employee organization has been reported *inter alia* in Cyprus. This resulted in rapid increase of labour disputes. In accordance with Eurofound, a total of 56 strikes were reported in Cyprus resulting with 48,294 working days in 2012 which has been only a prelude between open ended strikes occurring in 2013. In this context one shall refer to Giorgos Charalambous who stated that such strikes served rather to confirm than challenge the more general trend (Charalambous, 2016, p. 145). In this case the Meardi's observations about the futility of struggle against an elusive opponent uninterested in local political exchange and unaffected by general strikes, resonated also the Cypriot case. At the same time the author expresses the opinion that right to strike and lockout shall be to some extent protected by the legislative measures, which prevent from extraordinary situations such as series of general strikes from 2013 (Meardi, 2014). One ought to be aware that regulating rights to strike and lockout in legislative measures serves the principle of legal security of the individual. Undoubtedly the statutory regulation create the state of stability which is not always enhanced by the voluntary agreements between employers and employees. An aforesaid meaning is especially vital through the prism of the Cyprus 2013 Human Rights Report which states that penalties are confined to payment of pecuniary damages and compensation, but unions do not consider them sufficient to deter violations. Simultaneously it shall be stipulated that in accordance with the abovementioned Human Rights Report, the absence of legally binding regulations regarding right to strike and lockout in Cypriot labour law, both employers and workers effectively observe the terms of the collective bargaining agreements (Cyprus Human Rights Report, 2013).

2.2. GERMAN LABOUR LAW REGULATIONS REGARDING THE RIGHT TO STRIKE AND LOCKOUT

In the section hereto the theoretical and practical dimension collective bargains shall be analyzed in German labour law through the prism of the days not worked due to industrial actions. Such conducted analysis will further enable to indicate certain advantages and disadvantages of the German model in comparison with Cypriot model. Analogously, the analysis shall be commenced with adequate database from the period between 2009 and 2015 which are illustrated on the figure below[2]. In the German practice the number of days not worked due to industrial action stabilizes at low level with significant increase in one particular year (2015), but not as rapid as in the Cypriot case.

The rationale for increase of days not worked in Germany is associated with warning strikes in metal and electrical industry as well as strikes in the social and education sector. The demand in the education and childcare sector were equate to a wage increase of 10 percent. According to trade union leaders this was to be achieved by categorising the professionals at a higher level on the pay scale within the child and social care sector.

As the initial remark, it must be stipulated that German Constitution does not explicitly recognize the right to collective bargaining. However, the Constitution of the Germany

[2] Based on ETUI dataset: Interactive map on strikes in Europe, July 2016.

Source: Ineractive map on striking Europe, July 2016, p. 15.

implements the term of the freedom to form coalitions. According to the opinions of the vast majority of the doctrine, the collective bargaining and collective action are interpreted as inseparably linked with such freedom. This, in compliance with the statement of Tomas Blanke, safeguard the perception of collective bargaining and right to strike as acceptable constitutional rights, nevertheless it is not intensively regulated by the statutory law. Consequently, in the jurisprudence of German courts, the collective bargaining cases became constitutional cases. As a result, the content of the right to strike has been significantly developed by the Labour Courts as well as judicial practice of the Federal Constitutional Court. Additionally one shall be aware that since the right to strike was derived only from bargaining rights of trade unions by means of judicial interpretation, it was limited to collective bargaining-related situations. In other cases right to strike within the German legal system is impossible to occur. Therefore, in German labour law, the legislative measures are reserved only to important legal aspects of collective agreements as for instance, the Collective Agreement Act regulates *inter alia* the parties eligible to engage in collective bargaining and aspect regarding the binding effect of collective agreements. It must be also said that German Labour Court is equipped with the competence to interpret the provisions of collective agreements in individual cases. Such part shall be recapitulated with the conclusion that in spite of the fact that German law widely regulates the procedures of collective bargaining, it is still widely open to autonomous regulations by the social partners regarding especially the material status of the agreement. Also the direct intervention of the State authorities in collective wage conflicts is prevented by the constitutional collective autonomy. Contrary to the Cypriot case, the strikes in Germany were not caused by radical legal changes imposed either by national authorities or European Union, but as a weapon to defend one's position on the labour market (Blanke & Rose, 2005, p. 64).

Focusing on material aspects, German right to strike has been traditionally restricted by various limitations, such as peace obligation during the term of collective agreement and a prohibition of striking for conflicts of rights, distinct from conflicts of interests. The German system legitimates only these strikes which aim at enhancing the bargaining position of employees, while the political and solidarity strikes are excluded from the protection. In

addition, the German right to strike has never been interpreted as an individual right, but rather as a trade unions' right. The most characteristic feature of the German regulatory model regarding right to strike is the principle of *ultima ratio* which establishes the rule of proportionality within the area of labour law. According to such principle: "strike is only legal if it is necessary and ultimate measure to solve an industrial conflict". It must be also said that the concept of freedom to form coalitions is constructed in such ways which enhances the employers' right to lockout. The justification for such interpretation under the German law is the material concept of parity. Nevertheless, such understood lockout is restricted by a numerous limitations established in the case law. The departure point is the assumptions that strikes and lockouts shall be treated differently to retain the balance of bargaining power. As a result, lockout is only permitted in case of where an uneven balance of power needs to be corrected and after notification and consultation of the social partner. Such cases are classified as examples of the defensive lockout, which is possible under certain limitations. The more controversies are associated with so-called offensive lockout where right to lockout has been treated as employer's weapon to force workers to accept certain working conditions imposed by the employer. In accordance with the opinion of T. Blanke, the offensive lockout in Germany is almost completely forbidden. Nevertheless, it must be said that in the 80. years of the XX century while some examples of offensive lockout had occurred in Germany, the European Committee of Social Rights dissembled the issue of their legality (Blanke &. Rose, 2005, p. 78). It is also worth mentioning that Sweden widely accepts the practice of the offensive lockout. Simultaneously, an average numbers of days worked due to industrial actions in Sweden within the period 2009-2015 equals 3 days (ETUI, 2016).

To conclude the previously made remarks, both rights to strike and lockout have been limited by the principle of proportionality in the German practice which serves upon the realization of the doctrine of equality of arms between labour and capital. Such notion shall be indicated as the primary reason for relatively low number of days not worked due to industrial actions in Germany. Moreover the German labour law maintains an adequate proportion between the legislative measure regulating mainly procedural aspects and the agreements of social partner however evoking binding effect with material provisions. This enhances the guarantees of legal certainty and security with no avoidance of the social partners' expectations regarding their rights and position on the labour market. In comparison with Cypriot practice it provides both parties to the labour dispute with certain guarantees and procedural equality towards the law.

2.3. FRENCH LABOUR LAW REGULATIONS REGARDING RIGHT TO STRIKE AND LOCKOUT

To contrast the judicial practice of Cyprus and Germany, it is highly advisable to conduct analysis regarding right to strike and lockout in French legal system. Retaining the same tool of interpretation which is the number of days not worked due to industrial actions within the period between 2009–2015 to estimate the advantages and disadvantages of the position of employers and workers on the French legal market. An adequate database is shown on the figure below[3]:

[3] Based on ETUI dataset, Interactive map on strike in Europe, July 2016.

Source: Ineractive map on striking Europe, July 2016, p. 14.

In accordance with presented data, the number of days not worked due to industrial actions within the period between 2009-2013 is the second highest among European countries. Contrary to the Cyprus and Germany, the number of such days in France between 2009 and 2010 showed a tendency to increase, and between 2011 and 2012 it decreased, but still maintained relatively high level to have increased again in 2013. To search for grounds of such circumstances, one shall focus on specific regulations of French labour law.

An aforesaid analysis shall be commenced with statement that French model of labour relations is characterized by the enhanced protection of the right to strike. According to the Preamble to the French Constitution right to strike is recognized "within the framework of the laws that regulate it". Moreover, what is worth emphasizing within the bases of French constitutional order, the right to strike is classified as the individual right which is exercised collectively, contrary to German practice which recognizes it as the right of the trade unions. In the French practice the constitutional provisions regarding right to strike have not been implemented through ordinary legislation (except in the field of public service) and as a result domestic courts are granted competence to direct application of to the constitutional clauses as well as defining the lawful scope and the limits of the right to strike. The French *Cour de Cassation* has strictly enforced the constitutional guarantee of the right to strike, excluding that it can be restricted by collective agreement or an obligation to maintain industrial peace. The deeply rooted jurisprudence of the French courts states that a strike must express a professional claim (including in the form of solidarity action) and due to such assumption, purely political strikes shall be regarded as unlawful (Fabbrini, 2014, p. 147). Nevertheless, the *Cour de Cassation* has legitimized strikes with macro-social goal, which has caused the indirect sanctioning of lawfulness of strikes which aim at influencing the social and economic policy of the government which has direct impact on working conditions". In comparison with German establishment of labour relations, the scope of admissibility of the

legal enjoyment of the right to strike is much wider. In spite of the fact that French law provides the conciliation procedures of industrial actions, the workers are not obliged to wait for the result or even undertake such procedure to go on strike. Similarly, there is no provision which demands the expectations to be explicitly presented to the employer before getting on strike. This is a vital difference comparing to German practice where right to strike has been recognized only while bargaining a collective agreement.

Variously from Cypriot and German provisions, in French labour relations there is no right to lockout. Such shape of regulations is justified by the absence of the principle of equality of arms (balance between labour and capital) in French legal system. The French labour law has been based upon argument that employer must provide work independently from any external circumstances. Right to lockout is also deemed to constitute the violation of the constitutional provision which protects the right to strike. Nevertheless lockout does not constitute a penal offense, it is classified as contractual misconduct of the employer who shall have to pay the regular wages and possibly damages to each employee. The situation is exceptionally different in two instances. The first can be described as an absolute impossibility of providing the work for employees as a result of force majeure (Act of God) or an irresistible force. It is obvious that the burden of proof in such situation is imposed upon the employer. The employer must bring proof that a disorganization of the enterprise brought about by the strike or related facts make it impossible to continue to operate. The second ground for lawfulness of the right to lockout was established by the jurisprudence of the Supreme Court and relates to the safety reasons. In other words, it occurs only when the security of employees is so seriously threatened by a bad evolution of the industrial action that the temporary closure of the firm is necessary. In such situation, lockout is perceived not only as a right, but first of all as a duty of the employer (Despax, Rojot, Laborde, 2011, p. 211).

To conclude the analysis of the French provisions regarding right to strike and lockout, it shall be characterized with inequality of arms and privileged position of the workers. As to some extent such practice is compatible with the European Social Charter or even recommended by the international standards, the French example directly leads to the violation of another human right – right to lockout. The conflict of two colliding rights shall be settled with proportionate limitation of both rights and not the overall denial of one of them. Even while taking into consideration, the two acceptable instances to legalize the right to lockout, the inconvenient allocation of the burden of proof shall be understood as a factor which deters the employers from implementing of such possibility. What is more, the rationale for analyzed exceptions was associated with the rights of employees and not employers. The assumption that the institution treated as the employers' weapon shall serve as a benefit of the employees is not only clear violation of the article 6(4) ESC, but a factor which adversely affects French economy.

3. RESULTS AND DISCUSSION

After the initial remarks regarding absence of homogenous standard regarding the establishment of labour relations (especially regarding the recognition of the right to lockout) as well as analysis of the exemplifications of different labour law practice in Cyprus, Germany and France, this part aims at presentation of general conclusions between the number of days not worked due to industrial actions and the adopted model of resolving labour disputes (in par-

ticular a mutual relationship between strike and lockout). this part shall be commenced with presenting the exact database regarding days not worked due to industrial relations of some European states (figure 1)[4]. As illustrated on the presented figure, the states with preferential status of employee rights which often do not recognize the right to lockout, characterize with high level of the amount of days not worked due to industrial actions. An opposite tendency is visible in states which labour relations are based upon the principle of equality of arms, such as Germany where the number of days not worked is relatively low. Such model has been slightly distracted by the Cypriot case which usually characterizes with low level of the undertaken strikes due to efficient voluntary agreements' model with the exception of the general strike in 2013. Such circumstances has been subjected to genuine analysis in the previous part of the article. While analyzing the presented data, it is worth indicating some remarks regarding Poland. The author of the article did not selected Poland to elaborate it in the previous part due to different shape of labour relations. While in the vast majority of European states the strikes are associated with the private sector, in Poland most of the strikes occur in public sphere. the most vivid example may be the instance from 2008 where the teacher undertook strikes demanding *inter alia.* The exact number of the strikes in Poland is presented in the table below:

Table 1: Number of strikes undertaken in Poland within the period 2008–2012

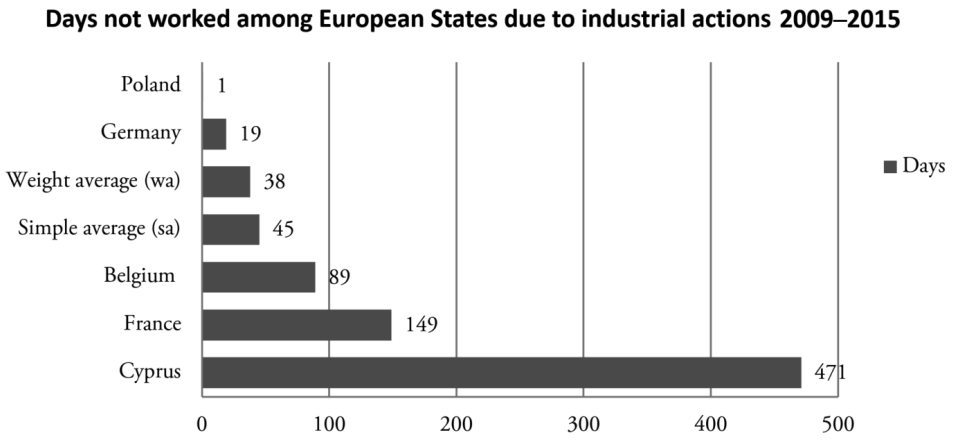
Year	Number of strikes
2008	12.765
2009	49
2010	79
2011	53
2012	17

Source: The data of Main Statistical Office in Poland

As presented on the figure 1, Polish resolution of labour disputes characterizes with very low amount of the days not worked due to industrial actions stabilizes at a very low level within the period of 2009-2015, but the rationale of such situation shall be sought in historic and social factors rather than concrete establishment of relationship between right to strike and right to lockout (Zjawiona, 2014). Therefore, the particular situation of Poland is not the subject to the article hereto.

While analyzing the data provided by the figure 1 to search the advantages for the lockout institution, according to Michael A. Crew - it shall be said that the protection of both right to strike and lockout causes that management and union leaders need to consider the risks associated with leaving the bargaining table and moving to more drastic actions. Consequently, it increases the chance of success of the bilateral negotiations procedure and elaborating a certain compromise. Such solution gives both parties the incentive to negotiate to the middle, rather than formulating an extreme position. This has been especially visible in the Cypriot practice where the open-ended strike has been undertaken to defend already existing model and not (as traditionally) to modify it. As the proper functioning of the domestic economy

[4] Based upon ETUI dataset, Interactive map on strikes in Europe, July 2016.



Source: Ineractive Map on Striking Europe, July 2016, p. 6.

requires both: the labour and the capital, each of the parties shall be equipped with certain measures to protect one's interests to maintain the right balance between them (Crew & Kleindorfer, 2006, p. 350).

Due to its complexity, the relationship between strike and lockout requires well established economic system of the State and consequent practice. While analyzing the solutions of the presented countries, the Cypriot model has its roots with the enactment of the Basic Agreement in 1962. Identically established and deep rooted is French reluctance toward the right of lockout. Therefore, currently the only impulse to unify the standard within the European States will be proposition of some legally binding regulation from the Council of Europe or the European Union. However, in addition to the fact that the rights to strike and lockout have been excluded from the legislative competences of the European Union, the second option is rather impossible.

According to the dataset of the European Trade Union Institute (figure 1) one may also observe a bigger stability within the State which (at least to some extent) provided the right to strike and lockout in their constitutional and legislative framework and the subject of the judicial practice of domestic courts rather than leaving it to be mostly regulated by the voluntary agreement. This last assumption is associated with the principle of legal certainty which requires that people subject to the law shall be able clearly to ascertain their rights and obligations. Moreover the related concept of legitimate expectations' protection constitutes the corollary to this principle as those who act in good faith on the basis of the law as it is or as it seems to be should not be frustrated in their expectations. It will prevent from situation visible in Cypriot practice which led to open-ended strike (Dashwood, 2010, p. 89).

4. CONCLUSIONS

Upon the basis of the factor of numbers of days lost due to industrial actions, one can observe a clear reliance between average duration of certain industrial action and the mutual relationship between rights to strike and lockout. Obviously such dependence has been also shaped by the number of different factors, starting from the sources of law regulating area of

labour disputes (legislative measures or voluntary agreements), current economic and social situation and historic conditions. Generally speaking two most abject European models can be characterized either with presence or absence of the principle of equality of arms. Such principle is associated with many economic benefits – *inter alia* it provides a more efficient bilateral negotiations and enables to economize the time traditionally lost due to labour disputes. Nevertheless many States have been reluctant to recognize and efficiently protect the right to lockout.

The common European standards do not force to recognize the right to lockout and to protect it within domestic legislative measures. Despite this, such protection is widely recommended by the author due to dynamically changing economic and social conditions. Obviously the decisions of national authorities shall not replace the initiatives of social partners. In this context the German model seems the most adequate as it efficiently combines both of the aforesaid factors.

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