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Social Dialogue, Employment Policy and the Principles of Equal Treatment

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Introduction

The purpose of this overview is to provide an analysis of recent trends, issues and challenges in tripartism and industrial relations in the countries of Central and Eastern Europe. The sixteen countries analysed in the present report are those covered by the International Labour Office, Central and Eastern European Team (ILO-CEET) in Budapest.

This overview aims at pointing out some of the major issues, problems and recent changes which have emerged in the region. It specifically aims at stimulating discussion by raising a number of questions which are at the core of the present industrial relations debate in Central and Eastern Europe by putting before the reader a number of topical issues, and by referring to a number of characteristics of the present social dialogue scenario.

One major difficulty in preparing such a report has resulted from the great differences which exist in the various countries in the region. Changes in industrial relations which are affecting countries like Hungary, Czech Republic, Estonia, Croatia, and Poland do not seem to have much in common with each other and problems in Albania and Bosnia and Herzegovina are quite different from those in Slovakia or in Lithuania. In spite of such differences, however, there is indeed a certain degree of comparability which makes the exchange of views and experiences within this group of Central and Eastern European countries possible and useful.

In order to make such a discussion meaningful, it is necessary in this report to concentrate on certain major problems and questions. Therefore, we will present in a succinct manner the issues which are characterising labour management relations and in particular, we will give a look at the recent experiences in tripartism and industrial relations.

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Labour market and industrial relations issues

One of the major problems after the fall of communism in countries like Albania, Bosnia and Herzegovina, Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Ukraine was to recreate a legislative framework within which the new social actors could freely interact among themselves. In all the countries covered in this report, new labour laws have been enacted with a specific reference to the role of the parties in industrial relations, the creation of mechanisms of tripartite co-operation, the conduct of collective bargaining, the conclusion of collective agreements, the setting up of new forms of workers' participation in undertakings, the regulation of the right to strike and the prevention and settlement of labour disputes.

The initial process was specifically characterised by the creation of independent trade unions out of the remnants of the party controlled unions. This, in the beginning, was very difficult. Today, it can be said that in all the countries covered in this report there is a general acceptance of the principle of freedom of association with the consequent result of having a plurality of trade unions and employers' organisations. However, as we will see below, collective bargaining has been weakened by dramatic changes in the labour market system. Trade unions are not able to exert pressure to improve production standards or wages in obsolete enterprises which have no economic future. Attracting foreign investors has been considered, in countries like the Czech Republic, Estonia, Hungary, Poland, Slovenia and Slovakia, more important than ensuring higher wages or better working conditions. All trade unions have difficulties in reconciling the demands of their unemployed members for job creation with those of their employed members who demand better salaries and better working conditions. This dilemma is acute in a large number of countries in the region where the former sense of solidarity between workers has been replaced by intense competition. In this context, we should not forget that the economic weakness of the governments of Central and Eastern European countries limits, in a certain sense, their ability to advocate workers' interests, even if they had the political will to do so.

In addition to what we have just said, it should be noted that labour law in all the countries covered in the report is not always implemented in the day to day practice. Major investors are often able to avoid bureaucracy, but small and medium sized enterprises have to face with a highly bureaucratic regulations which limit, in turn, the creation of new jobs. In this regard, some of the countries in the region are moving ahead with the adoption of specific laws dealing with small and medium sized enterprises with a view to reducing administrative procedures, payment of excessive fees, and facilitating the

mechanism of hiring and firing workers.

Furthermore, in those countries in the region who are on the way of becoming members of the European Union, labour laws, especially those dealing with social rights, have been reformed on paper with serious difficulties of being implemented in practice. Indeed, most countries in Central and Eastern Europe are in the process of enacting legislation in accordance with the European Commission's requirements, but it is questionable whether it will actually be implemented when such a legislation conflicts with domestic needs and realities.

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Building a new social dialogue framework: in search for new institutions and mechanisms

Since the beginning of the transition period, the main form of social dialogue in Central and Eastern European countries has been that of tripartite consultation and negotiation at the national level. There are many reasons for this, but one main reason is that following a long tradition of central control and given the difficulties of the transition process, the governments have preferred to keep a relatively tight hand on economic and social reforms which would, of course, be impossible in the context of a completely decentralised system of industrial relations. A further reason for keeping centralised tripartite relations was given by the fact that the emerging employers' associations have generally not been in a position to act as effective partners at the various levels of negotiation and consultation.

In addition, the experience of Western European countries had convinced the countries in transition that tripartite consultation and negotiation often helps the social partners to become more co-operative, especially during periods of difficult economic adjustment. In fact, in the very beginning of the transition period there were high expectations that tripartite consultation and negotiation at the central level would similarly facilitate the transition process in countries of Central and Eastern Europe. The basic belief was that if all the parties were directly involved in the decision making process, then the outcome would stand a greater chance, both of being perceived as equitable by all the parties concerned and of being effectively implemented. Therefore, countries in the region like the then Czechoslovakia, Hungary and Poland started to experience tripartite relations at the national level, followed by other countries as well. Such tripartite relations were underpinned by a general commitment to move their former economic systems towards a market economy. At the same time, there was a general consensus on the fact that governments have to guarantee social protection and active participation of the social partners in the definition of economic and social programmes at the national level. The most viable tool for such a participation was given by the establishment of national bodies dealing with tripartite co-operation. Against this background, let us give a look at the various experiences with tripartism in the region.

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Tripartite bodies: a comparison

In Central and Eastern Europe, Hungary was among the first to establish tripartite bodies at the national level. In particular, the Interest Reconciliation Council (ET) was established on August, 1st 1990. The Interest Reconciliation Council was created by a voluntary agreement between the government and the social partners. Its main objective was to explore and harmonise the interests of workers, employers and the government. The major competence of the Council was to deal with economic, social and labour issues affecting the participants in the labour market. In this context, the Council used to:

- negotiate and conclude national tripartite agreements regarding specific industrial relations issues, such as the national minimum wage;
- consult the drafts of economic, social and labour laws as well as other law drafts of particular importance to the social partners;
- consult economic and social issues of general importance for the social partners.

The Council recognised several powers to the social partners, especially the right to get information, to give opinion and to consent. The competence and powers of the Council were defined in details in the procedural rules of the ET (September 1991) and in a series of related provisions to be found in the Labour Code of 1992 and subsequent laws concerning employment, vocational training, and safety at work. The Council was composed of three sides: government, workers and employers. The Council used to have also a Secretariat whose function was to prepare and co-ordinate the plenary sessions and the meetings of the various sub-committees. Among the various permanent sub-committees, particular importance was given to the Wages and Labour Committee, the Labour Market Committee, the Labour Safety Committee, the Privatisation Committee, and the one dealing with the ILO and European Union integration affairs.

In addition to the ET, there were also other national consultative and negotiating bodies dealing with other sectors of the economy with similar composition and powers of the ET. In this regard, mention should be made of the Interest Reconciliation Council for Budgetary Institutions (IRCBI), the Labour Market Fund Steering Committee (LMFSC), and at the county level, local tripartite councils, the so- called Labour Market Councils.

All the above mentioned tripartite councils have been recently dissolved by the new government which took into office in July 1998. National consultation and co-operation with the social partners now takes place mainly within the framework of three newly established bodies. The first is the Economic Council (GT) dealing with consultations on economic policy. In this Council, there is the participation not only of the national trade union confederations and employers' associations, but also of all those important economic actors which had no representation in the previous tripartite Interest Reconciliation Council; that is to say, the chambers of economy, the financial and banking sector and multinational companies. A second council is the Social Council which represents the socially disadvantaged groups, such as NGOs of disabled people, family members, women groups, etc. A third body is the European Integration Council, and a fourth one is the National Regional Development Council.

In parallel to these national bodies, there have been established a number of tripartite national institutions. One of these is the newly established National Labour Council (OMT) which retains in a large measure the previous ET's functions in labour issues, including the decision making power for determining the minimum wage, as well as negotiations about the annual growth of salaries in the business sector and the provision of opinions related to draft labour laws.

A second tripartite Council, exclusively composed of government's, workers' and employers' representatives, has also been created with a view to co-ordinating activities related to ILO standards, which is called the National ILO Council. Finally, the forums of the public (budgetary) sector have been retained, especially for the increasing role that they will play in industrial relations in view of the reform of public service.

Lastly, it should be noted that it is still not clear whether the Labour Market Fund Steering Committee will be assimilated by one of the newly established bodies or will continue to function separately from them. It should be recalled that all these new councils have started to operate between April and May 1999, and therefore it is too early to say whether the current reform of the Hungarian social dialogue structure become more efficient.

A second country which has experienced since the beginning of economic transition tripartite consultation and negotiation at the national level is Poland. The Tripartite Commission for Social and Economic Affairs which was created on the basis of a voluntary agreement between the government and the

major social partners when signing the Pact on State Owned Enterprises in the Process of Transformation concluded on 22 February 1993, saw its first inception on 15 February 1994 following the resolution of the Council of Ministers No. 7/94.

In accordance with the will of the signatory parties of the Pact of 1993, the Commission shall constitute the place of developing harmonised positions in the area of socio-economic policy. The Commission, as the Hungarian ET, is composed of three parties: government, employers and workers. The difference with the Hungarian Council is that the Polish Commission on the trade union side has not only the two major trade union confederations - NSZZ Solidarnosc and OPZZ (All Polish Trade Union Alliance) - but also branch unions which are: the Federation of National Railway Workers Union, the Federation of Energy Workers Union, the Alliance of Mine Supervisors Union (KADRA), the Engineers and Technicians Union, the Union of Polish Railway Drivers, the Municipal Transport Workers Union, the Electromachinery Industry Workers Union.

It should be noted that the resolution of the Council of Ministers did not specify any formal criteria of union representativeness and, therefore, the only criterion which has been utilised until now was the "historical one". It refers to whether or not a union was a signatory party of the Pact on State Owned Enterprises in the Process of Transformation.

The Polish Tripartite Commission is charged with the following tasks:

- monitoring economic development and basic macro-economic issues;
- evaluating methods and instruments utilised in social and economic policy;
- expressing opinions and submitting proposals regarding priority areas of social and economic policy, with a particular emphasis on wage policy, employment policy, social benefits policy, consumption and investment policies;
- all other tasks as it may be assigned by ad hoc legislation.

It is interesting to note that, in the Polish context, the Commission's opinions and positions are reached by consensus. The opinion of the Commission becomes the main guideline for the activities of the social partners in the various areas covered by the agreement reached.

The chairman of the Commission is the Minister of Labour and Social Policy. The minister in consultation with members of the Commission may establish sub-committees dealing with specialised issues.

In addition to the Tripartite Commission for Social and Economic Affairs, there are other bodies, either tripartite or with an enlarged representation. Among the former, mention should be made of the Polish Tripartite Committee for the Co-operation with the ILO (established on 6 January 1990) and the Commission for Collective Labour Agreements (established on 29 September 1994); among the latter mention should be made of the Supervisory Boards of the Social Insurance Institution (November 1989) and the Employment Councils (established on 21 March 1995).

For what concerns the very recent developments of tripartite co-operation in Poland, it should be noted that at the end of April 1999 the OPZZ (All Poland Trade Union Alliance) has suspended its participation in the Tripartite Commission for Social and Economic Affairs. This trade union confederation allegedly criticised the current Polish government of not having a positive and genuine attitude vis-a-vis the workers. In OPZZ's view, the current government's economic policy has led to a deterioration of working and living conditions in general, unemployment remains high, the health service reform has increased the costs of medical treatment, access to education is becoming more and more difficult for children and youth coming from poor families. The suspension by OPZZ of participating in the works of the Tripartite Commission has put under strains the whole framework of tripartite

co-operation in Poland.

As mentioned above, along with Hungary and Poland, also the Czech Republic experienced a tripartite machinery at the beginning of its economic transition to a market economy. In the then Czechoslovakia, a tripartite national body, called the Council of Economic and Social Agreement, was established on 10 October 1990. The Council (RHSD) was the outcome of a voluntary tripartite national agreement. The establishment of this institution, its purpose, statute and activities were formulated in a series of documents agreed and signed between the government and the most representative trade unions and newly formed employers' associations. This Council had the same composition, power and role as the ones discussed above for Hungary and Poland. The RHSD had, however, an additional important task, notably the one of negotiating the annual General Agreement which would set the guidelines for all the various economic sectors in the country.

Following the separation between the Czech Republic and Slovakia, as well as the results of the parliamentary elections in 1992, which brought to power liberal-conservative parties, the Council basically ceased to function. The new government was less interested in tripartite co-operation than in bipartite negotiations. In the Czech Republic, a new Council was also established, in June 1995, called the "Council for the Dialogue of Social Partners". This Council did not really achieve the quality of negotiation that the social partners would have expected. In practice this body was conceived as a forum for discussing selected issues of common interest with a view of reaching consensus. It was mainly conceived as an advisory body rather than a negotiating one, and the trade unions lost interest in its role.

More recently, after the social-democratic government was elected, following the June 1998 elections, a new approach to tripartite co-operation has been adopted. During one of its very first meetings with the social partners, the new government's representatives have accepted the proposal by the trade unions and the employers' organisations to re-establish a new Council of Economic and Social Agreement. In this regard, the government has also made, together with the social partners, a declaration concerning the important role that social dialogue has to play at all the levels of the economy in the Czech Republic. Furthermore, the government has recently declared its interest to enter into negotiations with the most representative trade unions and employers' associations for concluding a "Social Stability Pact" which should be seen as a first step towards a renewal of tripartite co-operation in the country. However, it should be noted that the employers' organisations are experiencing a financial crisis which has severely diminished their role in tripartite relations and which has recently reduced their influence in tripartite consultation.

Another country which is experiencing a renewal of tripartite co-operation is the Slovak Republic. In this country, tripartite consultation has played from the beginning of the transition period an important role in the industrial relations sphere. The most important tripartite body in function in the Slovak Republic is the "Council of Economic and Social Agreement of the Slovak Republic" which is basically a remnant of the formal tripartite body established in the then Czechoslovakia in October 1990.

The Council of Economic and Social Agreement of Slovakia is an independent, autonomous and negotiating body which deals with economic, social, wage, labour and employment issues. Its structure is based on a strictly tripartite composition (7 government representatives, 7 workers' representatives, 7 employers' representatives). In addition to opinions and recommendations, the Council is seen as the privileged place where the social parties can negotiate economic and social issues with the government. However, it should be noted that the agreements reached after negotiations are in principle of a recommendation character, and that the last word remains with the parliament. However, such agreements are considered to be mandatory on the parties, only in the case of agreements signed by all the parties represented in the Council.

The Council's activity, in the beginning of its existence, gave birth to the General Agreement which was considered to be the means to keep social peace during the economic and social transformation of the country. There was an hiccup period for the Council during the centre-right government coalition period (no further general agreements were signed) and it was only recently that the new government started to consider entering into negotiation with trade unions and employers' organisations for fixing a new minimum wage and to discuss the reform of the social security system.

In Slovakia, in addition to the Council, there are other tripartite bodies. For example, there is a Council for the Social Insurance, a Council for the General Health Insurance, and the National Labour Office whose main function is to reach tripartite agreements for creating new jobs and reducing unemployment.

Recently, after tripartite negotiations, it was decided to adopt a new law on tripartite co-operation. The new Law No. 106 of 25 May 1999 (Law on Economic and Social Partnership - The Tripartite Act) introduces new criteria for determining union representativeness for both trade unions and employers' organisations. The Law 106/1999 regulates the relations among the tripartite constituents and recognizes a negotiating power on specific issues of the new Council of Economic and Social Concertation. The main task of the Council is to reach consensus among the parties in those areas related to the economic and social sphere, as well as the state budget. It provides also opinions on draft legislation, including the one dealing with working and living conditions, and wages. It is composed of twenty one members and has an internal structure - plenary sessions, presidency, ad hoc sub-committees - supported by a permanent Secretariat. The Council's financing is secured by the State budget.

Turning now our attention to other countries in the region, a different picture is to be found in Albania. In this country the political, economical, social, cultural and religious situation is such that it is very difficult to speak about tripartism in normal circumstances. However, it should be noted that great efforts have been done by all the social partners involved in the reconstruction of the country. In this regard, it is interesting to note that from a chronological point of view the first tripartite body to be established in Albania was the Social Insurance Institute already established in 1992. Following the creation of this tripartite body, other tripartite councils came into existence. For example, mention should be made of the Training, Enterprise and Employment Fund of May 1993, and the State Labour Inspectorate of September 1995. In Albania, after the adoption of a new Labour Code in August 1995, as amended in March 1996, a National Labour Council was established as the highest level tripartite body. The Albanian National Labour Council reflects in a large measure the experiences of Western European countries. For example, the National Labour Council deals with matters of common interests for employers' and workers' organisations with a view to harmonising the interests of the social partners with those of the government. The Council has also the right to request information and to receive data in order to conduct tripartite co-operation. The Council is composed of various sub-committees dealing with promotion of employment, vocational training, wages, social insurance, working conditions, health and safety at work, and social affairs in general. It is composed of 25 official members (10 employers/10 workers/5 government) and 25 substitute members (10 employers/10 workers/5 government) . The chairman of the Council is the Minister of Labour and Social Affairs. On the government's side, the other members are: the Minister of Finance, the Minister of Education and Science, the Minister of Public Health, and the Minister of Justice. The vice-chairmen of the Council are two and are selected from the employers' and the workers' groups. It should also be noted that the Council since the beginning has suffered from problems and obstacles which did not allow it to run smoothly. In particular, there was the thorny question of representativeness, even if the government had tried through a decree of December 1998 to recognise the two main trade union confederations: KSSH and BSPSH.

National tripartite bodies have existed for some time now in many other countries in the region, e.g. Bulgaria, Estonia, Latvia, Lithuania, Moldova, Slovenia, Ukraine. In Ukraine, for example, the National Council for Social Partnership was established in 1993. It meets regularly, and among its other activities, it deals with the reform of collective bargaining, provides opinions on draft labour legislation, and proposes reforms in the social and economic

area.

In Moldova, the Tripartite Council created at the national level has competence in economic and social issues. Furthermore, this Council is based on the interesting principle that if trade unions or employers nominate a representative from a major sector, the corresponding ministry should also be represented on the Council. In this regard, we should note that the Council includes the Ministers of Labour, Industry, Finance, Agriculture and Privatisation, along with the Vice Prime Minister, who is also responsible for economic reforms.

In the Baltic States, such as in Estonia, the tripartite structure is quite developed. The tripartite Estonian ILO Council was founded after the re-entry of the country to the ILO in 1991. This Council was established in May 1992 and meets regularly and discusses ILO matters. After several years, in February 1999, a Social and Economic Council was established. It is a tripartite advisory body and is involved in designing and implementing economic and social policies. It is composed of fifteen members among the three parties (government, employers, workers). The government appoints its representatives among independent experts. The financing is secured by the State budget (a special budgetary line of the Ministry of Social Affairs).

Also in Latvia we find a relatively developed structure of tripartism. There are three tripartite councils: a) the Tripartite Labour Protection Council, established in August 1993; b) the Tripartite National Council of Employers, State and Trade Unions; c) the Tripartite Insurance Council which held its first meeting in May 1994. These councils are organised mainly at the national level, and their main task is to give assistance to the parties, and sometimes opinions on draft legislation. Among these councils, the most "prestigious" is the Tripartite National Council, in whose sessions the Minister of Welfare takes regularly part.

Finally, in Lithuania, following the agreement "On Tripartite Partnership" signed among the major tripartite constituents in 1995, the Tripartite Board of the Republic of Lithuania was established. However, only in 1998 by a government's decision the Secretariat of the Tripartite Board was permanently established. It is part of the Ministry of Social Security and Labour. The Board has an important function in the economic and social life of the country. In fact, on 11 February 1999 a national tripartite agreement was signed including several issues of relevance for the accession process of Lithuania to the European Union. Among several negotiating issues, the parties have also agreed on signing the yearly tripartite agreement on the minimum wage (monthly). Along with the Tripartite Board, there are also four tripartite specialised committees: a) the Standing Committee on Tripartite Consultation on ILO standards; b) the National Wage Committee; c) the Labour Relations Committee; d) the Committee on Employment and Social Guarantees. In addition to the Tripartite Board, Lithuania has also established, already in 1994, a tripartite Commission on Safety at Workplace; it consists of 15 members and is headed by a chairperson elected among the members for a period of six months. For further developing labour market policies, there is an ad hoc Employment Board, which was established in 1996, and composed of 15 members. Finally, mention should also be made of the National Labour Exchange Council with its tripartite Councils disseminated throughout the regions - a total of 46 regional tripartite Councils are currently in operation. Other tripartite bodies are the Expert Board on Labour Exchange Training Services with its 6 regional tripartite centres and the State Social Insurance Council.

In the last few years, tripartite bodies have been established in several other countries, such as in FYR Macedonia, Romania, and Croatia. For example, in Croatia, the new Economic and Social Council was created in May 1997 through a provisional voluntary agreement among the parties, and has extensive competence - among others, it examines and assesses the impact of the fluctuation of prices and salaries on economic stability and development; gives opinions to the Minister of Labour concerning any problems related to the conclusions and application of collective agreements; monitors the employment, pension and health insurance situation; maintains a list of mediators and arbitrators; gives opinions on draft legislation in the

area of labour and social security, including public services; expresses an opinion on the state budget; and monitors labour and social welfare issues.

In Romania, a new Law No. 109 of July 1997 established the Economic and Social Council of Romania. The Council is a tripartite body created for promoting social dialogue in the country. It comprises twenty-seven members chosen among the tripartite constituents: nine members are nominated by the government, nine represent the national trade union confederations and the remaining nine represent the national confederations of employers. The main tasks of the Romanian Economic and Social Council are:

- to formulate, under the terms of the Law 109/1997, opinions on draft laws dealing with economic and social aspects;
- to examine the economic and social performance of the country, especially to consult and co-operate on restructuring and development of national economy, privatisation policies, labour relations, wage policy, social security, education and research;
- to mediate any branch or national disputes between social partners, at their own request;
- to follow up the implementation of the ratified ILO Convention No. 144.

With the establishment of the Economic and Social Council, Romania has institutionalised social dialogue and the social partners are looking forward to promoting tripartite co-operation at the national level, especially in the forthcoming privatisation process.

A different situation is to be found in a country like Bosnia and Herzegovina, in which the two political entities, respectively the Federation of Bosnia-Herzegovina and Republika Srpska, have embarked in a process of reforming their respective labour laws and industrial relations systems. In Republika Srpska, for instance, a resolution of the government has established, only on paper, in May 1996 a tripartite body called "Economic and Social Council". In accordance to the resolution, the Council is an advisory body and gives opinions on laws on economic and social issues. Also in the Federation of Bosnia-Herzegovina, the very recent new draft Labour Act, which is still pending in parliament, also provides for the establishment of a tripartite national body with consultative powers and mandatory opinions on draft labour laws. Yet, the political situation is such that these bodies, which are necessary to the country, will have to wait still a long time before they can function properly and regularly.

Most of these national tripartite bodies are active in a variety of economic and social areas. They have issued numerous opinions on draft labour laws, industrial relations issues and many other social policy matters, as well as on issues of economic policy. In some cases, they also have a concrete decision-making function, particularly in the fixing of the minimum wage or in setting up tripartite bodies to administer certain aspects of employment policy or vocational training. They have also settled major industrial conflicts, on occasions. Most importantly, however, they have negotiated a considerable number of agreements, usually on a yearly basis. Some of these, especially those signed in Bulgaria in 1990 and 1991, have dealt not only with social matters but with other issues directly related to economic reforms, such as privatisation and industrial restructuring. The privatisation of state enterprises is frequently the subject of tripartite consultation - indeed, privatisation is one of the hottest topics in the region. In this context, most national tripartite councils have created specialised subcommittees to deal with privatisation issues. Such committees have been created, for example, in Bulgaria, Croatia, Hungary, Lithuania, FYR Macedonia, Moldova, Poland, Romania, Slovenia, Ukraine. Other subcommittees have been created as well, such as those dealing with wages, employment and social policy, collective bargaining and collective agreements, labour law, and public services.

The major issues at the core of tripartite consultation in Central and Eastern European countries are the ones dealing mostly with the liberalisation of wage policy, the level of wages and other income, the protection of workers against certain risks entailed in the market economy, such as redundancy and unemployment. Wage issues have been the most common subjects of tripartite negotiations and agreements. This is true in a good number of countries in

the region. Such agreements have essentially tried to strike a balance between three conflicting goals: the need for wage moderation in order to keep a rein on inflation, the need for incomes that allow an acceptable standard of living, and the attempt to gradually abolish government-imposed wage control measures and introduce a wage system governed by market forces. In this regard, tripartite dealings have taken place at several levels and to various degrees; however, many new issues are coming up for discussion in tripartite forums, amidst a number of difficulties and obstacles which impede the smooth functioning of tripartism in these countries.

In fact, certain fundamental conditions must be met in the region before tripartism can function in an effective way. In the first place, the public authorities, the employers and workers must be independent of each other and there should not be any overlap of their respective functions. This implies, among others, the full recognition of the principle of freedom of association. Indeed, at a closer look, political democracy, market economy and tripartism cannot be separated from each other. In a nutshell, tripartism is nothing other than the transfer to social relations of the principles which underlie political democracy and the free market economy, especially the principles of freedom, pluralism and participation by the persons concerned in decision making that is going to affect them. The experience of industrialised market economy countries demonstrate that political democracy, free market economy and tripartism are closely inter-linked and that none of these objectives can be fully realised without the other two.

The smooth functioning of tripartism implies not only three distinct and autonomous parties, but also that each party should be capable of carrying out its own functions properly. In essence, this latter condition should be met by each of the social partners to maintain a reasonable balance of power between them. Governments, and in particular ministries of labour, should be able to take on different roles as the need arises, whether regulating, encouraging, moderating, conciliating or, where it is necessary, arbitrating, in accordance, of course, with established practices and procedures. The other two parties - employers and workers - should be so structured as to be able to act effectively, have sufficient representation and legitimacy to speak with authority on behalf of employers and workers, be in a position to obtain the resources needed for their activities, and have the necessary technical knowledge to carry out their duties in a competent way.

It should be noted that in order to ensure the smooth functioning of tripartism, it is not enough to have a body, an institution characterised by the existence of three different parties sufficiently well equipped to exercise their respective functions, but the parties, above all, must have a positive attitude to consult and co-operate. The social partners must be aware that apart from the numerous positions on which their interest diverge, and which is typical of a free society, in the long run they are fundamentally engaged in a common task. This implies consensus between all the parties on the very basic characteristics of the political, economic and social organisation of society and the determination to contribute, often at the cost of sacrifices, to developing and maintaining the type of society that has been chosen.

In its essence, it can be argued that tripartism consists essentially of a constructive approach, on the part of all parties concerned, towards the solution of the economic and social problems of the moment. Its basic purpose is to create a general climate of mutual respect and understanding more than necessary to bring about an agreement on all issues. As such, tripartism can make an important contribution to the consolidation of democracy and the preservation of social stability.

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Collective Bargaining and the Law

Further labour law reform is still needed in many CEE countries, particularly in the areas of the autonomy of labour law, individual employment rights,

and related reform of institutions (eg labour courts) which protect these rights. Labour laws in various CEE countries need further clarification in many ways, especially concerning collective representation and the promotion of collective bargaining - these two aspects of law go hand-in-hand. The question of collective representation involves a number of principles and enforcement issues - for example, regarding individual rights to representation, information and consultation, as well as trade union recognition for collective bargaining purposes. Such principles are indeed of critical importance, if CEE countries want to take a sustainable, long-term approach in their establishment of sound industrial relations systems.

One legitimate question in this regard is whether the law is capable, through direct intervention, of further boosting the trend towards collective bargaining. Of course, the answer for each country lies in the practical experience that has developed within its own industrial relations system since the demise of communism. Indeed, this question has been at the heart of many of the changes and transformations in the labour laws of CEE countries. In examining the reform of labour legislation regulating collective labour relations, we can notice four main trends:

- support for the independent and autonomous role of the social partners in industrial relations,
- provision of a basis for the creation of collective bargaining mechanisms and institutions,
- the establishment of a minimum framework of rules and procedures to govern the terms and conditions of employment which are applicable to the entire labour force,
- the creation of new rules and procedures for what is permitted and what is forbidden in the conduct of industrial relations.

Yet this has not been enough. A new social consensus is needed, recognising that labour law should be designed to strengthen collective bargaining and collective participation by both workers and employers in the decision-making processes which are going to affect their lives and futures. Numerous authors have considered that labour laws represent an impediment to the growth of the aggregate welfare of employers, workers and the population at large; but there are also numerous examples of successful initiatives which have enabled the workers to be better informed and consulted, and hence more productive. Neglecting the collective aspects of the employment relationship jeopardises the acquisition of skills as well as the employee's motivation, with negative effects on productivity.

It is also true that in the region the development of labour law has moved from a rigid and compulsory system towards the introduction of more open and flexible norms. Such a trend has opened the way for reaching a new balance of regulatory powers between the public authority and the social partners, especially in the areas connected with the internal lives of the undertakings. In fact, taking into account the new scenario, the employment relationship between employers and workers becomes the core issue in labour law, for enterprises are moving from traditional methods of organisation to more flexible internal arrangements. It is exactly in this context that the role of workers' representatives in decision making at the different levels of the economy and the strengthening of the existing and new arrangements (e.g. those arrangements dealing with flexibility) would become even more crucial. For example, the various interconnected issues about information and consultation of workers' representatives with a view to entering into negotiation represent the corner stone for the promotion of collective bargaining not only in the private sector but also in public service.

Thus, in order to continue their dynamic approach to the transition towards a full market economy, many CEE countries still need to modernise various functions of labour law. In general, further attention is needed in the areas of:

- providing information and consultation rights to workers,
- the establishment of a minimum level of rights for the growing number of workers under various types of contract labour,

- the extension of collective agreements at the sectoral level,
- the strengthening of tripartite mechanisms for direct participation of workers and employers in the decision-making process on economic and social policy issues,
- the development of appropriate mechanisms for the settlement of labour disputes.

It is essential, then, that in the more advanced stages of the transition process towards a free market economy, labour law needs to provide equal rights for every worker. This is especially true for those CEE countries where the euphoria of democracy and free market principles is definitely over, and people are waiting for a more secure approach (and more sincere answers) to their daily problems.

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Recent experiences with collective bargaining

The following considerations concerning the experiences with collective bargaining in the countries covered in the present report should be taken with a grain of salt due to the differences existing between countries like Albania, Bosnia and Herzegovina, Macedonia, Moldova, Latvia, Ukraine on the one hand, and the Czech Republic, Hungary, Poland and Slovakia, on the other hand.

There is no doubt that the absence of real collective bargaining in the period of pre-reform has made the reforms and the transition period more difficult than expected. As we have mentioned above, in the pre-reform period no conflicts of collective interests were supposed to exist, and in general collective agreements had more a supervisory character in which the state bodies were imposing rules and duties for the workers. Collective agreements often included disciplinary measures as well as the regulation of the rights and duties of the employment relationship which were very often a carbon copy of legislative texts.

Since the beginning of the 1990s there have been repeated attempts to advance towards a system of free collective bargaining or at least to loosen the state's influence. Many changes have occurred and are occurring in this sense in a large group of countries covered in this report where new labour laws have been already adopted or are likely to be adopted. Yet, the road for reaching a viable collective bargaining system in these countries is still long. Although legislation exists on paper, the practice goes otherwise. Collective agreements which are in force in the countries covered in this report are still limited in number and sometimes they are not yet the result of a genuine bargaining process between two autonomous and independent social partners.

Time and again, it has been agreed that the division between and within employers' organisations and the trade union movement is at the basis of the failure for building an efficient system of collective bargaining. In this regard, attention should also be brought to other obstacles which have emerged in the meantime, during this relatively brief period of economic transformation. Among others, one of the obstacles to the promotion of collective bargaining in the countries covered by this report is the reluctance or resistance of certain employers and/or management representatives to negotiate with trade unions as recognised representatives of workers' interests. Often, in the region groups of employers/managers look at the trade union movement with suspicion and mistrust. We shall not enter into details concerning this aspect, but it should be noted that unless trade unions are accepted and recognised as the legitimate representatives of the workers in the industrial relations system, there can be no hope for the evolution of serious and constructive industrial relations consonant with the economic and social development of the countries concerned.

A further obstacle to a full fledged collective bargaining mechanism is given by the "de facto" separation between the national and the enterprise level of

negotiation and consultation between employers' organisations and trade unions. In countries like Albania, Bosnia and Herzegovina, Macedonia, Latvia, Lithuania, Ukraine the new diversity of enterprise ownership forms has created a distinct labour management relations dynamic which evolves separately from what is negotiated and consulted at the national level. Such a phenomenon becomes even more evident if we take into account the current multi-ethnic composition of the population with their different values and views in the conduct of industrial relations.

As we have mentioned above, legislative changes have been introduced in all the 16 countries of this report, in both the collective and individual spheres of labour law. For example, in the Czech Republic and Slovakia, the collective bargaining Act of December 1990 states in its introductory provisions that the Act shall govern collective bargaining between the competent bodies of trade union organisations and employers, with possible co-ordination by the state with a view to concluding a collective agreement. Such a provision, in addition to Art. 3, paras. a, b, c, d of the same Act, provides the legal instrument for trade union recognition by employers or management for collective bargaining purposes.

These measures to secure trade union recognition are also expressed in countries like Poland and Hungary. In Poland, this issue is regulated by an Act of 29 September 1994, which amended the Polish Labour Code of June 1974, in which it is stated that a party entitled to conclude an agreement may not refuse the other party's request for bargaining (Art. 214-2, para. 3). Although collective bargaining in Poland is subject to further legal requirements, it is sufficient here to note that legislation seeks to secure the legal principle of promoting bargaining between the parties through the notion of "non-refusal". A similar, although not identical, legal provision is to be found in Hungary where according to the Hungarian Labour Code of 4 May 1992 trade unions shall be entitled to enter into collective agreements (Art. 20).

In the legislation of all the 16 countries covered in this report, and more particularly in the Czech Republic, Hungary, Poland and Slovakia, the legislators have tried since the beginning to enact laws on collective bargaining with a twofold objective: on the one hand, the law should promote collective bargaining; on the other hand, the law should create a machinery for collective bargaining.

In this regard, it should be noted that mechanisms and institutions of collective bargaining vary substantially from one country to another. Indeed, current legislation regulating the conduct of negotiations and the conclusion and validity of collective agreements deals with the establishment of procedures and mechanisms of collective bargaining. For example, this is done through the Collective Bargaining Act of December 1990 in the Czech Republic, Act no. 54/1996 amending the Collective Bargaining Act of December 1990 in the Slovak Republic, the Labour Code of 1992 in Hungary, an Act of October 1994 amending Title 11 of the Labour Code of 1974 in Poland.

In addition, it should be noted that in the countries under consideration there is a gap between "formal industrial relations legislation" and what the real practice is at the workplace. Such an uncoordinated development in industrial relations coupled by the existence of numerous schemes of privatisation and commercialisation, had resulted in different outcomes as far as industrial relations practices are concerned, affecting in particular the structures of decision making. Indeed, the new emerging employment relationships at the enterprise level are still very much unclear today. There is a general trend characterised by a tendency to exclude the workers from participating more actively in the enterprise life, and this, in the long run, would be contrary to the economic interests of enterprises themselves.

Although there have been substantial attempts to promote collective bargaining and to conclude collective agreements at the industry wide level in countries like Croatia, the Czech Republic, Estonia, Hungary, Poland, Slovakia, Slovenia the development of such a bargaining system depends to a large extent on the existence of well structured organisations on both sides of an industry. In general, when collective bargaining takes place it is most

commonly practised at the enterprise and plant level, rather than at any other level. This trend is common not only to the countries that we are examining here, but also in many other countries in the region.

A link between bargaining at the enterprise level and the development of national economic growth has been somehow established. However, in a great number of the countries examined here, there is a missing linkage between the industry wide level of collective bargaining and the enterprise level of negotiation. With different degrees, industry wide level collective bargaining exists in countries like Bulgaria, the Czech Republic, Estonia, Hungary, Poland, Romania and Slovakia. However, it should be noted that this level of negotiation is not fully developed and structured. In this regard, promotion of collective bargaining between employers' and workers' organisations for entire branches of the economy needs further development. Industry wide bargaining has a number of advantages over an excessive enterprise bargaining level. For example, it can bring into the bargaining process, much better than what can be done at the enterprise level, considerations and arguments of a macro-economic character. As it has been recognised by the majority of the trade union leaders in the region by inducing individual employers and workers of individual enterprises to act in co-operation with their fellow employers and workers of other enterprises, especially those in the same branch of economic activity or industry, there is likely to develop an attitude of solidarity and better awareness of the interaction between their own enterprises and the others.

Among the various obstacles which impede the smooth functioning of collective bargaining, specific mention should be made of the different opinions expressed by trade unions and employers' organisations during these years in the region.

For the trade unions the main problems are:

- insufficient representation and representativeness of the newly established employers' associations;
- greater interest of employers and their organisations in conducting negotiations mainly at the enterprise level;
- excessive number of trade unions entitled to enter into collective bargaining which, in turn, implies a long period of identification and/or negotiation among the trade unions themselves;
- non-application of the extension provision of those collective agreements which are signed at the sectoral level and clarification of the exact legal nature of those "extended terms" to non-union members.

For the employers' organisations the main problems are:

- weakness of the employers' representation;
- significant difference and dispersion of economic interests among the employers;
- insufficient strength and organisation of trade unions in branches of the economy as well as in enterprises;
- too elaborated and formalised procedures for entering into negotiations in order to sign collective agreements;
- too sophisticated rules for registering signed collective agreements.

In addition to the above, one could also add that collective bargaining is not well spread for the little knowledge that social partners have about negotiating issues, and, above all, the lack of training and further training in negotiating skills.

Nevertheless, it would seem appropriate that in the countries of Central and Eastern Europe a bigger effort is needed by all the parties concerned to establish minimum conditions for an entire sector or industry, industry wide collective bargaining will also bring within the scope of negotiation, although

sometimes in an indirect way, small and medium enterprises in which employers and workers are not, or not yet, members of those organisations which have actually been the parties to negotiations. In other words, whatever the legal force of such a formal industry wide agreement may be, especially for what concerns its applicability to employers and workers who are not members of the contracting parties, its influence in practice as an instrument for the establishment of minimum conditions is likely to be great. Efforts in order to promote industry wide collective bargaining should be seriously promoted in the countries of Central and Eastern Europe.

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New challenges and trends in workers' participation in undertakings

All the countries covered in this report have been affected by numerous changes in both labour and commercial laws. The legal changes introduced have mainly dealt with issues such as the introduction of works councils or similar bodies, trade union representation at the enterprise level, the functioning of supervisory boards or boards of directors and the creation of various workers' committees. The legislative solutions enacted in the various countries differ, depending on local conditions in each country. Changes have mainly affected the law, and only to a lesser extent the practice. This is not surprising when we consider that much remains to be accomplished in the field of industrial relations in some of the countries covered in this report, particularly regarding such fundamental questions as the creation of systems consonant with economic reforms. In this regard, the issue of workers' participation in decision-making within enterprises forms an important part of the renewal of the different industrial relations systems.

A number of options are prescribed by law in the countries of Central and Eastern Europe and they enable workers' participation in undertakings. They can be summarised under the following major categories:

- the right to participate in decision making through trade union representation (e.g. Albania, the Czech Republic, Bulgaria, Romania, Poland, Slovakia);
- the establishment of works councils or similar bodies (e.g. Croatia, Slovenia Fed. of Bosnia-Herzegovina, Hungary);
- the election of workers' representatives (e.g. Albania, Bulgaria, Hungary).

In addition to the above forms of workers' participation, mention should also be made of workers' representatives on the supervisory boards or boards of directors of companies. This is now a common practice in some countries in the region. In general, statutory provisions allow for one-third of the membership on supervisory boards to consist of workers' representatives. In addition, the law in several countries also enables the workers to purchase shares in their respective enterprises in the course of privatisation, and they are thus entitled to elect representatives to attend shareholders' meetings.

Legislative changes in the countries like Bulgaria, Czech Republic, Hungary, Poland and Slovakia have been characterized by two common issues: a) the break with past legislative traditions; and b) the creation of new mechanisms for labour-management relations consonant with economic reforms. In making these changes, legislators had to overcome the resistance and scepticism of trade unions vis-a-vis new forms of workers' participation, especially works councils, which many in the region consider a threat to the trade union movement. While it is too early to determine the extent to which existing legislative changes have helped to create efficient systems of workers' participation at the enterprise level, labour law and industrial relations experts in countries like the Czech Republic and Poland are in broad agreement that alternative forms of workers' participation in enterprise decision-making are becoming an increasingly important issue. There is also a common understanding that the issue cannot be systematically opposed by the trade unions.

Despite the criticism and opposition of some unions, the legislator in Croatia, Hungary and Slovenia opted for the introduction of works councils. The same in the Federation of Bosnia-Herzegovina where there is a draft law on works councils in front of parliament. While in other countries like Albania, Bulgaria the Czech Republic, Poland, Lithuania, Romania and Slovakia, the legislators have opted to allow trade unions to exercise the "participation rights" of workers in undertakings. Other solutions have also been worked out, but without too much success.

In Hungary, the Labour Code of 1992, introduces and regulates the establishment and composition of works councils and civil servants' councils. Act No. IV of 1993 regulates the election of workers' representatives for health and safety. Act CXLIV of 1997 on Economic Associations (also known as the Companies Law) provides for the election of one-third of workers' representatives in supervisory boards in undertakings with more than 200 workers, carrying this provision over from Act VI of 1988, which it replaced.

In Poland, it is primarily the Law on Trade Unions of 1991 that regulates the presence of trade unions at the enterprise level, and the Law of 1996 on the Commercialization and Privatization of State-Owned Enterprises. The latter amended previous legislation, according to which it was possible to create a works council in state-owned enterprises with more than 50 workers. Nowadays, with the privatization process, the works councils have been dissolved.

In Slovakia, trade union representation at the enterprise level is regulated through legal acts such as Law No. 2 of 1991 on Collective Bargaining, as amended by Law No. 54 of 1996, Law No. 54 of 1996, Law No. 195 of 1990 on Compensation, Law No. 120 of 1990, as amended by Law No. 55 of 1996, on Freedom of Association, and Law No. 330 of 1996 dealing with the creation of health and safety committees.

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The works council

The introduction of a works council system in countries like Croatia, Slovenia and Hungary, and the same can be said for the Federation of Bosnia-Herzegovina, is associated with the belief that these statutory bodies would serve to represent all the workers at the enterprise level collectively, dealing with all tasks within its competence and communicating with management. The relevant legislation in the countries concerned (it should be noted that in the Federation of Bosnia-Herzegovina, the law on works council has not been adopted yet by parliament) refers to the possibility of having unitary representation of all workers in an enterprise with the indication of guidelines for the distribution of seats. In general, the legal framework does in fact address the relationship between the works council and trade unions.

The works council in Hungary has similar powers and functions to those existing in Western European countries. They have four main competencies: information, consultation, co-decision (such a right to prior consent or a veto right on certain decisions), and direct co-operation with management concerning certain activities of the enterprise. The competencies of the works council can be particularly strong when dealing with welfare activities.

The information supplied to works councils is often at the centre of discussion between management and the council. Usually, the main subjects are related to the general situation of the enterprise, its economic and financial outlook, and changes that management is considering in areas such as technology and the reduction of jobs. Further requests may be put forward by works councils for information on investments, rationalization of new production methods, cutbacks in production, or changes in the structure of the enterprise. Thus the works council may generally request forecasts of events which may lead to changes in the employment situation.

The right to information is accompanied by a right to consultation. These rights should be seen in the context of the ambitions of a country like Hungary to join the European Union and the wish to harmonise its legislation, to the maximum extent possible, with the provisions of information and consultation rights applicable in EU countries.

Especially, the European Union Directive 94/45 of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees is going to have an impact on industrial relations in the national systems. The Directive is aimed at improving workers' information and consultation rights in multi-national companies or companies operating in Europe whether based in Europe or elsewhere. The new approach introduced by the Directive is to favour a voluntary approach. Such an approach is possible under Article 13 of the Directive, and before the entering into force on 22 September 1996, about 400 agreements were concluded.

Since the Directive is in force, now the emphasis is on the negotiation of agreements, with few restrictions on their contents between management and workers' representatives, through a special means called: "special negotiating body" (SNB). It is only in the case negotiations are refused or failed that the Directive's subsidiary requirements, which lay down the role, composition and functioning of the European Works Council, would apply. It is likely that legislation of the countries of Central and Eastern Europe will be shortly modified in accordance to the transposition of the Directive, although the solutions will inevitably vary.

An important aspect of the legislation regulating works councils is the possibility of the council signing agreements with management. Although this is possible, the Hungarian law was not very clear on this point, until a very recent amendment to the Labour Code has recognised such a possibility. However, it should be noted that in general agreements can be signed by works councils within the framework of agreements signed at higher level, on questions other than the major issues (for example wages) already covered in industry or national wide collective agreements. Such agreements are not very well developed in the Hungarian system, and hence the enlargement of bargaining rights to works council under the present circumstances do not favour sound labour-management relations. Clarification on the true nature of the role of the works council in industrial relations is needed, in order to avoid possible conflicts between the functions of works councils and those of trade unions.

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Trade union representation

As we have seen, with the exception of Croatia, Slovenia and Hungary, and the Federation of Bosnia-Herzegovina, for which a draft law on works council has been prepared since more than a year, all the other countries concerned in this report have opted not to introduce a statutory system of works council. They have preferred to continue to have trade union representatives defending workers' interests in enterprises.

Other countries like Bulgaria, Romania, Czech Republic, Poland, Slovakia, Albania, Lithuania and Ukraine are countries that keep the channel of trade union representation in undertakings. In these countries, it is believed that workers' participation is better fulfilled through collective bargaining mechanisms in which trade union representatives play an active role. This approach has to be understood in the context of the development of new industrial relations systems in these countries. Their past experiences have let them to the conviction that workers' interests can be better defended through trade unions rather than through other mechanisms, such as works councils. A variety of factors have led to this determination, including a desire to have formal agreements confirming wages at each enterprise and to have some control over working conditions at the enterprise level including

matters as working hours, safety and health issues.

Furthermore, the transition to a market economy has put pressure on trade unions to take an active part in the decision making process, especially in matters of technological development and industrial restructuring. Developments in these areas have given rise to claims regarding employment security, income guarantees, and other crucial issues such as training and re-training. In addition, trade unions are called on to negotiate workforce reductions at the enterprise level with a view to softening their social impact. This reasoning also goes some way towards explaining why the trade unions in some countries feel that they are not ready for the introduction of a system based on works councils. Therefore, in countries like Albania, the Czech Republic, Bulgaria, Romania, Poland and Slovakia, collective bargaining, where it is practised, still constitutes the main form of workers' participation in decision making. Indeed, the importance of collective bargaining as an instrument of workers' participation can be great, because, with a few exceptions, there is practically no participation machinery of the works council type in these countries.

From a legal point of view, the new provisions of 1994 Act on Collective Bargaining in Poland grant the trade unions the possibility of participating in the management of the enterprise, together with the directors. In accordance with these legislative provisions, both trade unions and management may negotiate and agree on issues related to decision making at the enterprise level.

In countries like the Czech Republic and Slovakia, the participation of workers is also achieved through trade unions. Rights of workers' participation are determined in law, according to which the workers have the right to be informed through the trade unions regarding employers' activities in economic matters. Employers also have the obligation to consult with the unions on issues such as dismissals, transfers, working time and work organisation. Even if the employer is not bound to follow trade union recommendations, consultation prior to taking a decision is compulsory. In both the Czech Republic and Slovakia, labour laws also provide that the trade unions retain some decision making power, especially in matters of health and safety (eg Slovakian Labour Code, Art. 136, para. 1 © and (d)) and in issues dealing with determination of employment of a trade union member, night work for women, rules of the enterprise, absence from work.

In Poland, Albania, Bulgaria, the Czech Republic, Romania and Slovakia, trade unions are trying to consolidate their action in decision making. This approach, however, has repercussions on collective bargaining itself. One of the repercussions relates, for example, to the level at which collective bargaining is carried out. In certain countries, the amount of bargaining at the enterprise level is growing, sometimes even superseding bargaining at the industry level, as we have mentioned above. Although this development facilitates a closer association of workers and employers in taking decisions on issues of direct interest to both parties, it can also weaken the spirit of solidarity which is the basis for carrying out collective bargaining at the industry and national levels.

For example, in all these countries, collective bargaining is broadening its scope and new topics are becoming central issues in negotiations, such as sub-contracting, supplementary unemployment benefits, training and re-training, work organisation, personnel policy, and investment policy. The expanding scope of issues subject to negotiation is part of a general trend today. In this context, such a trend underlines the interest and commitment of the trade unions to enlarge the possibilities for keeping control on the negotiating issues, rather than leaving them to alternative bodies eventually established at the enterprise level.

Before concluding this part, it should also be said that such a trend in industrial relations in Central and Eastern Europe is still in the early stage and much more is needed from both the trade unions and employers to create conditions for genuine collective bargaining machinery conducive to more effective

participation of workers in the decision making process.

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The settlement of labour disputes

During the transition to a market economy, the countries of Central and Eastern Europe have experienced a substantial increase in the number of labour disputes. This includes individual and collective as well as rights and interest disputes. The new situation has induced all the countries in the region with no exception, to introduce new laws regulating the settlement of labour disputes, as well as to create modern and updated procedures dealing with conciliation, mediation and arbitration. We will examine these developments and underline the most fundamental changes which have occurred in the area of labour disputes and their settlement.

The right to strike

The right to strike is recognised in the large majority of Central and Eastern European countries. In many countries this right is guaranteed by the constitution (e.g. Bulgaria (art.50), Latvia(art.26), Lithuania (art.51), Romania (art.40), Ukraine, Albania, the Czech Republic, Hungary, Poland and Slovakia). In countries with a constitutional right to strike, the constitutional text is worded in such a way that the right is regulated by laws and regulations. Regulations and rules in this area seem to be very similar. In most of the countries in Central and Eastern Europe, regulations on the exercise of the right to strike are found in the laws on collective bargaining, in collective agreements, in specific laws on the settlement of collective labour disputes, or in labour codes. For example, the exercise of the right to strike by individual workers is recognised in Hungary in the Constitution and, at the same time, is regulated by Act VII of 15 April 1989 on the Right to Strike. In addition, the provisions to be found in this Act are supplemented by the Hungarian Labour Code. In Hungary, every worker has the right to strike, and this right does not depend on trade union membership. Before an industrial action takes place, the parties should recur to conciliation, and if they agree they can also avail themselves of the possibility of recurring to arbitration procedures (Hungarian Labour Code, Articles 194, 195, 196).

It should be noted that there are a number of differences between countries in their regulations on the exercise of the right to strike. For example, in some countries only trade unions may call a strike. This is the typical situation in Albania, Bosnia and Herzegovina, the Czech Republic, Poland and Slovakia. For example, in Poland the Law regulating the Settlement of Collective Labour Disputes of 1991 indicates that the right to strike is an individual right, but it can only be exercised in a collective form. This implies that only a trade union may call a strike.

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Limitations on the exercise of the right to strike

In all the 16 countries, there are limitations on the right to strike relating to the object of a strike and to the nature of the economic activity. Although to different degrees, a strike is considered to be illegal if it: a) has not been preceded by a conciliation attempt; b) is directed against constitutional principles; c) is related to purposes other than those protecting the economic and social interests of the workers; d) challenges the terms of an existing collective agreement; e) is called in pursuit of measures on which the tribunals might have been asked to intervene.

One major category of restriction on the right to strike, however, concerns the public or security services. In fact, in the labour laws of Albania, Bulgaria, Bosnia and Herzegovina, the Czech Republic, Hungary, Poland, for example Romania and Slovakia, the military forces, the police and civil servants do not usually enjoy the ability to exercise the right to strike. Moreover, limitations on the right to strike also apply in public services, such as medical care, education, transport, as well as in public utilities such as the supply of gas, electricity and water.

In Bulgaria, the Law on the Settlement of Collective Labour Disputes of 6 March 1990 includes a list of various categories of workers who do not enjoy the right to strike at all. These are found in energy production and distribution, post and telecommunications, health care, the Ministry of Defence, the Ministry of Internal Affairs, military units of other governmental agencies, and in the judiciary system. The same approach is also applied in Lithuania, where strikes are prohibited in the police, army, state security, judiciary, and customs services.

Legislation on the settlement of labour disputes often includes other means for limiting the right to strike. This is usually done by placing a cap on the duration of the strike - that is, a maximum duration for a strike expressly indicated by law. In Romania, the Law on the Settlement of Collective Labour Disputes indicates, at article 38, that a strike may not last more than 20 days. If the strike goes beyond this 20-day limit, the Ministry of Labour appoints an arbitrator who will decide whether the strike may continue, or should stop. If the strike is not stopped, there is the possibility of appeal to the Supreme Court.

Another major category of limitation on the right to strike in CEE countries applies to situations and circumstances in which the right may not be exercised. In Bulgaria, for example, the Law on the Settlement of Collective Labour Disputes provides, at article 16, that strikes are prohibited in time of natural calamities; when urgent lifesaving is required; when the object of the strike is in contradiction to the constitution; when the object of the strike is the settlement of an individual case or cases; or when the object of the strike is of political nature. Other countries in the region also refer to situations under which the right to strike is limited. In Lithuania, for example, strikes are prohibited in areas of natural disaster and in cases of extraordinary urgency.

In Estonia, the criteria used to prohibit the exercise of the right to strike is based on categories of employees, rather than on situations or economic activities as in the countries mentioned above. The Estonian legislation prohibits strikes by the following categories of workers: government officials; military and para-military groups; the army, national guard, police and public security; court officers; fire fighters; the civil defence; and medical emergency and emergency service personnel.

For what concerns the right to strike in public services, it should be noted that in Hungary such a right is recognised but subject to a series of restrictions. For example, according to Hungarian legislation the right to strike is subject to restrictions in case of an industrial action in public services when the strike is not exercised in conformity with those specific rules set out in the agreement between the Council of Ministers and the unions concerned.

The right to strike is restricted in those economic activities considered to be "essential services" and also in "emergency situations" (i.e. when a situation or circumstances are such that the public authority defines the strike to be dangerous for the health and security of part or all the population). In Poland, for example, strikes are prohibited in a state of emergency. The same is true in countries like the Czech Republic and Slovakia.

Other forms of limitations to the right to strike are the requirements prescribed by law to give prior notice to calling a strike. Prior notice of a strike is generally required three days in advance in the Czech Republic and Slovakia, and in the meantime a list of workers who will go on strike must be

submitted to the employer, even if such a provision seems quite impracticable. In other countries, such as Hungary, prior notice is regulated by law and is usually given 24 or 48 hours in advance. It is only when a minimum service must be guaranteed for strikes in essential services that the notice period becomes longer. It should also be noted that in Hungary, the law obliges the parties to attempt conciliation procedures before striking, and that the length of time prescribed for this is maximum 7 days. In other countries, such as Poland, the prior notice period is 5 days, after which a strike may be called. In Lithuania, there is a notice period of 7 days, which becomes 21 days in strikes in essential services.

Other forms of industrial action

Warning strikes are organised in most Central and Eastern European countries. For example, a warning strike of up to two hours duration may be organised in the Czech Republic, Hungary, Poland and Slovakia. In Hungary, it is interesting to note that although the right to strike is defined by law as an individual right, a solidarity strike may only be called by a trade union, and it cannot last more than two hours. Solidarity strikes are also permitted in the Czech Republic and Slovakia only if the strike which is being supported meets certain conditions. For example, the workers receiving the support must themselves be striking over the failure to conclude a collective agreement; and the employers' side in the strike being supported must be able to influence the outcome of the strike. In real practice, such limitations rule out the possibility of calling solidarity strikes.

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Conciliation, mediation and arbitration

In a large majority of Central and Eastern European countries, rules and procedures for conciliation, mediation and arbitration are regulated by law. These procedures are usually dealt with in the labour codes or in laws on labour disputes settlement. In the following examples, the reader should be aware that mechanisms and procedures for the peaceful settlement of labour disputes are still not well developed in a good number of countries and a great effort has still to be made in order to reconstruct a sound system of industrial relations, especially geared to the prevention of labour disputes. However let us give some examples in law and practice.

Hungary has been among the first countries in Central and Eastern Europe to establish an independent institution dealing with mediation and arbitration mechanisms. In this country, a new Industrial Relations Mediation and Arbitration Service has been recently created (August 1996). Its rules of operation and procedures were approved on 16 February 1996 during an ad hoc meeting of the tripartite Interest Reconciliation Council (ET). The Service is voluntary and depends on the will of the parties to utilise its services. It is composed of 92 between mediators and arbitrators. It is co-ordinated by a director and the secretary. They are appointed by the Minister of Labour in consultation with the social partners represented in the tripartite national body called: Interest Reconciliation Council (ET). The relationship of the Service is now with the newly established National Labour Council and it is in some respect quite unique. In fact, the Service has to give on a year basis the account of its work to the Council which has the opportunity also to provide its own opinions on the work of the Service and give suggestions on how to improve the action of the Service itself.

The responsibilities and functions of the Service in Hungary had been determined following a tripartite agreement reached within the ET. Following that agreement, the director of the Service, among other things, has the following responsibilities: a) represents the service; b) maintains contacts with the mediators and arbitrators; c) maintains contacts with domestic and international institutions, including the organization of training for the mediators and arbitrators; d) mediates or arbitrates upon request; e) monitors the development of industrial relations and co-ordinates the work of the Service; f)

provides a report on the functioning of the service and makes proposals for justified changes on a yearly basis; g) oversees the observance of the economic and administrative obligations, as specified in the rules of operation of the service. The responsibilities of the secretariat were also determined in that agreement.

From a financial viewpoint, the Service provides a wide range of activities which are free of charge for mediation, but they are paid for arbitration. The financing of the service is covered by the State budget. As far as the fees for mediators and arbitrators are concerned they receive fees for the accomplished work and the fee is paid by the service, in case of mediation, and by the employer, if there is no agreement between the parties. In case of arbitration are the parties who pay the fee to the arbitrator. The fee for a mediator/arbitrator is determined on a general basis, regardless of the circumstances or of the nature of the conflict.

In those countries in the region which have set up mediation and arbitration services, there is an official register in which the mediators and arbitrators have to be listed. There is usually a selection made among the various candidates who have to respond to certain pre-requisites, such as the country's nationality, a mature age, a certain experience in the field of industrial relations, sometimes also a university degree is required. In particular, in Hungary the candidates used to be evaluated by a tripartite committee appointed within the ET. In this committee, however, also independent experts could participate.

In Poland, collective labour disputes are resolved through conciliation, mediation and arbitration. Conciliation is considered to be the first stage for settling the dispute. It is usually initiated by the trade unions and an employer cannot refuse, according to the law, to start conciliatory procedures. If an agreement is reached during conciliation, it is binding on both parties. In case the conciliation has not worked out, and the trade union maintains its claims, then there is an obligation to go to mediation. The mediator, in this case, is chosen by both parties to the dispute on the basis of a list of mediators kept by the Ministry of Labour and Social Policy. In the Ministry there is a newly established Mediation Service. According to the law, mediation proceedings cannot exceed 14 days, and it ends with a written agreement proposed by the mediator or with a protocol in which are registered the divergence of opinions.

The recourse to courts for arbitration is provided by the Polish law. In Poland, once the conciliation and mediation proceedings have been exhausted, arbitration proceedings are dealt with only by the courts. An industry-wide labour dispute is then arbitrated by an Arbitration Committee of a Council Court, while if the collective labour dispute concerns a multi-industry, then such a dispute is examined by the Supreme Court.

In most countries in the region, there are certain general rules which have to be followed before starting the procedure for mediation and arbitration. This is usually to be found in the labour laws of a good number of countries. Mediation and arbitration are in general voluntary and the effectiveness of these services, which are newly established in the region, have still to prove their effectiveness, although much depends on the choice that is made of a mediator or an arbitrator. The responsibility for the choice is usually of the director in charge of the service who has also a moral duty to offer mediation services to the parties in a dispute. If there is disagreement between the parties on the name of the mediator/arbitrator, then the parties can write to the Service asking for the appointment of someone.

In the Czech Republic and Slovakia, the parties to a labour dispute may select a conciliator/mediator and if they are not in a position to agree on the nomination of a third person, the Ministry of Labour can appoint directly the conciliator/mediator who has maximum 15 days to submit a written

proposal for settling the dispute. If the dispute remains unsettled after an additional 15 days period, that is to say a total of 30 days, and the mediation effort has failed, the parties may refer the dispute to arbitration by mutual agreement in writing. It should be noted that in the Czech Republic and Slovakia any person may be listed with the Ministry of Labour as a mediator who is over the age of 18 and who possesses moral integrity, a university degree (usually in law, economics or social sciences), and such personal qualities as to allow him to carry out mediation with independence and neutrality. In the Czech Republic, the registry at the Ministry of Labour and Social Affairs currently includes about 60 persons out of which 25 perform mediation while the rest operate both as mediators and arbitrators.

As in the case of Poland, mediators in the Czech Republic and Slovakia are entitled to receive time-off from normal work responsibilities and adequate remuneration for duties performed. The remuneration and other costs of the mediator are borne jointly by the parties to the dispute. The amount of remuneration is determined by mutual agreement between the parties and the mediator. Only in the case there is no agreement on remuneration, does the mediator receive an amount fixed on a regular basis by the Ministry of Finance.

In all the mediation procedures in countries like Czech Republic, Hungary, Poland and Slovakia, certain rules have to be followed. The mediator, for example, studies the subject of the dispute, writes a protocol on the different views expressed by the parties, and within the fixed time limit (usually 15 days) after careful examination, provides the parties with a written proposal for settling the dispute. The proposal must specify the following points:

- a clear identification of the parties to the dispute;
- facts and points upon which the parties have failed to agree;
- recommendations of the mediator and explanations given for them;
- date, signature and name of the mediator.

The disputing parties may accept or reject the proposal. In case mediation fails, and the disputing parties have still not reached an agreement within an extra time limit given by the mediator, the parties may jointly request the same mediator to propose a final solution to the dispute, which in this case can easily become an arbitration award.

For what concerns arbitration, Polish law provides recourse to the court system for arbitration once conciliation and mediation procedures have been exhausted. In general, industry wide labour disputes are resolved by an arbitration committee in a council court, while multi-industry disputes are examined by the Supreme Court. In Poland, arbitration under the terms of the Law on the Settlement of Collective Labour Disputes is seen as an alternative to industrial action, and is of a voluntary nature. In the day to day practice, only the trade unions involved in a dispute may decide whether or not to go to arbitration. Polish law also defines arbitration mechanisms which can be put into operation, but this in no way excludes the possibility of parallel negotiations between the disputing parties. In accordance to Polish law, if the parties to a dispute choose to go to arbitration, they may choose their own arbitrator, define the arbitration procedures, and determine the validity of the arbitration award. In this regard, even if such boards of social arbitration cannot be considered on an equal footing to courts of civil law, they in practice function as quasi-judicial bodies. In this sense, the role of social arbitration boards is quite original and has proved to be a valid mechanism when called upon to function. Social arbitration boards, in Poland, are regulated by Art. 16, para. 3 of the Law on the Settlement of Collective Labour Disputes.

A different situation is to be found in the Czech Republic and Slovakia. In these two countries, it is interesting to note that the arbitrator's award is binding only if the labour dispute deals with the conclusion of a collective agreement. In the Czech Republic and Slovakia, arbitration procedures are the

following:

- the parties agree to go to arbitration;
- the arbitrator should meet the same requirements as conciliators/mediators in terms of personal qualities;
- the arbitrator has the duty to collect and review evidence, and has 15 days at his disposal for taking a decision;
- the arbitrator issues an award that specifies the scope of the labour dispute;
- in case of a labour dispute related to a text of a collective agreement, the arbitrator must indicate what the party at fault should do in order to fulfil its duty;
- in case of a dispute related to the conclusion of collective agreement, the arbitrator may decide on the wording that should be utilised in the text of the collective agreement;
- an arbitrator's award is considered to be final on the day of its delivery to the parties. However, a disputing party is free to file a complaint with the ordinary civil court within 15 days with a view to nullifying the arbitrator's award;
- if no complaint is filed with the ordinary civil court, the arbitrator's award becomes effective and all the obligations on the disputing parties contained in the award are immediately enforceable.

All in all, it can be said that arbitration is rare in the countries mentioned above. This is because the parties prefer to settle labour disputes through conciliation/mediation machinery or, much more utilised, direct negotiations. This is particularly true in countries like Hungary and Poland. In Hungary, for example, there is no compulsory arbitration, and the rules and procedures which regulate the possibility to resort to arbitration are the same as those for mediation. However, it should also be added that according to the Hungarian Labour Code, it is possible to have recourse to compulsory arbitration in some specific cases which relate to disputes between an employer and a trade union, or between an employer and the works council. Compulsory arbitration can, therefore, be available to resolve labour disputes related to the operation of the trade union or the works council, or when there is no agreement on those areas in which the works council has the right of co-decision. We should also note that arbitration procedures follow certain original rules in Hungary. For example, the arbitration procedure is public; the arbitrator announces the final decision in public; during arbitration procedures the parties may appoint their own representatives to present and enforce their interests.

Conciliation, mediation and arbitration in these countries of Central and Eastern Europe have still to prove its efficacy. In our view, one weakness of both mediation and arbitration, in the present circumstances, is that their success depends to a great extent on the choice of the conciliator or arbitrator. The responsibility for the choice often is made by the director of the respective service or by the Ministry of Labour. If there is disagreement between the parties on the selection of a conciliator or arbitrator then either party or both of the parties may ask for the appointment of a particular person. Yet the circumstances are such that usually the choice of a conciliator or arbitrator takes too long time and therefore the dispute may be left unsettled.

More recently, a new system for settling labour disputes now been introduced in Estonia: a labour dispute may be referred to a conciliation commission. The trade union has the right to seek assistance in resolving the dispute from the next higher level of its organisation (eg from a national-level union). Within three days, the higher union body will form a conciliation commission including both employer and union representatives on an equal basis. This commission first attempts to reach an agreement through conciliation; if an agreement is reached, it becomes binding on the parties. Only if the conciliation commission fails to reach agreement is the labour dispute referred to the state mediator, who may either handle the case personally, or appoint a local mediator. During the mediation procedure, the parties are requested to attend all mediation sessions. It is only when a mediation effort has been declared unsuccessful that the union may call a strike.

In another group of countries, eg in Ukraine, legislation provides rules and procedures for conciliation and mediation. The new Ukrainian Law on Procedures for the Settlement of Collective Labour Disputes (Conflicts) makes specific reference to the use of conciliation and mediation procedures. Conciliation procedures are implemented by a conciliation committee. According to the law, a conciliation committee is established at the initiative of either of the disputing parties, within a period of three days at the enterprise level or within five days at industry or regional level. These time periods begin counting from the moment in which the collective labour dispute arises. The trade union representatives on the conciliation committee are elected by a general meeting or meetings of the affected workers, on the basis of majority vote. At the industry or regional level, the conciliation committee includes representatives of those institutions which act at the relevant level. It is interesting to note that under this law, conciliation is understood as negotiation between the parties with the possible assistance of neutral persons or experts. In general, any decisions of a conciliation committee are adopted by consensus, and once consensus is reached, any agreement is considered binding on both parties.

Lithuania also has an established practice for conciliation proceedings. According to the Law on the Settlement of Collective Disputes of 17 March 1992, as amended on 31 March 1994, collective disputes are settled by conciliation committees composed of representatives of both parties to the dispute. The conciliation committee may consist of a maximum of five representatives from each side, and may call in independent experts to evaluate the dispute and to provide their opinions. The committee must consider the dispute within seven days. Any final decision reached through the conciliation procedure is binding on both parties, and in case of disagreement, a final protocol is issued registering the differing views of the parties. If the conciliation procedure does not yield a final agreement, the parties may go on to arbitration.

Conciliation is also practised in Romania. According to the Law on the Settlement of Collective Labour Disputes, the parties first must start "direct conciliation" proceedings, as provided for in article 7: "[I]n all the cases in which in a unit there are premises for starting a collective trade dispute, the trade union body or, failing which, the elected representatives of the employees shall notify the management of the unit about the situation." Once the management of a unit has been notified, it is obliged to respond in writing to the employees' claims. In case management and the employees' side do not reach a consensus regarding the claims, a dispute between the parties officially commences. In the dispute, the trade union or employees' representatives notify the Ministry of Labour and Social Protection, through its territorial bodies (ie the departments of labour), in order to continue with conciliation proceedings. The Ministry of Labour has the obligation to appoint a representative within 24 hours, who is charged with carrying out conciliation proceedings (art. 12). The conciliation may take place at the headquarters of the Ministry, at the local department of labour, or at a place established by agreement of the parties (art. 15). In case of disagreement, the dispute may be submitted for the decision of an arbitration commission.

Regarding arbitration, Bulgarian regulations are somewhat different from those of other countries in the region. The Law on the Settlement of Collective Labour Disputes of 1990 provides that, in case one of the parties refuses to bargain or to reach an agreement, either party may appeal to an arbitrator or to an arbitration commission (art. 4). The arbitrator or arbitrators are persons who are registered and included on an official list of arbitrators published in the State Gazette. Both the trade unions and the employers' organisations may make proposals about the choice of the person(s), but in the end it is the responsibility of the government to nominate the arbitrator(s).

In Romania, the procedures for arbitration are spelled out in the Law on the Settlement of Collective Labour Disputes. An arbitration commission is composed of three members taken from a list of eligible persons established annually by the Ministry of Labour. The list of potential arbitrators is made up with the consultation of the trade unions and of the Chamber of Commerce and Industry from a pool of economic, technical, juridical, and other professional specialists (art. 39). The individual arbitrators included on the list are chosen on a tripartite basis. The arbitration commission carries out its activities within three days of receiving the documentation regarding the dispute. The commission convenes the parties together, holds hearings with the

parties on the dispute, and pronounces a final decision within 24 hours of the conclusion of the hearings. Following the arbitration award, any industrial action shall cease (art. 44).

A common practice in many CEE countries regards the case where a labour dispute either concerns the conclusion of a collective agreement in an area of activity where striking is prohibited (eg in the police forces, etc.), or is caused by the breach of the terms of an existing collective agreement still in force. In these cases, the responsible ministry often appoints an arbitrator at the request of either party, or at least attempts some form of compulsory mediation.

In most CEE countries, labour legislation establishes certain general rules which must be followed prior to the commencement of procedures for mediation or arbitration. Mediation and arbitration are in general voluntary, and the effectiveness of these newly established dispute resolution mechanisms in the region has yet to be proven. One weakness of both mediation and arbitration is that their success depends to a great extent on the choice of the mediator(s) or arbitrator(s). The responsibility for the choice often belongs to the director of the respective service, who also has the moral obligation to offer direct mediation services to the parties in a dispute. If there is disagreement between the parties on the selection of a mediator or arbitrator, then either or both of the parties may write to the service asking for the appointment of a particular person.

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Conclusions

Although important progress can be registered in the 16 countries covered in the report in many areas of industrial relations, the systems still suffer from a number of weaknesses, mainly due to the fact that the social partners need further strengthening. For example, it is often the case that none of the parties is sufficiently strong or sufficiently representative to act as a real effective social partner. Moreover, the spirit of tripartite co-operation which is needed for effective participation of the workers' and employers' representative in the process of decision making is still not sufficiently developed.

In addition, there is still a lack of a consolidated mechanism of collective bargaining, especially at industry wide level, which hampers the possibility for the social partners to exploit to the maximum extent possible their. In particular, at the national level there should be selective interventions to deal with specific sectoral problems that cannot be reached very efficiently or equitably by macro-economic policies only. Without such interventions, and without emphasising the importance of developing sectoral collective bargaining it would be difficult in the years to come to develop a well structured and balanced system of industrial relations in the countries in the region.

Another area in which much remains to be done is the transformation of the attitude and approaches of the social partners vis-a-vis labour management relations. Such a change is welcome, and should take place at every level of the economy, from individual employers and workers to the respective bodies of representation of their interest, and on to the state itself. The state, in particular, should commit resources to promoting these changes, and to avoid direct or systematic interference in the relationship between the social partners.

For what concerns labour disputes settlement, it should be noted that there is a common trend in these countries for the creation of independent and autonomous services dealing with conciliation, mediation and arbitration. The greatest difficulty in carrying out meaningful conciliation and/or arbitration services lie in the availability of sufficient sources for running training programmes for conciliators and arbitrators, particularly at the national and regional levels. The lack of well trained conciliators and arbitrators jeopardises the development of sound industrial relations in these countries, especially in the period of transition when certain crucial disputes have to be solved. In this regard, much assistance is needed. Indeed, a labour relations system

would not function properly without an expeditious and efficient system for settling labour disputes.

Finally, an important element should always be kept in mind when dealing with the settlement of labour disputes: the strength of the law depends much more on the degree to which it is accepted by the parties concerned, rather than on the use of constraint and compulsion. Indeed, experience shows that no solution can be durably imposed in a democratic state against the will of the parties, and hence every effort should be made towards developing a system of labour disputes settlement in which the parties have full confidence.

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