COLLECTIVE AGREEMENTS – WITH FOCUS ON HUNGARY, ROMANIA AND THE SLOVAK REPUBLIC

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Abstract

The paper assesses the practicability of collective bargaining and collective agreements in Hungary, Romania and the Slovak Republic. The examined countries all have introduced modifications in their labour legislations recently, lowering the labour standards. In order to balance the social effects of the changes the best tool is collective bargaining, this view being embraced by the International Labour Organisation and the European Union.

Through the comparison of the three legislations, by analysing the conclusion of collective agreements and different aspects of it, it is concluded that the inspected countries fail to recognize the social and economic importance of collective bargaining. They fulfil their international obligation of promoting collective bargaining only in a formal manner, without actual legislative provisions which promote practice.

The long term implication of the findings is that Hungary, Romania and the Slovak Republic will have to face the same problems, which pushed them to lower the labour standards, because of the failure of promoting collective bargaining.

Introduction

Nowadays governments of the developing European Union Member States are eager to intervene on their labour market regulations to improve the flexibility in order to attract capital into their economy. In today's economic settings, in times of crisis, the legislators react to the market changes by lowering labour standards, benefiting employers in order to promote the creation of workplaces, the growth of the level of production.

In this kind of unbalanced labour market, where the interests of employers dominate, collective bargaining can play the role of the most consolidated and powerful institution in order to bring equilibrium.[1] Collective bargaining can be defined as the interrelations between the social partners, including collective agreements, the most important autonomous source of labour law.[2]

As Bob Hepple wrote: "(T)he dilemma which globalisation poses for labour law is that the more comprehensive and effective legislation or collective bargaining is, the more likely it is that (multinational corporations) will wish to relocate."[3] Considering the role of collective bargaining, the question arises: is it worth undermining it for the sake of supporting multinational companies, when already labour standards are low?

1 Sciarra,Silvana "Market Freedom and Fundemental Social Rights", in Hepple, B. "Social and Labour Rights in a Global Context", (2002), Cambridge University Press, at 103

2 In broad sense the system of collective bargaining can be defined as „the complex interrelationship among bargaining agents and levels of bargaining; the connection between norms and procedures; the empowerment of bargaining agents in order to depart from agreed standards and modify them with or without limits; the relevance of "representativity" criteria is allowing departures from statutory terms and conditions of employment in collective agreements." (Sciarra, S. "The evolving structure of Collective Bargaining in Europe 1999-2004", Research Project Co-financed by the European Commission and the University of Florence, Draft General Report, 2005, at 8)

In a narrower sense, as defined by Blanpain, „collective bargaining [...] involves a process of negotiation between employers and representatives of the employees as well as an agreement containing binding rules." (Blainpain, R. "European Labour Law", Ninth revised ed., 2003,Kluwer Law International, at 570)

3 Hepple, B. "New Approaches to International Labour Regulation" (1997) 26 ILJ 353, at 355

Hungary, Romania and Slovak Republic introduced drastic modifications of their Labour Codes[4] in 2011, but probably the deepest decentralisation was implemented in Romania, by deleting from the Labour Code the provisions on collective agreements on a national and industry level. It is unclear however how the social partners will and can react to this race to the bottom. The aim of this paper is to assess the practicability of collective agreements in Hungary, Romania and Slovakia after the recent changes, comparing them and their role in the countries' battle to stop the relocation of multinational companies and to attract new foreign direct investment. It will be shown that these countries fail to recognise collective bargaining as a way of creating balance between workers and employers, by failing to promote collective bargaining. This might be caused not just by the economic crisis, but also the decline in the last two decades of trade unions.

A comparative study in labour law, taking into account more than one systems, is especially useful within the European Union. When the objective is legal integration, identifying differences, recognising national traditions can represent a strong starting point in foreseeing the numerous variations national responses can produce.[5]

First chapter discusses the International Labour Organisation's and the European Union's approach to collective bargaining, the way these two institutions see the promotion of collective bargaining. The second and the third chapter analyses the conclusion and different aspects of the collective agreement in the focus countries, whereas the fourth chapter asks

4 Hungary: XXII./1992 Law on the Labour Code, but the new Labour Code I./2012 shall entry in force on 1st of July 2012
Romania: Labour Code, as modified by Law nr. 40/2011, published in Romanian Official Gazette, Part I nr. 225 of 31/03/2011
Slovakia: Labour Code, as amended

5 Sciarra, S. "Some Reflections on Comparative Labor Law and On Its Vicinity with Policy-Making". Comparative Labor Law & Policy Journal, Vol. 25, No. 1, pp. 97-104, Fall 2003 (published February 18, 2005). at p.104; Available at SSRN: http://ssrn.com/abstract=676674

and answers the question if these countries are succeeding in promoting collective bargaining, are the policy makers recognising its balancing role.

Chapter I. International approach on collective agreements

The supranational organisations which have influence on national level collective bargaining are the International Labour Organisation (ILO) and the European Union (EU). The way they exercise influence is different.

The first part of this chapter gives a short summary of the ILO binding and non-binding rules adopted with the aim to promote collective bargaining. The investigated countries are all members of the ILO, in consequence they all must obey the Organisation's Conventions which they signed. The second part of the chapter concentrates on the EU view on collective bargaining expressed in the Treaties and in the European Court of Justice case-law. In the final part, the influence of the ILO on the EU is discussed, the interaction between the two institutions.

1.1. The International Labour Organisation

The ILO, founded in 1919, is the first international organisation established for setting labour standards. Its role was reaffirmed when it became a specialised agency of the United Nations in 1945. The organisation completes its function through two types of instruments, conventions and recommendations. These are adopted by the International Labour Conference, “the international parliament of labour”, a tripartite yearly meeting composed out of delegates of trade unions, employers' organisations and governments. When ratified by a country, a convention has a binding force on it, whereas recommendations are non-binding acts issued unilaterally by the ILO. The enforcement of the conventions is overseen by the Committee on Freedom of Association by examining complaints concerning the violation of freedom of association. If it is established that there has been a violation, issues a report and

makes recommendation containing remedies on the situation. Also, a follow-up report from the government is requested on the implementation of the remedies proposed.

The relevant conventions[6] on collective bargaining were adopted by the examined countries, except the case of Labour Relations (Public Service) Convention, which still is not ratified by Romania. Although it is not ratified, its provisions are implemented in the national legislation. A complaint[7] was even made about the suspension of the collective agreements in the public sector by the government of Romania in 2000 in front of the ILO, the complaining party being one of the biggest trade unions.

The definition of the concepts of collective bargaining, collective agreement[8] or workers' representative are left open-ended or rather broad by the conventions, the core issues are left to the national legislator either to define or to choose one of the options to implement provided by the ILO.

The lack of ratifications as well as the deteriorating impact of the globalization to existing labour standards has prompted the ILO International Labour Conference to adopt its 1998 Declaration on Fundamental Rights and Principles at Work, so called “core standards” that have to be respected, promoted and realised by all countries simply by the force of their ILO membership, regardless whether they ratified or not the given conventions. These core labour standards start with the freedom of association and the effective recognition of the right to collective bargaining.[9]

6 C87 Freedom of Association and Protection of the Right to Organise Convention, 1948
C98 Right to Organise and Collective Bargaining Convention, 1949
C135 Workers' Representatives Convention, 1971
C151 Labour Relations (Public Service) Convention, 1978
C154 Collective Bargaining Convention, 1981

7 Complaint against the Government of Romania presented by the National Trade Union Confederation „Cartel Alfa” Report No.323. Case(s) No(s).2089

8 This concept is defined in Recommendation R91 on Collective Agreements, in consequence is a not binding

9 See http://www.ilo.org/declaration/lang--en/index.htm

Regarding the decline of "hard" instruments, the opinion have been expressed by Hepple, that the „soft law" (non-binding recommendations)[10] would be a more effective instrument in the hands of ILO for setting labour standards.[11] The same was suggested by Francis Maupain, that recommendations "can exercise a real influence on national law and practice, with the degree of influence varying widely depending on the subject matter".[12] But then a new issue arises, the compliance with the „soft law" is rather hard to measure, when there is no monitoring mechanism or sanctions.

1.2. The European Union's approach

The original approach of the EU was hostile towards collective bargaining, and especially collective action. This can be concluded from the ECJ rulings on the matter, which several times subordinated them to the economic freedoms, the founding values and principles of the EU.

The current version of the Treaty on European Union[13] (TEU), the Lisbon Treaty, in force since 1 December 2009, expressly includes in Article 6 the Charter of Fundamental Rights of the European Union[14] (Charter), giving it the same legal status as the Treaties have. In spite of Title IX and its provisions of the Charter – limiting its mandatory nature to the actions of the Union (within its competence) and to Member States actions only to

10 R91 Collective Agreements Recommendation, 1951
R143 Workers' Representatives Recommendation, 1971
R159 Labour Relations (Public Service) Recommendation, 1978
R163 Collective Bargaining Recommendation, 1981

11 Hepple, B. "Enforcement: the law and politics of cooperation and compliance" in Hepple, B. "Social and Labour Rights in a Global Context",2002, Cambridge University Press, at 238

12 Maupain, Francis "Commitment and Compliance: The role of non-binding norms in the International Legal System" in Shelton, D. "International Labor Organization Recommendations and Similar Instruments", 2000, Oxford, 372 at 383

13 Official Journal of the European Union C83, 30.10.2010

14 Official Journal of the European Union C364, 18.12.2000

implementing EU norms[15] - great expectations have been expressed towards the Charter, that it will bring the renewal of labour law, not only at EU level, but also within the Member States legislation.[16] The Charter had to wait nine long years to entry in force as a legally binding document after its proclamation on 7 December 2000[17] - this long awaited step contributed to the high expectations attached to it.

The Charter directly refers to trade unions in Article 12 on the Freedom of assembly and of association: „implies the right of everyone to form and to join trade unions for the protection of his or her interests". In addition in Chapter IV, Article 28 on Right of collective bargaining and action has direct reference to "the right to negotiate and conclude collective agreements at the appropriate levels, and in cases of conflicts of interest, to take action to defend their interests, including strike action". The charter is reaffirming the EU level promotion of collective bargaining and affirming the right to collective action.

As described in the Treaty on the Functioning of the European Union (TFEU),[18] under the Social Policy Chapter in Article 154 "(the) Commission shall have the task of promoting the consultation of management and labour at Union level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties." It is obvious that term of social dialogue refers to collective bargaining, including also collective agreements.[19] The same position should be taken also by the Member States at a national level, promoting the consultation between the two sides.

One significant outcome of this provision is that the Commission can exercise political pressure on the two sides, represented by ETUC (European Trade Union Confederation) on the one hand, and BUSINESSEUROPE (the former UNICE Union of

15 Further restrictions are emerging from the provisions of the „Explanations" (2007/C 303/02), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0017:0035:en:PDF last checked March 29, 2012.
16 Bercusson, Brian "European Labour Law", Second Edition, 2009, Cambridge University Press, at 384
17 Proclaimed as Part II of the Treaty Establishing a Constitution for Europe, which failed to be adopted
18 Official Journal of the European Union C115, 9.5.2008
19 Blanpain, R. "European Labour Law", Ninth Revised Edition, (2003), at 549

Industrial and Employers Confederation of Europe), CEEP (European Center of Enterprises with Public Participation), UEAPME (European Association of Craft, Small and Medium-sized Enterprises) on the other, to achieve an agreement[20] on a certain matter. The EU level collective bargaining received also harsh critics, being characterised as "collective begging" from the side of the trade unions.[21] This happened before the entry into force of the Lisbon Treaty, when the right to collective action, to strike was not yet part of the EU legislation. It will be interesting to follow how the ETUC will use this new „weapon".

The procedure of giving force to an EU level collective agreement, set by Article 155 TFEU, goes as: the social partners participate in a dialogue, which can result in an agreement between them. This agreement shall be implemented by way of a decision by the Council, either regulation or directive, at the proposal of the Commission. The Commission has just one possibility to interfere with this procedure, by rejecting to propose the agreement. If it chooses to put it forward, the content of the agreement cannot be modified either by the Commission or the Council. The possibility to implement EU level collective agreements by the means of a Council decision was one of the achievements of the Amsterdam Treaty.[22] This move was needed because neither the ETUC nor the EU level employers' organisations had the means to force the implementation of the EU level collective agreements in the Member States, or to force the member organisations to respect it.

However, the issue of representativity comes up when we discuss collective agreements. In the Treaties there is no reference to it. The representativity criterium was set unilaterally by the Commission Communication on the Application of the Protocol on Social

20 The most important Framework Agreements are on part-time work (Council Directive 97/81/EC), fixed-term work (Council Directive 1999/70/EC) and parental leave (Council Directive 2010/18/EU repealing Directive 94/34/EU, that was based on a less wide consensus)

21 Britz, G, Schmidt, Marlene "The Institutionalised Participation of Management and Labour in the Legislative Activities of the European Community: A Challenge to the Principle of Democracy under the Community Law", European Law Journal, Vol.6, No.1, March 2000, at 70

22 Idem, at 47

Policy. However, in the case law of the European Social Charter several decisions rule on the violation of Article 6 (2) on the right to collective bargaining and of Article 5 on the freedom of association due to the existence of the unilateral Communication; the Communication being able of creating monopoly situation of organisations, limiting the freedom of association and of collective bargaining. The criteria of representativity are the following: the organisations have to be organised on a cross-industry basis or relate to specific sectors or categories and have to be organised at European level; they must consist of organisations, which are recognized at a national (Member State) level as representative organisation; and at last, they must have the proper structures to participate in the consultation in an effective manner. The list of organisations which fulfil these conditions were published by the Commission in a Communication,[23] list which is updated by the Commission regularly. The currently recognised cross-industry organisations are: BUSINESSEUROPE, CEEP and ETUC. Other recognised organisations, which represent a specific category of employees or undertakings are: Eurocadres (professional and managerial staff), UEAPME and CEC (European Confederation of Executives and Managerial Staff).

A famous case in front of the European Court of First Instance is UEAPME v. Council,[24] where the Court discusses the representativity issue. The UEAPME, as a representative organisation, was not among the signing parties of the Framework Agreement which was implemented by the original Parental Leave Directive. The case was declared inadmissible, but the Court stated that the social partners are independent and the initiative of negotiation is only conferred to them, although a general right to be part of negotiations of representatives of management or labour does not exist. The Commission and the Council

23 COM (93) 600

24 Court of First Instance T-135/96 Union Européenne de l'artisanat et petites et moyennes entreprises (UEAPME) v Council of the European Union

have only the duty to verify the representativity of signatory parties;[25] they do not have the right to intervene in the negotiations between the two sides of the industry.

Matters regulated under Article 155 TFEU, by concluding contractual relations, are set in a positive light, because shows that the parties have to be ready to action, to get to an agreement, shows their flexibility, instead of presenting them as stubborn players, who are waiting to orders from "upstairs", as it happened with the temporary work directive[26]. In this case the negotiations failed between the parties and the Commission had to intervene because of the urgency of the subject matter.

The European Court of Justice (ECJ) jurisprudence is quite curious on the matter of collective bargaining. It influences directly and indirectly the industrial relations systems of the Member States as the guardian and interpreter of the Treaties.[27] First came the Albany[28] decision, followed by Laval,[29] Viking[30] and Luxembourg.[31] In these decisions the Court is manoeuvring on the field where the social provisions of the Treaties clash with its competition rules (now Article 101 TFEU) and the freedom of establishment or to provide services (Articles 49 and 56 TFEU). Labour law scholars gain reassurance from the Albany ruling,[32] the decision exempting collective agreements from antitrust law, they had to face also the Court's later decisions, which although recognised the right to collective action, but placed collective bargaining under the economic freedoms, by applying the proportionality

25 See supra 18, p 51
26 Directive 2008/104/EC on temporary agency work
27 Bruun, Niklas "The Autonomy of Collective Agreement", in Blanpain, R. "Collective Bargaining, Discrimination, Social Security and European Integration", 2003, Kluwer, at 16
28 ECJ C-67/96 Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie
29 ECJ C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbatareforbundet
30 ECJ C-438/05 International Transport Workers' Federation and Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti
31 ECJ C-319/06 Commission v Luxembourg
32 Sciarra, S. "Market freedom and fundamental social rights" in Hepple, B. "Social and Labour Rights in a Global Context"

test. In Laval and its sister case Viking, the Court is not willing to listen and to accept the idea of collective action as mean of setting standards for posted workers or as a mean to ensure compliance with a statutory minimum wage.[33]

Since the Charter of Fundamental Rights became part of the EU legislation the vote of confidence must be given to the Court by labour lawyers that it will manage to find the balance between the economic freedoms and social rights.

1.3. The interaction between the ILO and EU

Historically, it seems that the EU documents ignored the ILO – that was not surprising taken the original aim of the European Economic Community: to create a free, common economic space. The so called "social dimension" of the EU has emerged later, only in the 1980's when it became clear that the economic and political integration is hard, if not impossible without a certain amount of social integration. The 1986 Single European Act and, in particular the Maastricht Treaty have reflected the new approach and the dimension at European level.

The first important convention on the continent is the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in 1950. Articles 10 and 11, guaranteeing the freedom of expression, of assembly and association (to form trade unions), do not appear from their content as they would have been influenced directly by the ILO. The same thing can be said about the Articles 117-121 on Social Provisions in the Treaty of Rome (1957), setting up the European Economic Community.

The first referring European level convention was the European Social Charter[34] of the Council of Europe, laying down minimum labour and social standards. Nevertheless, in

33 Kilpatrick, C. "Laval's regulatory conundrum: collective standard-setting and the Court's new approach to posted workers", 2009, European Law Review, at 852

the Social Charter a friendly approach is taken towards the ILO, by permitting ILO observers to participate as consultants during the Committee of Experts[35] meetings, or accepting the reports submitted to the ILO covering the same subject matter.[36]

The first act of the EU which seems to be inspired by the ILO is the Single European Act, which contains the Community Charter of the Fundamental Social Rights of Workers. In its preamble there is a direct reference to the ILO: „Inspiration should be drawn from the Conventions of the International Labour Organisation". The next act which contains reference, although an indirect one, is the Charter of Fundamental Rights of the European Union. In the Preamble is established that one of the inspirations of the Charter are the international obligations of the Member States, which include the ILO Constitution and the Philadelphia Declaration.[37]

The European Court of Justice has also shown reluctance when it comes to give effect to ILO instruments (Constitution and Philadelphia Declaration). As follows, it also received well-deserved critics from scholars,[38] given that all the Member States are signing parties of the ILO documents.[39] It must be also noted, that the first time the ECJ cited the Charter of Fundamental Rights happened in the European Parliament v. Council[40] case in 2006, six years after its proclamation.

34 Signed 18 Oct. 1961; in force 26 Feb. 1965
35 In charge with the examination of national reports on the implementation by states of their obligations under the Social Charter. See Articles 24 and 25
36 O'Higgins, Paul, "The interaction of the ILO, the Council of Europe and European Union labour standards" in Hepple, B. "Social and Labour Rights in a Global Context", 2002, Cambridge University Press
37 Idem
38 Idem, at 63
39 See Stoeckel case (1991) ECR I-4047, Albany International case C-67/96
40 Case C-540/03

Chapter II. Conclusion of Collective Agreements

It can be considered – at least in Europe - that management and labour have to consult with each other; this duty derives from a number of EU Directives, most importantly under Directive 2002/14/EU establishing a general framework for informing and consulting employees in the European Union. The interaction between the two sides can take place either through social dialogue or collective bargaining. The meaning of social dialogue can be expressed as the consultation and the productive information exchange between the partners, whereas collective bargaining has to be distinguished from it, even if in the European terminology "social dialogue" is frequently reserved to higher level, sectoral and especially national, exchange of views. Even if EU legislation prescribes in specific cases[41] to make effort to reach agreement, information and consultation has to be distinguished from collective bargaining and collective agreement. The role of collective bargaining is to balance the labour relations, whereas to role of social dialogue is to rise the awareness of the social partners on the on-going problems and issues which they have to face together.

It must be pointed out as a general feature of collective bargaining in the examined countries, that only one collective agreement can be concluded on a certain level, meaning that in one company only one collective agreement can be enforced. There cannot exist more than one because of the possibility of conflict between them. This provision is necessary in order to avoid conflicts between different trade unions. It may happen that in larger companies there are several trade unions represented. This provision is forcing the representative trade unions to represent the workers' interest in harmony between each other, even if they are in a race for members, on which their representativity depends.

41 See Directive 98/59/EU on Collective Redundancies Art.2.1

This chapter presents first of all the definition of the collective agreement, second the levels on which they might be negotiated, and the last part deals with the partners who participate at the conclusion of the collective agreement. The presentation helps to prepare for the question asked in Chapter IV., Promoting Collective Bargaining?

2.1. Definition of the collective agreement

In R91 Collective Agreements Recommendation of the ILO the following definition can be read in section 2. :

> For the purpose of this Recommendation, the term collective agreements 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 authorise by them in accordance with national laws and regulations, on the other.

It must not be forgotten that this definition is not a mandatory one; member countries of the ILO do not have to follow it. Although it is a „soft law" term of the ILO, the analysed countries' legislation is following the direction set by it.

The Romanian legislation gives two separate definitions of the collective agreement; one in the Art.236 Labour Code, and another in Art.1 i) of the special law on social dialogue.[42] The Labour Code enhances the role of trade unions and employers associations in the negotiation, whereas the Law on Social Dialogue mentions only the workers' representatives. On the object of the agreement the Labour Code emphasizes the working conditions and salary, when the Law on Social Dialogue refers to rights and obligations arising out of the labour relation. It is expressly stated by the special law that the collective agreement is the law of the parties. In both cases the collective agreement is a written one.

42 Law nr. 62/2011 on Social Dialogue, published in the Romanian Official Gazette, Part I nr. 322 of 10 May 2011

Unlike Romania, Hungary used other legislative technique to define collective agreement. The Labour Code in force defines the collective agreement as a "provision pertaining to labour relations", with other words, it defines collective agreements as a normative rule, a part of the normative sources of law, in one category with acts of the Parliament and decrees.[43] However, a clear-cut definition of the term cannot be found in the legislation, its parts can be identified in various articles. The New Labour Code's provisions in this respect will bring no difference.[44] Evidently and similarly to the current legislation, it is specified in Article 278 that it has to in writing; although such an explicit provision does not exist in the current Law, it can be conceived from the provision on its "signatury parties", "depositing copies", etc.[45]

The Slovakian Labour Code § 231[46] defines also clearly the collective agreement. It can be identified the parties, the object of the collective agreement in it. It is also an agreement in writing, which is the consequence of the mandatory registration of the agreement.

All three are following the basic way of how to define an agreement: the nature of it, the parties, the object of it, and the required form. The definition technique is different, but the result is the same.

43 See Article 13 of the Labour Code, para. (3)
44 Act I of 2012, in force from July 1, 2012
45 See Art. 41/A of the Labour Code
46 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-law 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.

2.2. Levels of collective bargaining

There is no national level bargaining mentioned by the legislator in any of the examined countries according to the recent legislative changes. Until 2011 Romania was unique in the region for bringing under regulation the national level collective agreement, this provision being deleted by the recent modifications.[47] The social dialogue between representative organisations on a national level[48] is carried out by the National Tripartite Council for Social Dialogue, having the role of a consultation organ. This special body also exists in Slovakia, having the same consultative role. On the opposite side, in Hungary a similar body is already history, due to abolition by the new government in the middle of 2010.

However, national collective bargaining is still possible in every investigated country, if the social partners decide so, as consequence of their freedom to bargain and to contract. There is no direct prohibition in any of the legislations of national level collective bargaining.

The new Romanian approach to the level of bargaining is similar to the Hungarian, but uses a different legislative technique to regulate. Under the current Romanian legislation the levels of collective bargaining are:

- company level
- group of companies level
- sectoral (branch of industry) level;

the distinctive Hungarian approach is related to the fact that the Hungarian Labour Code does not refer expressly to the levels, the articulation is left to social partners.[49] The specificity of

47 Law nr. 40/2011, 90. point
48 Art. 51 on representativity of trade unions, Law on Social Dialogue nr. 62/2011
Art. 72 on representativity of employer's associations, Law on Social Dialogue nr. 62/2011
49 Casale, Giuseppe "Collective Bargaining and the Law in Central and Eastern Europe: Recent Trends and Issues" in Blanpain, R. "Collective Bargaining, Discrimination, Social Security and European Integration", 2003, Kluwer, at 54

the Romanian is that negotiating a collective agreement is compulsory on company level, except in case of companies under 21 employees,[50] the compelling duty of initiation cannot be identified in none of the other two.

In the Slovak Republic a less precise approach is introduced to the levels of collective bargaining as in Hungary or Romania. According to §2(3) the Act on Collective Bargaining:

> The collective agreement is
> (a) company collective agreement, concluded between the respective trade union body and the employer who is also a service office,
> (b) collective agreement of a higher degree, concluded for a major number of employers between the respective higher trade union body and the organization or organizations of employers

It can be noticed that the level of group of companies and the sectoral one are not clarified, the term „major number" not being specific enough. It is not clear if two companies can negotiate jointly with a representative trade union a collective agreement. In any case, the notion of higher degree it includes the branch of industry.

2.3. The partners in collective bargaining

Partners in the process of collective bargaining are representatives of the employees and the employers. The main players are trade unions, representing the workers, and employers' organisations or the employer.

In the international field, the ILO conventions[51] leave the signing states the choice: either to recognize elected workers' representatives beside trade unions as parties to collective bargaining or to narrow the field to representative trade unions. Romania chose the first possibility recognising in company level collective bargaining the elected workers' representative as bargaining party if there is no representative trade union in the company;

50 See at Section 2.4. Initiation of Collective Bargaining
51 C154 Collective Bargaining Convention, Article 2 and Article 3 read together with C135 Workers' Representatives Convention Article 3

whereas Hungary and Slovakia implemented the second, recognising only trade unions as representatives of the employees in the process of collective bargaining.

Trade unions and employers' organisations are based on the right of association, present in every Constitution,[52] but the purpose of the two is essentially different. On one hand, trade unions objective is to defend the rights of workers conferred to them the national legislation, collective agreements and individual labour contracts; and to promote the professional, economical and social interests of their members. On the other hand, the objective of employers' organisations is to promote and defend the rights and interests of the employers. In all three jurisdictions trade unions and employers' organisations are required to have the organizational form which provides them with legal personality, namely the form of association.

The keyword when the topic of partners is explored is representiveness, which is an attribute of trade unions and employers' organisations that confers them the ability to represent their members during collective bargaining. However, in the last decade trade unions have to face the problem of decline in membership, having the result of hardly being able to fulfil the representativity requirements. Their power is decreasing, but in the same time the influence of the companies is growing, especially multinational ones.[53]

For the employers' association representativity is not a concern, it has to be authorized in any case by all its members to proceed with collective bargaining.

2.3.1. Representation of employees

In Hungary and the Slovak Republic only trade unions can participate in collective bargaining. The specificity of the Romanian approach to collective bargaining is the

52 Article VII. (2), (5) of the Hungarian Constitution
Article 9 and 40 of the Romanian Constitution
Article 29 of the Constitution of Slovak Republic

53 See supra 36, at 57

introduction of the workers' representative between the possible partners at company level. If there is no representative trade union in a certain company the workers will elect a representative with the majority of votes, who is enabled to negotiate and conclude the collective agreement. The institutions of work council and work trustee are not introduced into Romanian legislation.

Trade unions are regulated on three levels in all three countries:

- on company level: trade union
- on sectoral (industry) level: federation of trade unions
- on national level: confederation of trade unions

In order to be considered representative, a trade union must have legal status, organisatory and patrimonial independence, and a certain number of members depending on the level of bargaining. They all adopted the same approach to the basic organisation of trade unions, whereas the representativity requirements are remarkably different.

The Romanian representativity numbers are: half plus one of the employees at the company level, 7% of the total employees at group or sectoral level, 5% of the total number of employees at a national level.

Under the Hungarian Labour Code in force the representativity of trade unions is bound to the work council elections, not to the number of members in the company. The issue has a rather complicated regulation but if we simplify, the trade union(s) representatives have to get at least half of the votes at the work council election. At the negotiation even non-representative trade unions can take part, but they cannot conclude a collective agreement; only representative trade unions are enabled. However if there in no representative trade union in the company with at least half of the workers approval, who have the right to elect

the work council, the non-representative trade union can even negotiate and conclude the collective agreement.

In the new Labour Code the representativity notion is addressed more simply, but in the same time more aggressively towards the unions. The representivity standard is set higher concerning a sector than in Romania, namely at 10% concerning both company and sectoral level bargaining. The representative trade unions shall participate jointly at the negotiations of the collective agreement, the possibility of non-representative trade unions participation at the negotiations was not included in the new regulation, so from 1st July 2012 it does not exist. A notable legislative change was also introduced by depriving the trade unions from the possibility of achieving the representativity barrier commonly. In the new Labour Code each union has to achieve the 10%, which will be rather difficult task for them in the light of the declining union membership.

Just like in the Hungarian Labour Code, the Slovak limits the partners of collective bargaining: "Employees shall have the right to collective bargaining only through the competent trade union body."[54] The other two institutions, the work council and works trustees[55] are not entitled to carry out negotiations of collective agreements, even their role is limited to consultation and information, if there operates a representative trade union's body. The duty to act in concordance of the representative trade unions is also regulated, giving also the chance for the largest one to dominate. If they do not reach an agreement in 15 days, the position to be considered will be the one of the union "with the greatest number of members at the employer."[56] In the same time this provision is forcing unions to reach a common position, in order to be all considered as serious players. If they fail to reach an understanding, the members might feel that their interests are not properly promoted, that

54 See § 229 (6) Labour Code of the Slovak Republic
55 See § 233 of Labour Code
56 See § 232 Slovak Labour Code

they are being sacrificed in the battle for being the leader. Actually, failure may lead a significant loss of members, if they loose their trust in the organisation.

Drastic modifications were introduced in 2011 concerning the representivity of trade unions. The former legislation almost didn't have any provisions on it, employers being forced to deal with trade unions with a minimal number of members, provision which was often criticised.[57] The newly established trade unions (after 1 September 2011) have to prove that represent 30% of the total workforce in order to fulfil the representativity requirement. The same rule will be applicable to older trade unions from 1 January 2013.[58]

2.3.2. Representation of the employer

The regulation on the representation of the employer is a common denominator in the three jurisdictions. On behalf of the employer either the management, at company level, or the employers' organisation is enabled to negotiate the collective agreement. The same organisational rules are applicable for the employer's organisations as for the trade unions, with one exception applicable to Romanian employers' organisations, where one extra requirement was introduced at sectoral and national level, that the employers have to employ at least 10% out of the total employed in the sector, and 7% being the national requirement.

As a new concept to the Hungarian Labour Code, but already existing in Slovakia, the notion of work agreement[59] was introduced, which can be concluded in companies where there is no representative trade union or the company in not under the effects of a collective agreements. In small and medium enterprises the applicability of the provisions on work

57 Handiak, Peter "The evolving structure of Collective Bargaining In Europe 1990-2004", Research Project Co-financed by the European Commission and the University of Florence, National Report Slovak Republic, 2005

58 Cziria, L. „Changes to Labour Code come into effect", (2011) EIROnline

59 267. § and 268. § of Law I./2012 on the Labour Code

agreements is rather limited, because of the fact that only the work council is entitled to negotiate them, whereas election of the work council is mandatory only in companies over 50 employees. Can it be qualified as a collective agreement? It is for sure that it does not have the same force as the collective agreement, although the parties can provide for in it for the same issues; it looses its effects as soon as a representative trade union announces the employer that it is enabled to conclude the collective agreement or the employer concludes a collective agreement.

2.4. Initiation of the bargaining process

Similar approaches to the initiation of collective bargaining can be recognised in Hungary[60] and the Slovak Republic[61]. Bargaining can take place at the request of either one of the representative social partners, and none of the parties can refuse the request of the other. In the Slovak version the written proposal is mandatory. The parties have the obligation to cooperate, but initiation of collective bargaining is not compelling. In Hungary, on a yearly base for the employer is mandatory to propose to the representative trade union collective bargaining on the salarization rules. This procedure could lead to what is referred to as „wage agreement", which is seen as an amendment to the collective agreement, if there exists one.[62] In Slovakia, after initiation the other contractual party has the duty to respond in 30 days (time period which can be negotiated by the parties). The parties have the duty to bargain, and to initiate collective bargaining at least 60 days before the expiration of the existing collective agreement, it is not limited wage negotiations. The same procedure shall apply in case of amendment.

60 See 37.§ Labour Code in force
61 See §8 Act on Collective Bargaining
62 Supra 42, at 59

The new Hungarian Labour Code contains just two subsections[63] on this issue, lessening the provisions on the initiation. It is foreseen that none of the parties may refuse the proposal for collective bargaining. It is also provided for the situation if a trade union becomes representative while a collective agreement is in force. The new one can initiate the renegotiation, modification and participate at the meetings as an advisor. They do not have the right to be a signing party of the modification. If we interpret logically these provisions, in order to a new representative trade union's voice to be actually heard the collective agreement has to be terminated first. Only at the negotiation of the new agreement will the new representative trade union be considered as an actor in the collective bargaining.

The Romanian Law on Social Dialogue[64] made mandatory initiation of collective bargaining by the management, which can be qualified as an exception from the general rule of non-compelling collective bargaining. By making mandatory the collective bargaining at the level of company, except of those which employ less than 21 workers, the management's hand is forced to inform the workers about this obligation and to take the first steps to elect the workers' representative. If the employer fails to initiate the collective bargaining with 45 days before the expiry date of the one in force, the initiation can be done by a written proposal of the representative trade union within 10 days of deposition of the proposal.

Patterns and differences where identified concerning the conclusion of collective agreements, they role in promoting or not promoting are further analysed in Chapter IV. Promoting Collective Bargaining?

63 See 276.§ (6), (7)
64 See Art. 130

Chapter III. Different Aspects of Collective Agreements

During bargaining and after the conclusion of the collective agreement important matters arise, which influence the process, the broadness of rights and obligations of the parties, the workers covered, the possible extension of applicability, duration and renewal. The legislators chose different ways to regulate this issues, this chapter has the role to analyse them. These choices mark the way which promotion of collective bargaining and collective agreements is seen by the parties in the process.

3.1. Content of the collective agreement

Romania and the Slovak Republic share an important point of view on this issue, the general prohibition of negotiation *in peius* of the rights and obligations of workers. This is the outcome of considering the Labour Code as a minimal standard setter. It is an important protection for the employees in Romania especially, because normally at the company level the workers' representative is not a trained negotiator.[65]

In contrast, the new Hungarian Labour Code has the opposite approach regulating this matter. First, there is no general prohibition of negotiating worst work conditions for employees. Second, after every chapter of the Code it is stated which articles might not be negotiated and which might be negotiated positively for the employee. It can be concluded that all the rights and obligations not enumerated by the special provision can be negotiated downwards for workers. The Labour Code to enter in force does not act entirely as a minimal requirements setter. On certain parts collective agreements can set lower standards, than those included in the law, however a lower level (company) collective agreement can be negotiated only as setting better work conditions as a higher level (sectoral) collective agreement.

65 See R163 Collective Bargaining Recommendation, at 5.(1), International Labour Organisation

Furthermore, the general principal that a lower level (company) collective agreement cannot overwrite (contain lower standards) a higher level (branch of industry) collective agreement is applicable also in Romania and Slovakia.

In Romania the objects of collective bargaining are quite loosely defined, referring to the rights and obligations of the parties. The parties are able to negotiate on any matter concerning the rights and obligations, for example wage, working hours.

The Hungarian Labour Code in force defines the fields which a collective agreement can regulate in Article 30. These are the rights and obligations arising out of the employment, their exercise, fulfilment and the determination of procedure in connection with these issues. Moreover, the relations between the parties who conclude the agreement can be a part of it.[66]

The new Labour Code presents the object slightly differently. It mandates in Article 277 that the collective agreement can regulate "rights and obligations arising out of and in connection with the labour relations", which adds to the field. Throughout the new Code the limitations of the object are dispersed.

According to the Slovak Labour Code § 231 the collective agreement can "govern working conditions, including wage conditions, and conditions of employment, relations between employers and the employees, relations between employers or their organisations and one or more employees' organisations".

3.2. Effect of the Collective Agreement

66 J. Hajdú, Sz. Csikós, „The evolving structure of Collective Bargaining in Europe 1999-2004", Research Project Co-financed by the European Commission and the University of Florence, National Report Hungary, (2005), at 16

As a general principal, a collective agreement shall be binding for the contracting parties. When a collective agreement is signed, it is applicable to every worker, even if they are not trade union members, in the company, group of companies. At sector level the collective agreement is applicable to all the workers whose employer is part of the employers' organisation(s) which concluded the agreement. This approach to sector level collective agreements was introduced recently in Romania,[67] before the rule was the automatic extension of the collective agreement to the employees and employers of the sector. Nonetheless, in the Slovak Act on Collective Bargaining the extension of the collective agreement is possible on not signatory parties. The next section will deal with this issue.

3.3. Extension and Registration of the Collective Agreement

Extension and registration do not have the same weight in the analysed countries; extension exists only in Slovakia, procedure through which the government can rise the number of companies to which the collective agreement is applicable, whereas registration in Romania is more than just administrative procedure, marking the date of entry in force.

3.3.1. Extension

In Hungary and Romania the extension of a collective agreement is not possible. The collective agreement is the law of the parties, it cannot be applied to workers, who were not represented at the conclusion. Thanks to this provision extension of the collective agreements is not allowed by the Romanian legislator, neither by the Hungarian. From the Labour Code provisions on extension of collective agreements have been removed, having the consequence that extension is not possible anymore.

67 Law nr. 62/2011 on Social Dialogue

The Slovak legislators approach to the extension issue is on the opposite side of the spectrum. Upon joint written request of the signing social partners or upon written request of one of the signatory parties of a higher level collective agreement, the Ministry of Employment, Social Affairs and Family may extend the validity of a higher level collective agreement to all employers in the sector in which this agreement has been concluded. In the same Act in §7a the exceptions from extension of a collective agreement can be identified:

a) to which the binding effect of a different collective agreement of a higher degree applies as at the effective date of the extension,
b) that as at the effective date of the extension is in bankruptcy according to a specific regulation,
c) that as at effective date of the extension is in liquidation,
d) hat employs fewer than 20 employees according to the average registered number of employees calculated for the calendar month preceding the calendar month in which the extension entered into effect,
e) of whose employees more than 10% are person with health disability as calculated from the average registered number of employees for the calendar month preceding the calendar month in which the extension entered into effect,
f) that has been afflicted by an extraordinary incident the consequences of which persist as at the effective date of extension,
g) that as at the effective date of the extension has pursued business activity for a period shorter than 24 months, provided it is not legal successor of a different employer.

The most important exceptions are the ones which provide for the exclusion of small and new enterprises. For new enterprises this can give a breath, a push to them in their first two years to gain force and strengthen their position in the market. The small company exception must be seen also in a positive light, as they are usually not the exploiters of workers.

3.3.2. Registration

Registration, an administrative procedure, is mandatory in all three countries for every level of conclusion, according to the rules set by the law at the designated authority. It is also compulsory the registration of the modification, any amendment, and where is possible also the termination.[68] Registration offers the possibility to the governmental body to double-

68 See section 3.5. Hungary

check the compliance of the collective agreement with the mandatory legal provisions and the higher level collective agreements.

In Romania the collective agreement's date of registration is especially important, as it marks the date of entry in force, whereas in Hungary the entry in force is marked by the date of publication for the workers, in Slovakia being the date on which was signed.

3.4. Duration and Renewal of the Collective Agreement

On regulating the duration of collective agreements Hungary and Romania take two opposite direction, Slovakia chose the middle way.

The Romanian Law on Social Dialogue[69] states expressly that the collective agreement has to be concluded for a defined period. Moreover, the minimum and maximum duration of the collective agreement is set, between 12-24 months. On the opposite side, Hungarian collective contracts are concluded for an indefinite period of time, according to the legislation in force. The new Labour Code adds only that it can be concluded for a predetermined period of time, giving no specifics on the issue. The middle solution was adopted in Slovakia, where collective agreements have to "be concluded for a period explicitly specified therein. In case the period has not been specified, it shall be assumed that the collective agreement shall cover a period of one year."[70] The legislator chose the auxiliary way of regulating, by providing the period of time if the parties fail to do so.

The three countries have also taken different approaches to the renewal of collective agreements. If the Romanian parties wish so, the agreement might be extended in terms of duration only once according to the procedure of the Law on Social Dialogue, with maximum 12 months. However, the Slovak parties are mandated to renegotiate the agreement, but to

69 See Art. 140, 141
70 §6 of Act nr. 2/1991 on Collective Bargaining

introduce modifications is not mandatory, they are free to keep the wording. In Hungary, as the general rule is the conclusion for indefinite period, the issue of renewal does not arise. The emphasis is therefore put on the rules which provide for the modification of the collective agreement.

3.5. Termination of the Collective Agreement

The three legislations are also differently setting the rules on termination of collective agreements. The difference is the consequence of the different view on the duration of the agreement but it is surprising that the Slovak Labour Code and the Act on Collective bargaining "forgot" to regulate the termination.

According to the Romanian Law on Social Dialogue,[71] the collective agreement ends:

- at the expiration of the time period for which it was concluded, if no extension was negotiated
- when the company is dissolved or liquidated
- through the agreement of the parties

In Art.152 it is expressly provided that none of the parties can terminate the collective agreement unilaterally.

However, in Hungary unilateral termination is possible for both parties with a notice period of 3 months. This provision was necessary because the duration of an agreement is not set by either Labour Codes. The right to terminate unilaterally is not an unlimited one, it cannot be exercised in the first 6 months from the conclusion of the agreement. In the Hungarian legislation the issue of legal successor in highly regulated, on whose existence is the termination of the collective agreement strongly linked.

71 See Art.151, 152

To conclude this chapter's analysis the following must be pointed out, because of their role in the legislators approach to collective bargaining. The content of the collective agreement is up to the freedom of the parties, as one of the basics of the autonomy of collective bargaining. The Romanian and Slovak agreements can provide only more positive settings for the workers, whereas the new Hungarian provisions allow also negotiations *in peius*. Taking this opportunity is up to the social parties, to weigh which rights and obligations matter more to them.

The effects have similar approaches in all three countries, but the extension of these effects to workers, who were not covered initially, is possible only in Slovakia. When the collective agreement is providing better working conditions, extension is welcomed by all the workers.

Chapter IV. Promoting Collective Bargaining?

The importance of collective bargaining, why it is worth promoting, derives from its autonomy, its role of social policy and rule-making.[72] It is the most adaptable source of law, being created by the social partners on who poses rights and obligations. This feature is also recognised by the ILO and EU, the ILO compelling Member States to promote collective bargaining; whereas the EU endorses collective bargaining on its own level.

This chapter focuses on the promotion of collective bargaining in the light of Hungary's, Romania's and Slovakia's international obligations, which they assumed by signing the ILO C154 Collective Bargaining Convention. It will answer the question - Promoting collective bargaining? - using the analysis presented in Chapters II and III.

The Collective Bargaining Convention foresees expressly the promotion of collective bargaining in Article 5:

> 1. Measures adapted to national conditions shall be taken to promote collective bargaining.
> 2. The aims of the measures referred to in a paragraph 1 of this Article shall be the following:
>   (a) collective bargaining should be made possible for all employers and groups of workers in the branches of activity covered by this Convention;
>   (b) collective bargaining should be progressively extended to all matters covered by subparagraph (b) and (c) of Article 2 of this Convention;
>   (c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;
>   (d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;
>   (e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

As a specificity of Central Eastern Europe, social partners rely more on state interventions to create rules and regulations on maintaining the industrial peace and the working conditions.[73] To change this habit, the promotion of collective bargaining should have a central place in the legislation, the law being the most important tool in the process of promotion.

72 See supra 19, at 426
73 See supra 49, at 51

The need for promotion of collective bargaining exists because normally the employer is in a better bargaining position, having a considerably more powerful voice than the worker in the individual employment relation. This is also reflected by the examined countries' legislation, which view of the individual labour relationship is one of subordination. Collective bargaining should be the instrument which balances the relationship between the workers and the employer. In order to achieve equilibrium in this system the best way to promote collective bargaining is the law. But are the measures adopted by the investigated countries effective in way of promoting collective bargaining?

Promoting collective bargaining means to ensure the social partners willingness to bargain. The willingness to bargain is a feature of trade unions, but the same cannot be said about employers. To boost their willingness the representativity of the unions must be approached delicately by the law; the approach influences the recognition of each and every trade union in particular, it is not abstract. Regulation of representativity is the way to induce or to mandate employers to recognise trade unions and to set the conditions of recognition.[74]

The representativity barrier has to be carefully established. On one hand, representativity requirements set too high might block the process of collective bargaining in case the membership of the trade unions is low, as a non-representative trade union cannot initiate collective bargaining. Even if the employer would have the inclination to bargain, it would be only possible to conclude a work agreement. On the other hand, barrier set too low might complicate the process, because of too many partners, or trade unions develop an aggressive attitude towards the employer, which could feel harassed.[75]

In establishing the representativity the union membership should be taken also into account. Here surfaces a major problem: how to get to a realistic figure on coverage of trade

74 See supra 49, at 52
75 The reason why the Slovak 30% was introduced

unions? The number of members is hard to define in each country, some sources[76] put the number in Hungary and Slovakia at 16%, in Romania at 35%, but non of them are reliable or providing official data. The figures can be qualified as unreliable, because it happens in many cases that one person is member of more than one trade union, nonetheless the trade unions also have the tendency to exaggerate the number of their members in order to be taken "more seriously".[77] In result they are often criticised for this practice and even made fun of, which does not contribute to their image or organisation building and strengthening procedures.

The Hungarian 10% and especially the Slovak 30% representativity requirements seem quite high comparing with the Romanian 7%. These recent steps could be interpreted as against collective bargaining.

The Romanian approach seems a bit milder at first look, but actually limits the trade union activity at company level, by mandating as representativity requirement 50% of the workers. The situation is presented positively by the regulation, initiation of collective bargaining being mandatory for every employer over 21 workers. But we must ask ourselves what could be the ending of a negotiation between the skilled management and a simple workers' representative. How he/she will know how and what can he ask for? A great experience is needed to weigh the situation which occurs during negotiations. In these circumstances there is almost no possibility to train the person who has to face the management and get better working conditions for the workforce which he represents.

On the positive side, in Slovakia the most probable scenario is that the 30% provision will not last for long. Due to elections in 2012, where the SMER dominated, the figure will be lowered. This also was an election promise of the party in response to the political

76 European Industrial Relations Online; but the ILO does not have data, nor any national statistics institutions

77 For example the total Romanian employees number for November 2011, according to the National Institute of Statistics, is 4 198 500. 3 of the trade unions, National Trade Union Block (Blocul National Sindical), C.N.S.L.R. - Fratia and CNS „Cartel Alfa" together claim to have more than 2 800 000 members, and we didn't even count the other two remaining confederations, Romanian Democratic Trade Union Confederation (C.S.D.R. Confederatia Sindicatelor Democratice din Romania) and C.S.N. Meridian

endorsement which received from the biggest trade union confederation, KOZ SR. Political implication is unavoidable, even with relatively low membership, trade unions still represent a great force, although the marriage to one party is not always a success story.

Another aspect to be considered, the trade unions have had to face a decline in the last 20 years, decline which had many sources. After shifting to capitalism, the trade unions failed to train their representatives as much as the management did and does. Today the management's training and education level is at comparable heights with the Western European, whereas the trade union's representatives are still not considered as trained as their Western counterparts. They often sit opposite well-trained negotiators who play the negotiating game every day. Another source of decline is the fact that workers don't consider the work of the trade union as productive, so they refuse to become members or choose to quit. Often the revenue which they get for being a member is no more than the membership fee. Also political and corruption scandals damaged the image of trade unions through the years.

Who should be responsible for re-building the image of trade unions? Why should be even the image of trade unions be re-built? The answer to this question is because of their function in society, which was formulated the best way in an ILO World Report[78]:

> [Trade unions] fulfil three important functions. The first is a democratic function: allowing all those who have work or want to work to have a say in their working life. The second is of course an economic function: helping to find the best possible balance in the production and the distribution of the fruits of growth. The third, which derives from the first two, is a social function: ensuring that all those who would like to work find their place in society; these organizations can certainly help to eradicate poverty, as well as to combat the social exclusion of the most

78 ILO, World Labour Report 1997-98: Industrial Relations, Democracy and Social Stability, Geneva, International Labour Office, 1997, at p.27

vulnerable, inner-city violence, social tensions and unrest, and indeed be a contributing factor to social stability.

Returning to the first question, certainly the employers will not complete this task. They are gaining the biggest profits out of the current situation, out of the tendency of legislators to lower the labour standards in order to create a welcoming environment for investment or to keep it. Weakness of the labour organisations could be even a decisive factor on this issue.

Should the state be responsible for re-shaping trade unions image? In this case there are two sides of the problem. On the negative side for the government, collective action (strike) takes place more frequently in the public sector, where the employer is the state. This sector's trade unions are still more powerful, than the ones which represent the workers from the private sector. We also have to consider that any step towards helping the trade unions will be interpreted as an attack against the economic sphere by the management. On the positive side, the re-empowerment of the trade unions would benefit the society as a whole, if we reflect on its functions described above.

The good answer must be that this matter has to be dealt with by the trade unions, as an internal matter. They have to regain the trust and confidence of the workers and of the society as a whole. This will not be an easy ride, and certainly not a short one. The unions have to keep on fighting, to protest, to have their voice heard. Silence in social dialogue is equal with non-existence.

Conclusion

Collective bargaining plays an essential function in modern society, bringing balance in the industrial relations. This role is recognised by the International Labour Organisation and also by the European Union, both taking up the task to promote collective bargaining.

Hungary, Romania and Slovakia lowered recently their labour standards, but without adopting measures which promote collective bargaining to counterbalance them. In the near future this will create an imbalance on the labour markets, and the situation will have no practicable solution, but changing the statutory provisions one more time. The legislators do not rely on the most important feature of collective bargaining, its autonomy; and so they fail to promote it. The independent social partners can identify best their own needs and find the solution to the specific problems.

The distrust in collective bargaining is also caused by the decline of trade unions over the years, their failure to evolve on the side of their bargaining partners. To be able to put pressure on the legislators to fulfil their obligation of promoting collective bargaining, the trade unions need to regain the confidence of the labour market.

Nonetheless, collective bargaining and collective agreements are in the best interests of both social partners. The collective agreement is the solution which can solve all the case specific issues which a certain employer can have with its employees, or it can be designed so that fits the special needs of one specific branch of industry.

It is the best solution for the employers in order to keep the industrial peace, to avoid strikes, which is also the interest of the national economy. For the employees the best solution is to be considered equal partners as a collective, to counter the subordination which dominates in the individual employment relations. With low chances to enter into collective bargaining, to be seen as a valuable asset in the system, the workforce will loose its self-esteem, which eventually will lead to low level of productivity. The productivity level of the

workforce is an important consideration when multinationals decide where to place their production plants, so in the long run the same problem will have to be faced.

The three countries do not consider these long-term effects of failure of collective bargaining promotion. Hopes must be kept up, that they will realise soon enough that this is not the solution to the current situation.

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