

Collective Bargaining and the Law in Central and Eastern Europe: Recent Trends and Issues

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Index

1.	Introduction	51
2.	Collective Bargaining	52
2. 1	Purposes of Collective Bargaining	52
2. 2	The Law as a Means to Promote Collective Bargaining	53
2. 3	Mechanisms and Institutions of Collective Bargaining	57
2. 4	Levels of Collective Bargaining	61
2. 5	Articulation of Different Levels of Collective Bargaining	65
2. 6	Union Recognition for Collective Bargaining Purposes	65
2. 7	Union Representativeness	68
2. 8	Collective Bargaining in the Public Sector	72
3.	Collective Agreements	74
3. 1	Collective Agreements and the Law	74
3. 2	Observance of Collective Agreements	75
3. 3	Collective Agreements as Contracts: The Problem of Extension	76
3. 4	Collective Agreements as a Legal Code	79
3. 5	Contents of Collective Agreements	81
3. 6	Duration of Collective Agreements	84
3. 7	Registration and Validity of Collective Agreements	86
3. 8	Termination of Collective Agreements	89
4.	The Settlement of Labour Disputes	89
4. 1	The Right to Strike	90
4. 2	Limitations on Exercising the Right to Strike	91
4. 3	Recent Trends in Labour Disputes	93
5.	Conclusions	94
Notes	95

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1. Introduction

Legislative changes have recently occurred in all Central and Eastern European countries (CEE countries) in both the collective and individual spheres of labour law. Although the collective and individual spheres together represent integral components of a larger whole, in the present comparative study we will concentrate on the changes in collective labour law. In particular, we will examine recent trends and changes which have occurred in the legal framework for collective bargaining, and thus highlight the changing relationship between the law and collective bargaining. We will also note those changes in labour law which have been introduced with a view to creating a stable framework for a new labour relations system consonant with the economic and political transformations in the countries of Central and Eastern Europe.

The intent of this comparative analysis is to fill a gap in the numerous studies and works of research published thus far. Specifically, it aims to provide to labour law and industrial relations practitioners with an analysis of the major trends and issues designed for the promotion of free collective bargaining in this region. This study neither is intended as nor pretends to be an exhaustive, systematic examination of the subjects treated in the law – or, for that matter, an exhaustive catalogue of each country's legislation in the areas examined. Rather, it aims to highlight and illustrate through selected examples what is considered to be the backbone of the employer-employee relationship: the collective bargaining machinery.

In the following pages, we will examine the mechanisms, institutions and levels of collective bargaining; the status of collective bargaining in the public sector; the thorny issue of union representativeness; the legal nature of a collective agreement, including its validity, duration, extension, and implementation; as well as the machinery of labour disputes settlement (1).

All these topics are currently under debate among the workers, employers, governments, research institutes, and universities of the region.

As suggested in the title, the central issue of the present study is the relationship between the law and collective bargaining in Central and Eastern Europe. This is a new issue in the region, since political and economic transformations have brought with them new legal questions which were largely unknown before the transition to a market economy. By examining the relationship between the law and collective bargaining, we hope to provide an overview that will be useful in promoting collective bargaining at the various levels of the economy.

Of course, law and practice in the area of collective bargaining vary from country to country. It is possible to detect some common trends and issues, however, that would indicate the direction of evolution in the region's industrial relations systems. For example, one common characteristic in many new legislative texts is the inspiration of the basic principles of freedom of association, the right to collective bargaining, and the right to organise, which are enshrined in the ILO Conventions and Recommendations. These have been adjusted to national circumstances in the individual countries' legislation.

2. Collective Bargaining

2. 1 Purposes of Collective Bargaining

One of the main purposes of all rules in the area of labour relations, legal or otherwise, is to protect the legitimate but divergent expectations of different societal groups. These expectations usually conflict in society, and one of the principal tasks of labour law is to regulate such conflict. This process, which implies an adjustment of these divergent and conflicting expectations, is normally carried out by the main actors representing different social and economic interests, notably trade unions and employers' associations.

Indeed, expectations of labour and management are usually divergent. Management can legitimately expect that labour will be available at a price which permits a reasonable return on investment, and labour can expect with equal legitimacy that real wage levels will not only be maintained, but steadily increased. Management can claim a legitimate interest in obtaining the most qualified worker available for each job, and labour can claim a legitimate interest in obtaining a job for each worker who is unemployed. This, of course, is obvious. But through the basic instrument of collective bargaining, the conflicting expectations of labour and management can be temporarily reconciled. Collective bargaining therefore allows management and organised labour to create – through autonomous collective action – a body of rules which they can use to resolve their differences. Collective bargaining also makes it easier to determine the “rules of the game” in industrial relations, which are then implemented by the parties themselves on all levels of their interaction.

In Central and Eastern Europe, collective bargaining is not yet a widespread phenomenon; where it is practised at all, it suffers from a number of problems which eviscerate the climate within which the parties carry out negotiations. For example, collective bargaining ends all too often with the signature of a text – a collective agreement – which represents nothing more or less than the transposition of what has already been fixed by law. Significant time and effort are therefore still required from governments, trade unions, and employers' associations in many CEE countries in order to reach a level of genuine collective bargaining at all levels of the economy.

One principal interest of management in entering into collective bargaining with trade unions is to achieve an agreement for the maintenance of industrial peace over a given area and period of time. On the other hand, the principal interest of labour is the creation and maintenance of certain working standards, such as standards of distribution of work and rewards, as well as guarantees on the stability of employment, over a given area and period of time.

Of course, the relative significance of these various objectives varies from country to country, but as a whole the social partners in Central and Eastern Europe are now seriously confronted with these very basic issues. And so far, they have relied more on legislative interventions by the state than on their own autonomous action to create rules and regulations in this domain.

When dealing with the legislative framework within which collective bargaining takes place, we must first consider how the law can be used as a means to promote collective bargaining. This is a key question for governments, trade unions, and employers' organisations in the region. When considering this issue, reference must be made to the various legislative means available for promoting collective bargaining (i.e. statutes, administrative rules and regulations, decrees, and ministerial orders). Whatever legislative means is used, two basic starting points are essential before meaningful negotiations can occur. First, the employer must recognise the union for collective bargaining purposes. Second, the notion of employer obligation to disclose information for collective bargaining purposes must be implemented in daily practice. These two elements are closely interrelated, and are mainly regulated by law. In this regard, it should be noted that a historically different development marked the formation of structures representing the employers. At a time when the TU structures were already built-up (mostly by transformation from the former trade union organisations), the process of employers' representation formation had just started. This time shift was caused by the fact that in the past the main employer was the state. Apart from the state enterprises and organisations, the only significant sector was represented by co-operatives, which associated members of production and consumer co-ops. Owing to the fact that privatisation was carried out in stages and during a longer period (as a matter of fact, it has not yet been completely finished in some countries) the process of the formation of structures representing the employers' interests, was going on more slowly than that of the trade unions. Along with the process of so-called minor and, especially, major privatisation the employers' organisations came into being, too. Recently employers' associations are stabilised and are continuously developing. They are ready to bargain collectively with trade unions at the sectoral or branch level. For example, while in other countries they continue to function independently, in Slovakia, the Czech Republic, Hungary, Poland, Lithuania, Estonia, several dozens of employers' organisations were formed. Most of them are associated in the Federation of Employers' Associations, as in Slovakia (2).

2. 2 The Law as a Means to Promote Collective Bargaining

Collective bargaining presupposes that both trade unions and employers and their associations are willing to bargain as groups. Willingness to bargain is, of course, quite different from willingness to agree. In this sense, legislation designed to promote collective bargaining is also quite different from legislation designed to promote agreement.

The willingness of an employer or of an employers' association to bargain with a particular union is known as "recognition" of that union. One of the most fundamental issues in labour law is whether the law seeks to induce or to compel employers to recognise unions, and, if so, under what conditions. This is a very complex issue, because the problem is not recognition or non-recognition of unions

in the abstract, but of a particular union or unions. There may be, therefore, questions of choice between competing unions. Nor it is a problem of collective bargaining in the abstract, but of bargaining on particular matters, and thus it may involve questions of selecting the topics on which employers are under an obligation to negotiate. Labour laws in many CEE countries deal with these issues.

For example, in Estonia, the right to bargain collectively and to conclude collective agreements is governed by the Collective Agreements Act (passed 14 April 1993). The Act does not include an obligation for employers (or employers' association) and employees or employees' association to initiate bargaining for concluding an agreement, nor does it require either side to conclude an agreement. The Act enables either party to initiate negotiations for an agreement on the national, industry (sectoral) and enterprise levels, and establishes a procedure for negotiations. The partners are of the opinion that collective agreements are equally important on all three levels (i.e. the national, industry or sector and enterprise levels). However, the conclusion of collective agreements at the enterprise level has strong historical traditions in Estonia, and it is the main bargaining level while the regional level is rarely used. (3)

In other countries, such as the Czech Republic, the Collective Bargaining Act of 4 December 1990, which came into force on 1 February 1991, 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." (4) This provision, in addition to Article 3, para. a) through d), provides the legal instrument for union recognition by management for collective bargaining.

When the Czech and Slovakia republics separated in 1991, each of the two incorporated this law into their legislative systems. In the following years, the Slovak Republic amended the law on collective bargaining (2/1991) several times (law No. 54/1996 that introduced some minor modifications in collective bargaining), the last of which was Decree 476/2000 that entered into force in January 2002. The Slovak labour code was enacted in 2001 (311/2001) and amended in the same year (313/2001) with no changes for union recognition.

Measures to secure union recognition are also expressed in the legislation of many other CEE countries. In Poland, this issue is regulated by the Act of 29 September 1994, which amended the old Labour Code of 26 June 1974 and other acts dealing with collective bargaining. The 1994 Act states that: "a party entitled to conclude an agreement may not refuse the other party's request for bargaining" (Art. 214-2, para. 3)(5) Although collective bargaining in Poland is subject to further legal requirements, it is sufficient here to note that the legislation seeks to secure the legal principle of promoting bargaining between the parties through the notion of "non-refusal" (6). A similar, though not identical, legal provision is found in Hungary, where according to the Labour Code -Act No. 22 of 4 May 1992 - "trade unions shall be entitled to enter into collective agreements ..." (Art. 20). (7)

In this context, it would be worth mentioning that although the Hungarian Labour Code defines only the term of *collective agreement*, there are two specific types of agreements that may also be considered as collective agreements: i) the so-called *wage agreement* and ii) the "collective contractual agreement". The latter term, "collective contractual agreement" is mentioned in the Labour Code in connection to the settlement of interests disputes (art 198 (1))(8). The wage-agreement is an agreement separate from the collective agreement (although it

forms the appendix to the collective agreement), covering only and exclusively wages and earnings. While wage agreements are usually concluded only for a one-year term, “proper” collective agreements (covering a wide range of issues) are concluded for two or three years, or for unlimited period of time. In the Hungarian reality, wage agreements concluded each year are to be considered amendments to the collective agreement, exclusively affecting wage provisions.

Sectoral level bargaining is not regulated directly and distinctly in the Hungarian Labour Code, but under various headings. The most important provisions are as follows: Labour Code grants the right of concluding collective agreements for the trade unions (article 20)(9). There is no specific regulation regarding the level of the trade union structure where the right to conclude collective agreements can be exercised. The possible variety of collective bargaining levels are not unequivocally formulated by the Labour Code but can be deduced from its provisions (especially from article 31, which lists the various parties to collective agreements; and article 41, which details the relationship between collective agreements with a narrower and a wider scope) Collective agreements may be concluded on the employer’s side by (i) a single employer; (ii) several employers; and (iii) by an employer interest representation organisation; on the workers’ side by (i) a trade union or (ii) several trade unions. (article 31(1)) In looking closer at the provisions of the Labour Code, one could reach the following conclusion: that collective agreements might be concluded with the aim to cover single employer, or only a part of it (e.g. a plant), or more employers. However, there is no legal obstacle to conclude sectoral- or national level (central) collective agreements, though the law does not stipulate it expressly. Trade unions have the right to conclude collective agreements at every level of the trade union organisational structure, based on their right granted by the law. As opposed to this, employers’ associations only have the right to conclude collective agreements on behalf of their members, if it is clearly worded in their deed of foundation or if individual employers give a written authorisation to the employer association for that end (10). There are different ways of how collective bargaining can take place at a level higher than the enterprise one. One way could be a collective agreement that covers a couple of enterprises, and is signed by the relevant employers and a trade union; while another way could be a sectoral collective agreement signed by the relevant employers’ association and the trade union federation covering the majority of the sector.

In other countries, the task of promoting collective bargaining between the social partners, and hence the encouragement to conclude collective agreements, has also been provided through legislation on tripartite national bodies, where they exist.

For instance, tripartite concertation exists in Slovakia for more than 10 years. It was established with the aim of carrying out the economic transformation in cooperation with the newly formed social partners and to avoid social tension, by creating conditions for preserving social peace. As a platform for the tripartism was established the Council for Economic and Social Concertation (Rada hospodárskej a sociálnej dohody – RHSD). The Council for Economic and Social Concertation (hereinafter the CESC) handles topical problems of society related to the most important interests of all the three partners. Currently, the activity of the CESC is regulated by a new legislative rule (the tripartite social dialogue in Slovakia is regulated by Act No. 106 on Economic and Social partnership of May 12, 1999) (11), which served to enact its previous basic principles based more upon “gentleman agreements” and made them more compulsory for the parties concerned.

For example, the Labour Code of Croatia, which entered into force on 1 January 1996, provides that “[a]n Economic and Social Council may be established for purposes of the definition and performance of co-ordinated activities aimed at the protection and promotion of economic and social rights and the interests of both employees and employers, in pursuance of co-ordinated economic, social and development policies, encouragement of entering into and application of collective agreements and their harmonisation with economic, social and development policies” (Art. 219). (12)

As mentioned above, the second important element for the promotion of collective bargaining is the disclosure of information by the employer to the workers’ representatives. In a good number of CEE countries, labour law provides an obligation on the employer for the disclosure of information. This obligation imposes on the employer a duty to disclose to the union representatives – in writing if the union so requests – information related to the industry or enterprise. It is a good practice to disclose information for collective bargaining purposes, without which the union representatives would be impeded in conducting genuine negotiations with the employer. However, the employer is usually not required by law to produce or allow the inspection of documents which would be prejudicial to the employers’ interests. (13) Trade union representatives very often complain about the lack of co-operation from employers concerning access to enterprise information. Furthermore, the law in most of Central and Eastern Europe includes only symbolic sanctions if the employer fails to comply with its obligation to disclose information for collective bargaining purposes.

In the case of a country like Bulgaria, its Labour Code (art. 52) states that the individual employer, the group of employers, and their organisations shall make available to the employees’ representatives timely, reliable and comprehensive information for the financial position which is significant for the conclusion of the collective agreement (submitting information whose spreading could harm the employer can be refused or made with a request for confidentiality). In case of failure to perform the obligation under the preceding paragraph the employers in default shall owe indemnity for damages inflicted. In addition art. 130a. deals with the right to information in case of mass layoffs. It states that: 1) if the employer intends to carry out mass layoff, he must inform in due time the representatives of the workers and employees by an order and in a way established by the collective agreement; 2) in the cases regulated under para 1, the employer shall submit to them information regarding: a) the reasons for layoff; b) the number and the category of the workers and employees to be terminated; c) the period during which the layoff shall be carried out; d) the criteria for the choice of the workers and employees to be terminated.

To illustrate even further these issues with a few examples, the above-mentioned Polish Act states that “[e]mployers shall be obliged to provide information on their financial situation to representatives of the bargaining trade union organisations, within the scope of the bargaining and when necessary for the conduct of responsible bargaining” (Art. 241–4). The same principle can be found in the Hungarian Labour Code, particularly at Articles 21–22, which state that “state authorities, local governments and employers shall co-operate with trade unions; within the framework of such cooperation they shall promote their interest representation activities by providing the information required for such activities, and shall notify trade unions of their detailed position and the reasons for such

positions in relation to trade union comments and proposals within a period of thirty days”.

Yet there is no mention of any sanction in case the management side fails to provide information.

The notion of the duty to inform is also found in several other countries' legislation. For example, Croatia's Labour Code regulates disclosure, especially in provisions related to the duty to supply information to the works' councils (14). At Article 144, it states that employers have the duty to inform the works' council every four months about the enterprise's financial-situation, the development plans of the enterprise, potential impacts on the economic or social situation of the workers, the status of wages, job security and safety measures, as well as on all other measures deemed to be of particular interest to the well-being of the workers at the enterprise level. A nearly identical notion is found in Bulgarian law, where according to the Labour Code employers should make available to workers' representatives for collective bargaining purposes all “information on their financial position which is significant for the conclusion of the collective agreement” (Art. 52).

In several countries in the region, then, labour law has regulated the employer's obligation to disclose information for collective bargaining purposes. This can be considered wide recognition that this is an important step for the advancement of collective bargaining (15). Yet less attention is paid to the consequences of non-compliance with this legal duty. Most of the time, sanctions are too weak or not at all related to the enforcement of the obligation (as in Bulgaria and Croatia, for example).

This is one of the many aspects that still need further clarification in labour law, although some progress has been registered in a number of countries. Indeed, the reform of labour law and industrial relations in Central and Eastern Europe is a constant effort. Laws are being modified, redrafted, and constantly updated with a view to making them consonant with the changing nature of collective and individual employment relationships, especially with reference to the various mechanisms of collective bargaining.

2. 3 Mechanisms and Institutions of Collective Bargaining

Mechanisms and institutions of collective bargaining vary substantially from one country to another, and are in general determined by law. Numerous changes have been made to labour laws regulating collective bargaining. Current legislation regulating the conduct of negotiations and the conclusion and validity of collective agreements often dates back to the beginning of the economic transition in Central and Eastern Europe. In the Czech Republic, the previously-mentioned Collective Bargaining Act of 4 December 1990 regulates collective bargaining mechanisms, while, more recently in the Slovak Republic, new legislation has introduced some modifications to the regulation of collective bargaining mechanisms and the conclusion of collective agreements.

Currently in Slovakia, the procedure for the conclusion of collective agreements provides that collective bargaining shall be initiated by submitting a written proposal to conclude a collective agreement by one of the contractual parties to the other contractual party. It shall be the duty of the contractual party to respond in writing within 30 days at latest, unless agreed otherwise, to the other

contractual party's proposal and to comment, in its response, on those parts of the proposal that have not been accepted. It shall be the duty of the contractual parties to bargain and provide further requested collaboration, unless this goes against their legitimate interests. It shall be the duty of the contractual parties to initiate bargaining aimed at concluding a new collective agreement at least 60 days before expiry of the current collective agreement. The contractual parties may agree, in the collective agreement, on the possibility to amend the collective agreement and its extent; the procedure taken to amend it shall be identical to that adopted when concluding a collective agreement. As far as the validity of collective agreements is concerned, the 2001 law provides that: collective agreements are validated by being a) concluded in writing, and endorsed on the same document by an authorized representative or authorized representatives of the respective trade union bodies, and by employers, alternatively by representatives of their organizations; b) accompanied with a list of employers on whose behalf the collective agreement was concluded (art. 4).

The Collective agreement shall be invalid in the part which a) contravenes generally binding legal regulations, b) regulates claims by employees to an extent smaller than done by the collective agreement of a higher level (art. 5).

A collective agreement shall be binding for the contractual parties.

Collective agreements shall also be binding for: a) employers on whose behalf the collective agreement has been concluded by the employers' organization; b) employees on whose behalf the collective agreement has been concluded by the respective trade union body or the respective superior trade union body; (c) a trade union body on whose behalf the collective agreement has been concluded by the respective superior trade union body. The respective trade union body shall conclude the collective agreement also on behalf of employees who are not trade union members (art. 6). The respective trade union body shall acquaint employees with the contents of the collective agreement within 15 days from its conclusion at latest (art. 7).

The contractual parties (§ 2, paragraph 2) are obliged to retain the collective agreement and the relevant decision of the arbitrator for at least five years from termination of the period on which the collective agreement has been concluded.

In other countries, such as Hungary, Bulgaria, and Poland, changes to the conduct of collective bargaining were brought by the enforcement of new labour codes.

With the changes, in force since 1. 03. 2001, in the Bulgarian Labour Code, it is established that a collective agreement cannot contain clauses that are less favourable to the workers than those established by legislation or in the collective agreement that binds the employer. They also define the levels of collective bargaining: collective agreements are concluded at the level of enterprises, branches, industries, and municipalities: collective agreements may be concluded only at the industry, branch and enterprise levels.

In Hungary, the Labour Code of 1992 regulates the conclusion of collective agreements, at Chapter II, Articles 30-41 (with amendments made in 1999). According to Hungarian law, however, carrying on collective bargaining negotiations is not mandatory. Any party has the right to initiate collective negotiations. The fact that the other party should not refuse this initiation to negotiate is partly guaranteed by the basic principle of labour law stipulating that both the employer and the trade unions are burdened with the obligation to

cooperate in terms of practicing their rights and meeting their obligations. Detailed regulations of the Labour Code complete this obligation, defined as a basic principle, with the following: none of the parties has the right to refuse the proposal to carry on negotiations about the collective agreement. In Bulgaria and Poland, meanwhile, the respective Labour Codes regulate collective bargaining machineries as well as the conclusion of collective agreements. In Bulgaria, the various amendments brought to the Labour Code (in force since 1 January 1993) created a new legal framework for the conduct of collective bargaining and the conclusion of collective agreements. 10 Changes and amendments to the Labour Code of 1974 have also been accomplished in Poland, where the legal framework for collective bargaining and the conclusion of collective agreements is provided in the Act of 26 October 1994, mentioned above. Legal provisions presently in binding force that are relative to the conclusion of collective labour agreements were defined in Chapter XI of the Labour Code, amended in 1994 (Act of 29th September 1994 on the change of the Act, Labour Code and on the change of certain other acts. Journal of Laws No 113, item 547 with further amendments) and in 2000 (Act of 9th November 2000 on the change of the Act, Labour Code, and on the change of certain other acts. Journal of Laws No 113). The Labour Code considers two kinds of collective agreements:- enterprise collective agreements; and- supra-enterprise collective agreements. There is also another possibility, used more and more often, particularly at the supra-enterprise level, consisting of the conclusion of agreements on the application of a part or of a whole existing agreement, concluded by other parties. The modification of the contents of an agreement (agreement on the application of an agreement) may be done by concluding an accessory protocol. The same rules apply when concluding an accessory protocol as in the case of the conclusion of a collective labour agreement. The employer and the enterprise trade union organisations conclude enterprise collective agreements. Supra-enterprise collective agreements are concluded: – on the worker side, by the statutory appropriate organ of the supra-enterprise trade worker side ion; on the employers side, statutory appropriate organ of the employers’ organisation, on behalf of member employers who are associated in that particular employers’ organisation. According to the 1997 Constitution, the right to conclude collective agreements is a prerogative for employers and employers’ organisations. Until end of 2003, supra-enterprise collective labour agreements can be concluded by: – the appropriate minister – on behalf of employers of state-owned budgetary units that are not members of employers’ organisations, - the appropriate organ of the local self-government – on behalf of employers from self-governed budgetary entities. These agreements can remain in force only until December 31st, 2005.

The regulation of collective bargaining and the conclusion of collective agreements has also been on the agenda of many other governments in the region, as there is a need to update old legislation. For example, the law in Romania regulating collective agreements was passed by Parliament on 23 September 1996. The law redefines the legal structure within which the functioning of institutions and mechanisms of collective bargaining at the various levels would take place. In this respect, one major issue will be the adoption of new criteria for the determination of union representativeness for consultation and negotiation at the various levels of the economy. The new law, which amends Law No. 13 of 8 February 1991, does not really clarify the legal framework for collective bargaining. In particular, it is difficult

to see how in a period of transition the various criteria for the determination of union representativeness spelled out in the new law for the national, industry, and enterprise levels can be enforceable. Although the new law introduces the notion of the “duty to bargain” in enterprises with over 21 employees (Art. 3, para. 1), at the same time it states that a union organisation is considered to be representative at the enterprise level, and hence able to enter into negotiation, if it represents at least 50% of all the employees in the enterprise (Art. 17, para. 1(c)). This and other unclear legislative aspects have been criticised by the major national union confederations in Romania. Debate is continuing, and it is too early to determine the level of government commitment to amend the new law, which seems to be linked more to political choices than to genuine legislative interests.

Changes to labour law have also been introduced in the three Baltic States. For example, in Lithuania, Law No. 1-1202 of 4 April 1991 on Collective Agreements introduced new and substantial changes to the legal framework within which collective bargaining takes place.

This law was also modified recently by a series of amendments introduced in 1994. In Latvia, the Labour Code has been amended in various parts during the last several years, including its Chapter Two on collective labour agreements. These changes specifically involved a series of articles regulating the role of the parties to a collective agreement and the conclusion of a collective agreement. Of course, these changes have been introduced in accordance with the current economic reforms undertaken in the country. Finally, in Estonia, trade unions, employers’ associations and representatives of the Ministry of Social Affairs are holding discussions on the various reforms needed in the collective bargaining sphere. These talks concern the reform of collective labour relations and, in particular, the need to boost tripartism at the national level which would guarantee the institutional framework within which negotiations on the most important economic and social issues may be concluded.

In some other countries, such as in the Russian Federation and Ukraine, where the respective parliaments are in the process of revising their current labour laws, much discussion is taking place on the reform of collective bargaining and the introduction of new legal measures for the settlement of labour disputes. Chapters VI and VII of the new Labour Code (in force from 01. 02. 02) and the Act on collective agreements and accords of 11. 03. 92 of the Russian Federation and Chapter VI of the Labour Code and the Act on collective contracts and agreements of 01. 07. 02 of Ukraine regulate the same subject.

These two laws are very similar as far as procedures, rules, and terminology are concerned, and both set up the legal framework for the regulation of collective bargaining and the conclusion and implementation of collective agreements. (16) This phenomenon should also be seen in the wider context of the still-valid laws of the USSR in Ukraine. For example, by a decree of the Ukrainian parliament dated 12 September 1991, certain laws of the USSR have been (re)enforced on the territory. The decree entitled: “On procedure of temporary validity on the territory of Ukraine of certain texts of legislation of the USSR” validated the application of those USSR laws which are not in contradiction with the Constitution and the laws of Ukraine. Since Ukraine adopted a new Constitution on 28 June 1996, it would be interesting to examine, in this regard, which laws of the USSR remain valid in the country.

It should be noted, however, that many draft laws concerning labour-management relations are being examined by parliament, and that there is a wide consensus in the country to pass legislation regulating social partnership, the settlement of labour disputes, employers' associations, supervisory councils at the enterprise level, and other matters.

2. 4 Levels of Collective Bargaining

Collective bargaining takes place at different levels in CEE countries, most commonly at the national (central) level and at the enterprise level. However, the enterprise level is growing in significance. Today it plays the predominant role in a large number of CEE countries, although in some places there is an attempt to introduce the sectoral level as a third level of negotiation.

For example, in Slovakia, collective bargaining is recently carried out on two levels: a) sectoral level, where the so-called higher level collective agreements (Kolektívne zmluvy vyššieho stupňa – KZVS) are concluded between representatives of the employers' associations and trade unions and b) company or plant level, where the collective agreements are concluded between local trade union organisation and the management. Act on Collective Bargaining, No. 2 of 1991 provides that collective agreements regulate individual and collective labour relations between employer and employee, and the rights and duties of the parties concerned. Collective bargaining begins with the submission by one party to the other of a written proposal to conclude a collective agreement. The parties have a duty to bargain, unless this is counter to their legitimate interests. The parties to an existing agreement have a duty to begin negotiations on its replacement at least 60 days before it expires. A written response to such a proposal must be given (at the latest in 30 days) commenting on those parts of the claim which are not accepted. At least 60 days from the date of submission of the first proposal for an agreement are allowed for negotiation before one or other party is allowed to call for a mediator to be appointed. Collective agreements may improve upon the rights set out under the Labour Code, other laws or Government decrees, but may not reduce them. There is a principle applied that the agreed conditions of employment and wages in higher (sectoral) level collective agreements (KZVS) are to be respected in collective bargaining at the company level. A company-level collective agreement may not take away from employee rights agreed at a sectoral level, nor give more than granted by a higher level agreement only if that is considered to be a maximum. That means, only conditions of employment which are more favourable than those agreed upon in the sectoral level agreement can be granted. Collective agreements, which do not specify their duration, are presumed to last for one year. Hence, the collective agreement as a legal document is valid only in case that its provisions do not contradict the respective minimum or maximum standards. Collective agreements are equally binding on workers who are not trade union members. The validity of higher level collective agreements is subject to their registration at the Ministry of Labour, Social Affairs and Family of the SR. The respective employers association should submit the agreement to registration not later than 15 days after the date it was signed. These collective agreements have to be deposited with the Ministry's office but their legal effect is not dependent upon such registration, apart from non-signatory employers who might be bound by extension following the deposit with the Ministry. Collective agreements are normally only binding upon their signatories or upon members of

signatory organisations (their list should be attached to the collective agreement). Sectoral collective agreements, may be extended to non-signatory employers in the same sector or branch by simple administrative procedure of the Ministry. Extension should be applied for not later than 6 months before the agreement expires. The signatory parties have a duty to deposit a copy of the agreement and related decisions of arbiters for five years after expiration. The trade union has a duty to inform employees of the agreement's contents within 15 days of concluding the agreement.

As we have seen also in other countries, such as Hungary, collective bargaining can take place at various levels. In Hungary, the Labour Code of 1992 regulates collective agreements (articles 30–41) and thus indirectly the collective bargaining process. Sectoral level bargaining is not regulated directly and distinctly in the Labour Code, but under various headings. Undoubtedly, therefore, the notion of “sectoral collective bargaining” is somewhat vague in the legislation.

The Hungarian law also has introduced the possibility of bargaining at the multi-employer level, which in Hungary's context does not necessarily mean at the national level.

In summary, we can say that collective agreements might be concluded with the aim to cover single employer, or only a part of it (a plant, for instance), or more employers. However, there is no legal obstacle to concluding sectoral or national collective agreements, though the law does not stipulate it expressly.

In Romania, too, the law provides that collective agreements can be concluded at various levels of the economy, notably the national (central), industry, and enterprise levels. At the enterprise level, there is a “duty to bargain”, and the initiative to begin bargaining rests with the employer (Law of 23 September 1996, Art. 3, para. 4). Although the law has introduced new rules which should be followed during national, industry, and enterprise-level negotiations, these requirements pose several problems in implementation, obstructing constructive negotiation. One of the weaknesses of this law is a requirement at the enterprise level that at least 50% of all employees belong to a union in order for that union to qualify as representative, and therefore as entitled to negotiate a collective agreement.

With the changes introduced in the Labor Code in March 2001, a new text for collective agreement at the industry and branch level is introduced. According to the text, collective sectoral agreements are concluded between the respective representative organizations of workers and employees and of employers on the basis of an agreement between their national organizations; in this way general conditions are defined concerning the scope and procedural framework of the industry and branch contracts. The representative organizations of the workers prepare and present to the representative organizations of the employers a general project. When the collective labor contract at industry and branch level is concluded between all representative organizations of workers and of employers from the industry or branch, at their common request the Minister of Labor and Social Policy may extend the application of the contract or of separate clauses of the contract to all enterprises of the industry or branch.

The sectoral collective agreements signed in Bulgaria at the beginning of 2001 are 60–14 at industry level and 46 at branch level. After the changes in the Labour Code, several new collective agreements, mainly in the public sector, have been signed: health system, energy sector, tourism, social care, water supply, education.

After being signed, the sectoral collective agreement is deposited in the Ministry of Labour. So far these agreements have been concluded without a specific term of duration, and new additional agreements (clauses) are added to them each year. The possibility for termless agreements has been used by the trade unions, which have thus preserved certain social benefits. With the changes in the Labour Code these agreements will have a duration of one year with a possibility for being prolonged up to two years.

The laws in Russia and Ukraine also specify the various levels at which collective agreements can be negotiated. In these two countries, there is a problem of terminology which needs to be clarified. According to the Russian law regulating collective agreements and accords, a “collective agreement” is “a legal act to regulate labour, socio-economic and occupational relations between the employer and the workers of an enterprise, institution or organisation”, while the term “accord” signifies “a legal act establishing obligations concerning the fixing of conditions of work and employment and social guarantees for workers in an occupation, sector of activity or specific territory” (Act No. 2490–1, Art. 2). Similarly, but utilising a different terminology, the Act of 1 July 1993 of Ukraine at Article 2 states that “agreements” can be concluded at the national (central), sectoral, and regional levels, while “collective contracts” can be signed in “enterprises, institutions and organisations, irrespective of their form of ownership and management, which use hired labour and have legal personality”. Collective contracts, continues the law, can also be concluded in so-called structural subdivisions (e.g., different plants of the same company). (17)

For these two countries, then, the term “collective agreement” has a different connotation. In Ukraine, collective agreements are only those concluded at the various levels above the enterprise, while in Russia a collective agreement can only be concluded at the enterprise level. In Russia, a so-called “accord” can be concluded at the levels above the enterprise while in Ukraine the “agreement” signed at the enterprise level is called “collective contract”. Of course, we cannot enter into the numerous implications that the use of such terminology brings with it; yet, for the benefit of a rational comparison, we will use the term “collective agreement” in its widest acceptance (see the ILO definition in Section 3, below).

We will make specific use of the terminology in these two countries only if the function to which we are referring may change or have different meaning. In general, it is sufficient to say that in Russia and Ukraine the law provides the social partners with the possibility of carrying out negotiations at different levels of the economy, notably the national (central), industry, regional, enterprise, and subdivision levels.

Recently, there have been substantial attempts to conclude agreements at the industry level in many countries, (e.g., in Bulgaria, Hungary, Poland, and Romania). This trend can also be observed in other countries, but it is still not a widespread phenomenon. The development of such a bargaining system depends, of course, to a large extent on the existence of well-structured organisations on both sides of an industry; this is, however, not yet common in CEE countries.

As mentioned above, when collective bargaining takes place, it is most commonly practised at the enterprise and plant levels, rather than at any other level. Indeed, this trend is common to many countries in the region, as there are specific historical roots which led to the current characteristics of the law (18) For example, in Lithuania the Law on Collective Agreements of 1991 (before the

amendments of 1994) provided for negotiation only at the enterprise level. Article 2 of that law primarily regulated single-union and multi-union representation at the enterprise level. If unions did not exist, or were unable to co-ordinate their activities, then it was possible for the elected workers' representatives to engage in collective bargaining (19). Two main changes were introduced with the amendments of April 1994: 1) the workers at the enterprise level must be represented by trade unions (or by a joint trade union body, in the presence of more than one union), when engaged in collective bargaining for the purpose of concluding a collective agreement; 2) the possibility of negotiating collective agreements at a level higher than the enterprise was introduced, that is to say at the national (central) and industry levels. But while this is the law, practice remains otherwise. Even after the introduction of these amendments, there are still serious problems in the promotion of collective bargaining and the conclusion of collective agreements in the various sectors of the economy. In Lithuania, there are a limited number of signed collective agreements, and the majority of them have been negotiated at the enterprise level. Only a very few have been signed at the industry level (e.g., in the communications sector).

Similar situations can be found in other countries in the region. It is not surprising that in Hungary, the number of collective agreements signed is still very low, and collective bargaining mechanisms are difficult to set up with consistency. Despite the fact that the Hungarian government introduced the registration of collective agreements in 1998, agreements are not numerous. This is due to various reasons, including (i) the shortcomings of the registration system itself; (ii) the unacceptable long process of gaining information from the register; (iii) the parallel existence of collective agreements and the so-called wage-agreements; (iv) the overlapping of enterprise and higher level collective agreements whose extent can only be estimated due to the lack of relevant information, (v) some methodological uncertainties regarding the basis for comparison when coverage ratio is calculated. Therefore caution has to be exercised regarding all figures on collective bargaining. With all the above uncertainties, it is reasonable to assume that in the competitive sector (20) in 1998 almost 40 per cent of the employees were covered by collective agreements (concluded at one level or another, taking into consideration the assessed extent of overlapping), while the similar figure for 1999 was more than 42 per cent (21).

Within the general coverage, the dominant coverage is at enterprise level, while higher level bargaining has played a secondary role. Sectoral agreements along with the agreements applicable to several enterprises covered roughly 18 per cent in both years. No far-reaching conclusions can be drawn from the slight decrease, due to methodological uncertainties. Similarly, the symbolic increase in the number of multi-employer agreements could be also just a sign of improvements in reporting, and not that of positive developments. The "real" sectoral agreements' coverage ratio in 1999 was slightly above 10 per cent.

The same can be said of Poland, where collective bargaining has still to find its role in the industrial relations system. In fact, with the exception of a limited number of sectors, the number of concluded collective agreements is still very low.

In addition to this situation, mention should also be made of the fact that in a number of countries (e.g., Latvia and Estonia) several legislative texts are still not very clear in the definition of the level at which negotiation may take place. This

produces uncertainty for the negotiating parties and is detrimental in the long run. A clearer definition of the “rules of the game” needs to be worked out.

2. 5 Articulation of Different Levels of Collective Bargaining

One of the issues debated among the social partners in CEE countries is the existing relationship between the different levels of collective bargaining, especially between the national and local or enterprise level of negotiation. This issue is important, because co-ordination between the various levels gives a certain stability to the system of industrial relations as a whole. As mentioned previously, many countries are characterised mainly by negotiations taking place only at the national (central) level and the enterprise level. In some countries, such as the Czech Republic and Slovakia, the question often asked is whether a direct relationship exists between the two levels – especially when time comes for the insertion of a clause which has been agreed at the national level, but not at the enterprise level. Often, negotiators do not know, for example, whether a clause which has been agreed at the national level, but has not been included in a particular enterprise agreement, is in fact valid at the enterprise level.

Legal uncertainty on issues such as those described above often become issues of (re)negotiation between trade unions and employers. The situation is even further complicated by the non-existence of sectoral negotiations in many countries, which would give the social partners the opportunity to further clarify issues of general interest at the industry-wide level. In this regard, ad hoc solutions are often worked out based on the initiative of the parties, rather than as part of a coherent industrial relations strategy. For example, a collective agreement or an individual contract of employment may include more or less advantageous provisions than those concluded at a higher level. Such circumstances are resolved differently according to the legal rules in the various countries. For example, in the Czech Republic, the knife cuts both ways: the provisions of a collective agreement at the enterprise level may not conflict in any way with agreements at higher levels. A provision of a collective enterprise agreement is considered invalid not only if it is less advantageous for the worker, but also if conditions are more advantageous for the worker in the enterprise-level agreement (e.g., if wages are higher than those stipulated at the national level). Concerning individual employment contracts, however, the only requirement is that wages and other employment conditions not be less advantageous for the worker than those stipulated in the enterprise collective agreement or, for that matter, at the higher (national) level.

In other countries, such as Hungary and Poland, the articulation of the different levels of negotiation is left to the social partners themselves, for there is no specific legal provision which determines the hierarchy of the various possible bargaining levels. In general, the principle is that what is determined in a collective agreement at the sectoral or regional level is automatically applied at the enterprise level as well, unless the enterprise-level agreement specifies otherwise (as is true in Poland).

2. 6 Union Recognition for Collective Bargaining Purposes

Union recognition for collective bargaining purposes is of paramount importance. The usual practice for employers is to resist bargaining with unions. This is particularly true at the enterprise level, where the resistance from management can easily be exercised. Labour law in several countries guarantees, however, the

“entitlement” of unions to bargain. Such a privilege is usually granted to unions or unions’ bodies (as in the Czech Republic, Hungary, Lithuania, Poland, and Slovakia). For example, in Slovakia, the Labour Code lays down that an employer shall beforehand negotiate with the competent trade union body (art. 233). According to art 231, a trade union body shall conclude a collective agreement with the employer, which shall govern working conditions, including wage conditions, and conditions of employment, relations between employers and employees, relations between employers or their organisations and one or more employees’ organisations in a more favourable way than does this Act or any other labour regulation, provided such is not expressly prohibited pursuant to this Act or any other labour regulation, or if, pursuant to regulations therein, divergence from such is not impossible. Claims arising from collective agreements for individual employees shall be applied and satisfied as other claims of employees arising from an employment relationship. An employment agreement is invalid in that section in which the rights of an employee are governed to a lesser extent than in collective agreement. Procedures for concluding collective agreements shall be stipulated by special regulation.

Furthermore, at article 236 it is said that “a works council is a body representing all employees of an employer where a trade union body is not operative. Employees shall be authorised to apply their rights pursuant to labour relations or similar labour relations via the works council, unless established otherwise by law. In relations with the employer, the works council shall possess the right to negotiate, even including those cases in which the trade union body is entitled to joint decision making, as well as to information and the right to inspect adherence to labour regulations”. The works council shall be operative in enterprises with minimum 20 employees.

Of course, the key issue here is to establish the identity of the parties for collective bargaining purposes. In a large number of industrialised countries, this issue is resolved through the voluntary agreement of the parties to enter into collective bargaining. In CEE countries, it is still difficult to determine the identity of the “real” parties to collective bargaining at the various levels of the economy. In many countries in the region, it is in fact easier in practice to identify the workers’ side rather than the employers’ side. In order to help the parties to identify themselves in negotiation, the legislators in many countries have taken the initiative to regulate collective bargaining, by starting with a definition of the labour and the management sides.

Let us examine a few examples in this regard. In Hungary, the Labour Code (at Articles 31 through 33, before the recent amendments) introduced a legal definition of those parties who were entitled to conclude a collective agreement. Article 31 provides that “collective agreements shall be entered into between an employer, an employer’s representative organisation, or several employers and a trade union or several trade unions. ” In addition, Article 32 introduced the principle that “collective agreements can be concluded by a trade union and an employers’ representative organisation that represents interests independent of those of the other party entering into the collective agreement. Employers’ representative organisations shall be entitled to enter into a collective agreement if their members authorise them to do so. ” From the above provisions, it was clear that the law promoted trade unions and employers’ organizations as the parties to conclude

collective agreements. Once signed, the collective agreement in Hungary was considered to be a direct source of labour law for the parties to the agreement in accordance with Article 13, para. 5 of the Labour Code. After the amendments, an additional subject for negotiation has been introduced, and this is the works council, but only if there are no unions in enterprises.

Also in some other CEE countries, such as the Czech Republic and Poland, labour law regulates the identification of the parties which can legitimately enter into a collective agreement. In the Czech Republic, the previously-mentioned Collective Bargaining Act states that a collective agreement “may be concluded between trade union bodies and employers or between their respective organisations” (Art. 2, para. 2) and that a collective agreement may be also negotiated and concluded by “(a) a representative of the appropriate trade union body, duly authorised under the trade union constitution or under the rules of the trade union body in question; (b) the chairman or any other duly authorised representative of an employers’ organisation; (c) a citizen employing workers in pursuit of entrepreneurial activities; (d) a representative of the appropriate employers’ organisation vested with authority to conclude collective agreements under the rules of the organisation” (Art. 3). It is worth mentioning, at this stage, that in Slovakia the law on collective bargaining as amended, reads slightly different, although the meaning is the same (art 3): on behalf of the contractual party (§ 2, paragraph 2), a collective agreement can be negotiated and concluded by: a) a representative of the respective trade union body, whose authorization is implied in the trade union statutes or, alternatively, in internal provisions of the respective trade union body; b) statutory body (17) another authorized representative of the employer organization; c) natural person who within his/her business activity employs 18 employees; d) a representative of the respective employers’ organization whose authorization to conclude collective agreement is implied in the internal provisions of the organization.

In Poland, labour law also makes a reference to the parties to a collective agreement according to the level of negotiation: the so-called “supra-enterprise level” (a level which is not well defined, but which presupposes the regional and national levels) and the enterprise level. At the supra-enterprise level, a collective agreement can be concluded by “(i) on the part of the workers, the statutory body of a supra-enterprise trade union organisation [a national union] and (ii) on the part of employers: (a) the statutory body of an employers’ organisation on behalf of the employers associated in it; (b) the competent minister on behalf of employers of workers in units under the state budget; (c) the chairman of the communal council [chairman of the council of a communal association] on behalf of employers of workers in units under the budget of the local self government authority” (Art. 241–14, para. I). At the enterprise level, according to Article 241–23, a collective agreement can be concluded by the employer and the trade union organisation representing the enterprise level.

The few examples above demonstrate how labour law can help define the identity of the parties to a negotiation, and thereby assist the parties – the trade unions, the employers, and their organisations – to recognise each other for purposes of collective bargaining at various levels.

2. 7 Union Representativeness

Related to the question of union recognition is also the question of union representativeness (22). The determination of criteria for union representativeness is a thorny subject not only in Central and Eastern Europe, but around the world. It should be said at the outset that a clear solution to this problem does not exist. Nevertheless, certain systems have been developed which define criteria to help determine the representativeness of both social partners to a collective agreement. The problem is not limited to trade unions; a main issue in many countries in the region is the adoption, from both a legal and practical viewpoint, of criteria for the representativeness of the employers' organisations which operate at the national level. This is a concrete problem, especially when trade union representatives trying to negotiate collective agreements with employers' organisations discover that a number of employers' organisations at the national level lack either the mandate from their members to negotiate an agreement, or more importantly, lack the necessary "quality" of representativeness. This vast subject cannot be covered in a few pages.

However, for our purposes it is sufficient to say that in many CEE countries, the criteria for the determination of representativeness of both trade unions and employers' associations have been fixed by law.

According to the Hungarian Labour Code, a trade union is considered to be representative "when it is the most significant in a given sphere of activity in terms of membership and support received from employees" (Art. 34, para. 3).

A trade union is representative at the workplace where its candidates received at least a ten per cent of the votes cast at the elections of the works councils (Art. 34, para. 4). Representativeness should always be based on the results of the first election. A trade union might become representative not only based on the results of the elections of the works councils, but also if it succeeds to achieve a high level of organization within one occupational group. Consequently, trade unions are also qualified as representative when a minimum of two thirds of the employees belonging to the same occupational group are members of such union.

According to Hungarian law, "an employers' organisation shall be deemed representative when it is the most significant in a given sphere of activity in terms of its membership, economic importance and number of employees" (Art. 34, para. 2). However, the practical application of these criteria, especially for clarifying the situation on the employers' side, has produced few results. Therefore, the government, in co-operation with the social partners represented in the tripartite National Council for the Reconciliation of Interests, is now considering the introduction of new criteria for determining the representativeness of the employers' associations (23). The question of representativeness can be a particularly thorny issue at the industry level of negotiation.

If there is more than one trade union or employers' organisation at this level, those organisations qualifying as representative are entitled to conclude collective agreements. Yet, representativeness in this case is determined as follows; a) in the case of employers, that particular organisation representing the employers' interests which is the most significant in its field of action by virtue of its membership, economic importance, and the number of people it employs, shall qualify as representative; b) in the case of trade unions, that particular union which is the most significant in its field of action by virtue of the size of its membership may

qualify as representative. In practice, the workers' support for a trade union is judged according to the results of the most recent works' council election prior to the conclusion of the collective agreement. The election's results must be taken into consideration by the employers negotiating a collective agreement at the industry level.

Regarding the negotiation of a collective agreement at the enterprise level, only one agreement can be concluded under Hungarian law (24). If the collective agreement is to be concluded with one employer, a single union is entitled to negotiate if it receives 50% of the votes cast at the last works' council election. If several representative trade unions operate at the enterprise level, one of them can conclude an agreement if it receives over 65% support from the workers. Finally, in addition to these rules, if the trade union or its candidates have not acquired more than half the votes at the last works' council election, negotiations to conclude a collective agreement may still be conducted, but any conclusion requires the endorsement of the workers by ballot. The vote for the endorsement of the collective agreement is valid if over half the workers entitled to vote in the works' council election take part in it.

A few comments may be made, concerning the situation in Hungary. There is no reliable information available, for the time being, on the representativeness of the existing sectoral social partners, and thus on the overall coverage of the sectors. Regarding trade unions the results of last works council elections in 1995 could provide with some orientation, but sectoral employer associations (similarly to national associations) have never been subject to a similar exercise. Social partners tend to hide their membership figures, for various reasons. Our impression is, that they are very much afraid of revealing their "being smaller than expected", or being currently smaller than reported earlier. This fear can be traced back to the situation, that neither in theory nor in practice it is accepted, that there is a role in social dialogue also for those social partners that might not be qualified as representative for the whole sector. They might not be eligible alone for concluding a collective agreement binding for the whole sector. But they still can make the voice of workers and employers they represent be heard, and their joint views are certainly worth to be taken into consideration in all decisions. There is a need for an open and honest debate on sectoral representativeness with the aim of including (and not selecting or excluding) as many partners as possible.

In several countries in the region where the sectoral level bargaining is not fully developed, over the years a vicious circle has developed: social partners at sectoral level are, with a few exception, rather poor in providing services to their members and weak in representing their interests, due primarily to the lack of necessary human and financial sources. As an understandable response, neither workers nor businesses are keen to join the respective sectoral organisations, which further deteriorates sectoral social partner organisations in institutional and, as importantly, in political terms. Finally, a special miss-match, asymmetry of social partners at sectoral level has to be emphasised, which has a special relevance regarding sectoral collective bargaining. As it was already referred to earlier, most sectoral trade unions have survived the profound economic and political changes of the last decade, and thus, alone or together with some new professional trade unions are ready to enter into bargaining at sectoral level. Their respective counterpart is, however, either missing or showing a far too complex structure.

The quasi-employer organisations in the socialist past followed a regional rather than sectoral structure, and the establishment of sectoral sections has been rather slow. Even if sectoral employer organisations existed they would be much more professional organisations than distinct interest groups that represent employers' interest, as mentioned already. This is the prime reason, why sectoral employer organisations usually do not possess the authority to conclude agreements on behalf of their membership. Should this situation remain unchanged, no considerable progress can be expected in sectoral collective bargaining.

In another group of countries, for instance in Estonia, there are no established criteria for evaluation of trade union or employers' organization representativeness. Everything has been done thus far on the principle of *de facto* recognition, and without any major misunderstandings. In practice, all three union confederations and their affiliates (the federations of industrial organizations) have been recognized as representative.

In Poland, the law makes a distinction between the various criteria for union representativeness, according to the level at which collective bargaining takes place. A trade union is said to be representative at the national level (supra-enterprise level) if it has: "i) at least 500, 000 workers; or ii) at least 10 per cent of the total number of workers covered by the scope of its statutes, but not less than 5,000 workers; or iii) the highest number of workers for whom the specified supra-enterprise agreement is to be concluded" (Art. 241–17, para. 1). These criteria are specifically oriented towards the recognition of confederation unions at the national level. The law also states that when a confederation has proved to be representative, all the federations belonging to it are automatically considered to be representative (Art. 241–17, para. 3). The criteria for the determination of representativeness are different at the enterprise level, where majority rule is applied. The law says that when "not all trade union organisations enter into bargaining in the manner defined (by the law), bargaining may be conducted by those trade union organisations which together have as members at least 50 per cent of workers and other persons working for the employer after appointing a common representation or entering into bargaining jointly" (Art. 214–25, para. 3). These legal measures have been introduced into the system in order to bring, to the maximum extent possible, a certain order to union recognition at the enterprise level, where bargaining has been impeded by excessive union pluralism.

As a final example of how the countries of the region are dealing with the issue of union representativeness, let us examine the Bulgarian solution. As in Hungary, Bulgaria has introduced criteria for determining the representativeness for both unions and employers' associations. Moreover, parallel to the approach adopted in Poland, a distinction is made between the national and the local level. As far as the national level is concerned, the following criteria for the representativeness of trade unions are given: "1. It should have no less than 50 grass root trade union organisations in the sector concerned; 2. each grass root trade union organisation should have no less than 5 members" (Decree No. 7 of 22 January 1993, Art. 3, para. 2)(25). At the geographically local level, the criteria are modified. According to the same decree, a local trade union should meet the following conditions: "1. it should have corresponding local bodies in no less than 80 per cent of the ex-district cities in the county; 2. it should have no less than 50 trade union organisations at enterprise level on the territory of the corresponding ex-district; 3. each trade union organisation at the enterprise level should have at least 5 members"

(Art. 3, para. 4). The criteria for determining representativeness of workers' organisations at the national level were challenged by a Bulgarian union, the National Trade Union, which brought a formal complaint to the ILO Committee on Freedom of Association. This complaint of 1994 held that the criteria fixed in the law run contrary to the principle of freedom of association and the principle of pluralism adopted by Bulgaria. It was based on allegations of "excessive criteria" for determining representativeness of workers' organisations at the national level, as set forth in Decree No. 7 of 1993 for participation in tripartite co-operation as provided for in Section 3 of the Labour Code. In its conclusion of this Case No. 1765 (Bulgaria), the ILO Committee on Freedom of Association upheld the principle that "the determination of the most representative trade union should always be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse" (26). The Committee considered that the criteria for representativeness contained in the Bulgarian Decree No. 7 of 1993 did not appear to be contrary to this principle, and that the requirements contained in the Decree were not disproportionate given the current reality (27).

This particular case aside, it is interesting to note that the criteria of union representativeness can always be challenged from a legal point of view, for it is always very difficult to have in law and practice clear criteria which are universally valid. This also indicates that practice, as well as jurisprudence, will likely play a determinant role in further clarifying the notion of representativeness in CEE countries.

The criteria in Bulgaria for determining the representativeness for employers' organisations are somewhat similar to those for trade unions, because a similar quantitative method is applied here, as well.

For example, the Labour Code regulates the criteria for recognizing the representative status of employers' organizations. They are: a minimum of 500 employers; organizations in a minimum of one fifth of the sectors with a minimum of 10 employers in each sector; territorial organizations in at least one fifth of the municipalities in the country and a national governing body.

The representative character of an organization at the national level is automatically ascribed to the following levels: sectoral, regional, enterprise level. Art. 36 of the Bulgarian Labour Code indicates also the process through which representativeness is checked: Art. 36a. (new, SG 25/2001) (1) Every three years after their recognition under art. 36, para 2 the organisations of the workers and employees and of the employers shall certify their representation by the order stipulated by art. 36. (2) The Council of Ministers, at its initiative or upon proposal of the National Council for tripartite partnership can carry out inspection of the representation of the organisations of the workers and employees and of the employers according to art. 34 and 35. (3) Depending on the results from the inspection the Council of Ministers shall take a decision by which it can: 1. refuse the recognition as representative t organisations of the workers and employees or of the employers; 2. confirm their representation by the order of art. 36, para 1 and 2. (4) The refusal under para 3, item 1 can be appealed by the order of art. 36.

From these few examples, it should be noted that criteria for the determination of representativeness are heavily based on quantitative methods, which are considered to be the "most" objective. Yet experience shows that quantitative criteria, although extremely important, cannot be considered the only valid criteria in the determination of representativeness. It is too early to say whether new

criteria, such as authenticity, independence, autonomy, and territorial coverage, will work effectively in the industrial relations practices of Central and Eastern Europe. The solution to introduce quantitative methods into legislation has been largely accepted for the time being.

We should note as a final point, however, that the law in many countries allows the possibility for any organisation to challenge the representativeness of any other organisation before the national courts (e.g., in Bulgaria, Hungary, and Poland).

2. 8 Collective Bargaining in the Public Sector

In a good number of CEE countries, the law regulating the employment relationship in the public sector does not make any clear distinction between employees of state-owned enterprises of a commercial or industrial nature, employees of publicly-owned utilities, and civil servants.

Much work remains to be done in this area in order to bring some clarification in the adoption and implementation of a new legislative framework. In some countries, attempts have been made in this direction, and new legislation is currently being prepared. In Hungary, two current laws, one on the legal status of public employees, the other on the legal status of civil servants, are under examination for being merged into a single, consolidated act. Legislative reforms are also being discussed in other countries, such as the Czech Republic and Romania.

The experience in the region shows that there is usually no collective bargaining for civil servants and little collective bargaining at all in the public sector (28).

However, situation has improved in recent years. Negotiation and consultation take place in a haphazard way in sectors like health, education, transport, communication, science, and research, but in general these sectors have not fully benefited from a structured system of collective bargaining which could bring beneficial effects measured in increased productivity and efficiency in these important economic activities. There is a general sense of disillusionment on the side of the workers and employees in the public sector, for they perceive their demands are not listened to carefully.

Collective bargaining in the public sector suffers, above all, from a series of legal restrictions and limitations on certain categories of workers, as well as on certain economic activities deemed to be essential, and therefore subject to limitations on exercising the right to strike and to engage in collective bargaining. This is a vast technical issue which would require a separate analysis. For our purposes it is sufficient to say that the law in many countries imposes restrictions and limitations on the exercise of the right to strike, and that this leaves too much room for arbitrary decisions. (29)

However, it should be noted that in a number of countries, for example in the Czech Republic, the right to collective bargaining for civil servants is recognised, even for such essential categories of workers as the police. This is possible, under the Czech example, in those departments of the police where at least 40% of the employees are members of a union. It is also interesting to note that, according to some amendments introduced in labour legislation, it is possible for the armed forces to engage in collective bargaining. However, these categories of workers have no right to strike.

It is interesting to note that the employment and labour relations framework in Slovakia are now guided by the Labour Code for both the public and private

sector. The implementation of the new Labour Code by Act No. 311 of 2001, Act No. 312 of 2001 on Civil Service and Act No. 313 of 2001 on Public Service will, first time after 50 years, introduce a different employment framework for private and public sector employers (30). The framework in public sector will be different for public employers and for civil servants. Freedom of association for employees are secured in the civil and public service institutions. The trade union organisation or the Personnel Council (31) would be entitled to represent the public employees. Trade unions in civil service will have the right for sectoral collective bargaining on employment and working conditions and also about wages in a limited way. Trade unions will have the right for each year wage bargaining with representatives nominated by the Government. The wage bargaining outputs will be implemented into the proposal of the state budget, including the compulsory insurance funds and will be valid after the approval by the parliament. The bargaining process and its outputs will slightly differ, comparing to the public service or to the private sector. According to the law, trade unions in civil service could bargain on the length of the working time and holidays, wages and funds for the Social Fund. Trade unions in public service will have the similar scope of collective bargaining topics, however there will be some reduced limitations (e.g. possible reduction of the standard working time without wage reduction, holiday extension etc.). Wage increase will be limited by the state budget and regulated in similar way like in the civil service. Collective disputes in public sector will be guided by the same rules as those for the private sector. Strikes are considered as a legal, but extreme tool applied according to the Act No. 2 of 1991. Civil servants in high leading positions and positions, which are inevitable for the defence, health and life protection, are excluded from the right for strike.

Although it is too early to advance any conclusions regarding collective bargaining in the public sector, it will be interesting to monitor the evolution of negotiations for these categories of employees in the future. To different degrees in different countries, there is already an effort to work out a clearer definition in both legal and practical terms of the meaning of “public sector” or “public service”. The lack of clear definitions creates uncertainties and misunderstandings, especially when time comes to interpret the law and to apply it in concrete circumstances.

Despite the confusion in this area, in some CEE countries (e.g., in Hungary), the rules and regulations dealing with collective bargaining which apply to the private sector were also applicable to the public sector, especially in industrial and commercial state-owned enterprises. In fact, several institutions had been created in Hungary in order to carry out cooperation between public employees, civil servants, and public authorities at the national level. For example, at the national (central) level, consultation was carried out in the National Council of Interest Reconciliation of Budgetary Institutions, composed of representatives from the government, the national federations of local councils, and the trade unions concerned. At the sectoral level, co-operation was carried out by the Minister for that particular sector, the federations of local councils and the related trade unions concerned. Finally, at the regional level, consultation was carried out by the local council and the trade unions.

In general, the problem of collective bargaining is less serious in those state-owned industrial and commercial enterprises in which there is an effort by management to run the enterprise according to the models and rules applicable to the private sector.

The problem of collective bargaining in publicly owned utilities is, however, more complicated, since the very question here is to see how “essential” these services are to the public. Nonetheless, a main issue remains the control of the government over management decisions in public enterprises. This continues to have a detrimental effect on the managerial culture for public managers, who often still identify themselves as “civil servants” rather than as genuine “public employers”.

3. Collective Agreements

In examining the various texts of legislation on collective agreements in Central and Eastern Europe, we find that the standard definition of the term “collective agreement” follows in large part the ILO definition: “The term collective agreement means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more representative workers’ organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.” (30) Such a common-denominator definition is to be found in one form or another in the different legislative texts concerning collective bargaining and collective agreements of the countries under examination. This common understanding helps in our comparison of the various legislative texts.

3. 1 Collective Agreements and the Law

Before coming to examine the contents, duration, and validity of collective agreements, let us first examine the relationship between the law and collective agreements. This relationship can be summarised in its two main qualities: 1) the law’s promotion of collective agreements as a tool for industrial relations, and 2) the law’s measures to ensure the observance of the provisions of collective agreements.

A collective agreement is a treaty between social partners which can be considered in part as a kind of peace treaty, and in part a normative treaty to establish rules and codes of conduct. It is a peace treaty because it presupposes that for the duration of the agreement, the parties will refrain from exercising industrial action; it is a normative treaty because rules, procedures, and conditions are fixed by its very nature. A collective agreement usually contains two parts: one substantive, the other procedural. The substantive part of the agreement concerns wages or other conditions of employment, the distribution of work among the workforce, access to jobs – in short, all matters which determine the conditions under which relations between individual employers and workers can be and are created, and on rights and obligations arising from the employment relationship once it has been created. The procedural part of the agreement concerns the relations between the collective bargaining partners as such, as well as the institutions and methods to be used for the prevention or settlement of disputes, and thus for the creation of substantive norms. Among other things, the procedural agreement comprises the machinery for the settlement of labour disputes.

Article 30 of the Hungarian Labour Code states, for example, that in general collective agreements may govern: “a) rights and obligations arising from employment, methods for their exercise and fulfillment, and related procedures;”

and “b) the relationship between the parties entering into a collective agreement.” This provision delimits the scope of competence for the parties when concluding a collective agreement, and at the same time provides the social partners with a legal instrument when carrying out negotiation. Moreover, in this country a collective agreement is considered to be a source of labour law (Labour Code, Art. 13, para. 5). The parties can determine two kinds of rules in the collective agreement: rights and obligations arising from employment, and the relationship between the parties concluding the agreement.

In principle, a collective agreement cannot stipulate rules contrary to law, unless it is to surpass legal minima and provide conditions more favourable to the workers. There are different types of collective agreements and, as we have mentioned above, they can be negotiated at different levels of the economy. In this specific area – and this is true not only in Hungary – the problems related to the conclusion and number of valid collective agreements have more to do with the question of the representativeness of the parties to the agreement than with applicable legislation. Collective agreements, when and where they are signed, also cover broader issues, such as those related to employment policies. The implementation of such clauses, however, still has a lot to do with the nature of the enterprise and of the sector in which the collective agreement has been signed. Another important question is whether the agreement will be extended to other categories of workers or to other enterprises (discussed in Section 3. 3, below).

The nature of a collective agreement is also indicated in the legal provisions of Poland. The previously-mentioned Act of 29 September 1994 establishes at Article 240 that “[a]greements shall define: i) conditions which should be met by the contents of an employment relationship ..., and ii) mutual obligations of the parties to the agreement. ” Similar legal notions can also be found in the Collective Bargaining Act of the Czech Republic at Article 2, para. 1, where it is said that “collective agreements shall govern individual and collective relations between employers and employees and the rights and duties of the parties thereto. ”

The legislative provisions on collective agreements in CEE countries are, then, mainly based upon the recognition of a fundamental rationale which permeates the law regulating collective bargaining. This rationale distinguishes between substantive and procedural agreements – a distinction which is significant for the orderly development of industrial relations.

3. 2 Observance of Collective Agreements

Once it is accepted that a collective agreement is both an industrial peace treaty and a source of autonomous normative rules for the regulation of terms and conditions of employment, for the distribution of work, and for the stability of jobs, these two aspects should be seen in a wider framework of continuous reconciliation between management and labour expectations. What can the law do to protect these expectations?

To the two social functions of a collective agreement correspond two actual or potential legal characteristics. The collective agreement may be, and in many countries is in fact, a contract between the signatories – i.e., between an employer or employers or their associations on the one side, and a trade union or unions on the other. At the same time the collective agreement is potentially, and in some countries truly is, a legal code.

The social function of maintaining industrial peace, therefore, is represented primarily through the legal function of contractuality. It is an agreement of temporary duration designed to bind the parties into a functioning (i.e., peaceful) relationship.

The (social) normative function – i.e., the codifying and rule-making function – of a collective agreement ensures that the agreed conditions are applied in the plant, enterprise, or industry covered by the agreement. Many of these provisions prescribe the terms of individual employment relations, other provisions indicate the conditions under which these relations may or may not be created. For example, a clause on wages, holidays, or overtime belongs to the first category of provision (about the individual employment relationship); a clause on the reservation of jobs for skilled workers or on the employment of non-union members belongs to the second category (conditions under which the relations may be created).

When considering the collective agreement as a legal code, we should also note that the agreement predetermines the content of future contracts of employment. It also prescribes minima and determines the substance of the contract of employment, but not the existence of such a contract. As a matter of law, the individual employer and worker decide whether or not to enter into a contract; once they have so decided, it is the collective agreement which indicates their rights and obligations under the contract.

Indeed, according to the current legislation in a number of countries in the region, collective bargaining between an employer, employers, and their associations on the one hand and union representatives on the other results in an agreement on the terms which will govern the employment conditions of the workforce. The result is not, however, a contract of employment. In fact, no one has a job by reason of a collective agreement, and no obligation to any individual comes into existence from a collective agreement alone.

The contract of employment is an act of individually binding submission, in the sense that both sides submit to the collective agreement, which expresses the bilateral rule-making authority of management and organised labour. In this sense, individuals submit their will to the maintenance and implementation of what has been decided before in a collective forum.

3. 3 Collective Agreements as Contracts: The Problem of Extension

One question that now arises is to what extent the agreement is a legally binding contract. Here, we enter the central area of acute controversy in present debates on collective labour law. One of the first issues to be examined is whether in each of the CEE countries, a collective agreement can be used as a tool to conclude a legally binding contract which is then extended on a non-consensual basis to other employers who did not take part directly in the negotiations. In other words, we must ask how accepted and respected the legal nature of a collective agreement is. Furthermore, we should also examine whether all or some collective agreements, for example those concluded at national level, can be effectively implemented at lower levels, including individual contracts of employment. This is a very delicate juridical problem since the law in most countries in the region is not very clear.

Nonetheless, the law provides for collective agreements to be “binding” on the signatory parties. A written collective agreement is, in general, presumed to be a legally enforceable contract, unless the parties have inserted an express clause that

the agreement is not intended to be legally enforceable; this can be done, but is extremely rare. The binding nature of a collective agreement is not always recognised by the employers, especially for those who are not members of national employers' associations. An important step in this regard would be the introduction, in those countries where it is not yet present, of the obligation to register collective agreements with the public authorities. This administrative procedure makes it possible to assess the true state of affairs in industrial relations without resorting to further investigations. This issue is lately discussed in a tripartite framework in Hungary, where the trade unions were particularly in favour of introducing the obligation to register collective agreements (31). This obligation has been finally introduced, but with mixed results (see above).

Also in Bulgaria, collective agreements that are of importance to the entire industry or at national level are registered in the Executive Agency of the General Inspection of Labour. Since March 2002, the collective agreement is considered concluded for the term of one year unless another term is agreed upon, but for no longer than two years. The parties may agree on a shorter term of action of the separate clauses.

In many Central and Eastern European countries, the extension of the binding effects of collective agreements is an issue highly debated, and is usually regulated by law. For example, in the Czech Republic the binding effects of a collective agreement can be extended through a decree of the Ministry of Labour to those employers who are not members of the employers' associations which have signed the agreement at the national level. The legal conditions for the extension of the agreement are stipulated in the previously-mentioned Collective Bargaining Act of 1990 (Art. 7, para. 2).

More recently, in Estonia, on the basis of relatively new amendment (§ 4 (4), entered into force 23. 07. 2000), a collective agreement concluded between a association or federation of employers and a union or federation of employees (i.e. was concluded on the sectoral (industrial) level) and a collective agreement between the central federation of employers and the central federation of employees may be extended by agreement of the parties in respect of the conditions determined in the Act (§ 6 (1) 1 and 3). The scope of extension shall be determined in the collective agreement.

In Hungary, the Labour Code regulates the extension of a collective agreement. On joint demand of the parties to the agreement, the Minister of Labour can extend the scope of the agreement to the entire sector or sub-sector, on the condition that the contracting parties are considered to be representative in that sector or sub-sector (Art. 34, para. 1). However, since 1992, the government received applications for extensions only from four sectors or subsector. Finally, the extension was effectuated in two sectors, (baking industry and electricity industry). In the baking sector, the Trade union Association of Baking Industry Workers and the Baking Industry Union signed the sectoral mainframe agreement in 1991. Altogether 90 percent of the respective sector belonged to these two organizations. However, the large state-owned bread making factories of the sector were privatized and decentralized during the subsequent years and several hundreds of new small enterprises were also founded. According to the reasoning of the application for extension, defencelessness of employees increased at the new private enterprises and the role of "black" economy was also significant. The sense behind the extension was the "unification of market conditions". It means

that the employer organizations of large enterprises and the trade unions of their employees jointly acted against the strengthening “dishonest” competition of small enterprises (32). In the electricity industry, collective agreements were concluded and extended right before the privatisation of the sector. The extraordinary nature of the situation is due to the fact that in 1995 the Minister of privatisation had to make an urgent agreement with the trade unions wording their demands in order to find, already in that year, foreign buyers for the enterprises of the sector representing high capital value. The conclusion of collective agreement and its extension were among the demands of the trade union because the trade union tried to eliminate the negative consequences resulting from the post privatisation of the employers (green-field foreign investments) and the decentralization of the trade unions. According to the evaluation of the trade union made at a later date, the conclusion and extension of the sectoral agreement in 1995 was a well timed action, because later they would have not been able to reach such agreement with the privatised companies in the new political atmosphere (33). The fundamental reason of the very low number of extensions lies in the low number of concluded sectoral collective agreements. In addition, only a small proportion of these agreements is suitable for extension (with having proper representativeness and being free from employer declarations on output, excluding the adaptation of certain parts). However, the extension procedure in Hungary is likely to be soon reconsidered with a view to the establishment of Sectoral Committees. Should the Committees be empowered to conclude collective agreements, the extension could become either automatic, or at least simpler, as the representativeness of contracting parties and their sectoral competence need not be assessed case by case.

In Poland, similar lines of argument hold in the interpretation of the legal norm concerning the extension of collective agreements. Collective agreements can be concluded on behalf of all workers employed by the employers subject to the agreement, unless the parties to the agreement decide otherwise. Agreements can also “automatically” cover employees working on a basis other than that of an employment relationship, as well as pensioners and workers who receive disability pensions.

In addition to this “automatic coverage”, there is the “formal procedure” through which a national union or an employers’ organisation may request the Minister of Labour “to extend by order the scope of application of a supra-enterprise agreement, or parts of it, to workers who are not covered by any agreement, in the event that this is dictated by an important social interest” (Act of 29 September 1994, Art. 241–18). Moreover, Polish law gives the opportunity to the unions who have signed an enterprise agreement to extend it to more than one employer (i.e., to other enterprises), if “these employers are members of an economic organisation” (Art. 241–28, para. 1). 2^o! However, such an extension is only valid if the agreement has been concluded on the part of the employer by the statutory body of the economic organisation.

In some other countries, such as Romania, a collective agreement signed at the enterprise level is automatically extended to apply to the entire enterprise workforce. In this country, only one collective agreement can be concluded for each company at the enterprise level, and according to the new Law of 23 September 1996 on collective labour agreements, the clauses of the collective agreement are applicable for all workers in the enterprise, whether they are union members or

not (Art. 9). This law also introduces provisions regarding the extension of a collective agreement signed at levels above the enterprise (Art. 11, para. 1).

As a further example, mention should be made of the treatment of extensions in the Bulgarian Labour Code, as amended in 2001 (34). The instrument of the extension is similar to that of other countries mentioned above. However, Bulgarian law has an additional provision according to which the legal effects of a collective agreement continue to apply to those employers that, during the life of the collective agreement, decide to quit the employers' organisation which had signed the agreement. Also, in case of transfer of the enterprise ownership or in case of merge, the old contract will remain in force until the conclusion of another collective agreement, and in any case for at least a year.

In Ukraine, certain extension effects of a "collective contract or agreement" are automatically enforced on the enterprises that the agreements cover. The provisions of a collective agreement signed at the enterprise level apply to all the workers employed in the enterprise, irrespective of trade union membership. These provisions of the enterprise-level agreement are binding both on the employer or the body authorised to represent the employer, as well as on the workers in the enterprise. The situation regarding extensions of an agreement signed at levels above the enterprise is slightly different. The provisions of a general, sectoral, or regional agreement, says the law, "are directly applicable to and binding on all persons within the sphere of activity of the parties to the agreement" (Act of 1 July 1993, Art. 9). This legislative provision renders possible the extension of the various clauses signed in an agreement to the majority of the workers.

Although the mechanism for extending the conditions signed in a collective agreement is recognised and regulated by law in most CEE countries, in some countries the extension mechanism is becoming less and less utilised in everyday practice. In the Czech Republic in 1994, for example, the contents of the Economic and Social Agreement signed at the national level were extended, for the first time, to employers who did not take part in the negotiations. The reaction to the extension by the employers was very critical of the government and the trade unions. The final result, after three years, has been a dramatic decrease in the number of employers subject to the binding nature of national agreements. Therefore, the importance of such national agreements as well as of the instrument for extending the validity of the collective agreement clauses is losing ground in this country, and this is due in part to political reasons that we cannot deal with in this report. As an illustration, however, we can note that during 1995, four national collective agreements were extended, but they covered a total of about twelve employers.

3. 4 Collective Agreements as a Legal Code

According to the laws of a number of CEE countries, the terms and conditions of employment finalised in a collective agreement are legally binding only after registration with the public authorities. This is the case in Poland, where the registration of collective agreements is regulated by Art. 241–12 of the Act of 29 September 1994. Once registered, the collective agreement is considered to be law binding on the signatories, the parties represented by the signatories, and on any other parties to which the agreement is automatically extended.

Moreover, an employer who is party to the agreement, or member of an association which has signed the agreement, cannot contract out of its terms of employment. Thus the bilateral rule-making power of the parties to a collective agreement does not only influence but restrains the unilateral rule-making power of management. In general, as a consequence of this, a term in the contract of employment which is to the worker less favourable than the corresponding collective term is automatically void, and there is a presumption that a collective term is deemed to have been agreed by the parties to the individual contract.

In those countries where an extension mechanism is in force, such an extension is usually made by the Ministry of Labour. However, even in those countries where the law refers to both the registration and the extension of collective agreements, there is still a need to better clarify this issue in practice. There are countries where the extension can be done only on proof that the agreement is of wide and general application, or covers a minimum percentage of workers, or has been concluded by the most representative organisations, or even sometimes that it is in the public interest to render the agreement a common rule for an entire sector or industry. The procedure of extension must comply with certain requirements of substance and form. Extension procedures are usually elaborated and also supervised by the public authorities, in general through the labour inspection system.

Two further points regarding the binding effects of an agreement should be mentioned here, especially when we consider the collective agreement as a legal code. The first point is technical, and involves the nature of the workers' claims against the employer. These claims must be based on the contract of employment, of course, not on the collective agreement, which is only supportive of the claim. The second point has wider implications for the collective agreement. The object of a collective agreement is to delimit the power of management through the combined rule-making power of management and labour. Hence, the general rule is that the collective terms are a "floor", not a "ceiling", and can be contracted out of for the benefit of the worker only.

In several countries, such as in the Czech Republic and Slovakia, collective agreements may improve upon the rights set out under the Labour Code, other laws or Government decrees, but may not reduce them. There is a principle applied that the agreed conditions of employment and wages in higher (sectoral) level collective agreements (KZVS) are at a minimum or maximum standard, which must be respected in collective bargaining at the company level.

The binding nature of the collective agreement as a legal code is important where the supply of labour exceeds the demand. The law is called upon as a countervailing force to support the weaker side in industrial relations, but the law is impotent as a countervailing force against the combined forces of labour and management. This also explains why it is very difficult to insist that the collective terms are not only minima but also maxima. Of course, maxima can also be fixed, but their enforcement becomes a problem in practice. If an employer is willing to pay higher wages than those laid down in the agreement, who will prevent him? If the market reduces the power of management, can the law restore it? In principle, a collective agreement can try to regulate these aspects as well, but experience shows that the respect of any maxima defined in a collective agreement can only succeed if they are backed by a determined policy of organised labour itself. Of course, sometimes organised labour is also interested in treating collective terms as maxima. This happens when employers offer terms which are more favourable

that those obtainable by a union with a view to inducing workers not to join the union. This practice seems to be well known among militant anti-union employers, but this has to do more with the industrial relations system as a whole, rather than with a pure juridical solution to the problems of labour relations.

A few final points regarding the “codification” aspect of collective agreements. First of all, it should be noted that not every collective agreement can be enforceable *erga omnes*.

This can be done only if the agreement is made by organisations which represent a substantial proportion of the employers and workers concerned on both sides. Secondly, the requirement that the terms of the collective agreement must be “recognised terms and conditions of employment” corresponds to the conditions under which legal systems provide for the “extension” of an agreement – e.g., it must cover more than half the workers, or must be concluded by the most representative organisations. This latter aspect, in particular, is not well clarified in a number of laws concerning collective agreements in Central and Eastern Europe, and should be better defined in the near future.

3.5 Contents of Collective Agreements

The relationship between the law and the contents of collective agreements varies according to country. In one group of countries, the law indicates only in a very general way what the contents of collective agreements should be; in another group of countries more detailed regulations apply. The former group includes such countries as Bulgaria, the Czech Republic, and Hungary, while the latter group can be illustrated by Poland, Russia, and Ukraine.

In Bulgaria, the Labour Code states at Article 50 that a collective agreement shall regulate issues related to the labour and social spheres which “are not regulated by mandatory provisions of law.” In this sense, the Bulgarian law leaves a large margin of manoeuvre for negotiation to the social partners. The same can be said for the Czech Republic, where the issues which may be included in collective agreements are indicated by the Collective Bargaining Act. Negotiation, of course, can take place on a variety of issues, and with Law No. 1/1992 on wages, compensation for work, and average income, considerable freedom has been given to the parties to negotiate issues related to wages and income policy. Of course, the collective agreement cannot include rules or contents which run contrary to the law. But the practice in countries where the contents of collective agreements are relatively free has raised the question of whether it is possible through collective agreements to change the legal basis of the relations between the parties if national legislation stipulates otherwise. Concerning this, we can say that as a general principle, negotiation *in melius* is admitted, while negotiation *in peius* is rejected. In other words, rules and regulations which are more favourable to the workers are in line with the spirit of labour law.

Much is debated in trade union circles on the contents of collective agreements in many countries where the contents are freely determined by the parties. For example, in the Czech Republic the most frequent issues which are negotiated in collective agreements are labour-management relations, health and safety at work, wages, security of employment, and procedures for settling grievances. Such issues are usually treated by establishing principles in national agreements, and negotiating in more detail at the enterprise level.

It should not come as a surprise if, as mentioned above, in a number of countries legislation regulating collective bargaining and collective agreements refers more specifically to the list of subjects which should be part of negotiation. In Poland, this has become the object of recent legal regulations. Polish law takes the approach of defining what should not be part of negotiation: “agreements may not define: (i) principles governing specific protection of workers from termination of employment relationships; (ii) rights to which workers are entitled in the event of an unfounded or unlawful notice of termination or a termination of an employment relationship without notice, with the exception of wages and compensation to which workers are entitled as a result of such an event; (iii) responsibility for maintaining order and disciplinary responsibility; (iv) maternity and child-care leave; (v) protection of wages” (Act of 29 September 1994, Art. 240, para. 3). Such a “negative freedom” to delimit the issues of negotiation as opposed to “positive freedom” to negotiation is quite singular and among the CEE countries can be found only in Poland.

Interestingly, one of the new features of the collective agreements concluded during the past two years in Hungary is that wage agreements try to deal with the inflation within the fiscal year. The three-year wage agreements of MAV (Hungarian Railways) concluded in the beginning of 2000, envisages that the rate of inflation should be taken into account after the end of each year. Should actual inflation exceed the extent forecasted at the conclusion of the agreement, the company pays the difference in one sum. A similar practice has become common in the electricity industry and at the enterprises of other sectors. Moreover, during the negotiations of the wage increases of public employees for the year 2000, also affecting the budget, this issue was also in the agenda. In these cases, there is an agreement about the increase in real wages at the end of the year in the function of the rate of inflation. This mode of indexing the wages directly resulted from the uncertainties following the enterprises wage negotiations that stemmed from the government forecasts underestimating the rate of inflation. On the other hand, however, commenced economic growth created a fundamentally new situation also for wage bargaining and it is possible that the central issue of negotiations will continue to be the increase of real wages also in the long run.

The laws regulating the conclusion of collective agreements in Russia and Ukraine specify the acceptable contents of a collective agreement in more detail. According to Russian law, a collective agreement at the enterprise level can cover the following issues: “a) the form, system and rate of remuneration of work, as well as tips, benefits, compensation and pecuniary supplements; b) machinery for determining remuneration for work, on the basis of price increases, inflation levels and the indicators fixed by the collective agreement; c) employment, continued training and conditions governing assignment of workers; d) hours of work, rest periods and leave; e) improvement of working conditions and the protection of workers, in particular women and youth; f) compulsory and optional medical and social insurance; g) protection of workers’ interests and housing in the event of the privatisation of the enterprise; h) conditions for workers who combine work and studies; i) supervision of the application of the collective agreement, liability of the parties, social partnership and guarantee of the normal operating conditions of trade unions and other representative bodies empowered by the workers; j) waiver of the right to strike inasmuch as the conditions established in the collective agreement are respected fully and at the appropriate time” (Act No. 2490–1, Art. 13).

In Ukraine, a “collective contract” at the enterprise level should include, *inter alia*: “a) changes in the organisation of production and work; b) provision of productive employment; c) fixing of rates and remuneration; determining the form, system and rate of remuneration and other kinds of pay for work (wage supplements, overtime and extra pay, bonuses, etc.); d) fixing guarantees, compensation and benefits; e) participation of the work collective in forming, distributing and using the profits of the enterprise (if provision is made for this in the staff regulations); f) the work schedule and hours of work and rest; g) working conditions and occupational safety and health; h) providing workers with services relating to housing, welfare, culture and medical care, and organising leisure and health activities for them; i) guarantees for the activity of trade union or other organisations representing the workers” (“Act respecting collective contracts and agreements” of 1 July 1993, Art. 7).

In Russia and Ukraine, legislators have found it necessary to stipulate the contents of a collective agreement, in order to make sure that the most important topics of employer-employee relationships are covered. This approach is, of course, part of the cultural tradition in these countries, where there is a tendency to regulate negotiating issues by law. Indeed, the content of agreements at levels above the enterprise is also disciplined by the law in these two countries.

In Russia, the law stipulates the content of an “accord” at the federal, republic, sectoral or occupational, and territorial levels. The content of an accord under Russian law should cover the following matters: “a) remuneration, working conditions and work protection, system of work and rest periods; b) machinery for determining work compensation on the basis of price increases, inflation levels and criteria fixed by the accord; c) compensatory payments, the minimum amount of which shall be fixed by legislation; d) protection of the environment and workers’ health in the workplace; e) special social protection measures for workers and members of their families; f) protection of workers’ interests in the event of the privatisation of state or municipal enterprises; g) measures on behalf of enterprises which create new positions that use the working capacity of handicapped persons or youth (including adolescents); h) development of social partnership and tripartite co-operation, promotion of the conclusion of collective agreements, prevention of labour conflicts and strikes and strengthening of work discipline” (Act No. 2490–1, Art. 21).

The same applies to Ukraine, where the law indicates what should be the content of the collective agreements at the various levels above the enterprise. The Ukrainian law specifies the content of agreements at the national (central) and sectoral levels, while it leaves to a general formula the content that can be negotiated at the regional level. For example, at the national (central) level, the law enunciates a series of principles, including those related to the negotiation of standards for the implementation of socio-economic policy and industrial relations. More specifically, the law states that the following issues have to be part of the negotiations: “a) labour guarantees and the provision of productive employment; b) minimum social guaranteed wages and income for all population groups, which are such as to ensure an adequate standard of living; c) minimum subsistence wage and minimum standards; d) social insurance; e) industrial relations, hours of work and rest; 1) safe working conditions and environmental protection; g) meeting the non-physical needs of the population” (Act of 1 July 1993, Art. 8). The law continues with more details regarding the conclusion of an

agreement at the sectoral level. But the practice in Ukraine is quite different. The number and implementation of collective agreements are impeded by numerous factors, which can be summarised as follows: a) lack of clarity in the various economic plans adopted during 1991–1995; b) political instability; c) difficulties in signing the tripartite General Agreement; d) changes in ministries' responsibilities vis-à-vis workers' representatives during negotiation of collective agreements; and e) weaknesses of the employers' associations at the various levels of the economy. These are among the many impediments remaining for the promotion of collective bargaining in Ukraine, although, as we have already mentioned, important changes are currently being made in the field of labour law 31. The need, in general, of the legislator to go into many details, demonstrates the fear (or lack of confidence) of the social partners that they will not be able to "impose" on each other the agenda of issues of interest to them in negotiations. This is a normal phenomenon, if one considers the major difficulties still encountered by the workers' representatives when entering into genuine collective bargaining mechanisms with their legitimate counterparts either in the private or the public sector.

Even when the topics of a collective agreement have been determined, they can still be changed. This usually occurs by mutual agreement of the parties in situations of changing economic and social conditions. We should note, however, that according to the law, it is not possible to amend the prescriptions of basic labour law or of special labour protection legislation.

Regarding the possibility for an individual contract of employment to fix better working conditions than those regulated by a collective agreement, this principle has been widely accepted in the majority of systems. In fact, several national laws prescribe that the provisions of an individual employment contract cannot be less favourable than those fixed by a collective agreement or by the law itself. For example, the Bulgarian Labour Code expressly states: "The collective agreement shall not contain clauses which are [less] favourable to the employees than the provisions of the law" (Art. 50, para. 2). In Poland, as well, the Act of 29 September 1994 provides that: "Stipulations of an enterprise agreement may not be less advantageous to workers than the stipulations of the supra-enterprise agreement which covers them" (Art. 241–26, para. 1). The same principle can also be found in the Hungarian Labour Code, although in a different context. Hungary makes a distinction between collective agreements with a so-called "narrow scope" and those with a "broad scope", and the Labour Code states: "A collective agreement having a narrow scope may only differ from one having a broad scope to the extent that it specifies more favourable conditions for the employees" (Art. 41).

Finally, it should be noted that the notion of not admitting less favourable working conditions than those negotiated at a higher level is a constant measure in many legislative texts, although it is not always implemented in practice.

3. 6 Duration of Collective Agreements

The duration of a collective agreement is regulated by both the law and the collective agreement itself. According to the Collective Bargaining Act in the Czech Republic, a collective agreement should be concluded only for an expressed period of time. Even if the parties do not specify the period of time in the text of the collective agreement, the law assumes that the agreement is valid for one year. It is

left to the parties to negotiate when and how a collective agreement should be renewed. In the Czech Republic, the parties usually specify the duration of the collective agreement.

In Estonia, the term of a collective agreement is **one year**, unless the parties have agreed otherwise. This is also the practice in other countries, such as Hungary and Poland. It is interesting to note that in Poland, according to the Act of 29 September 1994, the negotiating parties may agree to set the suspension of the collective agreement or of certain of its provisions for a period which is no longer than one year, in order to avoid or limit the dismissal of workers for reasons under the control of the employer (Art. 241–27, para. 1). In this case, the provisions stipulated in an enterprise collective agreement which are more favourable to the workers than under applicable legislation may be suspended.

The practice concerning the duration of collective agreements varies according to country; however, it tends to be between one and two years. For example, one year duration of collective agreements is most often used in Bulgaria, the Czech Republic, Romania, and Slovakia.

In Hungary, the majority (86 %) of the registered collective agreements at the end of 1999 was concluded for an unlimited period of time. Most of the collective agreements (52%) concluded for a definite period of time have validity exceeding three years. Altogether one fifth (19 %) of them expires within one year. At the same time, 63 % of the contracting parties also concluded wage agreements. Consequently, the typical agreements concluded for unlimited period of time are routinely completed with one year or more frequent wage agreements. As the legal status of these agreements is the same as that of collective agreements, approximately two thirds of the agreements are amended annually, but in general these amendments do not affect relationship between the contracting parties and the non-wage type conditions of individual employment. Supposedly, the practice of separate wage agreements is due to the high inflation rate of the early and mid 80ies (in some years, the rate of inflation exceeded 30 %). This necessitated annual or even more frequent corrections of wages, while the other parts of the collective agreements continued to be valid in their original wording.

As far as the duration of a collective agreement is concerned, in Poland, the general practice is to sign a contract for two years. In Romania, a collective agreement is signed for a determined duration which cannot be less than one year, leaving the parties free to conclude an agreement for a longer period (Law of 23 September 1996, Art. 23, para. 1). It should also be noted that in Poland, where collective agreements are concluded for a limited period of time, the parties can extend the validity of an agreement, prior to its expiration, for a specified period, or they can recognise the agreement as valid for an unspecified period of time. In Bulgaria, the Labour Code states that a collective agreement is considered to be concluded at least for one year, unless it provides otherwise (Aft. 54, para. 2). In another group of countries, such as in Russia, the law leaves it to the parties themselves to fix the period of validity of an “accord” or collective agreement. Finally, in both Russia and Ukraine, the law leaves the task of supervision of the application of the agreement to the parties of the agreement themselves.

3. 7 Registration and Validity of Collective Agreements

A collective agreement is usually binding on the signatory parties once signed. However, legislation and administrative regulations in the various CEE countries go into details regarding the validity of collective agreements. In many countries, for example in Poland, the Czech Republic, and Romania, a collective agreement is considered valid only if it is registered with the competent public authorities. In Poland, this registration is regulated by law. The Act of 29 September 1994 enunciates that “an agreement shall enter into force as of the date specified in it, however not earlier than the date of registration” (Art. 241–12, para. 1). Once the agreement is registered, the employer has a series of legal obligations to fulfill. *Inter alia*, the employer must inform the workers about the agreement’s entry into force, supply the trade union organisations with sufficient copies of the agreement, and, should a worker so request, provide the text of the agreement and explain its contents. In this country, then, the validity of a collective agreement depends upon its registration. Since the introduction of the registration system is a current subject of debate in many countries in the region, it would be interesting to examine how this system works in Poland, which was among the first to introduce such a system.

Collective labour agreements are supposed to be registered after the examination of their provisions as to their compliance with labour law. Enterprise collective labour agreements are registered by the regional labour inspectors. Supra-enterprise collective labour agreements are registered by the Minister of Labour and Social Policy. According to preliminary data gathered from the *General Labour Inspection*, there are over ten thousand enterprise collective labour agreements registered at the regional labour inspector offices. There are also over seventeen thousand accessory protocols to those agreements. The number of registered supra-enterprise collective labour agreements, as of 31st October 2000, reached a total of 129, of which 15 in 2000. Moreover, the following registrations also took place: – 44 agreements on the entire or partial application of a collective labour agreement; – 47 accessory protocols, 16 of which in 2000. As of 31st October 2000, the total number of registered collective labour agreements, agreements on their application and accessory protocols amounts to 244. It is worth mentioning that the registered collective labour agreements are related to workers employed by over 3500 distinct employers. Among collective labour agreements registered at the end of the year, we find agreements concluded for employees of: – “ORBIS” S. A. ; the civil army; the State Forestry Management Service; the Polish Telecom operator (“Telekomunikacja Polska S. A.”); the Municipal Bus Services and of Warsaw Tramways; the State-owned “Polish State Railways” (PKP) enterprise. The already mentioned Act of 9 November 2000 introduced a number of significant changes in collective labour law provisions included in the Labour Code as well as in three acts of 23rd May 1991: on trade unions, on employers’ organisations and on the settlement of collective labour disputes. The new Act which entered into force on January 1st, 2001, systematises the social dialogue machinery in the country. This Act has two main goals: a) it harmonises Polish collective labour relations provisions with the Constitution of the Republic of Poland of 1997 and with European legislation; b) it is based on past experiences and aims at regulating the numerous collective labour law issues in a more balanced way. This Act amended art. 240, § 3 of the Labour Code. It removed all possible limitations to the content of a collective agreement and

introduced the principle, according to which “a collective agreement shall not interfere with rights of third parties”.

In Romania, a collective agreement is considered to be valid from the date of registration (Law of 23 September 1996, Art. 25, para. 3). Collective agreements signed at the national (central) and industry levels must be registered with the competent authorities. The agreement can be registered with the municipality of Bucharest, or with the directorate of the department of labour and social security at the Ministry of Labour. Within 30 days the agreements are published in the Romanian Official Gazette (Law of 23 September 1996, Art. 29).

In the Czech Republic, according to the Collective Bargaining Act, a collective agreement is binding on the signatories. The Czech law further states that a higher-level collective agreement (above the enterprise level) is also binding on:

“(a) employers on whose behalf the collective agreement was concluded by an employers’ organisation; (b) workers on whose behalf the collective agreement was concluded by the appropriate trade union body or high-level trade union body; (c) a trade union body on whose behalf the collective agreement was concluded by the appropriate high-level trade union body” (Art. 5, para. 2).

Once the higher-level collective agreement is signed, the party acting on behalf of the employers has an obligation to file the agreement with the competent public authority, which is the office of the Ministry of Labour in which the organisation is registered. The mechanism of filing and registering the higher-level collective agreement automatically renders public the information contained therein. In fact, the Ministry of Labour office where the agreement has been filed should provide, for a fee, copies of the agreement on request. At the same time, the trade union body which concluded the agreement or on whose behalf the agreement was concluded has an obligation to inform the workers on the contents of the agreement within 15 days of its conclusion, at the latest (Art. 9, paras. 4–5).

Slovakia is the same: according to part 9 of the Labour Code, on registration of collective agreements, it lays down: 1) it shall be the duty of the contractual party on the part of the employers to deliver the collective agreement of a higher degree and relevant decision of the arbitrator to the Ministry for deposition within 15 days from the date of signature of the collective agreement of a higher degree, or within 15 days from the date of delivery of the decision of the arbitrator to the contractual parties. The contractual parties shall proceed identically in cases of amendment of the collective agreement; 2) registration of the collective agreement of a higher degree concluded under art. 4, paragraph 1 shall be notified in the Collection of Laws of the Slovak Republic. Notifying in the Collection of Laws of the Slovak Republic shall be requested by the Ministry; 3) the Ministry is obliged, upon request, to provide a copy of the collective agreement of a higher degree to the applicant.

The situation is slightly different in Hungary. The Hungarian Labour Code, (amended in 1999) provides that “in agreement with the National Labour Council, the Minister of Labour shall determine the order of registration of collective bargaining agreements and, within this framework, may prescribe reporting and data disclosure obligations as well” (Art. 38, para. 4, as amended by Section 59 of CT CXXII of 1999). Especially in Hungary, state registration of collective agreements was meant to promote collective agreements. Government experts expected more frequent use of extensions from the registration. Besides the political support given to the conclusion of collective agreements, trade unions expected the

strengthening of their bargaining position from the state approval of reported agreements with the control of lawfulness and the publication of the agreements. However, in the course of the dispute that took place in the Interest Reconciliation Council in 1997, also the government representatives refused to accept the proposal on legality control. This refusal was partly due to the fear of considerable extra work, and partly from the liability for damages caused in the area of administrative authority. Resistance of the employers was also strong. Finally, the dispute on publication resulted in the acceptance of a compromising solution. Formally, it preserved the mandatory and authority nature of registration, but did not attribute any meaning to it. A ministerial order issued on that basis stated that the registration has no influence on the validity of the collective agreement. As to the validity of collective agreements, probable refusal of registration by the Ministry has no legal consequences at all. Consequently, in the Hungarian legal system, registration rather fulfils a statistical rather than an authority role. In essence, the ministerial order describes a legal function. Collective agreements are filed in strict registration system and are given registration numbers, their receipt is certified, but the respective stamped document has no influence at all on the actual validity of the collective agreement. Besides the statistical and analytical functions facilitated by the registration, only the publication of the registry book and access to deposited multi-employer agreements should be guaranteed for the employers and trade unions of the sector. This function is rather an administrative service provided to the social partners. Nevertheless, it improves the records of publication of the information in the registry system. This facilitates the parties to receive the necessary information. Thus, for example, besides the registry book, that is currently available through the internet (<http://www.szcsm.gov.hu/tp.htm>), the collective agreements that are sent as an appendix to the data sheet or asked for research purposes are also available. Following the practice of other countries, also in Hungary the administration is about to create an archive of collective agreements for the general public (see <http://www.bls.gov/cbaccess.htm>).

The validity of a collective agreement in other countries, can often depend on its publication or registration. A fairly detailed list of conditions, for example, is provided in the Bulgarian Labour Code on the specific issue of registration of collective agreements. According to Article 53 of the Labour Code, a collective agreement, to be valid, should be registered with the labour inspection office in the administrative region where the employers' "seat" is located. In case the employers have seats in several locations, the registration shall be with one of the relevant labour inspection offices. The registration procedure is slightly different if the collective agreement deals with a particular industry or activity, or if it has been signed at the national (central) level, in which case the agreement must be registered with the General Labour Inspection Office. The registration of the collective agreement in Bulgaria is essential, since in case of rights disputes on the provisions of the agreement, it is the registered text which is considered to be authentic, and to which the judge will refer during a dispute. Following this trend in countries like Lithuania, Lettonia, Estonia, registration of collective agreement has been introduced. Since July 2000, collective agreements in Estonia shall be registered in a database maintained by the Ministry of Social Affairs.

In another group of countries, for example in Russia and Ukraine, a collective agreement (or collective contract) enters into force on the day, that the agreement has been signed.

Nonetheless, there are some differences between the two countries. In Ukraine, for example, the law referring to the sectoral and regional agreements imposes an obligation of registration with the Ministry of Labour, while for collective contracts at the enterprise level, the law provides for the registration with the public authorities at the local level.

3. 8 Termination of Collective Agreements

Collective agreements concluded for a definite period cease to be valid upon the expiration of their terms. In general, a collective agreement may be terminated by any of the contracting parties upon two to three months' notice (e.g., in the Czech Republic, Hungary, Poland, and Romania), but no party can terminate the agreement with no advance notice or within six months of the expiration of the agreement (e.g., in Hungary). In case the collective agreement was concluded by several trade unions and employers' organisations, the right of notice can be exercised by any of the contracting parties. If a collective agreement which has been concluded jointly by several employers or several employers' organisations is terminated, the agreement ceases to be valid or applicable to the workers of the employer or employers who have exercised their right to terminate. In addition, in several countries (including Hungary), if the employer or the trade union which completed a collective agreement ceases to exist without a legal successor, the agreement loses its validity. If such a collective agreement was concluded by several employers or employers' organisations, the collective agreement loses its validity only in case of cessation of all the employers and trade unions without legal successors. In the Baltic States, the law does not provide for termination or so-called withdrawal from an agreement, even for example in cases where the other party does not fulfil its obligations under the agreement. An agreement is valid for the period specified, and during this period labour peace has to be maintained.

A collective agreement can usually also be terminated following a joint declaration between the parties to that effect. Such a declaration by the parties should be made in writing and should indicate the period of notice for termination. In this case, the law in a number of countries (e.g., Poland) provides that if the parties declare that they do not intend to conclude a new agreement, the provisions of the previous agreement are considered to be null and void on the day of the termination of the collective agreement. The terms of employment contracts and of other legal instruments which have been constituted within the framework of the previous agreement shall continue to apply, until the expiration of the period of notice agreed upon by the parties, which terminates such terms (35).

4. The Settlement of Labour Disputes

Labour disputes are an integral part of the industrial relations systems. They are, indeed, a part of life and can appear at any time and at almost any level of the economy. During their transition to the market economy, many CEE countries have recorded a substantial increase in the number of labour conflicts, both individual and collective. This has induced many countries to introduce new legislation regulating the settlement of labour disputes, as well as to set up modern and updated procedures for conciliation, mediation, and arbitration. In this section, we will highlight the recent legislative innovations introduced into the

region's industrial relations systems, and underline the most fundamental changes which have occurred in this area. In so doing, we will put an emphasis on the legislative framework.

4. 1 The Right to Strike

The right to strike is recognised in the large majority of CEE countries. Indeed, in many countries – for example in Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, and Ukraine – this right is enshrined in the Constitution. In those countries with a constitutional right to strike, the text in the Constitution is usually worded in such way that the right to strike is effected by other laws and regulations. Regulations and rules in this area seem quite similar in many countries in the region. In most of Central and Eastern Europe, regulations on the exercise of the right to strike are to be found in the laws on collective bargaining, in specific laws dealing with the settlement of labour disputes, or in the labour codes.

In Slovakia, a collective dispute must concern the conclusion of a collective agreement or fulfilment of commitments under such an agreement. A dispute of rights under an existing agreement and a dispute of interest, or a claim to a new agreement must go to mediation and/or arbitration. The employer is not allowed to replace employees on strike by recruiting other employees. A strike is expressly referred to in the law as an extreme measure, after expiration of all other possibilities. In both the Czech Republic and Slovakia, a strike can be called by the respective trade union body and the respective superior trade union body. The procedure to call of a strike is stipulated in § 17 of the Act on Collective Bargaining (n. 2 of 1991, as amended), which reads: “(1) A strike in a dispute on conclusion of a company collective agreement shall be declared and its commencement shall be decided by the respective trade union body, if the strike is approved by the absolute majority of the employer's employees who are participating in the strike ballot whom the collective agreement concerns to, provided that at least absolute majority of employees counted out of total employees participate in strike ballot. (2) A strike in a dispute on conclusion of a collective agreement of a higher degree shall be declared by the respective superior trade union body. The commencement of the strike shall be decided by the respective trade union body, if the strike is approved by the absolute majority of the employer's employees who are participating in strike ballot whom the collective agreement of a higher degree concerns to, provided that at least absolute majority of employees counted out of total employees participate in strike ballot”.

For example, the exercise of the right to strike by individual workers is recognised in Hungary by Act VII on the Right to Strike of 15 April 1989, and is supplemented by the Hungarian Labour Code (add: part IV, from art. 194).

The law permits the use of the strike only for the solution of interests disputes. Strikes initiated to solve legal disputes falling under the authority of the court are illegal. The law does not permit either non-legal contest against regulated issues during the term of validity of the regulations. Consequently, the strike that initiated to change the collective agreement during the term of validity of the agreement is illegal.

Every worker has the right to strike, and this right does not depend on trade union membership. Solidarity strikes can only be called by trade unions, however. Before an industrial action, the parties may report to mediation, and if they so

agree, to arbitration (Labour Code, Arts. 194–196). Although the exercise of the right to strike is defined broadly in order to protect the “economic and social interests” of the workers, it is nevertheless subject to a number of limitations.

If there is interest dispute between the works council and the employer, the works council has no right to initiate the strike. As exceptions, the law prescribed mandatory arbitration procedures in four cases: two cases each for disputes between the employer and the trade union and two cases each for disputes between the employer and the works council. Moreover, works councils should behave neutrally in the case of strike, consequently interest disputes between works councils and employers might only be solved through negotiations, even if the dispute is about the content of the enterprise quasi-collective agreement.

Similar limitations are to be found throughout the countries of Central and Eastern Europe. There are some differences, however – for example, in some countries only trade unions can call a strike. This is typical of Croatia, where the new Labour Code states:

“Trade unions and their higher level associations have a right to call for a strike and to strike in order to protect and promote the economic and social interests of their members” (Art. 210, para. 1). In Poland, strangely enough, the act regulating the settlement of collective disputes indicates the right to strike is an individual right which is in practice exercised in collective form, but at the same time states that the initiation and conduct of a strike is exclusively reserved for trade unions. This, of course, raises problems in the legal interpretation of the right, which has to be better defined in its exercise.

4. 2 Limitations on Exercising the Right to Strike

There are two main areas of limitations relating to the object of the strike, and to the nature of the economic activity affected by a strike. In most of the countries in the region, albeit to different degrees, a strike is said to be illegal if it has not been preceded by a conciliation period, if it is directed against constitutional principles, if it is related to purposes other than those protecting the economic and social interests of the workers, if it challenges the terms of an existing collective agreement, or if it is called in pursuit of measures on which the courts might be asked to intervene.

In the legislation of many countries, the military forces, the police, and civil servants do not usually enjoy the ability to exercise the right to strike. Limitations to the right to strike also generally apply in public services such as medical care, education, transport, as well as in utilities such as water, electricity, gas supply, and so on.

In some countries (e.g., in Romania), there are specific laws which state that certain categories of employees cannot exercise the right to strike.

In Bosnia Herzegovina, the recent law regulating the right to strike of April 24, 2000, introduces rules and procedures dealing with the following categories of employers: the Army of the Federation of Bosnia and Herzegovina, the members of the Ministry of Interior, administrative bodies and administrative services of the Federation of Bosnia and Herzegovina. In art. 5, the same law indicates that the employer and the union must reach an agreement on what services may not be interrupted during the strike (minimum service). Art. 8 of the law states that the employer may not replace workers on strike with scabs.

In Romania, these are employees and special staff of parliament, employees in government services and ministries, employees in central and local administrative bodies, as well as employees in the Ministry of Defence, Ministry of Justice, the National Energy System, public lawyers, prosecutors, and judges. In another group of countries (e.g., in Hungary), the right to strike is recognised in the public services. According to Hungarian legislation, the exercise of the right to strike is subject to limitations in case of an industrial action in public services when it is not exercised in conformity with the specific rules laid down in the agreement between the Council of Ministers and the unions concerned, and also in those economic activities deemed to be “essential services”, such as public transportation, telecommunications, gas, water, and electricity supply.

In Bulgaria, the law on the settlement of collective labour disputes includes a list of those categories of workers who do not enjoy the right to strike. These are found in energy production and distribution, post and telecommunications, health, 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.

In Ukraine, art 23 of the law of the settlement of labour disputes and on the exercise of the right to strike states that strike is prohibited when work stoppage creates conditions which threaten the life and health of people, the environment, or impedes measures preventing disaster, as well as for personnel (except technical and service staff) and servicemen of justice bodies, Armed Forces of Ukraine, paramilitary units, bodies of state executive power, of national security, of law enforcement bodies, at the enterprises of defence branches (units, immediately engaged in production for defence purposes). In case of declaration of state of emergency, bodies of state executive power have the right to prohibit strikes. At the enterprises of national economy the operation of which has influence on the population’s interests (railways and city public transport (including metro) civil aviation, communications, gas, water, electricity and other types of energy supply services, the strike may be called only when it does not impede the supply to population of a minimum level of services. Volume of such services and conditions of staging a strike shall be beforehand, but not later than one day in advance, agreed upon by parties with local Council of people’s deputies or executive committee, and in case of strike at the enterprises on the territory of Crimea Republic – with the Council of Ministers of Republic of Crimea.

The legislation on the settlement of labour disputes often includes other means for limiting the right to strike, and this is usually done by placing a cap on the duration of the strike that is, the maximum duration of a strike can be expressly indicated in the law. In Romania, the law on labour disputes settlement indicates, at Article 38, that a strike cannot last more than 20 days. If the strike goes beyond 20 days, 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 a possibility for appeal to the Supreme Court.

Sometimes, the law refers to situations and circumstances when the right to strike cannot be exercised. In Bulgaria, for example, the law on the settlement of labour disputes provides, at Article 16, that strikes are prohibited under the following circumstances: in time of natural calamities or when urgent lifesaving is required; when the object of the strike is in contradiction of 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 Poland, for example, strikes are prohibited in a state of emergency. The same is true in Lithuania, where strikes are prohibited in areas of natural disaster and in cases of extraordinary urgency.

In Slovakia, the special regulation on strikes in essential services has not been adopted. The essential services are defined in 17 paragraph 9 of the Act on Collective Bargaining: “Essential activities and essential services are such activities and services which in case of their interruption or stoppage shall endanger the life and health of employees or other persons and shall cause damage to machines, equipment and apparatuses the nature and purpose of which do not allow to interrupt or stop their operation during the strike”. It is not permitted to go on strike in an essential service. The act on Collective Bargaining or other legal regulations do not regulate minimum services in the framework of essential service.

A strike is illegal, in Slovakia, when, pursuant to § 20 of the Act on Collective Bargaining: a) is not preceded by the proceedings before an intermediary (§ 11 and § 12 of the Act on Collective Bargaining); b) that has been declared or continues after following start of proceedings before an arbitrator (§ 13 and § 14 of the Act on Collective Bargaining) or following after conclusion of a collective agreement; c) that has not been declared or commenced under conditions specified in § 17 of the Act on Collective Bargaining; d) declared or commenced for reasons other than those specified in § 16 of the Act on Collective Bargaining; e) a solidarity one, provided the employer of participants in strike, especially with regard to economic continuity, cannot influence the course or result of the strike of employees, in the support of whose demands the solidarity strike has been declared; f) in case of military stand by of the state and in a period of emergency precautions.

4. 3 Recent Trends in Labour Disputes

In the last few years, labour stoppages have primarily occurred in the public sector. Demonstrations by teachers, hospital workers, and public transportation workers have been carried out in most countries in Central and Eastern Europe in order to attract the attention of the public authorities to the need for better working conditions. Workers’ demands have included the following: compliance with payment of salaries and of overtime, maternity leave, paid holidays, union facilities, and bonuses. Of course, the causes of industrial action vary; they are complex and highly dependent on the country. Nevertheless, it seems that work stoppages are mainly the result of workers’ genuine protests regarding their employers’ policies. Workers are making an important contribution to the wealth of the various countries by performing difficult jobs under difficult circumstances. Both employers’ and trade unions’ representatives bear a considerable responsibility to these workers. Many employers seem to have failed to develop adequate managerial policies – in particular, they do not seem to have tackled the problem of implementing measures such as the minimum wage or adequate and appropriate wage structures. A further problem is that some trade union representatives have failed to build up sufficient confidence among the workers at the local and enterprise levels.

Another potential danger which could result in future labour stoppages concerns the introduction of new technology at the enterprise level. New technology has already caused re-adjustment in the relative importance of different groups of workers in the industrial sector. As a result, more skilled and senior workers have become increasingly dissatisfied with wage structures that often do not reflect their skills and seniority.

Needless to say, there is no single remedy for the problems of strikes. The most effective solution to such problems lies in the creation of conditions which promote effective labour-management relations, especially at the enterprise level. Indeed, the present trends in labour disputes seem to indicate that workers' demonstrations result primarily from disorderly and unsatisfactory conduct of industrial relations at the enterprise level. The demonstrations will thus likely persist as long as enterprises pay inadequate attention to their pay structure and personnel policies, and if the methods of negotiation on matters of the workers' interests now prevalent at the workplace remain in their present state. Therefore, problems of industrial action will persist until the confusion which often surrounds the exercise by management of its "rights" has been solved by the creation and establishment of clear rules and procedures which are accepted as fair and responsible by both workers and employers. The reform of the collective bargaining systems in the countries of Central and Eastern Europe is fundamental to the solution of these problems. Therefore, the legislative framework for the promotion of collective bargaining in each country has to be as clear and as transparent as possible; this would help the social partners and the governments to develop genuine collective bargaining mechanisms in the region.

5. Conclusions

There is a positive trend in most countries of Central and Eastern Europe to reform legislation with a view to promoting collective bargaining. A great many countries in the region have ratified fundamental international labour standards of the ILO, even though much remains to be done in order to achieve effective and practical implementation of these international principles. New legal instruments are in force in many countries, including some which introduce new flexibility into the employment relationship, while guaranteeing the protection of workers considered to be in a disadvantageous position.

In this comparative analysis, I have attempted to highlight the main legal instruments and issues related to the promotion of collective bargaining, which is the essential ingredient in the development of sound industrial relations. Much remains to be accomplished and set into daily practice in this area. Indeed, the implementation of sound mechanisms of collective bargaining has more to do with the strength and autonomy of the social partners involved than with anything else. The identification and separation of each role in the industrial relations system, as well as the creation through bargaining of autonomous rules in line with legislation, would render the development of a sound system of industrial relations easier.

As we have seen, the need to create clear rules and practices in the delicate area of labour disputes settlement is also directly linked to the collective bargaining machinery. The settlement of labour disputes in Central and Eastern European countries is regulated by law in various ways. One common trend is the creation of independent and autonomous services for conciliation, mediation, and

arbitration at the national level. But demarcation between interest and rights disputes remains a crucial legal problem, which has still to be resolved in a number of countries. Lack of clarity in the law on the separation of such disputes makes it very difficult, in practice, to apply the procedures and rules which are already contained in the law.

A further difficulty in carrying out meaningful conciliation or arbitration services in many countries of the region lies in the non-availability of sufficient resources (both human and financial) for running genuinely autonomous and independent services of conciliation and arbitration. The lack of well-trained conciliators and arbitrators jeopardises the development of sound industrial relations in these countries, especially in a period of transition when new and complex labour disputes have to be solved by specialists in the field. A good deal of assistance is still required in this area. Indeed, a labour relations system cannot function properly without an expeditious and efficient system for settling labour disputes.

Notes

- (1) The question of representativeness has been dealt with in more detail in a separate study. See Giuseppe Casale, *Union Representativeness in a Comparative Perspective*, Budapest, ILO/CEET, Report No. 18, 1996.
- (2) A brief description on the evolution of Labour Law in the Country may be useful: the reform of labour law began in 1990 and was finalized in 2001 adopting three key laws – the new Labour Code (the Act No. 311/2001, Collection of Laws), the Act on Civil Service /State Service/ (the Act No. 312/2001, Collection of Laws) and the Act on Public Service (the Act No. 313/2001, Collection of Laws). After 36 years from adopting the first Labour Code, Slovak Republic has got the second (new) Labour Code. The new Labour Code was adopted by National Council of the Slovak Republic on 2 July 2001 and shall enter into effectiveness on 1 April 2002. The first Labour Code was adopted in 1965 (the Act No. 65/1965, Collection of Laws as amended by later regulations). The first Labour Code from 1965 to 2001 has been amended for the third time and according to § 255 point 1 of the new Labour Code (the Act No. 311/2001, Collection of Laws) shall be repealed on 31 March 2002. The new Labour Code reflects the facts resulting from implementation of market economy and regulates *inter alia* rights and duties of employers and employees and other labour-law matters (affairs).
- (3) However, there exists a cooperation agreement between the local government, employers and employees of the Ida-Viru County concluded in 2000. The agreement mainly deals with the questions of employment and unemployment.
- (4) The Collective Bargaining Act of 1990 was in force before the separation between the Czech Republic and the Slovak Republic. Geneva, ILO, Labour Law Documents, 1990-CSK1.
- (5) ILO, Labour Law Documents, 1994-POL1.
- (6) The Commission for Collective Labour Agreements, attached to the Minister of Labour and Social Policy (article 16 of the Act of 29th September 1994 on the amendment of the Act Labour Code and on the change of selected Acts – Journal of Laws NR. 113, item 547 and Regulation of the Minister of Labour and Social Policy of 13th March 1995 on the establishment, composition and principles of activity of the Commission for Collective Labour Agreements) is a tripartite institution. The Commission is composed of representatives of the following institutions: central state administrative organs, Polish Employers' Confederation, Polish Confederation of Private Employers, supra-enterprise trade union organisations and State Labour Inspectorate.

- (7) ILO, Labour Law Documents, 1992-HUN1.
- (8) If during the dispute resolution process is reached, either through direct negotiation, or through the involvement of a mediator, or by the arbitrator's award the solution shall be considered as a collective contractual agreement. Should there be a collective agreement in place, the collective contractual agreement should formally be interpreted as the amendment of the collective agreement.
- (9) Works councils can also conclude a "quasi collective agreement" called works agreement, if there is no trade union established and operating at the employer. (Article 31(2), inserted into the Labour Code by Act LVI. of 1999, article 2.) Works agreement can regulate the same matters as collective agreements. Works agreement shall cease to be in effect if the works council is terminated or if a collective agreement whose scope extends to the employer is concluded. (Article 31(3)). According to some experts the works agreement should be invalid when the employer falls under the effect of a collective agreement concluded by several employers, by the relevant employer association, or due to the extension procedure.
- (10) Nacsa-Neumann (2001): The system of collective bargaining in Hungary, page 12. Manuscript prepared for the Tripartite Conference on "promotion of collective agreements and the question of representativeness in Hungary in light of the experience of EU countries. Budapest, 20–21 September 2001.
- (11) The tripartite social dialogue in Slovakia is regulated by Act No. 106 on Economic and Social partnership of May 12, 1999.
- (12) It should be noted that the creation of the Economic and Social Council in Croatia is still under discussion. It is too early to say whether such a Council will be created in the near future.
- (13) Such a provision, however, often creates juridical problems, especially when the norm has to be interpreted and implemented.
- (14) The new Croatian Labour Code systematises both the individual and collective employment relationships. It contains 37 separate chapters and consists of 245 articles.
- (15) In this regard, ILO Convention No. 154 and Recommendation No. 163 of 1981 on collective bargaining provide the scope, definitions and means of promoting collective bargaining. In particular, Article 3, para. 3, (a) of Recommendation No. 163 states: "Representative employers' and workers' organisations are recognised for the purposes of collective bargaining." Article 7 (1) provides: "Measures adapted to national conditions should be taken, if necessary, so that the parties have access to the information required for meaningful negotiations."
- (16) See in particular, ILO, Labour Law Documents, 1992-RUS1 and 1993-UKR1.
- (17) See in particular, ILO, Labour Law Documents, 1992-RUS 1 and 1993 UKR 1.
- (18) The trend towards bargaining at the enterprise level has been favoured by the economic reforms of the transition period, which pushed the entire system towards decentralisation. Furthermore, the newly-created legislative framework has been mainly designed for regulating labour-management relations at the enterprise level.
- (19) The 1991 law stressed the role of workers' organisations as one of the parties in collective bargaining and referred to representatives of unorganised workers only in the absence of such organisations.
- (20) The term "competitive sector" refers to enterprises and non-profit organizations whose employees are covered by the Labour Code.
- (21) This estimate is based on the investigations carried out by L. Neumann on the basis of the compulsory registration of collective agreements. For a full description of the current collective bargaining practice as it is reflected in registration data, see Nacsa-Neumann (2001).
- (22) See Giuseppe Casale, Union Representativeness in a Comparative Perspective. cit., 1996.
- (23) The issue of union representativeness in Hungary was discussed during a High Level Tripartite Meeting organised by the Ministry of Labour of Hungary in

- cooperation with the ILO/CEET of Budapest. The meeting was held on 2 May 1996. See ILO/CEET, Newsletter, No. 1, 1996.
- (24) However, if there are different occupational categories of employees represented by different trade unions, independent collective agreements can also be concluded for each category of workers, such as in the case of an airline company, where it is possible to have one agreement for pilots, one agreement for stewards, and so on.
 - (25) Bulgarian Decree No. 7 of 22 January 1993 on the principles. Terms and order of recognition of worker, employee and employer organisations as representative on national level of tripartite partnership.
 - (26) Digest of Decisions and Principles of the Freedom of Association Committee, 4th ed., 1996, para. 314.
 - (27) ILO, Geneva, Governing Body 267/7, November 1996, paras. 81–101 OK
 - (28) In this regard, mention should be made of the Labour Relations (Public Service) Convention No. 151, 1978 and of its accompanying Recommendation No. 159. These ILO instruments contain provisions for the protection of the right to organise and procedures for the determination of terms and conditions of employment in the public service.
 - (29) The exercise of the right to strike in the public sector is becoming more and more an issue in a large number of countries in the region. This has been the subject of several meetings between ILO experts and the national tripartite constituents in advising on new labour laws. In the past years, for example, this subject has been debated several times in the Czech Republic, Estonia, Hungary, Lithuania, and Poland.
 - (30) This is the definition given by Article 2, para. 1 of the ILO Recommendation No. 91 of 1951 on Collective Agreements.
 - (31) See ILO/CEET, Newsletter, No. 1, 1996, p. 7.
 - (32) See: Gyula Soki: Case study on the relationship between medium and enterprise level collective agreements in the baking industry sector, Budapest 1993.
 - (33) See Laszlo Neumann: Extension of the collective agreement, 1998.
 - (34) Labour code of Bulgaria, Sofita Inter ed., No. 77, Sofia.
 - (35) See article 241–7 of the Polish Labour Code.