

THE LOCK-OUT

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Abstract

This paper analyses the legal nature and socio-economic implications of the lock-out (employer strike) in the contemporary legislative context, with a particular focus on the Romanian legal system. Although the strike is constitutionally recognised as a fundamental right of employees, the lock-out remains in a legislative vacuum marked by a deliberate silence in the Labour Code and the Social Dialogue Act (No. 367/2022). The study investigates whether this omission constitutes an implicit prohibition or a regulatory gap, assessing its impact on the principle of synallagmaticity in the employment contract and on Article 41 of the Romanian Constitution concerning the right to work.

Using a comparative methodology, the article examines the contrast between jurisdictions that accept lock-outs as an expression of 'equality of arms' (e.g. Germany) and the restrictive approach in Romania, where the protection of the vulnerable party takes precedence over the symmetry of the conflict. It also explores the crucial distinctions between lock-outs as an offensive tactic and the suspension of work caused by force majeure, highlighting the challenges that the lack of regulation of this measure poses for the coherence of the judicial system. The study's conclusions emphasise the need for legislative harmonisation with international standards (ILO) and propose solutions de lege ferenda for managing the balance between the employer's economic freedom and the employee's social protection.

Keywords: lock-out, collective labour dispute, right to work, equality of arms, legislative vacuum, comparative law.

1. Introduction

In the following lines, I aim to examine the legal nature of the lock-out — that radical measure whereby an employer decides to halt operations during a labour dispute. We cannot truly understand this concept without looking back briefly at its historical roots and its evolution in modern law, where the echoes of the old 'class struggle' still seem to influence the way we judge these tensions¹. This perspective strikes me as essential, particularly as it helps us decipher why Romanian labour legislation maintains a suspicious silence regarding lock-outs. It is an absence that raises questions about the fragile balance between the economic freedom of the employer and the constitutional right of the employee².

If we look more closely, we observe an interesting dynamic between the desire to protect the business and the need for social protection. The lock-out, simply defined as the temporary closure of factory or office gates to force or block certain demands, appears to function as a 'weapon' of counterattack in the face of trade union pressure³, often carrying connotations of an economic 'weapon' intended to counteract the pressure exerted by trade union actions, such as strikes. The lack of regulation of lockouts, unlike strikes, creates a substantial imbalance in the balance of power between employers and employees, a fact which requires a rigorous analysis of the compatibility of this legislative omission with constitutional principles and the rules of labour law. In this regard, a clear distinction must be drawn between a lock-out, in the sense of a strategic offensive measure, and a closure of the workplace imposed by exceptional circumstances, such as force majeure or a state of necessity⁴. Such a distinction is crucial for avoiding interpretative distortions and for maintaining the coherence of the legal

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¹ H. Wiczanowska, "MUTUAL RELATIONSHIP BETWEEN FREQUENCY OF THE RIGHT TO STRIKE AND RECOGNITION OF THE RIGHT TO LOCKOUT WITHIN THE LEGAL SYSTEMS OF SELECTED EUROPEAN STATES," *Toruńskie Studia Międzynarodowe*, vol. 1, no. 9, p. 87, Mar. 2017, doi: 10.12775/tis.2016.008.

² M. Seweryński, "Collective Labour Law Codification, Polish Experience," *Revista Latinoamericana de Derecho Social*, Jan. 2013, doi: 10.22201/ijj.24487899e.2013.17.9727.

³ J. Reklama et al., "Abstracts of the 8th International Scientific and Practical Conference," Nov. 2020, doi: 10.46299/isg.2020.ii.viii.

⁴ L. Fontaine, "Minimum service – Essential services: French and Quebec approaches," *HAL (The Centre for Direct Scientific Communication)*, Nov. 2004, Accessed: Feb. 2025. [Online]. Available: <https://theses.hal.science/tel-00068888>

system in the context of upholding social rights and solidarity⁵. A comparative approach to international legislation will complement the analysis, providing a basis for identifying best practices and potential solutions for harmonising the Romanian regulatory framework.

I do not believe we can draw a conclusion without taking a brief look at what our neighbours are doing. A comparative analysis with other European states could offer us some solutions for ‘patching up’ the Romanian regulatory framework. It is interesting to observe how other countries manage to balance collective rights and employers’ prerogatives without stifling social dialogue. Perhaps here too, the classical doctrine of labour law — built on the idea of equity and contractual freedom — should play a more active role in defining these conflicts⁶. Such an analysis is imperative to understand how fundamental labour rights, including the right to strike, are interpreted and protected in various jurisdictions, with direct implications for the Romanian regulatory framework⁷.

Currently, this regulatory landscape is characterised by a restrictive approach, in which the strike is strictly limited to collective bargaining, whilst the lock-out remains in a veritable legislative vacuum that oscillates between implicit prohibition and illegality⁸. This silence in the Labour Code⁹ or in the Social Dialogue Act¹⁰ appears to be more of a conscious choice. The intention was likely to protect the employee, considered the more vulnerable party, by rejecting the idea of perfect symmetry in the ‘weapons’ of industrial action. However, this ‘normative silence’ is problematic from a constitutional point of view. In a world where we are striving to align ourselves with the ILO’s international standards, it becomes imperative to decide: is this gap a tacit prohibition or simply a legislative lacuna that we refuse to address? It remains to be seen to what extent we can harmonise these disputes within a legal framework that does not ignore the economic realities on the ground.

However, this regulatory silence raises constitutional difficulties, given that the alignment of national judicial systems with international standards, such as those developed by the International Labour Organisation, is becoming essential for promoting fair labour practices and ensuring consistency in the resolution of collective disputes. The analysis will also examine the extent to which this legislative silence constitutes a genuine legislative gap or a tacit prohibition, in relation to dispute resolution mechanisms aimed at harmonising the coordination of labour relations within a comparative legal framework.

2. Content

Recent specialist literature emphasises the need to reassess traditional paradigms in labour law, highlighting the expansion of organisational responsibilities beyond mere profit maximisation, with an increasingly pronounced focus on ethical governance and corporate social responsibility¹¹. Within this framework, comparative research examines the delicate balance between the collective autonomy of the social partners and the imperative need to protect employees’ fundamental rights in the face of trends towards the flexibilisation of labour relations¹². This doctrinal recalibration highlights the risk that prioritising economic efficiency may marginalise the social function of collective bargaining¹³, ignoring the fact that industrial action has historically served as a means of redressing the power imbalances inherent in labour relations¹⁴.

⁵ W. P. Chaves and H. P. Martins, “JURIMETRIC ANALYSIS OF DECISIONS ON THE (non-)abuse of strikes by the Regional Labour Court of the 4th Region,” *Journal of Labour Law and the Working Environment*, vol. 6, no. 2, p. 76, Dec. 2020, doi: 10.26668/indexlawjournals/2525-9857/2020.v6i2.7052.

⁶ M. Rakhimov, “The Principles of the Classical Theory of Labour Law,” *International Journal of Law and Policy*, vol. 2, no. 2, Feb. 2024, doi: 10.59022/ijlp.157.

⁷ V.- Sribala, H. B. -, and B.- Layasri, “Right to Strike: A Fundamental Right or an Abstract Concept,” *International Journal For Multidisciplinary Research*, vol. 5, no. 6, Dec. 2023, doi: 10.36948/ijfmr.2023.v05i06.9929.

⁸ R. Dimitriu, “Collective Labour Conflicts in Companies and Public Institutions: Some Prospects,” *SHILAP Journal of Lepidopterology*, Oct. 2011, Accessed: Feb. 2026. [Online]. Available: <https://doaj.org/article/744d306bf4b84fa1a1fc9a0a9a7dd550>

⁹ Law 53/2003 – Labour Code, republished in the Official Gazette No. 345 of 18 May 2011;

¹⁰ Law No. 367 of 2022 on social dialogue, published in the Official Gazette No. 1238 of 22 December 2022;

¹¹ N. E. Eneh, S. S. Bakare, A. O. Adeniyi, and C. U. Akpuokwe, “MODERN LABOR LAW: A REVIEW OF CURRENT TRENDS IN EMPLOYEE RIGHTS AND ORGANISATIONAL DUTIES,” *International Journal of Management & Entrepreneurship Research*, vol. 6, no. 3, p. 540, Mar. 2024, doi: 10.51594/ijmer.v6i3.843.

¹² A. A. Vaz, M. A. L. Berberi, and T. Martins, “The Crisis in the European Union and the Impacts on Fundamental Labour Principles in the Face of the Erosion of Rights by Member States in Contravention of the Provisions of Community Law,” *REVISTA INTERNACIONAL CONSINTER DE DIREITO*, Jul. 2021, doi: 10.19135/revista.consinter.00012.16.

¹³ G. Centamore, *Collective Bargaining and the Plurality of Categories*. 2020. doi: 10.30682/sg301.

¹⁴ I. Meyrat, “Fundamental Rights and Changes in the Forms of Organisation of Economic Activity: Labour Law in the Face of the Transformations of Capitalism,” *HAL (The Centre for Direct Scientific Communication)*, Jun. 2015, Accessed: Jan. 2025. [Online]. Available: <https://hal.archives-ouvertes.fr/tel-01970239>

In the national context, this asymmetry is accentuated by the absence of explicit regulation of lockouts, a situation that creates a profound legal imbalance, where strikes enjoy constitutional protection, whilst employers' retaliation remains in a regulatory vacuum that limits the effectiveness of social dialogue mechanisms¹⁵. This silence on the part of the legislator cannot be interpreted as a mere omission, but reflects the difficulty of the state legal system in integrating, through legislation, collective phenomena of social self-determination that transcend the formal framework.

In this regard, comparative models of 'legislative abstention' demonstrate that, in the absence of a clear framework, conflict resolution tends to shift excessively towards the courts, perpetuating legal uncertainty regarding the legitimacy of employers' actions¹⁶. In states that adopt a balanced approach, such as Germany, the lock-out is integrated into the dispute resolution mechanism under the principle of equality of arms¹⁷, offering the employer a legitimate counterbalance to the pressure exerted by trade unions.

In contrast to the offensive parity model, jurisdictions such as France or Italy base the prohibition of lockouts on a social imperative: the need to compensate for structural power imbalances by granting the right to strike exclusively to the wage-earning segment¹⁸. This protectionist approach is not merely a technical option, but highlights a genuine conceptual divide between the idea of absolute collective autonomy of the social partners and the protective, almost providential, role that the state assumes in regulating industrial conflict. In such a paradigm, the strike is not seen as a mere counterbalance to economic freedom, but as an instrument of social citizenship, intended to correct the inherent asymmetry of the employment contract¹⁹.

Analysing these legal traditions, we observe a clear preference for the priority protection of the party considered to be inherently vulnerable, to the detriment of an 'equality of arms' which, in practice, might suggest a deceptive symmetry. In these systems, a lock-out is often characterised as a culpable failure on the part of the employer to fulfil their obligation to provide the agreed work, and is thus sanctioned not only as a breach of social peace, but also as a rupture of the synallagmatic logic of the employment relationship. This view tends to place the responsibility for economic risk exclusively on the employer, denying them the possibility of using the suspension of work as a pressure tactic in negotiations.

However, the evolution of this protectionism also reveals certain tensions in the context of globalised markets, where the rigidity of such prohibitions could, paradoxically, undermine the sustainability of businesses in the face of prolonged strikes. Nevertheless, the choice of these jurisdictions to maintain a monopoly on collective pressure in favour of employees reflects a philosophy of labour law that refuses to treat labour as a mere commodity, prioritising the maintenance of social balance by limiting the coercive prerogatives of capital. Thus, the distinction between states that opt for a symmetrical balance of power and those that choose asymmetrical protection becomes a key indicator of how each society defines fairness in production relations.

In Romania, the persistence of this legislative vacuum perpetuates a de facto asymmetry, where the right to strike is enshrined in the constitution, whilst the employer's refusal to accept labour remains in a legal grey area, lacking a clear basis that reconciles economic freedom with the social function of labour. This approach justifies, from the perspective of the national legislator, the exclusion of the lock-out as a means of pressure, reinforcing the presumption that employees require specific protective measures to compensate for the inherent imbalance of power in the employment contract²⁰. This legislative rigidity, coupled with a deeply formalistic interpretation of collective disputes, creates a context in which the accurate identification of conflicts becomes difficult, limiting the effectiveness of mediation and conciliation mechanisms²¹.

In Romanian law, the non-regulation of the lock-out does not constitute an accidental normative gap, but rather a legislative policy choice oriented toward the asymmetric protection of the vulnerable party. Although international instruments (e.g., the Revised European Social Charter) theoretically recognize the right of

¹⁵ D. Iliescu and A. Butucescu, "Mediation and Conciliation in Collective Labour Conflicts in Romania," in *Industrial relations & conflict management*, Springer International Publishing, 2019, p. 175. doi: 10.1007/978-3-319-92531-8_12.

¹⁶ S. G. Contreras and P. A. Ortíz, "Collective bargaining, autonomy and legislative abstention," **Ius et Praxis**, vol. 24, no. 3, p. 173, Dec. 2018, doi: 10.4067/s0718-00122018000300173

¹⁷ A. Allouch, "Comparative argument: Essay on changes in labour law," HAL (Le Centre pour la Communication Scientifique Directe), Oct. 2016, Accessed: Jan. 2025. [Online]. Available: <https://tel.archives-ouvertes.fr/tel-02970319>;

¹⁸ Z. Kotelnikova, "The Review of New Books in Economic Sociology — 2008," *Journal of Economic Sociology*, vol. 10, no. 3, p. 94, Jan. 2009, doi: 10.17323/1726-3247-2009-3-94-104

¹⁹ A. Allouch, op. cit.;

²⁰ J. Coleman, "Introducing Social Structure in Economic Analysis (translated by A. Kurakin)," *Journal of Economic Sociology*, vol. 10, no. 3, p. 33, Jan. 2009, doi: 10.17323/1726-3247-2009-3-33-40;

²¹ D. Iliescu and A. Butucescu, op. cit.;

employers to collective action, Law No. 367/2022 establishes a regime of "conflictual exclusivity" in favor of employees. By rigorously configuring the stages of collective labor disputes, the Romanian legislator has restricted the arsenal of industrial pressure to the right to strike, leaving the lock-out without a *sedes materiae* (legal seat). Viewed through the prism of the principle of legality, this nominal absence is equivalent to a lack of legal basis for any act of authority by the employer aimed at the unilateral suspension of activity for defensive or offensive purposes.

The legislative "ricochet" effect is primarily manifested through the imperative provisions of Art. 7 of Law No. 367/2022, which establishes an insurmountable barrier to any employer interference. The prohibition of any intervention capable of limiting the exercise of trade union rights transforms, in legal terms, any attempted lock-out into an illicit act. Since closing a unit would inevitably lead to the discouragement of participation in a collective dispute or the indirect penalization of the workforce, such a measure is absorbed into the sphere of prohibited coercion. Thus, although the law does not explicitly pronounce the word "prohibited" in relation to the lock-out, it sanctions all the material effects that such an institution would produce, stripping it of any possibility of lawful manifestation.

From the perspective of general labor law, the lock-out is in direct collision with the synallagmatic nature of the employment relationship and the restrictive regime governing the suspension of individual employment contracts. In the Romanian system, the suspension of activity at the employer's initiative (technical unemployment as regulated by Art. 52 para. 1 letter c of the Labor Code) is contingent upon the existence of objective motives independent of the employer's will. Utilizing this lever as an instrument of counter-pressure in negotiations would constitute a *détournement de pouvoir* (misuse of power), as the purpose of the measure would not be the management of an economic difficulty, but the exercise of subjective pressure. In the absence of a specific cause for suspension related to labor disputes for the employer, the refusal to accept work is qualified as a culpable failure to fulfill the obligation to provide work, entailing full pecuniary liability.

At the same time, the pressures exerted by economic governance regimes at European Union level tend to prioritise a liberalisation agenda, complicating the national system's efforts to harmonise the economic freedom of enterprises with the fundamental social guarantees of employees²². This tension between cross-border economic imperatives and the national specificity of social protection highlights the need for a reassessment of the principle of 'equality of arms' in the context of collective disputes, a concept which, although it underpins the right to lock-out in states such as Germany²³, remains a controversial or marginalised subject in Romanian case law. A rigorous examination of this imbalance must necessarily address the synallagmatic nature of the employment contract, within which the employer's refusal to provide work may be characterised as a culpable failure to fulfil their fundamental obligations. Consequently, legitimising such a measure could erode the principle of employee protection, transforming the structural inequality between the parties into a lever for disproportionate economic pressure²⁴.

In the absence of rigorous conciliation and arbitration mechanisms, the current legislative vacuum exposes collective relations to heightened risks of volatility, necessitating regulation that reconciles the imperatives of economic efficiency with fundamental labour safeguards. The introduction of mandatory mediation mechanisms could alleviate the tensions caused by this legislative vacuum, aligning national practices with international standards and facilitating a structured resolution of collective disputes²⁵. In this context, the imposition of good-faith obligations and procedural agreements would become essential to prevent the escalation of conflicts and to guarantee the stability of labour relations in an uncertain economic climate²⁶, aspects which cannot be regarded as balancing mechanisms; on the contrary, it may be argued that such mechanisms would be used to accentuate the inequality that is characteristic of most labour relations.

²² J. Jordan, V. Maccarrone, and R. Erne, "Towards a Socialisation of the EU's New Economic Governance Regime? EU Labour Policy Interventions in Germany, Ireland, Italy and Romania (2009–2019)," *British Journal of Industrial Relations*, vol. 59, no. 1, p. 191, Feb. 2020, doi: 10.1111/bjir.12522.

²³ O. Gourova and O. A. Mikhailova, "Consumer in the Mall: Between Freedom of Choice and Strategies of Restrictions of Consumer Behaviour," *Journal of Economic Sociology*, vol. 10, no. 3, p. 41, Jan. 2009, doi: 10.17323/1726-3247-2009-3-41-57;

²⁴ J. Pazos, "Negotiating Equality of the Parties in the Collective Sphere," *Revista de derecho*, vol. 91, no. 253, p. 93, Jan. 2023, doi: 10.29393/rd253-4injd10004;

²⁵ I. Rusi and M. Bejtja, "Legalising workplace mediation: Comparative lessons and policy gaps in Albania's labour dispute framework," *Multidisciplinary Science Journal*, vol. 8, no. 4, pp. 2026–284, Oct. 2025, doi: 10.31893/multiscience.2026284;

²⁶ C. David, "15 years of national legislation – On the path to maturity," HAL (The Centre for Direct Scientific Communication), Jan. 2016, Accessed: Sep. 2025. [Online]. Available: <https://hal.science/hal-02541365>;

This need for regulation becomes all the more pressing in the context of globalisation, where the asymmetry between transnational capital and the predominantly national organisation of trade unions undermines the traditional balance of collective bargaining²⁷. Thus, the implementation of social peace clauses and rigorous arbitration procedures, or even the implementation of the concept of preventive social peace, could offer a viable alternative to the escalation of conflicts, translating the principle of equality of arms from the theoretical sphere into the concrete practice of resolving industrial disputes²⁸. Thus, the adoption of rigorous regulations would not merely represent a normative solution to the current vacuum, but would constitute a fundamental step towards restoring the balance of power between the social partners²⁹. Consequently, any future legislative reform must go beyond the mere formalisation of procedures, incorporating a critical analysis of structural imbalances to prevent the recognition of lockouts from becoming a tool for undermining trade union rights³⁰. Consequently, the legislator must establish control mechanisms to ensure that negotiations are conducted in good faith³¹, thereby preventing economic freedom from becoming a mechanism for exerting unilateral pressure on employees. Such an approach should support the stability of collective relations, encouraging the parties to give priority to conciliation and arbitration mechanisms in order to suspend industrial action during negotiations.

A solid legislative consensus is indispensable for guaranteeing legal certainty, providing the predictability necessary both for the protection of the workforce and for the sustainability of the investment climate in a globalised economy³². Within this framework, the consolidation of social peace depends on the regulatory framework's ability to institutionalise dialogue, transforming conflict from a direct confrontation into a negotiated process under the aegis of institutional neutrality³³. This paradigm of structured dialogue, through the integration of social peace clauses, becomes the essential pillar for avoiding open conflicts and ensuring sustainable legal predictability³⁴. However, the success of these mechanisms depends on a rigorous distinction between conflicts of interest and legal disputes, an aspect that requires explicit legislative transposition to ensure uniform application of the rules.

The analysis highlights the fact that the current legislative vacuum undermines the balance of collective bargaining, necessitating a restructuring of the rules to incorporate proportionate sanctioning and conciliation mechanisms in order to ensure balanced protection for all parties involved³⁵. This approach must include strengthening trade union autonomy and control mechanisms, thereby reducing the risk that regulatory fragmentation will erode the effectiveness of negotiations at the workplace level. Thus, comparative experience confirms the need for legislative intervention to prevent the weakening of labour relations by maintaining a robust balance between economic freedom and social guarantees³⁶. Such intervention must clearly establish the limits of the non-negotiability of social rights³⁷, ensuring that collective autonomy remains the central lever in defining working conditions and in preventing any erosion of trade union freedom.

However, there must be a very delicate correlation and conditionality within the institution so that it ultimately passes any constitutional review; specifically, such a mechanism must not only not interfere with the

²⁷ R. Dimitriu, "Unsettling trends in collective bargaining today," *Journal of Accounting and Management Information Systems*, vol. 16, no. 3, p. 389, Aug. 2017, doi: 10.24818/jamis.2017.03008.

²⁸ J. Pleps, "The doctrine of state continuity in the case law of the Constitutional Court," p. 16, Jan. 2016, doi: 10.22364/cvcls.1.2016.01;

²⁹ J. M. M. Ortega, "Collective bargaining, deadlock in negotiations and collective agreements following RDL 32/2021," *Trabajo persona derecho mercado Journal of Labour Studies and Social Protection*, no. 5, p. 223, Jan. 2022, doi: 10.12795/tpdm.mon.2022.06;

³⁰ A. Rahmawati, H. Haryono, B. Endarto, I. Nuroini, and H. Hananto, "The Role of Labour Law in Settling Industrial Relations Disputes: A Normative Juridical Perspective on the Rights of Workers and the Obligations of Employers in Indonesia," *West Science Law and Human Rights*, vol. 3, no. 1, p. 115, Jan. 2025, doi: 10.58812/wslhr.v3i01.1653

³¹ R. M. Ruiz, "Labour conciliation: An examination of its functionality as a conflict resolution system," *THEMIS Revista de Derecho*, no. 75, p. 135, Apr. 2019, doi: 10.18800/themis.201901.011.

³² L. J. D. Herrero, "Challenges and proposals for the regulation of work in the production processes of digital platforms," **Cuadernos de Relaciones Laborales**, vol. 37, no. 2, p. 275, Oct. 2019, doi: 10.5209/crla.66038;

³³ M. Trajković and G. Obradović, "SOCIAL PEACE AS A VALUE ORDER," *TEME*, p. 1437, Jan. 2019, doi: 10.22190/teme1804437t;

³⁴ R. Chartier, "Labour legislation, freedom, fear and conflict," *Industrial Relations*, vol. 13, no. 3, p. 254, Feb. 2014, doi: 10.7202/1022424ar;

³⁵ L. Lukman, I. Isnawati, F. Farahwati, and S. R. Hendrayanto, "The Urgency of Regulating Legal Sanctions under Article 157A of the Job Creation Law for the Protection of Workers," *JURNAL USM LAW REVIEW*, vol. 8, no. 3, p. 2198, Dec. 2025, doi: 10.26623/julr.v8i3.12967.

³⁶ A. K. de Souza and C. F. do Nascimento, "Negotiated over Legislated: The Position of the Federal Supreme Court," *Research Society and Development*, vol. 11, no. 13, Oct. 2022, doi: 10.33448/rsd-v11i13.35363

³⁷ R. J. M. de B. Pereira and F. D. S. B. de Freitas, "Collective Bargaining and Labour Legislation: A Critical Analysis of Decision No. 1046 on General Repercussion by the Federal Supreme Court," *Journal of Fundamental Rights in Labour, Social and Business Relations*, vol. 9, no. 1, Aug. 2023, doi: 10.26668/indexlawjournals/2526-009x/2023.v9i1.9662.

provisions of Article 41 of the Romanian Constitution, but must also not contravene the spirit (*ratio legis*) of the constitutional provision. Although, from a legislative perspective, such an effort can be made without contravening constitutional requirements⁽³⁸⁾, this approach entails establishing a strict procedure that makes the recognition of this measure subject to rigorous criteria of proportionality and subsidiarity, in full accordance with recent European directives aimed at revitalising collective bargaining.

The integration of this instrument into national legislation must, therefore, be supported by vertical coordination mechanisms that prevent excessive fragmentation of negotiations, ensuring that collective autonomy remains an effective lever and not a source of systemic inefficiency. A combined analysis of the specialist literature and current legislation shows that a lock-out is defined, in a broad sense, as a temporary closure of the workplace by the employer to exert pressure or resist trade union demands. The research findings reveal a major discrepancy between the international recognition of this right and its status in Romania.

A comparative analysis of collective labour relations highlights the fact that, in many legal systems, the lock-out is legally grounded in the mechanism of non-performance of the contract, being perceived as a legitimate response to the suspension of work by employees; however, under Romanian law, this measure remains, at present, inadmissible. A rigorous taxonomy of this instrument allows it to be classified into three distinct strategic categories, namely defensive, preventive and subsequent, thus highlighting its profoundly subjective nature and its character as an instrument of industrial action. This voluntary feature clearly distinguishes it from the institution of technical redundancy, which, according to the provisions of the Labour Code, must be based exclusively on objective economic, technological or structural causes, arising independently of the employer's will and which cannot be used to mask a reaction to trade union demands.

Although Romania has ratified the revised European Social Charter³⁹, which in Article 6(4) explicitly recognises the right of employers to take collective action in the event of conflicts of interest, national legislation maintains a persistent regulatory silence on this subject. In the absence of explicit provisions in Law No. 367 of 2022 on social dialogue, this legislative vacuum is systematically interpreted as an implicit prohibition, forcing employers, in extreme situations, to resort to alternative justifications such as force majeure or the imperative of maintaining order and security within the premises to justify the suspension of work. This practice highlights a vulnerability in the current legal framework, which does not provide a transparent procedural route for exercising a right recognised at international level.

A combined review of legal doctrine and statutory texts indicates that a lock-out, broadly defined as a temporary closure of the workplace intended to exert pressure on trade unions or to resist demands deemed unacceptable, suffers in Romania from a major discrepancy between its recognition in international treaties and its status of quasi-clandestinity under domestic law. Any legislative integration of this instrument should therefore harmonise the obligations assumed under the European Social Charter with the need to protect employees against abuse, transforming the lock-out from a coercive measure into a regulated stage of collective bargaining, subject to judicial review and strict conditions of validity.

This state of legal uncertainty places employers at risk of sanctions, whilst also contributing to the weakening of the role of the social partners and accentuating the decline in collective bargaining coverage in a climate already marked by the limitation of trade unions' capacity for action⁴⁰. This vulnerability is exacerbated by the legislative trend to replace genuine trade union negotiations with diluted forms of employee representation, which undermines the quality of social dialogue and the effectiveness of collective bargaining at sectoral level⁴¹. Consequently, the current regulatory vacuum acts as an additional factor in restricting the bargaining power of trade unions, perpetuating a structural imbalance that favours the marginalisation of collective action⁴².

³⁸ R. Erne, S. Stan, D. Golden, I. Szabó, and V. Maccarrone, "Conclusion," in Cambridge University Press eBooks, Cambridge University Press, 2024, p. 353. doi: 10.1017/9781009053433.018;

³⁹ Law 74/1999 ratifying the revised European Social Charter, adopted in Strasbourg on 3 May 1996, published in the Official Gazette No. 193 of 4 May 1999;

⁴⁰ I. Daugareilh, C. Degryse, and P. Pochet, "The Platform Economy and Social Law: Key Issues in Comparative Perspective," SSRN Electronic Journal, Jan. 2019, doi: 10.2139/ssrn.3432441;

⁴¹ D. Adăscăliței and Ștefan Guga, "International actors and trade unions during postsocialism and after: the case of Romania," Employee Relations, vol. 40, no. 4, p. 692, May 2018, doi: 10.1108/er-01-2017-0017

⁴² M. Varga and A. Freyberg-Inan, "Post-communist state measures to thwart organised labour: The case of Romania," Economic and Industrial Democracy, vol. 36, no. 4, p. 677, Oct. 2014, doi: 10.1177/0143831x14548770;

This analysis substantiates the need for potential legislation on lockouts based on the fundamental principle of symmetry of arms, arguing that a genuine and balanced social dialogue presupposes the existence of a legal instrument corresponding to the right to strike. This view, supported by the legislative experience of countries such as Poland, suggests that the recognition of defensive lock-outs is not intended to undermine the fundamental rights of employees, but to offer the employer a legitimate means of economic self-defence in the face of disproportionate demands. However, the implementation of such a measure within the Romanian legal framework faces the major difficulty of distinguishing it from the institution of technical unemployment regulated by Article 52(1)(c) of the Labour Code. There is a risk that the use of a lock-out under the guise of a temporary suspension of operations could become a tool for abuse of rights, used exclusively to circumvent the obligation to pay compensation of at least 75% of the basic wage, which would profoundly alter the nature of collective labour disputes.

In a globalised economy, where the gap between the mobility of international capital and the geographical limitations of national trade unions is already pronounced, the introduction of lockouts without extremely rigorous procedures could lead to a radicalisation of social tensions. This dynamic risks generating a phenomenon of forced solidarity, in which employees not participating in the strike, having been deprived of income due to the closure of the workplace, are compelled by economic circumstances to join the protest, transforming a specific dispute into a generalised organisational crisis. The current Romanian system, characterised by the restrictive formalism of Law No. 367/2022 on social dialogue, makes the legal initiation of collective disputes a cumbersome procedure, often leaving real tensions without an appropriate framework for expression.

Consequently, a coherent regulation of lockouts, aligned with International Labour Organisation standards, should impose strict obligations of good faith and make this measure subject to rigorous conciliation and arbitration procedures. Rather than being perceived as a threat to trade union freedom, a regulated lockout could serve as a mechanism for channelling disputes towards mediation, preventing uncontrolled escalation and ensuring a framework of legal predictability for both parties involved in the employment relationship.

3. Conclusions

The transition from the current 'regulatory silence' to explicit regulation of lockouts should not be viewed merely as a technical adjustment, but as a social policy choice with profound systemic implications. The potential adoption of the German model of equality of arms within the domestic legal framework could, in theory, invigorate collective bargaining, compelling the social partners to engage in a more pragmatic dialogue. However, research points to a major risk: in a system where trade union structures are already weakened, legitimising an employer's counter-measure could degenerate into a tool for suppressing economic protest, thereby rendering the constitutional right to strike meaningless.

Furthermore, a rigorous analysis of the synallagmatic nature of the employment contract reveals doctrinal tensions that are difficult to overcome; a lock-out essentially entails a suspension of the employer's obligation to provide work, without any individual fault on the part of the employee. This recalibration of contractual risk raises questions regarding the measure's compatibility with the principle of protecting the vulnerable party, transforming structural inequality into a lever for disproportionate economic pressure.

The regulation of lockouts within the Romanian legal framework requires striking a delicate balance between the employer's economic freedom and the protection of the right to work, a constitutional pillar underpinning the welfare state model. Although national legal doctrine has consistently explored the possibility of integrating this measure, the persistence of the current legislative vacuum perpetuates a state of legal uncertainty, risking the transformation of the principle of equality of arms into an instrument of unilateral pressure that could undermine trade union rights. In this context, any future legislative initiative must incorporate the principles of European flexicurity, ensuring that the imperative of economic adaptability for businesses does not become a pretext for systematic abuses against the workforce.

The study demonstrates that lockouts, although often perceived through the prism of industrial aggression, represent an essential element in modern legal systems for balancing the balance of power. Maintaining an absolute prohibition in Romania, despite the obligations assumed through the ratification of the revised European Social Charter by Law No. 74 of 1999, creates an asymmetry that can be exploited through covert retaliatory measures, such as suspensions of operations under the pretext of technical difficulties. Future legislation should therefore go beyond a simple implicit ban, opting instead for a model that permits only

defensive lockouts, a solution that would reconcile the protection of employees with the employer's right to manage situations where a strike jeopardises the security or economic viability of the business.

The impossibility of transposing the lock-out into the internal legal order is sealed by the hierarchical interpretation of fundamental rights. In the collision between the employer's economic freedom (Art. 45 of the Constitution) and the right to work and social protection (Art. 41), the jurisprudence and the spirit of Law No. 367/2022 prioritize the stability of the employment relationship. The "silence" of the legislator thus becomes a constitutional barrier: recognizing a right to forced suspension of work by capital would hollow out the guarantee of remuneration for work performed. Consequently, the Romanian system rejects the "equality of arms" in favor of an asymmetric balance, considering that the employee's economic vulnerability cannot be used as a bargaining chip in industrial power plays—a fact that transforms any form of lock-out from an instrument of dialogue into an illicit barrier to social peace.

In conclusion, social stability depends on the legislator's ability to transform industrial conflict into a structured dialogue, in which both parties have access to legitimate and strictly controlled means of pressure. Such an approach would bring national legislation into line with European standards, facilitating more effective collective bargaining and reducing the duration of conflicts through legal predictability. This regulatory development would enable the courts to assess the legitimacy of disputes through the prism of procedural fairness and equality of arms, moving beyond the restrictive and often punitive approach that currently dominates national case law on collective labour disputes.

Consequently, any legislative initiative should go beyond the mere importation of foreign concepts and focus on establishing strict mechanisms for judicial review. It is imperative that the courts be able to assess not only the formal legality, but also the proportionality and good faith of the measure, thereby preventing the lock-out from becoming a method of covert trade union discrimination. In the absence of such safeguards, the regulation risks exacerbating the volatility of labour relations, undermining social stability under the pretext of equal treatment which, in the current economic reality, remains largely illusory.

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