

THE PARTICIPATION TO THE COLLECTIVE LABOR CONFLICTS

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Abstract

The collective labor conflicts' settlement represented and it still represents a subject of interest for the Romanian legislator and within the specialty literature. The Social Dialogue Law no. 62/2011 was criticized by being adopted without an impact study.

The current paper's objective is to shortly present some legislative aspects concerning the parties of the collective labor conflict and to analyze the statistic data provided by the Ministry of Labor, Family, Social Protection and Elderly Persons, and by the National Institute for Statistics concerning the participation to the collective labor conflicts.

Through the research instruments (the use of statistic data series) and taking into consideration the period subjected to analysis, the paper allows to describe the situation of the participation to the collective labor conflicts in Romania within the period 1992-2014 and of the factors that influence the triggering of this type of conflicts, and also to formulate proposals for the future amendment of the legislation.

Keywords: *the parties of the collective labor conflict, statistic data, the collective labor conflicts frequency, the representation of the collective labor conflicts.*

JEL classification: K31

1 The parties of the collective labor conflict

In the strict sense, the parties of the collective labor conflicts are the employees and their employer. For a correct identification of the collective labor conflict's parties, one must take into consideration that the conflict may arise at different levels, that correspond to the ones for which a collective labor contract/agreement may be concluded.²

With regard to the fact that the collective labor conflict may be triggered at the levels where the collective contracts/agreements may be concluded (according to art. 128 para. 1 of the Law no. 62/2011), it results that the conflict's parties are the participants to the collective bargaining corresponding to each level.

The parties of the collective labor conflict are the following:

- ✓ The employees represented by the trade unions, the federations or confederations of trade unions, in compliance with the representation requirements at unit, group of units or activity sector level;

The rule that emerges from the analysis of the legal provisions (art. 160 of the Law no.62/2011) is that in case of collective labor conflicts, the employees are being represented by the trade unions that fulfill the representation conditions, or, if the case, by the employees' representative that participate to the collective bargaining of the collective labor contract/agreement³.

- ✓ The employer or, if the case, the employers' organizations.

2 The employer's participation to the collective labor conflicts. The employers' organizations

Currently, the term of "employer" is being defined both by the Labor Code republished in 2011 and by the Social Dialogue Law no. 62/011. The Law no. 62/2011 also defines the terms of "unit" and "owner".

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² Monica Gheorghe, *Căi amiabile de soluționare a conflictelor colective de muncă*, Universul Juridic, București, 2010, p. 328, reported to the provisions of the Law no. 62/2011

³ Ion Traian Ștefănescu, *Tratat teoretic și practic de drept al muncii, ediția a III-a, revăzută și adăugită*, Universul Juridic, București, 2014, p. 891

The unit may initiate an individual labor conflict, but can not trigger a collective labor conflict. The collective labor conflict is regulated so that it can be initiated only in the situation when the employer or the employer's organization doesn't respond to all of the claims or if the trade unions or the employees' representatives, if the case, don't agree with the answer. Therefore, the regulation doesn't have a symmetric character, and the absence of any provisions related to the lock-out accentuates this asymmetry.⁴

In what concerns the employer's participation to the collective labor conflict, reasoning that the parties to the collective bargaining are also the parties to the collective labor conflict, the representation of the employer takes into consideration the levels at which the conflict may be triggered.

The representation requirements for the employers' organizations are being established by art. 72 para. 1 of the Law no. 62/2011 and must be fulfilled simultaneous.

3 The employees' participation to the collective labor conflicts. The trade unions

From the interpretation of the art. 159 and art. 160 of the Law no. 62/2011, the employees are being represented in a collective labor conflict, accordingly, as it follows by:

- The representative trade unions from the within the unit, or from the upper level (trade unions federations or confederations);
- The employees' representatives, appointed to represent them within the negotiations or, if the case, that participate to the negotiation, when there is no representative trade union.⁵

The representation requirements for the trade unions are established by art. 51 para. 1 of the Law no. 62/2011 and must be fulfilled simultaneous.

The Social Dialogue Law foresees the rules for participating to the collective bargaining for each level where the negotiation is possible.

After the adoption of the Law no. 62/2011, it was raised the exception of unconstitutionality of the provisions of art. 51 alin. 1 lit. C.c) of this Law (which institutes for the trade union at unit level – in order to be representative – the condition that its members to represent at least a half plus one of the number of the employees from the unit in question).

The unconstitutionality exception was rejected through the Decision no. 1089/2012⁶ and the Decision no. 24/2013⁷, the Constitutional Court invoking the following arguments:

- „the fact that the representation can be obtained only if the number of trade union members is at least one half plus one from the employees' number strictly constitute the legislator's option and politics; it's up to the legislator to chose between a certain number or another on the conditions not to affect the freedom of association within the trade unions and not to touch on the trade unions constitutional role;

- by stating the trade union's role to protect the rights and interests of its members, the Constitution doesn't foresee an unlimited possibility for them to participate, in any conditions, to the negotiations that concern the collective labor contracts; this right to collective bargaining is guaranteed, but its exercise is made in accordance with the law, which means that the legislator is competent to establish procedures, conditions and requirements in relation to the trade unions' activity;

- the trade unions' role is not affected, nor minimized; by contrary, the law takes into consideration the unity of action of the trade unions' members that are better represented in relation to their employer when the representation is higher;

- finally, it appears anachronistic to have more representative trade unions within the same unit –to support various points of views – and, as such, the legislative solution must be appreciated as positive for the unitary way of representing the employees.”⁸

Within the speciality literature, it was stated that: “we can admit that there is a centrifugal tendency within the collective bargaining, which moves the weight center of the collective labor

⁴ Raluca Dimitriu, *Legea privind soluționarea conflictelor de muncă. Comentarii și explicații*, C.H. Beck, București, 2007, p. 9, reported to the provisions of art. 163 from the Law no. 62/2011

⁵ Alexandru Țiclea, *Tratat de dreptul muncii – Legislație. Doctrină. Jurisprudență*, a VIII-a ediție revizuită și adăugită, Universul Juridic, București, 2014, p. 275

⁶ Published within the Official Journal no.75/05.02.2013

⁷ Published within the Official Journal no. 82/07.02.2013

⁸ Ion Traian Ștefănescu, *op.cit.*, 2014, p. 160

contracts' pyramid towards the unit, but in this case it must be adopted any necessary measure in order to strengthen the collective bargaining at this level", especially that the representation requirements for the trade unions at unit level became "difficult, even impossible to fulfill."⁹

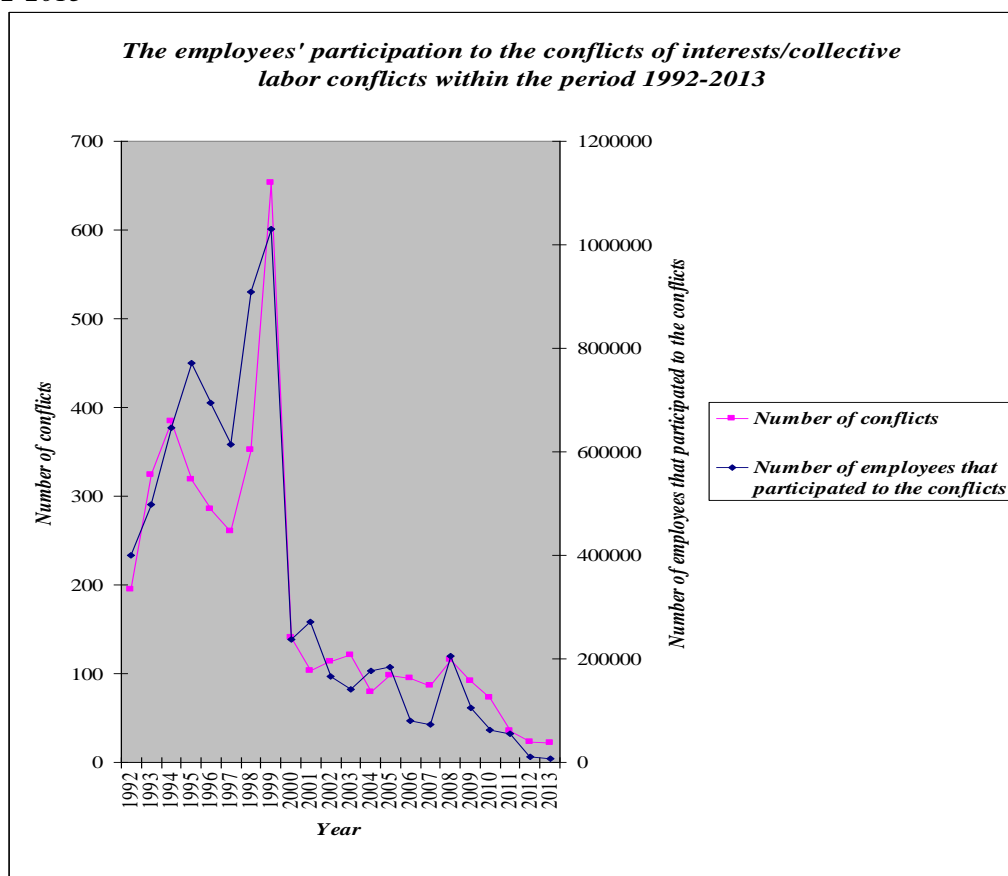
Moreover, within the doctrine it is being argued that the existence of only one representative trade union, having the competence to negotiate the collective labor contract, violates the pluralism principle. Supported also by the history of regulating this issue, for the future amendment of the law, it was proposed to return to the one third threshold of representation for the trade union at unit level.¹⁰

The requirement that must be fulfilled by the trade unions at unit level in order to be representative also affects the employees' participation to the collective labor conflicts and strike.

4 Statistical tools concerning the employees participation to the collective labor conflicts¹¹

4.1 From the interpretation of the Chart no. 1, it results that the period 1992-2013 is characterized by a relative ascending tendency until 1999, followed by a general descending tendency after 1999 of the number of conflicts of interests/collective labor conflicts. Within the reference period (1992-2013), it can be noticed that the peak for the number of conflicts of interests is reached in 1999, with 653 conflicts of interests registered at unit level, reported national wide. Opposite, for the same reference period, the year 2013 is the moment when the collective labor conflicts' number reached the lowest value, respectively 22 collective labor conflicts registered at unit level, reported national wide.

Chart no. 1 – The employees' participation to the conflicts of interests/collective labor conflicts within the period 1992-2013*



*Source: Ministry of Labor, Family, Social Protection and Elderly Persons, and National Institute for Statistics

⁹ Raluca Dimitriu, *Reflecții privind actuala legislație a muncii*, Revista Română de Dreptul Muncii nr. 3/2013, p. 17; Alexandru Țiclea, *Propuneri privind modificarea unor dispoziții ale legislației muncii*, Revista Română de Dreptul Muncii nr. 3/2013, p. 21; Radu Ștefan Pătru, *Contractele și acordurile colective de muncă*, Hamangiu, București, 2014, p. 23

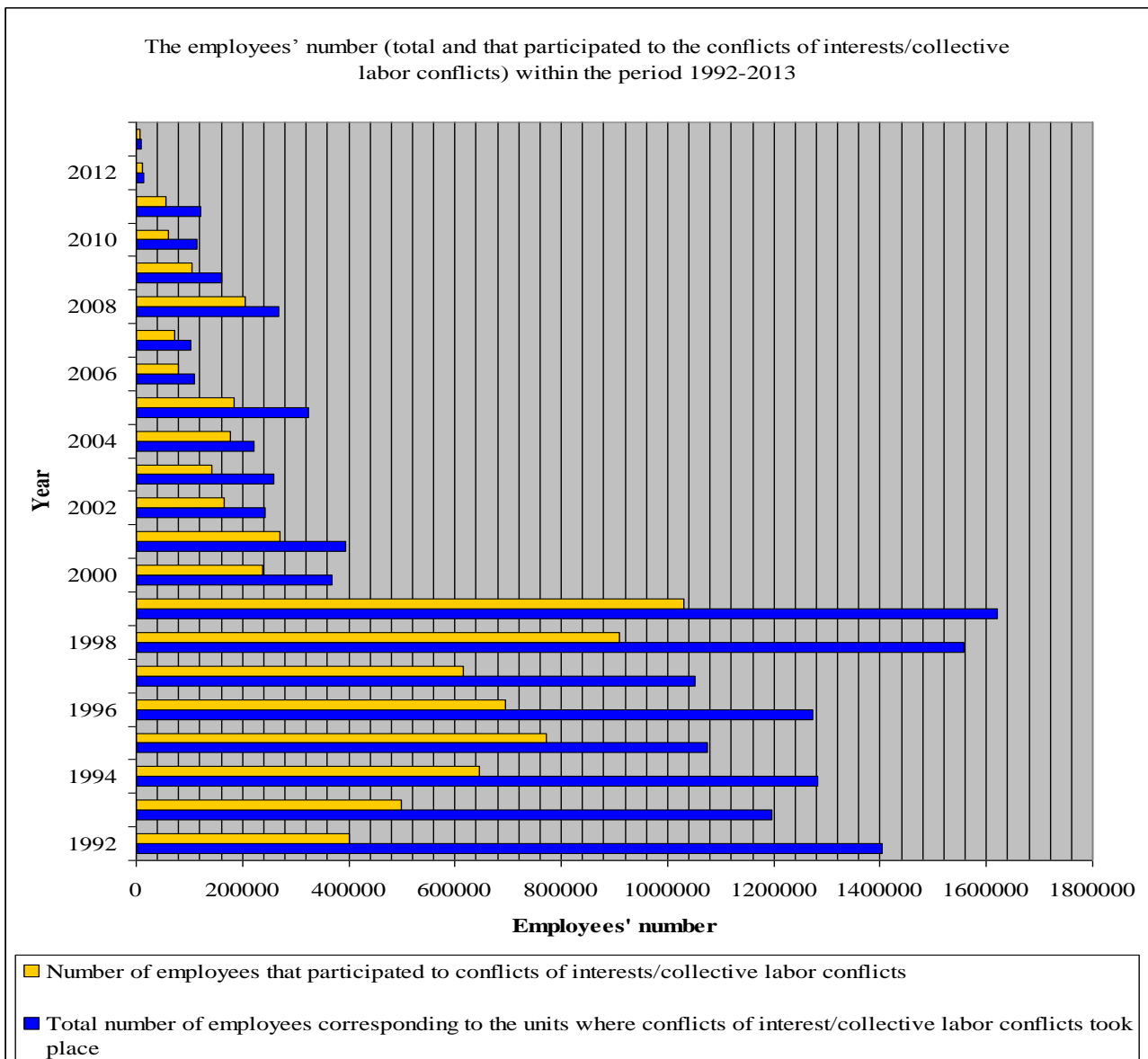
¹⁰ Ion Traian Ștefănescu, *op.cit.*, p. 160; Also, the Law no 130/1996 initially established this condition that was changed a year later by the Law no. 147/1997 (establishing, for the trade union's representation, a threshold of one third out from the unit's employees number)

¹¹ The statistic data used within this paper are provided by the Ministry of Labor, Family, Social Protection and Elderly Persons and are available by accessing the following link: <http://www.mmuncii.ro/j33/index.php/ro/transparenta/statistici/buletin-statistic> and by the National Institute for Statistics by accessing the Tempo-online account (database A. Statistică socială, A4. Forța de muncă, 10. Condiții de muncă)

4.2 Also, in what concerns the number of employees that participated to the conflicts of interests/collective labor conflicts, the period 1992-1999 is characterized by a relative ascending tendency, followed by the period 1999-2013, when there is manifested a general descending tendency of the number of employees that participated to the conflicts. Within the year 1999, there was registered the highest number of employees participating to the conflicts of interests, respectively 1029500, while 2013 is the year registering the lowest number of employees participating to the collective labor conflicts, namely 7678.

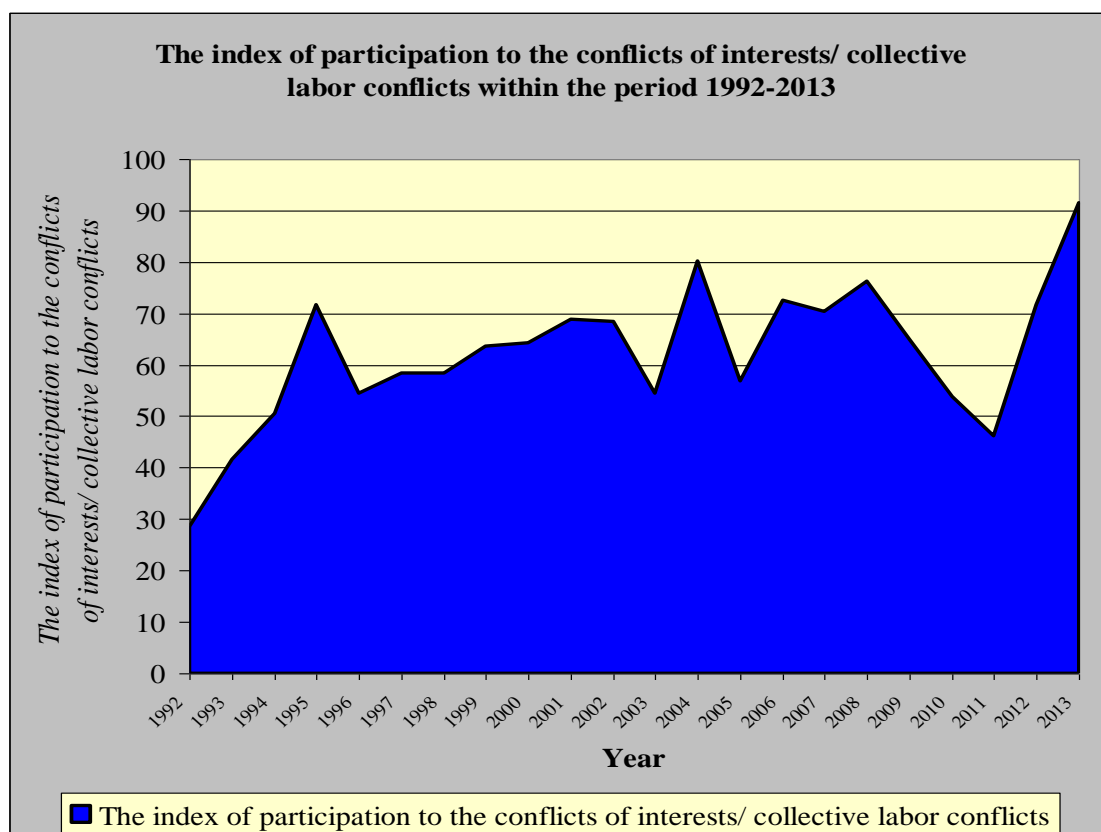
It can be noticed that the number of conflicts of interests/collective labor conflicts doesn't necessarily influence the number of employees that participated to the conflicts. Although, both in what concerns the number of conflicts and the number of employees that participated to the conflicts it can be observed a general descending tendency for the period of reference 1992-2013, it can be noticed in the same time that for instance even if in 1999 it was registered the highest number of conflicts of interests, with 85,51% more than in 1998, in what concerns the number of employees that participated to the conflicts of interests the value of the year 1999 (1029500 employees) increased only with 13,30% comparing with the value of the year 1998 (908616 employees).

Chart no. 2 – The employees' number (total and that participated to the conflicts of interests/collective labor conflicts) within the period 1992-2013)*



*Source: Ministry of Labor, Family, Social Protection and Elderly Persons, and National Institute for Statistics

4.3 **Chart no. 3** – *The index of participation to the conflicts of interests/ collective labor conflicts within the period 1992-2013**



*Source: Ministry of Labor, Family, Social Protection and Elderly Persons, and National Institute for Statistics

The evolution of the index of participation within the period 1992-2013 is being presented in the chart no. 3. For the reference period the lowest point was reached in 1992 and the higher value in 2013.

It's worth mentioning that the index of participation only reflects the percentage report between the number of employees that participated to the conflicts and the number of employees corresponding to the units where the conflicts took place and its evolution doesn't directly depend on the total number of conflicts. For example, in what concerns the minimum and maximum values of the index of participation within the period 1992-2013, although the index of participation reached the minimum value in 1992 (28,5 %), the total number of conflicts of interests was 195 that year, comparing to the year 2013, when it was registered the highest value of the index of participation (91,57%) and in the same time the lowest number of collective labor conflicts (22 conflicts).

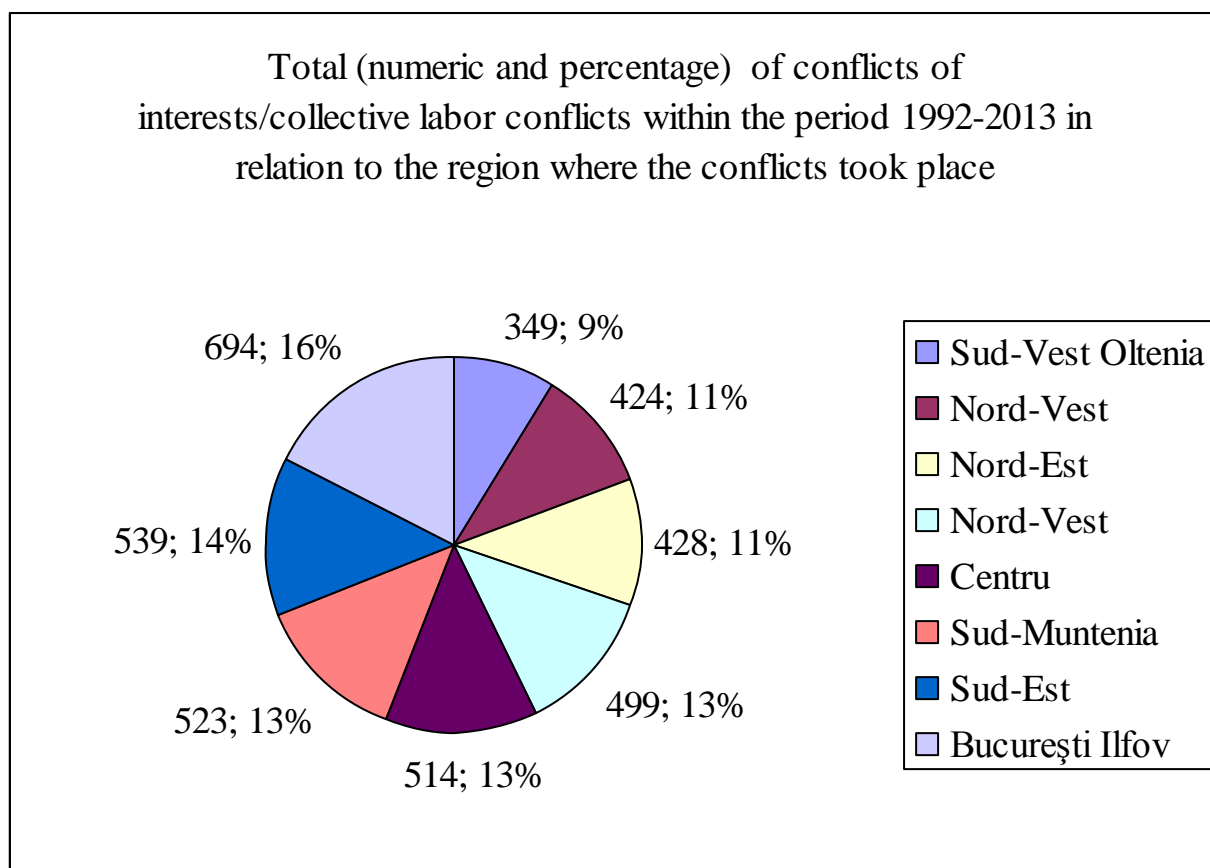
In the first trimester of the year 2014, there were registered 6 collective labor conflicts, in which participated 1155 employees out of 1763 employees corresponding to the units where the collective labor conflicts took place (index of participation = 65,51 %).

4.4 The regions where the conflicts of interests/collective labor conflicts took place are represented as it follows :

- ✓ **Regiunea Nord-Vest (the North-West Region)** is composed of the following counties: Bihor, Bistrița-Năsăud, Cluj, Maramureș, Satu-Mare, Sălaj;
- ✓ **Regiunea Centru (the Center Region)** is composed of the following counties: Alba, Brașov, Covasna, Harghita, Mureș, Sibiu;
- ✓ **Regiunea Nord-Est (the North-East Region)** is composed of the following counties: Bacău, Botoșani, Iași, Neamț, Suceava, Vaslui;

- ✓ **Regiunea Sud-Est (the South-East Region)** is composed of the following counties: Brăila, Buzău, Constanța, Galați, Tulcea, Vrancea;
- ✓ **Regiunea Sud-Muntenia (the South-Muntenia Region)** is composed of the following counties: Argeș, Călărași, Dâmbovița, Ialomița, Prahova, Teleorman;
- ✓ **Regiunea București – Ilfov (the București – Ilfov Region);**
- ✓ **Regiunea Sud-Vest Oltenia (the South-West Oltenia Region)** is composed of the following counties: Dolj, Gorj, Mehedinți, Olt, Vâlcea;
- ✓ **Regiunea Vest (the West Region)** is composed of the following counties: Arad, Caraș-Severin, Hunedoara, Timiș.

Chart no.4 – The representation of the conflicts of interests/collective labor conflicts within the period 1992-2013 in relation to the region where the conflicts took place



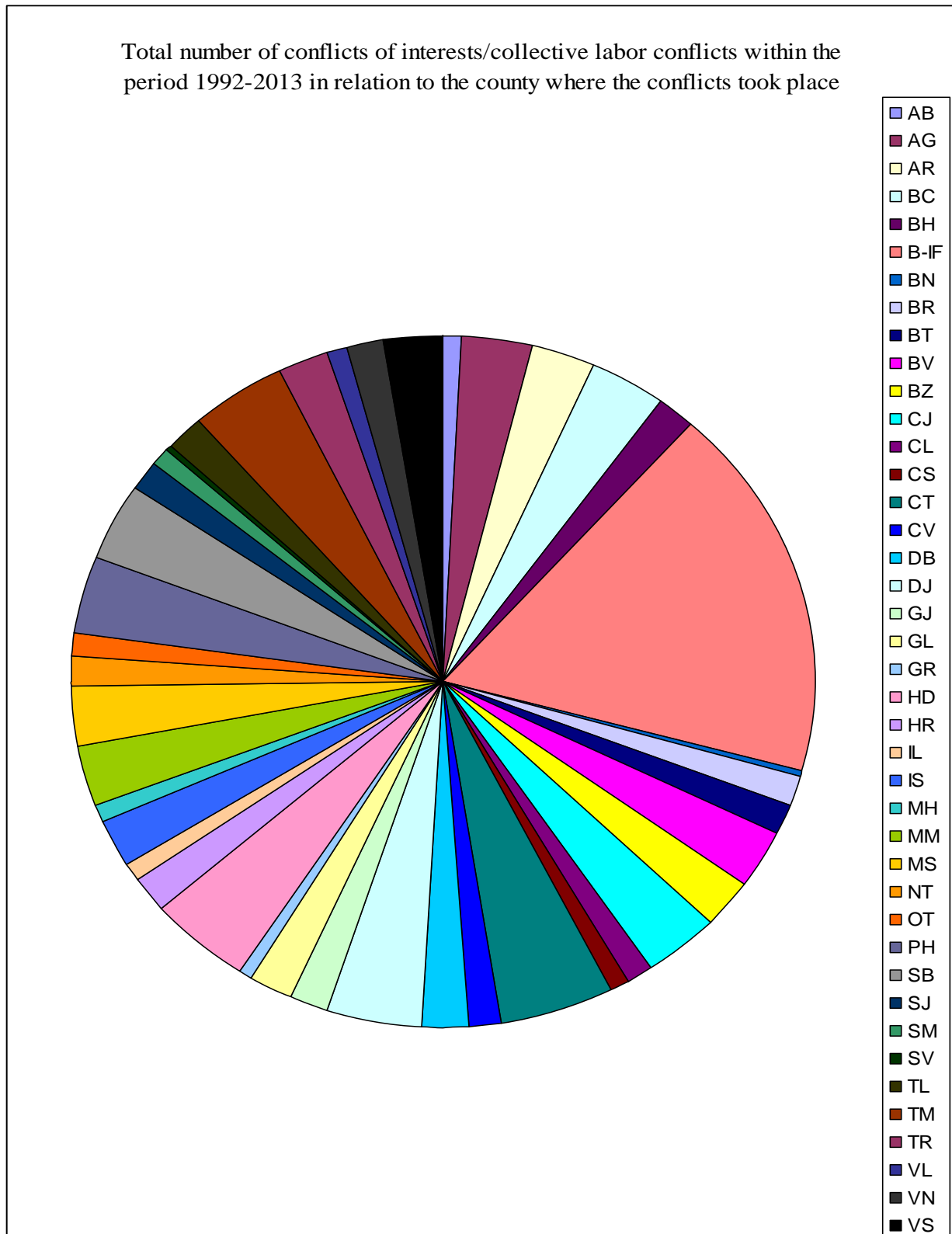
*Source: Ministry of Labor, Family, Social Protection and Elderly Persons, and National Institute for Statistics

As it can be observed from the chart no. 4, the representation of the number of conflicts of interests/collective labor conflicts within the period 1992-2013 is balanced (most of the conflicts took place in București-Ilfov Region, therefore within the period 1992-2013, 694 conflicts of interests/collective labor conflicts took place in that region, representing 16% of the total conflicts that took place in that period of time; opposite, the Region South-West Oltenia registered 349 conflicts of interests/collective labor conflicts within the period 1992-2013, representing 9% of the total number of conflicts that took place in that period of time).

4.5 From the perspective of the counties where they took place, the highest number of conflicts of interests/collective labor conflicts reported for the period 1992-2013 was registered in Bucuresti-Ilfov (a total of 694 conflicts of interests/collective labor conflicts that took place in the period 1992-2013) and the lowest number of conflicts was registered in Suceava county (13

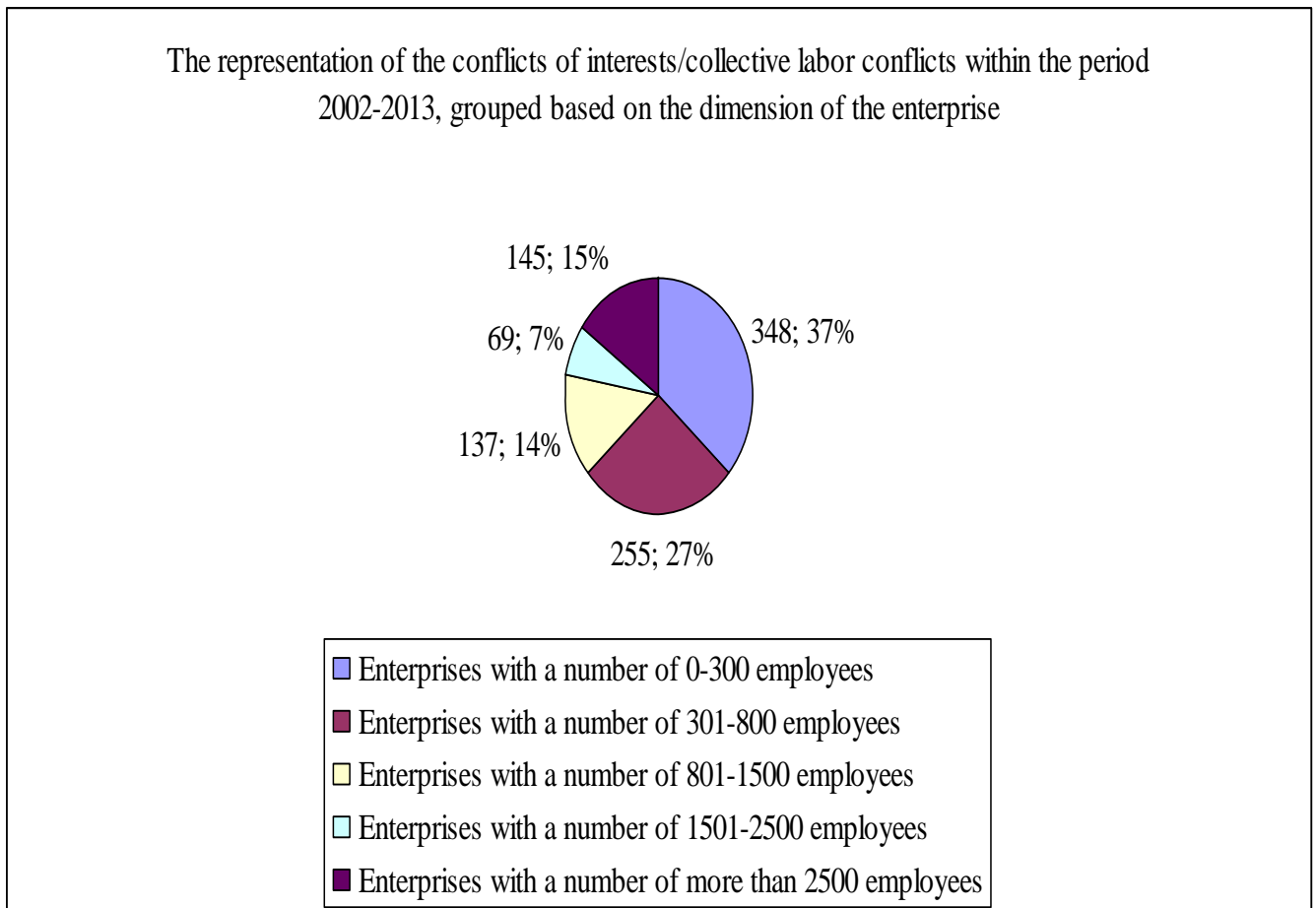
conflicts of interests/collective labor conflicts that took place in the period 1992-2013) and Bistrița-Năsăud county (14 conflicts of interests/collective labor conflicts that took place in the period 1992-2013).

Chart no. 5 - The representation of the conflicts of interests/collective labor conflicts within the period 1992-2013 in relation to the county where the conflicts took place



*Source: Ministry of Labor, Family, Social Protection and Elderly Persons, and National Institute for Statistics

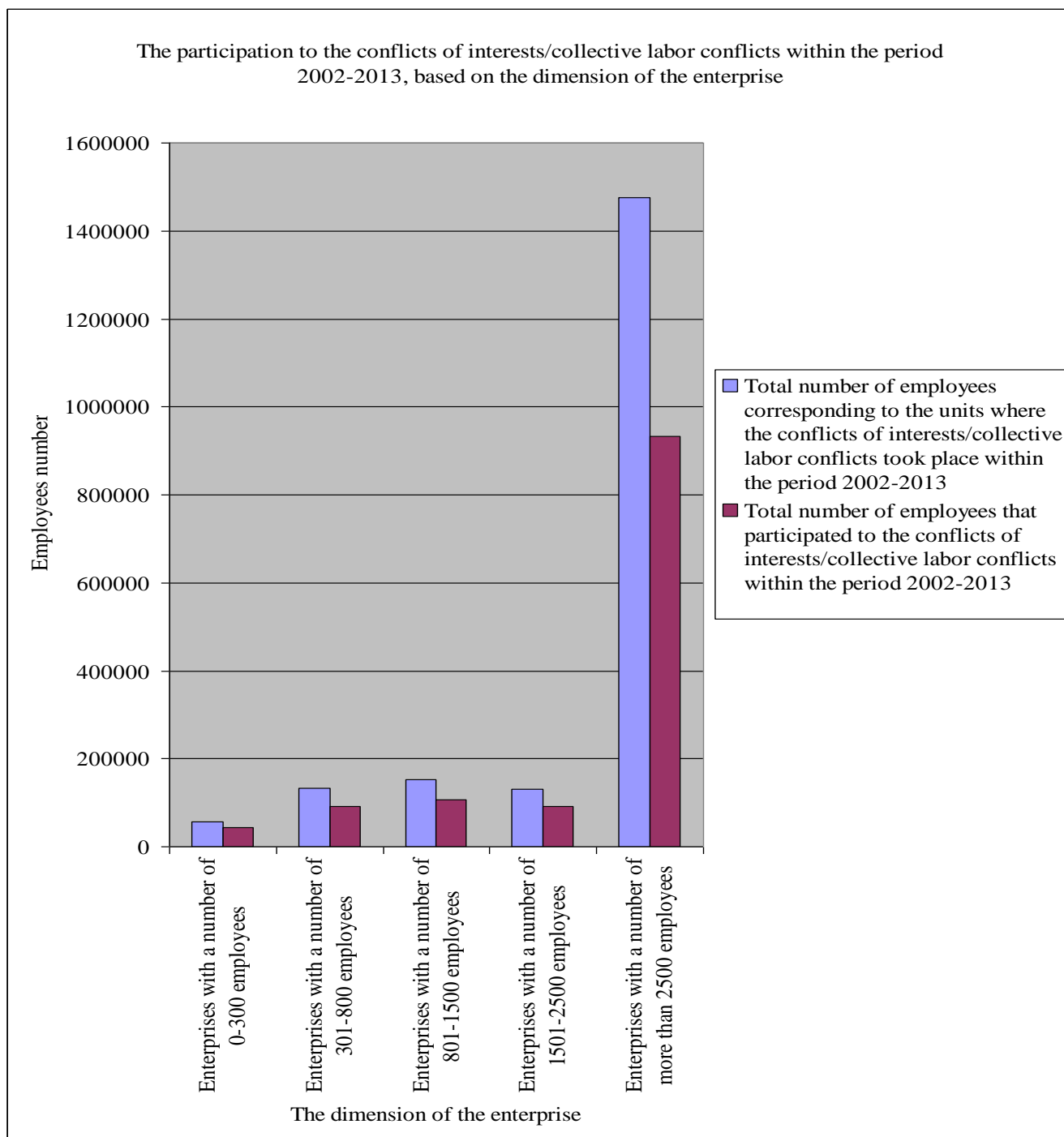
4.6 Chart no.6 - The representation of the conflicts of interests/collective labor conflicts within the period 2002-2013, grouped based on the dimension of the enterprise



**Source: Ministry of Labor, Family, Social Protection and Elderly Persons*

From the point of view of the total number of the conflicts of interests/collective labor conflicts in the period 2002-2013, the highest number of conflicts took place within the enterprises with a number of de 0-300 employees, while the lowest number of conflicts for the same period of reference was registered within the enterprises with a number of 1501-2500 employees (chart no.6). In what concerns the number of employees participating to these conflicts in the period subjected to analysis, the highest number of participants was registered within the enterprises with a number of more than 2500 employees, whilst the lowest number of participants was attributed to the enterprises with a number of 0-300 employees (chart no. 7).

Chart no. 7 – The participation to the conflicts of interests/collective labor conflicts within the period 2002-2013, based on the dimension of the enterprise *



*Source: Ministry of Labor, Family, Social Protection and Elderly Persons

5 Final considerations

With regard to the participants to the collective labor conflicts, within the specialty literature there were supported the ideas of returning to the representation threshold of one third for the trade union at unit level¹² and the adoption of any possible legislative measures in order to strengthen the collective bargaining at this level.

¹² Ion Traian Ștefănescu, *op.cit.*, p. 160,

The analysis and interpretation of the statistic data concerning the employees' participation to the conflicts of interests/collective labor conflicts show that the number of conflicts and participants depend on several factors.

Taking as an example the German pattern, where the conflicts of interests' settlement procedures are being foreseen within the collective labor contract itself and differ from industry to industry, in order to be able to adapt to the specificity of each conflict (based on the region, the dimension of the enterprise or economic activity), it could be effective also for Romania to regulate different procedures for settling the collective labor conflicts.¹³

The Social Dialogue Law was criticized for not being adopted based on an impact study.¹⁴ The statistic data provided by the Ministry of Labor, Family, Social Protection and Elderly Persons and by the National Institute for Statistics represent valuable instruments for conducting an analysis concerning the situation of the collective labor conflicts in Romania. Nevertheless, in the absence of a legal provision rendering mandatory for the units to report information in relation to these conflicts to the Ministry of Labor, Family, Social Protection and Elderly Persons it is very difficult to actually analyze the real situation. In this context, as a proposal for the future amendment of the law, it could be useful to regulate an obligation for the units where collective labor conflicts took place to report the necessary data in order to be gather by the Ministry of Labor, Family, Social Protection and Elderly Persons with the purpose of developing statistics based on updated classification (according to the terminological changes occurred as a consequence of the amendments to the legal framework), and of issuing best-practices catalogues.

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¹³ Tiraboschi Michele și Tomassetti Paolo, „A legal analysis on proceedings on conflict of interests in Estonia”, http://www.adapt.it/04_legal_analysis.pdf, p. 41

¹⁴ Raluca Dimitriu, *Collective labor conflicts in companies and public institutions: some prospects*, Transylvanian Review of Administrative Sciences nr. 34 E/2011, Accent, Cluj-Napoca, 2011, p. 89

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