

POSSIBILITIES AND LIMITATIONS OF COMMUNICATION OF SPECIAL PURPOSE CIVIC ASSOCIATIONS – THE CASE OF INTERNAL COMMUNICATION OF A TRADE UNION ACTIVE IN A COMPANY INFLUENCED BY THE GROUNDSWELL CONCEPT

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ABSTRACT:

The progressive development of marketing communication, which can also be characterised by a significant rise of the groundswell concept, has brought about the need to modify the well-established concepts and processes not only in this field of science, but also in seemingly unrelated areas, in particular collective labour relations. The traditionalist approach based on the “revolutionary trade union movement” concept favoured by special purpose civic associations (trade unions) for decades is losing its relevance. Trade unions are no longer able to attract and speak to potential trade union members – employees. The concept of “groundswell” is beginning to dominate the internal environment of employers as employees get ‘guaranteed’ information on the activities of trade unions or the very internal environment of the employer from social networks, internal software applications of the employer or its intranet (this information is questionable, if not outright misleading). Special purpose civic associations are looking for new ways to communicate with potential and current members, as they have to take into account national and European labour law, personal data protection legislation and various legal frameworks governing confidentiality duties, internal regulations governing internal communication and their own corporate identity. Based on their experience, the authors analyse the above-described trend, define possible legal and social restrictions, and outline possible solutions while respecting the nature of the special purpose civic association. The study is unique as it offers an insight into the conservative and (still) inaccessible (for non-members) environment of internal communication of trade unions (communication with members and potential members) based on objective interdisciplinary research combining legal science and marketing communication. The objective of the study is not to present an exhaustive overview of the issue, but to introduce new possibilities for the research in areas (where marketing plays an important role) that have so far gone unnoticed by marketing communication researchers.

KEY WORDS:

corporate identity, groundswell concept, information, integrated marketing communication, internal communication, trade union



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1 Introduction

The answer to the question as to why attention should be paid to the issue of communication of special purpose civic associations, which may include trade unions pursuant to the provisions of Section 230, Par. 1 of the Act No. 311/2001 Coll., the Labour Code, as amended (hereinafter referred to as the “Labour Code”), is simple. The ambivalence that exists between what the theory of marketing communication deals with (in relation to related scientific disciplines) and what it should deal with from the point of view of practice justifies the choice of the topic of the submitted study. This contrast is all the more pronounced given experience and information gathered over the years. At present, more than 13% of all employees in the Slovak Republic are members of trade unions and 35% of employees are parties to collective agreements (agreements regarding working and wage conditions).¹ More than 450,000 natural persons are members of trade unions. Therefore, trade unions have to communicate with various groups of recipients on a daily basis (it should be noted that each group of recipients has different expectations when it comes to communication). These expectations influence the groundswell, especially in terms of activities of the trade union, its internal characteristics and the internal environment in which communication between the trade union and third parties takes place. The need for communication also follows from the provisions of labour law regulations (pursuant to, e.g., The Labour Code, the Social Insurance Act or the Occupational Safety and Health Act) which grant trade unions a wide range of rights and impose obligations upon them. The communication regarding the above-mentioned rights and obligations mainly relates to the establishment or termination of employment, protection of employees’ rights and health and labour law-related claims, etc.

The specificity of communication between individual trade unions, and the image of ‘independence’, ‘impartiality’ or ‘apoliticality’ trade unions try to project to arouse interest in potential members and at the same time differentiate themselves from the other entities on the labour market are the issues the study will explore in more depth. Some recent publications perceive this issue as a borderline indicator² of the representativeness of trade unions in the labour market, as the communication of these newly formed trade unions is based on emphasising the notion of being ‘new and independent’ so as to persuade potential members to join their ranks.³ The classic internal communication concepts (i.e., communication between the employer and the employees) cannot be applied to the communication strategy of the trade union. If we take into account the assumptions regarding the internal communication of business entities (also aimed at motivating employees), these classic concepts just do not fit the environment of the trade union. The trade union is not a profit-oriented organisation (primarily) as its very purpose is to make sure employers respect the basic human rights of natural persons and provide them with satisfactory working conditions.⁴ The objective of employees is to secure for themselves better working conditions/employment conditions and a trade union is a tool to achieve that. According to Cook et al.,⁵ employees wishing to establish a trade union in the workplace should set up an appropriate communication strategy to persuade other employees to join the effort and help them establish the trade union. The newly established trade union should also set up an appropriate communication strategy to lead a dialogue with the employees as well as the employer in order to secure its position in the workplace.

1 UHLEROVÁ, M. et al.: *Odbory 2020. Výzvy v čase krízy*. Bratislava : Friedrich Ebert Stiftung, 2020, p. 13.

2 Compare to: UHLEROVÁ, M. et al.: *Odbory 2020. Výzvy v čase krízy*. Bratislava : Friedrich Ebert Stiftung, 2020, p. 17; CROUCH, C.: Membership Density and Trade Union Power. In *Transfer – European Review of Labour and Research*, 2017, Vol. 23, No. 1, p. 50.

3 VALENTINI, C. et al.: Trade Unions and Lobbying: Fighting Private Interests While Defending the Public Interest? In *International Journal of Communication*, 2020, Vol. 14, No. 1, p. 4915.

4 KOČER, R. G.: Measuring the Strength of Trade Unions and Identifying the Privileged Groups: A Two-Dimensional Approach and Its Implementation. In *The Journal of Mathematical Sociology*, 2018, Vol. 42, No. 3, p. 155.

5 COOK, H. et al.: Union Partnership as a Facilitator to HRM: Improving Implementation through Oppositional Engagement. In *International Journal of Human Resources Management*, 2020, Vol. 31, No. 10, p. 1266.

2 Methodology

The aim of the text is to point out the differences and specifics between the communication strategy of special purpose civic associations, in particular trade unions, and that of the employer (toward employees and the general public) based on a critical analysis. The way the trade union presents itself, especially within the internal environment of the company, is largely determined not only by the relevant national and European legislation, but also the efforts of those competent to recruit and retain trade union members. In order to achieve the set objective, we made use of several research methods which helped us explore the issue in terms of personnel management and reputation management, labour law and media and communication studies. The emphasis was placed on formal logic. The methods included analytic and synthetic methods, induction, deduction and comparative research. Through abstraction, we aimed at defining the key terminological apparatus that would help us identify shortcomings in the internal communication of trade unions. The individual parts of the study are interconnected and follow the main objective. When selecting information sources, we relied on Slovak as well as international literature – monographs and peer-reviewed journal articles. Instead of presenting well-known theoretical knowledge and generally known theories, the study focuses on issues from practice. It also presents the authors’ own opinions of based on their research in communication of business entities (under various scientific research projects and grants) and experience from practice.

3 Results and Discussion

Peculiarities of Trade Union Communication

The internal environment of a trade union cannot be characterised using classical marketing communication theory. The internal environment of a successful business entity (an employer who implemented an internal communication strategy) differs from the internal environment of a trade union so much that the characteristics of the former cannot be used to describe the functioning of the latter. Activities performed by members of the trade union on behalf of the trade union or towards third parties cannot be perceived as dependent work (as in the case of an employee-employer relationship). These activities should rather be perceived as voluntary activities which bring benefits to a wider group of people. However, these activities also differ from voluntary activities as natural persons pay for these activities from their membership fees. Membership of a trade union and activities carried out by trade union members for the trade union are not the same as activities employees carry out for their employer (the employer seeks to achieve set goals and visions and motivate its employees towards the set goal – also through internal communication strategy).⁶ The existence and activities of the trade union create a significant complex of multi-layered relationships marked by not only the subjective expectations of a new trade union member, but also the subjective expectations of all other trade union members. These expectations are often presented to the outside world as an uncontrolled stream of opinions – the groundswell. There is also an element of compliance in this regard. Compliance significantly affects the behaviour and communication of the trade union inside and outside the employer’s workplace, as the communication strategy of the trade union is able to communicate a positive but also a negative image of the employer to the outside world (and to this end communicate certain information to their members or other employees).

The employer may find it difficult to accept the marketing communication strategy of the trade union as it usually focuses only on basic tasks of the trade union arising from the relevant labour law regulations or international documents.⁷ Thus, consensus could be reached in terms of the communicated goal of the trade

6 HODDER, A. et al.: Does Strike Action Stimulate Trade Union Membership Growth? In *British Journal of Industrial Relations*, 2017, Vol. 55, No. 1, p. 171-172.

7 SCHUSZTEKOVÁ, S.: Zodpovednosť zamestnávateľa za pracovný úraz a choroby z povolania v nadväznosti na ochranu zdravia pri práci. In ŠVEC, M. (ed.): *Ochrana zdravia zamestnanca pri výkone práce*. Bratislava : Friedrich Ebert Stiftung, 2014, p. 10.

union to improve the working and wage conditions of employees (i.e., their members). To this end, the trade union might initiate collective bargaining or social dialogue with the employer to ensure better rights for employees. Reaching a compromise on issues, common values, the approach to the environment or the worldview is almost impossible mainly due to the number of members and the subjective reason of members for joining the trade union. With regard to the above facts, trade unions do not discuss divisive topics due to the fear of angering and losing members (also future members) who do not share the same view. Therefore, the internal communication of the trade union is fundamentally limited due to subjective preferences of members, as these views were not the reason for joining the trade union (nor were these taken into account prior to joining). In this regard, we can talk about the so-called limiting effect of the internal communication of trade unions. Compared to the (possible) ambivalence of the internal communication strategy of the employer and the subjective preferences of the employees, the motivation to terminate an employment relationship is disproportionately lower than in the case of membership in the trade union mainly due to economic reasons (salary).

If we were to assess the issue of legal and social relations within the trade union, we would arrive at the same conclusions as Trif et al.,⁸ who state that the macroenvironment is fundamentally determined by the existing labour law which regulates the establishment and operation of trade unions at the employer, including the scope of granted rights as these may affect individuals and their willingness to become trade union members (whether granted rights would help employees in certain aspects of their employment). Important factors influencing the external microenvironment are the employer and its style and form of communication with the trade union (e.g., companies of different sizes communicate differently; companies operating in different sectors communicate differently, too – industry vs. services). The specifics of the employer (size, type of activity, number of employees) have an impact not only on the topics communicated by the trade union but also on information the trade union decides to disclose to its members. The internal microenvironment of the trade union is influenced primarily by the content of internal documents of the trade union (e.g., trade union statutes, trade union status, trade union management principles) and subjective preferences of its members. These preferences may influence activities pursued by individual trade union bodies. The process of creating the internal microenvironment of the trade union is largely unpredictable as it is influenced by the willingness of employees to join/leave the trade union. In comparison with the internal communication of the employer, the communication of the trade union is neither predictable nor stable as the topics communicated depend on the prevailing opinion of its members.⁹ Predictability or prevailing opinions of trade union members are of no importance when the trade union needs to achieve a simple majority of votes (to uphold its democratic principles).¹⁰ The possible loss of reputation the frequent change of opinions (possibly also the value spectrum) entails does not play a role here, as the only thing that matters is the fulfilment of procedures set out in the internal documents of the trade union.

In order to improve the comprehensibility of the communicated information, trade unions should implement suitable marketing communication tools. At present, it is very important for trade unions to realise that the ever-increasing volume of information on the market (with regard to the action of competitors, i.e., other trade unions) reduces the effectiveness and impact the presented message might have. In addition, there are a number of ancillary interfering elements that may cause inaccurate interpretation of messages or lead to a situation where the recipient does not notice the message at all. The solution, therefore, appears to be the use of a multi-channel communication strategy which would combine traditional and modern forms of channels. By using different types of communication channels, trade unions could also address, in addition to a defined circle of recipients, other recipients who have not yet had access to the selected communication channel.¹¹ By integrating different marketing communication tools into the communication strategy, trade unions ensure a comprehensive and consistent report on the trade union, its mission and intentions is delivered to the intended recipients. As the process of drawing up an integrated marketing communication strategy is complicated, the person responsible

for drawing it up should have analytical thinking and objectively assess the preliminary effect of the proposed measures in relation to their chronological sequence. The implemented marketing strategy and its success rely heavily on the synergic effect of the communication mix tools.¹²

The nature of the mutual relationship between the employer and the trade union will, of course, also be reflected in the marketing communication of the trade union. With regard to the below-mentioned principle of co-decision as a basic determinant influencing the relationship between the employer and the trade union, their relationship in conducting the social dialogue, negotiations or collective bargaining (which will yield suggestions regarding the content of trade union's marketing communication) could be labelled, according to Armstrong¹³ as distributive bargaining which creates "a complex system of activities to achieve the objectives of one Party in a situation where those objectives are fundamentally at odds with the objectives of the other Party" while integrative bargaining is described as "a system of activities that are not in a substantial conflict with the activities of the other Party, and which may therefore be integrated (to some extent) in an area of common interest". According to Cowan, the cumulation of the two types of negotiations in question also corresponds to a pluralistic perception of the employer-trade union relationship based on the principle of pluralistic premise and presupposes that "enterprise is a pluralistic unit in which many interrelated but separate interests and goals need to be balanced. Instead of a company-wide unity reflected in the pursuit of the common goal and loyalty, the company's management must accept the existence of competing sources of HR management" (referring to the possible promotion of the interests of the trade union in which employees are associated).¹⁴ Such a pluralistic view of the cooperation between the employer and the trade union (including their possible cooperation in creating internal communication in the company)¹⁵ is in line with the overall pluralistic concept of looking at "the workforce as something that represents the opposition but does not seek dominance", while it also "represents a balance between two organized interests and (a certain degree of) trust, where both parties (usually) respect their legitimate and sometimes differing interests and understand that they cannot unilaterally assert their interests to such an extent that the cooperation between the two would cease".¹⁶ This assumption is then understandably also reflected in expressions used in the written marketing communication – avoidance of expressive words, hoaxes and unverified information that could harm the employer's interests and disrupt the mutual trust between the employer and the trade union (especially in a situation where there is a room for alternative interpretation of facts which could spread even further thanks to the groundswell).

Due to the absence of theoretical background, the study emphasises knowledge and information from practice, in particular specific cases to confirm the above premise – the communication of the trade union has an impact on the communication of the employer. When the employer introduces (using internal communication channels) remote work (working from home or telework according to the provisions of Section 52 of the Labour Code), either to offer employees better work-life balance or due to the pandemic, it seeks to create the impression of a 'good and caring' employer who takes into account the legitimate interests of employees. However, if the trade union begins to spread the word that the only goal of this 'good and caring' employer is to save money due to declining orders, loss of clients due to the economic crisis, to reduce overhead costs by deliberately withholding monetary compensation under the provisions of Section 145 of the Labour Code, to reduce the number of properties in which employees perform work, including further savings on energy costs, the Internet or disinfectants, the employer might find itself in a difficult position (the communication strategy backfired). The Labour Code does not stipulate the amount of the monetary compensation referred to above. However, Section 5, Par. 5, Letter f) of the Income Tax Act determines that this monetary compensation paid to the employee is not subject to tax if the amount of compensation is determined on the basis of the real costs' calculation. If the above-

8 TRIF, A. et al.: Power Resources and Successful Trade Union Actions that Address Precarity in Adverse Contexts: The Case of Central and Eastern Europe. In *Human Relations*, 2021, p. 4. [online]. [2021-09-17]. Available at: <<https://journals.sagepub.com/doi/pdf/10.1177/00187267211020189>>.

9 ŠTRBOVÁ, E.: *Organizácia a motivácia v event marketingu*. Nitra : Constantine the Philosopher University, 2012, p. 66.

10 KOČER, R. G.: Measuring the Strength of Trade Unions and Identifying the Privileged Groups: A Two-Dimensional Approach and Its Implementation. In *The Journal of Mathematical Sociology*, 2018, Vol. 42, No. 3, p. 152.

11 JUSKA, J.: *Integrated Marketing Communication: Advertising and Promotion in a Digital World*. New York : Routledge, 2018, p. 68.

12 FINNE, A., GRÖNROSS, C.: Communication-in-Use: Customer-Integrated Marketing Communication. In *European Journal of Marketing*, 2017, Vol. 51, No. 3, p. 445-447.

13 ARMSTRONG, M., TAYLOR, S.: *Řízení lidských zdrojů. Moderní pojetí a postupy*. Prague : Grada Publishing, 2015, p. 621.

14 COWAN, D.: *Strategic Internal Communication: How to Build Employee Engagement and Performance*. London : Kogan Page, 2014, p. 52-53.

15 MEN, L. R., YUE, C. A.: Creating a Positive Emotional Culture: Effect of Internal Communication and Impact on Employee Supportive Behaviors. In *Public Relations Review*, 2019, Vol. 45, No. 3, p. 165.

16 TOUBOL, J., JENSEN, C. S.: Why Do People Join Trade Unions? The Impact of Workplace Union Density on Union Recruitment. In *Transfer – European Review of Labour and Research*, 2014, Vol. 20, No. 1, p. 142.

mentioned monetary compensation has been paid to the employee, it is therefore not subject to tax, nor does the employee have an obligation to file a tax return. If the employer bases the amount of compensation for the use of the employee's own tools, equipment and objects necessary for the performance of work on the actual costs, then the compensation calculated in this way is not subject to tax. The work-related expenses and costs incurred by the employee therefore include not only the costs associated with the use of these items (such as consumption of fuel and electricity), but also costs of these items. The above thus meets the particulars of the compensation for the use of tools, equipment and items owned by the employee necessary for the performance of work.

The Nature of Marketing Communication of the Trade Union

The communication basis or so-called initial information (relevant to the creation of the communication strategy of the trade union itself), can be viewed from different angles. Either we take into account elements arising from the internal environment of the trade union, or we focus on the subjective preferences of natural persons who are already members of the trade union or are considering joining the trade union. Therefore, the communication of the trade union cannot focus exclusively on one group of employees (e.g., potential members given their different motives for joining). Regardless of this fact (to what extent individual information will be taken into account in the creation and implementation of the communication strategy of the trade union), the central idea of the communication strategy is the notion of 'trust' and the process of trust building among members or potential members of the trade union. Creating an atmosphere of trust among the members or potential members (when deciding whether to join the trade union) is the only way to ensure that individuals are sufficiently motivated to remain in or to join the trade union. At the same time, trust is (in principle) the only tool to ensure employees will remain in the trade union.

Based on Žáry's¹⁷ assumption, it can be stated that the internal communication of the trade union is not technology-oriented (technocratic or cybernetic), but is rather personal (takes into account needs, worries and joys of its members). In this context, Szarková adds that this "does not preclude a creative synthesis of human and personal elements with strategic, systematic and impersonal elements. The task of a senior employee (manager) is clear – to facilitate and motivate the merger of many individual skills, opportunities, desires, expectations, wills and destinies into one single river to ensure the company is a successful and promising unit able to compete in the market".¹⁸ Although the above arguments cannot be applied by analogy to the marketing communication of the trade union, the implications are clear – the predominant need of individuals to interact when sending and receiving information at a certain time and under certain conditions. Given that, therefore, the communication of the trade union shall be based on non-linear communication between the members of the trade union (or potential members of the trade union) and members of the relevant trade union bodies. Emphasis will always be placed on the need (necessity) to adapt to ensure smooth transition between communication roles, i.e., turn-taking between the speaker and the listener when exchanging views and information or during discussion.¹⁹ Therefore, the so-called transactional exchanges in which each person is considered a speaker and a listener at the same time (communicating and receiving messages) shall be pursued.²⁰ Due to the nature of the trade union's activities, a personal form of communication will always be preferred, be it meetings, negotiations or assemblies, as it reflects the structure of trade union bodies the best (trade unions are based on a collective bargaining principle). The very nature of the trade union is personal meetings of several natural persons who, in accordance with established and clearly defined rules take a binding decision on behalf of the relevant trade union body following negotiations and discussions. The basic functions of the trade union's internal communication²¹ are as follows – information

provision, motivation, coordination, counselling, persuasion, control and decision-making on behalf of the trade union to strengthen interpersonal relations and solidarity between members. With regard to the internal communication of the trade union, the trade union prefers an open (social) dialogue supplemented by written records (or another method of conveying communicated information). In principle, communication within the trade union is either formal or informal,²² with formal communication taking the form of official reports and notices disseminated through the official communication channels of relevant trade union bodies (members and potential members and), while informal communication will use channels outside the official communication channels of the relevant trade union bodies, in particular informal meetings of members of the relevant trade union bodies with regular members or potential members. Informal communication is thus the basis for the growing social phenomenon of the groundswell.

However, in its activities, the trade union must not damage the employer's reputation. Therefore, the trade union should disclose only true information in line with the actual facts and information which does not harm the employer's reputation. Unjustified criticism of the employer may constitute a breach of duty by a trade union official/a member of the relevant trade union body or an employee. Such a breach may even lead to sanctions. Even legitimate criticism can be considered a breach of duty if the employee has not acted in accordance with the legitimate interests of the employer.²³ It often happens that information used to address employees does not always correspond to objective facts. Such (false) information is capable of causing harm to the employer or its reputation or the reputation of persons working for the employer. "Where personal rights of a natural or legal person were interfered with and such interference was caused by a person appointed by a legal person to carry out the its activities, such interference shall be deemed to constitute an interference caused directly by the legal person."²⁴ For a reputation harm claims to arise, an objective capacity to cause (non-pecuniary) damage to the reputation of a legal person is sufficient. In such a case, we believe that the entity against which protection is to be applied under Section 19b of the Commercial Code is the relevant trade union (relevant trade union body) whose member or person acting on its behalf has published the information in question. Therefore, trade union members should be aware of their obligation to act in accordance with the legitimate interests of the employer. "The duty of the employee not to act contrary to the legitimate interests of the employer is, in general, a moral imperative imposed on the employee implying a certain degree of loyalty to the employer. The degree to which the employee identifies with such duty is thus a reflection on employee's behaviour."²⁵ An issue arises with regard to the use of company e-mail addresses for the activities of the trade union. Based on the premise that company e-mail address constitutes the employer's work equipment, using company e-mail address for trade union activities-related communication without consent of the employer is contrary to generally binding legislation and personal data protection legislation, as such communication creates a potential risk of personal data being processed by the employer as an operator without an adequate legal basis (also with regard to personal data of a special category pursuant to Article 9 of the GDPR).²⁶ Of all the forms and techniques of marketing communication, trade unions prefer personal form of communication – the exchange of information between members of trade union bodies and members or potential members of the trade union.

17 ŽÁRY, I.: Zamestnanci a komunikácia s nimi, alebo Náš zamestnanec – náš pán? In *Otázky žurnalistiky*, 2006, Vol. 49, No. 3-4, p. 210.

18 SZARKOVÁ, M.: *Komunikácia v manažmente*. Bratislava : Wolters Kluwer, 2018, p. 47.

19 ŠTRBOVÁ, E., BOLDIŠOVÁ, S.: Generation Y Preferences in Online Content Consumption: Content Marketing Implications for the Arts. In *Social Communication*, 2021, Vol. 7, No. 1, p. 8.

20 HERNAUS, T. et al.: Organizational Career Management Practices. The Role of the Relationship between HRM and Trade Unions. In *Employee Relations*, 2019, Vol. 41, No. 1, p. 88.

21 See: HOLÁ, J.: *Jak zlepšit interní komunikaci*. Brno : Computer Press, 2011, p. 41; KUPEC, V. et al.: Conceptual Comparison of Internal Audit and Internal Control in the Marketing Environment. In *Sustainability*, 2021, Vol. 13, No. 12, p. 9.

22 DEWHURST, S., FITZPATRICK, L.: *Successful Employee Communications: A Practitioner's Guide to Tools, Models and Best Practice for Internal Communication*. London : Kogan Page, 2019, p. 32.

23 *Judgment of the Supreme Court of the Czech Republic of 21st March 2013, file No. 560/2012.*

24 *Judgment of the Supreme Court of the Slovak Republic, file No. 3 Cdo 228/2012.*

25 *Judgment of the Supreme Court of the Czech Republic of 13th November 2008, file No. 21 Cdo 4418/2007.*

26 ŽUĽOVÁ, J.: *Spracúvanie osobných údajov zamestnanca podľa GDPR*. Košice : Pavol Jozef Šafárik University, 2018, p. 65.

The Basis of Marketing Communication of the Trade Union – Name and Logo

The trade union should use its logo on a regular basis so as to make it easier for others to identify it and differentiate itself from the employer's conduct and internal communication. However, it should be noted that even though the vast majority of trade unions state in their logos the name of the company (the employer – where the trade union was established), in very few cases the trade union has the right to use of the name of the employer. Trade unions, especially in the private sector, usually derive their name from the employer's own name and add their name or the name of the trade union under which they have been established. Trade unions usually use the employer's logo which they then slightly modify – they add a certain symbol, object or colours to distinguish themselves from other trade unions (sometimes there is a binding design manual in place issued by the trade union which should be followed). However, such an approach might be (is) in conflict with the legal provisions protecting the employer's name or brand. The employer takes all necessary steps to protect its brand, name²⁷ and design to create a corporate identity (not only) in relation to the products it produces or services it provides. A problem arises when a third-party entity takes the name of the employer, incorporates it into its own internal environment and starts using it without the employer's consent (not only for the purposes of internal communication but also in communication with third parties). A similar approach is also true for some trade unions which use the employer's logo or trademark²⁸ (with various modifications) without the prior consent of the employer. The trade union uses the employer's business name to show its 'affiliation' with the employer it is active at (identification role) pursuant to Section 230, Par. 2 of the Labour Code. At the same time, however, such use of the employer's business name is not explicitly excluded neither under Slovak nor European legislation. The relevant legislation in this case is Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14th June 2017 on the European Union trade mark,²⁹ Article 9, Par. 2 states that: "Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the EU trade mark, the proprietor of that EU trade mark shall be entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services, any sign where: (...)." The provision of Article 9, Par. 3, which is a follow-up to Par. 2, states that: "The following, in particular, may be prohibited under paragraph 2: (...)" therefore, Par. 3 shall be interpreted in conjunction with Par. 2. The use of a European Union trade mark by third parties may therefore be prevented by its proprietor only if there is specific conduct on the part of those third parties, but in particular if that conduct takes place in the course of trade and concerns labelling of goods and service, in particular.

The relationship between the trade union and the employer does not fulfil such a presumption, since the trade union is not established for the purpose of conducting business and does not use the employer's trade name in the course of trade or in connection with the labelling of goods or services. In this case, the basic substantive conditions, i.e., the need to implement protection measures regarding the trade name of a legal person (the employer) are not met, as there is no unfair competition conduct on the part of the trade union. However, it must also be objectively acknowledged that the above-described conduct of the trade union is not entirely correct due to the absence of the employer's consent (or knowledge) with the use of its name and brand (logo, etc.) for purposes of the trade union.³⁰ The creation of the name of the trade union is thus influenced, on the one hand, by the business name of the employer at which the trade union operates, while, on the other hand, provisions of Section 6, Par. 4 of the Act on Associations of Citizens, state that: "The name of a civic association may not be

27 Remark by authors: Protection against unauthorised use of the business name of a legal entity pursuant to Section 41 et seq. of the Commercial Code, trademark protection according to Act No. 506/2009 Coll. on trademarks, as amended and the like.

28 Remark by authors: A trade mark may be a word, picture, position of a sign, design, sign consisting of a single colour or combination of colours without outlines, sound, movement, multimedia, holograph or other sign capable of distinguishing the goods or services of one person from goods or services of another person.

29 Remark by authors: Other legislation include *Commission Delegated Regulation (EU) 2018/625 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark and repealing Delegated Regulation (EU) 2017/1430*, from 5th March 2018; *Commission Implementing Regulation (EU) 2018/626 laying down detailed rules for the implementation of certain provisions of Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark and repealing the Implementing Regulation (EU) 2017/1431*, from 5th March 2018.

30 ŠVEC, M. et al.: *Odborová organizácia. Postavenie a pracovnoprávne nároky*. Bratislava: Wolters Kluwer, 2020, p. 74-75.

derogatory, offensive or interchangeable with the name of a public authority or the name of a legal entity that already operates in the Slovak Republic." Section 6, Par. 4 of the Act on Associations of Citizens prevents a civic association/trade union from being in direct conflict with Section 4 of the Act on Associations of Citizens – to express ideas through the name of the trade union. The use of the business name and logo of the employer in the name of the trade union is subject to a special agreement between the employer and the trade union under a collective agreement or a special agreement on the regulation of relations between the trade union and the employer with reference to the performances of the employer towards the trade union according to Section 240, Par. 5 of the Labour Code. The trade union tends to obtain consent to use the employer's business name or part of it in its name only when it wishes to use the business name of the employer in its internal documents, promotional products and the like. However, the employer is entitled to veto any change, shortening or modification to/of its business name. The trade union is obliged not only to notify the employer, but also to obtain additional consent if it wishes to take such a step. However, failure to reach an agreement on the use of the employer's business name in the name of the trade union may result in the need to rename the trade union.

It is difficult for trade unions to reach an agreement regarding the use of an employer's logo, as employers have no interest in trade unions using their logo on trade union materials and promotional products. In the case of foreign corporations, internal supranational regulations regulate the use of the corporate logo in a unified manner, regardless of individual nation states. In terms of trademark protection, Slovak employers pay attention to the use of their trademark in communication with third parties. In this respect, employers are even more strict when it comes to the use of their corporate identity – their logo. Employers tend to prevent trade unions from using their logo. Yet, employers are not so strict when it comes to the use of their business name. The only option for the trade union is to come up with its own graphic which would reflect its purpose and speak of its activities to third parties. In some cases, the trade union may try to agree with the employer on every single use of the employer's trademark/logo.

Confidentiality of Information as a Barrier to the Communication Process of the Trade Union

Before and during the communication process of the trade union, an assessment must be made at all times as to whether the information which the trade union intends to disclose is subject to a legal or contractual duty of confidentiality.³¹ The marketing communication of the trade union is confronted with the employer's request to keep confidential certain information it provided, e.g., when meeting legal obligations in accordance with Section 229 of the Labour Code, and not to disclose them to third parties. When assessing the marketing communication strategy of the trade union, confidentiality of information seems to be the most significant barrier, as it directly influences the choice of topics and issues the trade union is able to tackle and discuss. It should be noted that it is topics that the trade union tackles and discusses that are important not only to the trade union members but also those who are thinking of joining the trade union.

In creating marketing communication strategy, two fundamental ambivalent rights should be taken into account – the employer's right to confidentiality of a certain category of information provided to the trade union and the trade union's correlative right to share information with/inform its own members of the facts which may be relevant to them – working, social and wage conditions, in particular information on planned organisational changes, termination of employment, changes in work organisation or production process, the process of collective bargaining, arising from its internal documents.³² Employees are usually willing to join the trade union when they see examples of good practice in the activities of the trade union or in the conduct of members of trade union bodies as well as real results achieved by the trade union in representing the rights and interests

31 STOKES, P. J. et al.: The Rhetoric and Realities of Internet Technologies on Trade Union Marketing: Marketing, Communications, Resistance. In *International Journal of Technology and Human Interaction*, 2021, Vol. 17, No. 2, p. 12.

32 BENCŠIK, A. et al.: Formal and Informal Knowledge Sharing in Organisations from Slovakia and Hungary. In *Entrepreneurial Business and Economics Review*, 2019, Vol. 7, No. 3, p. 28.

of employees (these must be openly communicated). It often happens that the employer fulfils its information obligation towards the competent trade union body and consequently requires that this information is not to be disclosed until it takes into account subjective/objective circumstances. After learning about this requirement, the relevant trade union body defends the right of trade union members and employees to information and rejects the duty of confidentiality. The relevant trade union body must consider whether the interest of the trade union in disclosing this information overrides the employer's decision to keep such information confidential. If the employer's interest prevails, the trade union should observe the duty of confidentiality. If not, the trade union may make the information available to relevant persons. However, should the employer initiate legal proceedings with regard to the breach of the duty of confidentiality (which might entail possible violation of the employer's rights), the trade union must be able to prove that the interests of the employees outweigh the interests of the employer. Failure to do this might give rise to employment or civil liability under which the employer is entitled to damage compensation.

The trade union is entitled to information (which may later be communicated to its members) under Section 238 of the Labour Code. Provisions of Section 238 of the Labour Code follow the Directive 2002/14/EC of the European Parliament and of the Council of 11th March 2002 establishing a general framework for informing and consulting employees in the European Community, under which "information" means transmission of data by the employer to the employees' representatives so as to enable them to acquaint themselves with the subject matter and to examine it. The employees' representatives have the right to information pursuant to Art. 2 of the Additional Protocol to the European Social Charter. The Labour Code therefore considers the provision of data and information to the employees' representatives by the employer for the purpose of becoming acquainted with the content of the information to be the act of informing pursuant to the above. The act of informing the trade union pursuant to the relevant labour law regulations and obligations under the collective agreement means oral provision of information or written submission of documents to the trade union body with the date, name and position of the submitter. Provision of information in the written form also covers electronic messages sent to e-mail addresses of members of trade union bodies who have been identified as persons authorised to receive such information on behalf of the trade union or to persons stipulated in internal documents of the trade union with which the employer was acquainted. Selected provisions of the Labour Code define the employer's obligation to inform employees' representatives without them requesting the employer to do so, in particular with regard to Section 237, Par. 4 of the Labour Code, as well as information on issues regarding insolvency of the employer (Section 22, Par. 1 of the Labour Code), transfer of rights and obligations under the employment relationship (Section 29, Par. 1 of the Labour Code), new employment relationship Section 47, Par. 4 of the Labour Code), indefinite term vacancies (Section 48, Par. 8 of the Labour Code), etc.³³

Apart from the right to information according to the provisions of Section 238 of the Labour Code, the trade union is also obliged to maintain confidentiality in accordance with Section 240, Par. 6 of the Labour Code, i.e., confidentiality about facts which the trade union has learned in the course of its duties and which the employer marked as confidential. Before the employer can mark certain information as confidential, it is obliged to introduce a confidential information protection system to prevent third parties from accessing confidential information; i.e., information cannot be classified as confidential solely on the basis of a subjective decision by the employer. The employer usually introduces an in-house information processing and protection system with several levels of protection (e.g., secret, internal, public, and confidential).³⁴ The duty of confidentiality, which is stated in Section 240, Par. 6 of the Labour Code, applies primarily to natural persons who are members of the trade union body (which is considered to be a relevant trade union body under the Labour Code). However, members of the relevant trade union body are not bound by the duty of confidentiality the moment they enter the trade union but rather the moment they receive information subject to such a duty of confidentiality. The duty of confidentiality is established, lasts and ceases to exist on the individual basis and may take effect under different circumstances unique to individual members of the relevant trade union body. Therefore, duty of confidentiality

33 ŠVEC, M. et al.: *Zákonník práce. Zákon o kolektivním vyjednávání. Komentár. II. zväzok*. Bratislava : Wolters Kluwer, 2019, p. 360-361.

34 HITKA, M. et al.: Knowledge and Human Capital as Sustainable Competitive Advantage in Human Resource Management. In *Sustainability*, 2019, Vol. 11, No. 18, p. 9.

arises exclusively on the basis of Section 36 of the Civil Code, i.e., following a unilateral declaration of a member of the trade union body in which the employee undertakes to comply with the duty of confidentiality or on the basis of a bilateral agreement between the employee and the employer under which the employee undertakes to comply with the duty of confidentiality. The legislation does not require the employer to impose the duty of confidentiality upon its employees. Therefore, the employer may refuse to provide an employee who is not a member of the relevant trade union body information covered by the duty of confidentiality.

In principle, it can be stated that Section 240, Par. 6 of the Labour Code primarily protects information that is not generally available, i.e., on the web, in literature or which has not already been made available by the employer to an unspecified circle of employees (information published on the employer's intranet). The above-mentioned information cannot be classified as confidential by the employer, as it lacks the 'confidential' component – piece of information to be classified. In this respect, Section 17 and Section 51 of the Commercial Code cannot be used, as the principle of subsidiarity has not been established between the Labour Code and Commercial Code. The concept of *analogia legis* is excluded from employment relationships due to the rigid legislation on the protection of employees and their representatives as the legislation in question limits the will of entities and disrupts the private (contractual) nature of employment relationships. The term "fact" can also be (secondarily) defined in accordance with Section 81, Letter f) of the Labour Code given the common basis both duties of confidentiality (for employee representatives and employees themselves) share. The term "fact" must therefore be interpreted in broader terms – in practice it can relate to various types of trade secrets (relating to trade, production, bank, etc.). Unlike the provisions of Section 81, Letter f) of the Labour Code, however, Section 240, Par. 5 of the Labour Code narrows the scope of confidential information to those learned by employees' representatives in the performance of their duties provided that those facts (information) were marked as confidential by the employer. Information that is subject to the legal obligation of the employer in relation to employees' representatives under Section 237, Par. 2, Letter a) of the Labour Code and under Section 229, Par. 1 and Par. 2 of the Labour Code (e.g., information on the expected development of employment at the employer, if, for example, the measures that the employer would like to implement would mean job reductions, as the provision of this information to employees' representatives and employees is stipulated in the Labour Code) cannot be subject to confidentiality. When determining the scope of confidential information, the employer takes into account the specific conditions of the company while also taking into account the burden of proof of the causal link between a possible breach of duty of confidentiality and the damage suffered by the employer in this regard. Thus, the marketing communication strategy of the trade union must be in line with the duty of confidentiality imposed upon the trade union. The duty of confidentiality makes it significantly more difficult for the trade union to achieve the set goals – to publish information about its activities in order to retain its members and attract new ones.

4 Conclusion

Trying to formulate any complex scientific conclusions on an issue that has not been researched yet is difficult from every point of view. We have already outlined many of the starting points in the individual parts of the study. On their basis we formulated a basic hypothesis which we will verify in subsequent papers. It is an indisputable fact that gradual changes in the labour market and in the internal environments of employers, brought in particular by the gradual onset of the 4th Industrial Revolution, also have secondary effects on the activities of special purpose civic associations. However, this impact is so fundamental that it is capable of changing the very essence of the internal environment of these associations, the way they are established, the communication with their members and the way of satisfying needs of their members in terms of their self-realisation. The digitalisation and information technologies have a major impact on the interest of individuals to join such associations and at the same time to participate in their activities aimed at improving working or wage conditions and to obtain employment-related information. To a certain extent, the onset of the groundswell appears to hamper further activities of special purpose civic associations. The outlined areas of operation of these associations, the constraints they have to face in their activities and their communication strategy thus represent a fundamental challenge which civic associations will either have to overcome or risk becoming insignificant.

The latter would, however, lead to the deterioration of working conditions of employees. We therefore believe that using the groundswell to the benefit of the civic associations would result in a stronger presence of special purpose civic associations on various social media platforms. Presence on social media requires changes to the marketing communication strategy (taking into account the needs and interests of potential members). If special purpose civic associations fail to recognise the need to adopt social media in their communication strategy, they might find themselves in a difficult position with fatal consequences.

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