Subregional Tripartite Conference

Strengthening the Mechanisms of Labour Dispute Prevention and Amicable Resolution in the Western Balkan Countries and Moldova

Montenegro, Hotel Splendid, Bećići, 25–26 February 2009

Conference Report

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Foreword

In times of severe crisis, such as the one we are witnessing at present, when the very foundations of industrial relations are at risk, social dialogue mechanisms can and should prove their value. For this, they must be sound, effective and based on the mutual trust, good will and solidarity of all the parties involved.

As emphasised in the conclusions of the ILO's 8th European Regional Meeting, held in Lisbon on 9–13 February 2009, harmonious labour–management relations can help to mitigate hardship due to economic recession. Collective agreements negotiated before the crisis might be challenged in the current situation, and so a fair and equitable balance between competitiveness and job security is needed more than ever. Measures to combat the economic crisis must be identified primarily by means of collective bargaining and social dialogue.

On 25–26 February 2009, the Sub-regional Tripartite Conference on "Strengthening the Mechanisms of Labour Disputes Prevention and Amicable Resolution in the Western Balkan countries and Moldova" took place in Becici, Montenegro. The conference was organized by the ILO Sub-regional Office for Central and Eastern Europe based in Budapest with financial support from the Austrian Development Agency (ADA), within the ADA-ILO joint project on "Consolidating the legal and institutional foundations of social dialogue in the countries of the Western Balkan and Moldova". The focus of the project is to promote a culture of social dialogue by consolidating tripartite institutions at the state level, enhancing the mechanisms for the amicable settlement of labour disputes and the capacity of the social partners to engage in bipartite and tripartite social dialogue.

The Becici conference was the first meeting where tripartite delegations from all countries covered by the ADA-ILO joint project participated. It was aimed at facilitating an interactive sharing of experience and good practices of alternative labour disputes resolution, which would help the participating countries shape disputes prevention policies and workplace strategies.

The event marked the start of a three year process of ILO technical assistance in capacity building and awareness raising on labour disputes resolution mechanisms with the view to making them more effective and efficient, and able to better meet the needs of both sides of industry in the context of the economic crisis. This process represents the continuation of the work the ILO has previously undertaken in several Central and Eastern European countries, such as: capacity building of peaceful labour disputes settlement bodies (Bulgaria, Serbia); high level tripartite seminar on alternative disputes resolution and labour courts in the new EU member States (Cyprus); training of labour judges on international labour standards (Romania).

This report reflects up to date developments on the functioning of alternative labour disputes resolution (ALDR) mechanisms in the participating countries, and the proposed Action Plans to increase their effectiveness and to reach out to their beneficiaries.

The positive feedback received after the conference concerning its practical and immediate impact on the legal process in some of the participating countries encourages us to believe that the information provided by the conference report will prove its usefulness in helping the Western Balkan countries and Moldova to further improve their law and practice in the matter of alternative labour dispute resolution.

I would like to take this opportunity to thank the Government of Austria for the financial support provided for the promotion of social dialogue in the Western Balkan countries and Moldova in general, and for making possible the Becici conference in particular. I would also like to extend my thanks to the Austrian Development Agency and to its representative in Montenegro, Mr. Gerhard Schaumberger for his support.

Special appreciation is expressed to the staff of the ILO Sub–regional Office in Budapest, in particular Ms. Cristina Mihes, Senior Specialist in Social Dialogue, Ms. Anne Knowles, Senior Specialist for Employers' Activities and Ms. Svetla Shekerdjieva, Senior Specialist for Workers' Activities, for their significant technical contribution. I would also like to thank Ms. Krisztina Homolya, Ms. Lilian Orz and Ms. Tunde Lovko for their efficient assistance at all times, and Mr. Alfred Topi, Ms. Lejla Tanovic, Ms. Ala Lipciu, and Mr. Jovan Protic, the ILO's National Coordinators in Albania, Bosnia and Herzegovina, Moldova and Serbia for their assistance in the overall organization of the conference.

Thanks are also due to the participating country delegations and to the experts, Ms. Plamenka Markova and Dr. Martin E. Risak for their valuable contributions and the enriching discussions.

A final thank you goes to the technical editors, Dr. Martin E. Risak and Ms. Christiane Holter; to Mr. James Patterson who copy edited this report; and to the staff of the Chair of Civil Law and Labour Law at the University of Passau for their support in the editorial work.

The opinions expressed in the individual sections of this report do not necessarily reflect the views of the ILO.

Mark Levin
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Context

One might ask whether a severe economic crisis is the right time to launch a debate on Alternative Labour Dispute Resolution in the Western Balkan countries and Moldova. We hope that the arguments presented here demonstrate that it is more timely than ever.

For the past decade, the Western Balkan countries and Moldova have been engaged in a wide-ranging overhaul of labour law. Under the influence of international labour standards and EU regulations, national labour codes have been enriched with new institutions, while collective labour law has assumed a prominent role. Freedom of association, the right to strike and the right to collective bargaining have been enshrined in these countries' new constitutions and labour codes.

The industrial relations landscape has been extensively reshaped. The social partners have merged or split in pursuit of new structures. Their legitimacy and representativeness constitute a major challenge to the conduct of bipartite and tripartite social dialogue.

Collective agreements have become an important source of law. Disagreement over their negotiation, application, interpretation or modification is subject to settlement both in and out of court. In the latter case, special clauses or rules have been set out in collective agreements or tripartite arrangements have been made.

With the mutual aim of securing social peace and speeding up court settlements by relieving ordinary courts of the burden of labour disputes, governments and social partners have been working together to establish Alternative Labour Dispute Resolution mechanisms. Whether institutionalised or ad hoc, these mechanisms are intended: (a) to prevent collective labour disputes escalating into strikes, and (b) to offer a quick settlement in individual and collective rights disputes.

Alternative Labour Dispute Resolution methods can provide cost- and time-effective extra-judicial settlements tailored to the needs of the parties. Their resulting agreements are more likely to preserve harmonious and sustainable relations between the two sides of industry.

At a time of severe economic crisis, when wage cuts and job insecurity on the one side, and pressure on enterprises due to capital shortages and shrinking demand on the other are likely to jeopardise relations between workers and employers, Alternative Labour Dispute Resolution can prove its added value in the pursuit of mutually acceptable solutions for labour and management.

However, despite its high potential for preserving industrial peace, Alternative Labour Dispute Resolution is far from being used to its full potential when it comes to collective disputes. Among the reasons for this, one might mention the persisting fragility and fragmentation of industrial relations systems in the Western Balkan countries and Moldova. Having set off in search of their identity, the social partners still lack the necessary structure, infrastructure and coherent agendas that would enable them to engage in meaningful bipartite dialogue. Furthermore, there is a tendency for them to challenge or to lobby the government directly instead of holding bipartite negotiations. Collective bargaining is usually confined to the enterprise level. When disputes arise at the branch level, the judicial route is usually taken.

In the absence of statutory objective representativeness criteria or genuine voluntary recognition, the sine qua non of mutual trust between the parties is not always met.

In some cases, the newly established institutions for the amicable settlement of labour disputes are not fully operational, lack the necessary expertise or suffer from bureaucracy and formalism. Across the board, the resources and skills are lacking to reach out to potential beneficiaries and build trustful relations with them.

Finally, a culture of compromise is very much in its early stages and still has far to go before it becomes a modus operandi in collective labour dispute settlement.

Methodological Approach

The Sub-Regional Conference was aimed at: (a) taking stock of new developments in the Western Balkan countries and Moldova in the area of the amicable settlement of labour disputes; (b) facilitating the exchange of experiences and good practices; and (c) helping to determine the way forward.

For this purpose, an interactive methodological approach was followed: tripartite (two government representatives, and one each from the workers' and employers' sides) national delegations and a Kosovo (within the meaning of UNSC Resolution 1244 [1999]) delegation were asked to jointly work out a PowerPoint presentation following the Terms of Reference prepared by ILO SRO Budapest. Each delegation also appointed a rapporteur to deliver the presentation at the dedicated conference session.

Two case studies (Bulgaria, a new EU Member State where an Alternative Labour Dispute Resolution body has recently become operational, and Austria, which enjoys effective compromise-driven social partnership) were presented and discussed.

The Senior Specialist on Social Dialogue and International Labour Standards and the Senior Specialist on Employers' Activities from ILO SRO Budapest gave presentations on Alternative Labour Dispute Resolution in light of international labour standards and EU regulations, and on practices to prevent and resolve disputes at the enterprise level. The presentations were followed by lively discussions.

On the second day of the Conference, during the working group sessions the participating delegations drafted Action Plans following the pattern recommended by the ILO. The Action Plans were presented and discussed in the plenary of the Conference.

After further revision and endorsement, the final country Action Plans represent the starting point for action within the ADA-ILO joint technical cooperation project in the area of Alternative Labour Dispute Resolution.

Opening of the Conference

In his welcome address Mr Mark Levin, Director of the ILO Sub-regional Office for Central and Eastern Europe in Budapest, pointed out that the conference was the first meeting in which tripartite delegations from all the countries covered by the ADA-ILO joint project had participated. The two main objectives of this joint project are (a) the strengthening of tripartite social dialogue and (b) capacity building in relation to the peaceful settlement of labour disputes in the Western Balkan countries and Moldova. The aim of the conference was to promote and facilitate the interactive sharing of experiences and good practices on alternative labour dispute resolution and to help the participating countries to shape dispute prevention policies and workplace strategies. The ILO intends, in a three-year programme, to assist the relevant countries in making labour dispute resolution mechanisms more effective and efficient so that they can better meet the needs of both sides of industry.

Mr Željko Vuković, Deputy Minister of Health, Labour and Social Welfare of Montenegro, introduced the subject of amicable labour dispute resolution by illustrating the current state of affairs. In 2005, Mon-

tenegro adopted the Law on Mediation which also regulates litigation based on labour disputes. According to Article 121 of the new Labour Code, in force since 23 August 2008, labour disputes may be resolved by means of arbitrators and conciliators. The procedure for such dispute resolution is regulated by the Law on Peaceful Labour Dispute Resolution. Its basic idea is to define the principles of the procedure with regard to collective and individual labour disputes, if the disputing parties have initiated court proceedings or intend to do so, as well as to stipulate the rights and responsibilities of conciliators and arbitrators. In addition, it was decided to establish an agency for amicable labour dispute resolution, whose tasks are related mainly to the selection of arbitrators and conciliators, their training and professional development and their exemption from particular cases. According to Mr Vuković it is expected that this agency will become operational very soon, hopefully with the assistance of the ILO.

Montenegro has accepted tripartism as an instrument of democracy and as a provision that respects the labour rights of all employees. Extra-judicial labour dispute resolution plays a very important role *'in lifting the burden off the regular courts in this area'*.[1] Unlike court proceedings, which usually take a long time, arbitration and conciliation procedures help employees to get a quick and effective decision.

Mr Gerhard Schaumberger, Head of the ADA Office in Podgorica underlined the importance of the Western Balkan region for Austria in both political and economic terms. He stressed that the current economic crisis does not recognise national boundaries and that substantial cross-border cooperation is more necessary than ever. Therefore, dispute settlement mechanisms will soon be introduced or improved in the countries of the Western Balkan region and in Moldova. In this context, the assistance of the ILO as a specialised and experienced international organisation that above all protects international labour standards is very useful. The programme, which shall run until 2011, is regarded as a good opportunity to improve negotiations between employees, employers and government institutions, and is very timely.

According to Mr Schaumberger, enhanced social dialogue is the basis for improved economic and social development. This can be shown on the example of Austria where social dialogue has been practiced very successfully since the middle of the twentieth century. The 'Social Partnership' has a very good track record in preserving social peace in the country, and has definitely contributed to economic development. In Austria, all three parties, who pull no punches in their negotiations, know that at the end of the day they are in a win–win situation if they find solutions to social and economic challenges. Therefore, the social partners are responsible for the fact that Austria is considered as 'an island of the blessed' where strikes are measured in seconds rather than in days or weeks. Concluding, Mr Schaumberger expressed the hope that the project would contribute to more successful social dialogue in the countries concerned.

1 Vijesti Daily (26 February 2009).

Conference Proceedings

I. Alternative Labour Dispute Resolution in Light of International Labour Standards

Ms Cristina Mihes, Senior Specialist in Social Dialogue and International Labour Standards, ILO Subregional Office for Central and Eastern Europe, Budapest, introduced the topic of Alternative Labour Dispute Resolution (ALDR) by explaining the general concepts and definitions and how labour disputes are treated and regulated throughout the ILO and the European Union.

1. General Concepts and Definitions

Employment disputes are generally related to either individual or collective disputes. Individual disputes involve only two parties, the employee and the employer, while collective disputes involve not individuals but groups of employees, usually represented by representative bodies. Collective disputes can be divided into two subcategories: rights disputes and interest disputes.

Whereas disputes of rights refer to the application and interpretation of current law or existing individual or collective agreements, disputes of interest are disputes about establishing new rights or the modification of existing ones. Interest disputes typically arise in the context of collective bargaining.

This distinction is relevant to determining the appropriate method of resolution. If these disputes are to be resolved outside the courtroom the method is referred to as 'Alternative Labour Dispute Resolution' (ALDR). Basically, there are three different types of ALDR, varying in terms of the degree of interference of the third, neutral party:

1. **Conciliation** is aimed at helping the parties to reach a mutually agreed solution. It is commonly used in interest disputes.
2. **Mediation** is the procedure most widely used for resolving interest disputes and collective rights disputes. Whereas the role of the third party in conciliation processes is restricted to mere "peace keeping", a mediator can also make proposals for a settlement. The parties are free to accept or to reject these proposals.
3. **Arbitration** is generally considered to be an option of last resort due to its quasi-judicial nature. Thus, it is usually applied after mediation attempts have failed. In many countries arbitration is associated with collective rights disputes, while in others it can be used only in the event of an interest dispute.

Dispute resolution procedures of this kind may be either compulsory or voluntary and their outcome either binding or advisory.

2. International Labour Standards

Within the ILO, labour dispute prevention and resolution are regulated by various Conventions and Recommendations:

- Labour Relations (Public Service) Convention No. 151 (1978);
- Collective Bargaining Convention No. 154 (1981);
- Voluntary Conciliation and Arbitration Recommendation No. 92 (1951);
- Examination of Grievances Recommendation No. 130 (1967);
- Labour Administration Recommendation No. 158 (1978).

From this it follows that a system of dispute settlement must be consistent with the right to strike and the freedom of association. The legal requirement to pursue conciliation and mediation before a strike can take place is legitimate only as long as the procedures are not too complex or too slow. Moreover, the requirement of compulsory arbitration is generally contrary to the principle of voluntary negotiation of collective agreements established in Collective Bargaining Convention No. 98 (1949). A single exception is made in respect of essential services, where an interruption would endanger the life, personal safety or health of the whole or part of the population.

3. EU Perspective

Whereas it is not within the competence of the European legislature to regulate matters concerning freedom of association, the right to strike and to lockout and wage fixing, Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters pursues the objective of facilitating access to alternative dispute resolution and promoting the amicable settlement of disputes (Art. 1). The scope of the Directive is limited to cross-border disputes, but Member States should not be prevented from applying it to internal mediation processes.

In the new EU Member States labour dispute resolution is regulated in a number of different ways. Besides the Labour Code in Hungary there are collective agreements that regulate labour disputes. Special laws on labour dispute resolution were adopted in Bulgaria, the Czech Republic, Latvia, Poland, Romania and Slovakia, and different regulations on labour relations can be found in Lithuania and Slovenia. These provisions mainly regulate the status of the parties involved, rights and obligations during the course of a dispute, and mechanisms and procedures for resolving the dispute.

As regards institutional frameworks in the new Member States, currently they are mostly in the public sphere. A number of different types of institution are involved in labour disputes. These include: public institutions and officials within the labour administration (Estonia, Romania); independent experts, proposed by the Ministry of Labour (Czech Republic, Slovakia); and independent public dispute resolution agencies (Hungary). There are also voluntary and autonomous bipartite arrangements for labour dispute resolution, set up by the social partners (Latvia, Lithuania, Poland, Slovenia).

As the Committee of Freedom of Association (CoFOA) has stated on many occasions there is no preference for a certain type of ALDR. All three types are combined in different ways in the new Member States: mediation and arbitration (Czech Republic, Poland and Slovakia); conciliation and mediation (Estonia); conciliation and arbitration (Latvia); conciliation, mediation and arbitration (Hungary, Lithuania and Romania); and conciliation or mediation combined with arbitration (Slovenia).

Conciliation procedure is very informal in some countries (such as Cyprus), whereas in others – for example, Hungary and Romania – there is a formal obligation on the disputing parties to file a written application. In Slovenia the procedures of conciliation and mediation overlap.

In a number of Member States **compulsory dispute resolution** is provided for by law. Within the scope of freedom of association the requirement of **compulsory arbitration** applies only to essential services in the strict sense of the term. In addition, the outcome of arbitration should not be predetermined by law.

4. Conclusions

The structure of industrial relations strongly influences the nature, scope and impact of ALDR mechanisms. There is a significant interdependence between the freedom of association, voluntary collective bargaining and the proper functioning of Alternative Labour Dispute Resolution. Despite its great po-

tential for preserving industrial peace, ALDR has so far not been used to its full potential. The task for the future will be to identify the obstacles and how they can best be overcome.

Discussion

Following Ms Mihes' presentation, Mr Schaumberger (Austrian Embassy in Montenegro) asked why ALDR is obligatory only in some countries.

Ms Mihes responded that in all EU countries disputes are categorised as either interest disputes or rights disputes. Interest disputes that arise in the course of collective bargaining are dangerous because they can escalate into larger conflicts, including strikes. Thus, governments are willing to invest time and resources to prevent such escalations and to maintain industrial peace. Therefore, disputing parties are often legally obliged to pursue an amicable settlement. In addition, the parties can try to resolve the dispute on their own, if they see any chance of success.

The representative of the BiH Association of Employers emphasised that all countries in the Western Balkan region and Moldova first have to check which conventions they have ratified in the field of amicable dispute resolution. If they have not already done so, they should make it a priority to ratify the relevant conventions. He added that across the region the courts are inundated by labour (and not only labour) disputes. For this reason, the social partners should take the lead in promoting alternative (amicable) labour dispute settlement. This would also facilitate the introduction of tripartite resolution of labour disputes. In addition, he mentioned the Greek model of dispute settlement (OMEDA) which includes the process of conciliation, mediation and arbitration on a tripartite basis, but with the social partners also jointly choosing a group of independent experts whose decision is considered final if the dispute cannot be resolved through regular mediation. According to the representative, this could become a useful and implementable system in Bosnia, too.

II. Practices to Prevent and Resolve Disputes at the Enterprise Level

Ms. Anne Knowles, Senior Specialist on Employers' Activities, ILO Subregional Office for Central and Eastern Europe, Budapest, pointed out in the introduction to her presentation that state mechanisms that provide for the speedy and practical resolution of disputes are essential but can only be a last resort. The prevention of disputes and genuine attempts by the parties to resolve conflicts themselves are an integral part of any dispute resolution system.

1. Prevention Mechanisms

1.1 Legislation and Collective Agreements

To avoid disputes it is important that the provisions regulating the rights and obligations of the employers and employees are clear and easy to apply. With regard to collective agreements the best outcome is guaranteed if they are workable and efficient, and sustain the relationship between the parties. It is essential that the terms used in collective bargaining agreements (CBAs) and the stated conditions are clear, written in simple, everyday language and relevant to the practical requirements of the respective industry or enterprise.

1.2 Rights and Responsibilities within the Framework of Industrial Relations

It is important to be aware that, for every right in a contractual relationship, there is a corresponding responsibility.

Employers, for example, have the right to manage, but they are also responsible for ensuring that supervisors know how to manage and motivate the staff. They have the right to expect that products or services are of good quality but they are also responsible for providing proper training.

By the same token, employees have rights and corresponding responsibilities. The right to a safe and healthy workplace corresponds to the responsibility to wear and use safety clothing and equipment; the right to have appropriate tools and equipment corresponds to the responsibility to take care of them; the right to be paid for 8 hours' work a day corresponds to the obligation to work during these 8 hours.

1.3 Training and Education

The training of employees plays an important role in the prevention of labour disputes. Disagreements often arise due to a lack of knowledge concerning the provisions and requirements that have to be complied with. Thus, it is essential to instruct new employees and to provide accessible versions of all legislation, collective agreements and company rules. In addition, supervisors should understand and respond to the concerns of employees in a timely manner.

2. Resolution Mechanisms

To resolve (individual) labour disputes, every enterprise should have a low-level, speedy and fair system. This requires that the enterprise has 'good reason' for its actions and that the process is fair.

'Good reason' refers to genuinely business-related reasons. It must be apparent that a dismissal or other instance of disciplinary action is unavoidable and proportionate. Such 'good reason' may include misconduct, negligence, persistent poor performance, redundancy, incapacity or incompatibility.

Furthermore, a **fair process** must be guaranteed. This includes the provision of information, the possibility of representation, the opportunity to comment, taking into account all relevant considerations, granting access to decision-makers and pointing out possible alternatives to the decision taken by the employer.

3. Conclusion

In order to promote practices to prevent and resolve disputes at enterprise level it is important to link these mechanisms with dispute resolution procedures. The precondition of instigating a dispute resolution process at enterprise level before any court proceedings can take place would help to improve alternative dispute resolution. If internal company procedures fail it is important to get an independent body (usually a labour court) to look at the reasons for the dismissal or the decision.

Discussion

In the discussion following the presentation, the representative of the Chamber of Economy of Kosovo [within the meaning of UNSC Resolution 1244 (1999)]) stated that the social partners in the Western Balkan countries and Moldova have knowledge and experience in the area covered by Ms Knowles's presentation. Labour dispute resolution systems have been established by the workers and employers of these countries. He pointed out two factors which, in his view, hinder the implementation of workers' and employers' rights, in both the public and the private sectors:

1. the economic and social crisis, which is already having a major impact in Europe – outcomes for workers are often unjust;

2. training and education – in his view, neither employers nor workers in Kosovo (within the meaning of UNSC Resolution 1244 [1999]) are well informed or educated in this respect. He would therefore be interested in learning about the mechanisms that might enhance the level of training and education on both sides. By enhancing this level, both employers and workers would become more aware and so more willing to raise their voice against injustices, seeking the implementation of their rights.

III. Austrian Practices in the Prevention and Amicable Settlement of Labour Disputes

Prof. Dr. Martin E. Risak, University of Vienna/University of Passau, presented a case study on Austrian mechanisms of Alternative Labour Dispute Resolution (for the full paper see Annex 1).

The system of 'Social Partnership' is the salient feature of industrial relations in Austria. Based on close voluntary cooperation ('gentlemen's agreements') between employers, employees and the state, this system has contributed significantly to ensuring industrial peace, and especially that no strikes or lock-outs have taken place in relation to collective labour disputes in recent decades.

The representation of employees' interests is provided for by two organisations: the (federal and regional) Chambers of Labour, established by law and with mandatory membership and fees, and the trade union organisation, of which membership is voluntary. The Chambers leave collective bargaining to the unions and operate mainly as a source of expertise. This cooperation results in numerous instances of multiple office-holding, not only between the Chambers and the trade union federation, but also between the Chambers and political parties.

Everyone licensed to carry on a business – with some minor exceptions – is an obligatory member of a (regional) Economic Chamber, representative bodies established by law with mandatory membership and fees, as well as regulatory autonomy. The Economic Chambers are invested by law with the capacity to conclude collective agreements.

Collective agreements cover all employees working at establishments where the employer is bound by the agreement (whether they are union members or not). Since in Austria collective agreements are normally signed, on the employers' side, by the Economic Chambers there is virtually blanket coverage by collective agreements.

At the enterprise level the works council represents the entire workforce at all establishments with five employees or more. It has workplace-level consultation and codetermination rights.

In Austria, jurisdiction in matters relating to labour and social security law falls within the system of ordinary courts which act as labour and social security courts. They hear cases in panels with, in addition to professional judges, lay judges who are nominated by the Economic Chambers and the Chambers of Labour.

Austria does not have a long history of formal alternative dispute resolution (conciliation, mediation, arbitration) in rights disputes. Only in 2003 was a first attempt made in this direction with the adoption of the Act on Mediation. In practise, mediation – as well as arbitration – in general does not play an important role in the resolution of employment rights disputes, which tend to be resolved in the labour courts.

Conflicts concerning collective disputes of interest are not dealt with in the courts, so alternative resolution methods were established relatively early, though the relevant bodies usually do not involve neutral persons but rather representatives of both sides of industry. The law provides for conciliation boards in disputes concerning the conclusion or amendment of certain types of works agreement, as well as collective agreements. If one of the parties to a collective agreement or some types of works agreement requests it the other has to enter into a conciliation procedure. In cases in which the body in charge is not vested by law with the power to arbitrate the dispute (which is the case with the Federal Concil-

iation Board in charge of conciliation disputes concerning collective agreements) the conciliation procedure has no practical relevance. Nevertheless, parties to collective agreements do not have recourse to strikes or other forms of industrial conflict. In the case of conciliation boards in charge of conflicts concerning works agreements they are used by both parties – though the number of conciliation and arbitration procedures actually taking place is rather small (about 80 in the last 30 years).

Discussion

After the presentation, the representative of the Employers' Association of Macedonia asked Prof. Risak how it is possible for the Chamber of Commerce in Austria to sign collective agreements if membership of the Chamber of Commerce is compulsory, and why there is an Economic and Social Council when the social partners have well developed relations with political parties.

Prof. Risak explained that Austria accepted tripartism a long time ago, in the period after the First World War, when the country was transformed from the large Austro-Hungarian Empire into a small democratic state. According to Prof. Risak, employers, in common with the rest of Austrian society, realised that employers' associations needed a reliable source of income more than anything else. It was therefore agreed to form Economic Chambers with mandatory membership. At the same time, it became clear that an equivalent level of workers' organisation was also needed. The Chambers of Labour were therefore formed soon afterwards to provide the workers with expertise, free representation in court, and so on. The Chambers of Labour were not in competition with the trade unions in any way, but rather complemented them. There was even an unwritten rule that trade union leaders had to be involved in the Chambers of Labour. On the employers' side it was clear that voluntary employers' organisations had the advantage over the Chambers of Commerce in collective bargaining in terms of legal resources and capacities, but as the employers' organisations were aware that the Chambers had much greater experience in collective bargaining they decided not to interfere with their work. More recently, new political parties (winning up to 25 per cent of the vote) came to the fore when the voters began to resent mandatory membership of the Chambers without feeling that they were actually being represented. It was stressed that the Austrian model of 'Social Partnership' does not constitute an Economic and Social Council in the strict sense as it operates only informally on the basis of a gentlemen's agreement.

Prof. Risak added that works councils in Austria have been very successful because they share competences with the trade unions. Works councils are not involved in collective bargaining and collective agreements, and rather complement the trade unions. They even share up to 85 per cent of their members with the trade unions. The structure of works councils is laid down by law, whereas the trade unions are mostly self-organised.

The representative of the Albanian Confederation of Trade Unions stated that in the countries of the Western Balkans it is very difficult to find well-informed men and women to sit on the executive bodies of all the tripartite social partners. In relation to the boards of employers and workers he said that all the countries of the Western Balkans are trying to establish national works councils. In Austria, works councils are involved in negotiating and signing collective agreements at the establishment level (works agreements) and their members are elected for four-year terms. As there is an evident overlap in competences between the trade unions and the works councils, the question is to establish where the boundary lies between them. In Western Balkan countries the trade unions function poorly and lack resources and know how. If they are subject to unfair competition from works councils they may well disappear.

The representative of the Association of Employers of BiH reminded seminar participants that in accordance with ILO practice the representatives of the Chambers of Commerce should not be present in

the Economic and Social Councils. Austria appears to constitute an exception from the ILO rules, as in all other countries only employers' organisations participate in the work of the Economic and Social Councils, while the Chambers do not. According to the representative, it seems that in Austria tripartism has been reduced to collective bargaining, whereas in Bosnia tripartite discussions are extended to a wide list of very important questions, such as the state budget, social policy, economic development, and so on. The representative also said that the state should encourage the employers to create jobs, as job creation represents the best kind of social policy.

Ms Knowles (ILO) said that the Austrian Federation of Industrialists is a member of the International Organisation of Employers, but had not complained about the Chambers' involvement in collective bargaining, since they are satisfied with the arrangement. The ILO has recognised the specific needs of Austrian constituents and has accepted the arrangement.

Ms Mihes (ILO) reminded the participants that it is not the ILO's intention to impose or promote any model of tripartism; the ILO simply wants to provide an opportunity to present and compare different national models.

The representative of the Association of Employers of BiH reminded the seminar participants that the existing agreement between the World Trade Chamber and the International Organization of Employers clearly defines their mandates in collective bargaining. Therefore, he assumed that the ILO was not suggesting any change in existing arrangements under which preference in collective bargaining is generally given to voluntary employers' organisations rather than to Chambers whose membership is mandatory.

IV. The Bulgarian Practice of Prevention and Amicable Settlement of Labour Disputes

Dr Plamenka Markova, Bulgaria, presented the Bulgarian set up as regards Alternative Labour Dispute Resolution (for the full paper see Annex 2).

The practice of the Bulgarian National Institute for Conciliation and Arbitration (NICA) in 2005–2007 clearly shows that arbitration on the provision of minimal services in the case of full-blown strikes is the basic form of mandatory amicable settlement in Bulgaria.

The social partners have not taken advantage of the possibility of voluntary arbitration. Mediation remains an unfamiliar and unpopular method for the amicable settlement of collective labour disputes despite a number of information campaigns and social dialogue projects.

The problems of the enforcement of arbitration awards or of agreements in cases of mediation were not solved with the reform of the Code of Civil Procedure in 2008.

The idea of labour courts has not been high on the agenda of legislative reform despite the support of the social partners.

Employers continue to avoid calling in the NICA, as they believe that it will act as a supervisory and sanctioning body like the General Labour Inspectorate, and fear that it will not maintain confidentiality concerning information used for settling disputes.

The trade unions still consider strikes as a more efficient way of achieving their goals and do not make a serious effort to maintain good relations with the employers. They also point to the fees paid to the NICA in cases of voluntary settlement of collective labour disputes as a hindrance for workers, while not discussing the option of establishing strike funds that could also finance amicable settlements.

A culture of dialogue and negotiation is developing only slowly.

Discussion

The representative of the Albanian Council of Employers' Organisations asked Ms Markova what advantages a bipartite rather than a tripartite Economic and Social Council has.

Ms Markova responded that in Bulgaria there is one body, the National Body for Tripartite Cooperation, which discusses issues related to employment, social security, labour and so on, as well as draft laws. During preparations for EU membership, however, there were discussions on the enlargement of social dialogue and its extension to other segments of civil society. For this reason the Economic and Social Council (ESC) was established, following the EU model (ECO/SOC), which is bipartite. The bipartite Economic and Social Council is composed of the social partners and non-governmental organisations, and state institutions only recommend the major topics that ought to be discussed (such as pension reform and anti-discrimination laws concerning persons with disabilities). Therefore, state officials in Bulgaria are not involved in preliminary discussions with the Council and the Council is not involved in providing opinions on the drafts of new laws.

Country Reports

I. Albania

The government representative explained the industrial relations and labour dispute resolution system in Albania.

1. Main Features of Albania's Industrial Relations System and Their Implications for the Resolution of Labour Disputes

Tripartite social dialogue with the participation of the National Labour Council was established by the Labour Code in 1995. In addition, bipartite social dialogue has been developed and collective agreements signed at branch level, for example, in the health sector, the petroleum industry, railways and transport, energy, telecommunications (Albtelecom, Albmobile, AlbaPost), mining and metallurgy, agriculture, and arts and education. In 2008, collective bargaining at company level covered up to 10.3 per cent of the total labour force. Therefore, up to 85 per cent of the employees within the public sector and 23 per cent of the employees in the private sector are covered by a collective agreement.

2. Categories of Labour Disputes

Disputes concerning labour rights are most commonly resolved in court, but a mediation or conciliation procedure is not excluded. **Individual labour disputes** are dealt with by the Labour Inspectorate.

As provided for by law, **collective labour disputes** should be settled through mediation and reconciliation procedures. Before exercising their right to strike, the employees' side must try to reach agreement by undergoing mediation and reconciliation.

The settlement of a collective labour dispute may take place either prior to collective bargaining, during the negotiations or after the conclusion of a collective agreement with regard to claims not regulated in the signed agreement.

3. Levels of Collective Labour Disputes

Within the reporting period no disputes were observed at **national level.**

At branch level there were consultations with trade unions about the number of and criteria for redundancies in cases of enterprise restructuring, as well as about mass redundancies. Working conditions and employment contracts have been improved. Representatives were appointed for negotiations on binding collective agreements. Finally, the rights and freedoms of trade unions were recognised.

At **company level** about 40 cases of mediation took place in collective labour disputes. Usually these cases concerned a demand for negotiations to conclude binding collective agreements and to satisfy demands as preconditions for the conclusion of a collective agreement. These demands were related to pay rises, bonuses at the end of the year, payment for overtime work, payment for holiday working, the employer's legal obligation to pay social insurance, improvement of working conditions (in particular in relation to health and safety at work), compliance with legal provisions concerning the restructuring and transfer of enterprises and the fulfilment of obligations provided for in collective agreements.

4. Reorganisation and Functioning of Reconciliation Offices

In Albania reconciliation offices have been established in 12 regions. In 2008, four regional reconciliation offices dealt with 10 labour disputes.

In addition, there is the tripartite **National Reconciliation Office** (NCO). It has five members and is chaired by the Director of the Labour Relations Department at the Ministry of Labour. As a tripartite body it has a mandate to settle collective labour disputes at branch level and in particular cases also at company level (for example, KESH, OSH, Cement Production Plant).

Although the social partners enjoy the right to go to court at any time, about 30 per cent of all collective labour disputes are settled through mediation and about 70 per cent through conciliation. The Labour Code asserts that a complaint should be submitted to the NCO if the employers' or employees' organisation objects to the notary certificate.

The third, neutral party (mediator/conciliator) is elected by the social partners and the relevant collective agreement shall stipulate provisions for this procedure. In general, mediators are labour experts appointed and placed at the regional and local employment offices, while conciliators are labour experts from the most prominent trade unions and employers' organisations at national (NCO) and/or regional level.

The **mediator's role** is to encourage the good will of the parties and to promote a reasonable settlement of the conflict. As a third, neutral party he should promote trust and confidence among the parties without prejudice. It is essential that he behave impartially throughout the mediation process. Thus, in case of a conflict of interest, he is obliged to recuse himself. The mediator should organise well-structured and effective meetings with the parties. Therefore, it is important to have the expertise and experience required by the procedures in question.

5. Establishment of Social Dialogue

According to Prime Minister's Ordinance No. 246 (18 October 2006) 'On the appointment of government representatives intended to establish collaboration with the social partners', every ministry is entitled to appoint its own representative in charge of dealing with the social partners' demands for mediation and conciliation.

Discussion

To clarify the Albanian system of ALDR, the Expert on Labour Relations at the Albanian Ministry of Labour and Social Affairs explained that in the system she had presented the collective agreements are regulated by legislation, while individual labour disputes are dealt with by the Labour Inspectorate, which is also regulated by law.

Ms Mihes (ILO) remarked on the small number of cases subject to labour dispute resolution and asked for the reasons.

The Expert said that dispute resolution has been established at national or regional level, but that the manner in which disputes are resolved (mediation or conciliation) depends on the importance of the dispute, the sector in which it occurs and the size of the company involved. However, a large number of disputes are resolved in Albania. She added that in Albania there are regions in which the relevant officials are insufficiently familiar with the law, which is why trade unions and employers are trained in this area.

Mr Adam Leather, ILO consultant, asked the Albanian representative to explain the mechanism for dispute settlement as the terms in which the regulations were presented gave him the impression that the legislation was enacted by a decree, meaning that in fact there was no dialogue. He was particularly interested in how the legislative provisions on resolution mechanisms came about.

The Ministry Expert explained that the 1995 Labour Code was drafted with the participation of all the social partners, whereas the 2003 Amendments were adopted by the National Labour Council. The new amendments to the Law will also be made on a cooperative basis and with the consensus of the social partners.

II. Bosnia and Herzegovina

The government representative summarised the main features of industrial relations and the labour dispute resolution system in BiH.

1. Main Features of Industrial Relations in BiH

The industrial relations system in BiH is a subsystem of the general economic, social and legal system of BiH and its entities, namely Republika Srpska (RS), the Federation of Bosnia and Herzegovina (FBIH) and Brčko District (BD). It is founded on the legislative provisions and collective agreements of the various Entities and of the District regulating the establishment of the employment relationship itself and other related issues, labour dispute settlement (mediation, reconciliation and arbitration), the exercise of tripartite and bipartite social dialogue (that is, collective bargaining), and strike-related issues.

At state level, there are only regulations governing the employment relationship of civil servants and employees working in the institutions of BiH. In the Entities and the District, the Labour Code enabled the establishment of the Economic and Social Council (ESC) on a tripartite basis, while in RS the Law on the ESC was adopted. The same laws enable collective bargaining aimed at the conclusion of general, branch and enterprise-level collective agreements and at the level of one or several cantons in the FBIH.

2. Labour Dispute Resolution System (Labour Courts)

If amicable dispute resolution fails, labour disputes are settled in court. In BiH (state, entity and district level) there are neither labour courts nor special departments for labour dispute settlement within the ordinary court system. Such disputes are decided by the courts of general jurisdiction dealing with civil disputes. The weaknesses of the court system include long-drawn-out court procedures, lack of awareness of the parties involved, high costs and the fact that the burden of proof is borne by the employee.

3. Alternative Labour Dispute Resolution (ALDR)

3.1 Legal Framework for Alternative Labour Dispute Resolution

At present (March 2009), there are no special laws concerning alternative labour dispute resolution in BiH and its entities. These issues are rather regulated by the applicable Labour Code, strike laws, the RS Law on the ESC, general and branch collective agreements and collective agreements at the level of the canton and the enterprise, as well as by enterprise-level work regulations.

However, Republic Srpska is planning to adopt a law on the amicable settlement of labour disputes with the active participation of all three social partners in the course of 2009. At state level, the Law on Mediation Procedure and the Law on the Transfer of Mediation Affairs to the Associations of Mediators were enacted. The disputing parties may agree to resolve the dispute through mediation prior to or after filing a law suit. The judge conducting the judicial proceedings may, if he finds it appropriate, advise the parties during the preparatory session to settle the dispute in the mediation procedure.

3.2 Individual Labour Disputes

For **individual labour disputes,** collective agreements and enterprise-level work regulations may provide for a procedure of amicable labour dispute resolution. The disputing parties may agree to settle the dispute through arbitration.

3.3 Collective Labour Disputes

If the parties to a **collective labour dispute** fail to agree on amicable dispute settlement, a compulsory reconciliation procedure must be instigated. The disputing parties may accept or reject the proposal of the Reconciliation Council, and in case of acceptance, the proposal has legal validity and affects the relevant collective agreement. If the Reconciliation Council fails to reach a consensus on the proposal concerning the settlement of the issue in dispute, or if the disputing parties reject the proposal made by the Reconciliation Council, the reconciliation shall be deemed unsuccessful. In Republic Srpska, the parties to the collective agreement may entrust the arbitration board with resolving the dispute; its decision is final and no appeal is permitted.

3.4 Strike-Related Disputes

In the case of **initiating a strike** the parties are legally obliged to settle the dispute jointly or to bring it before a special reconciliation body jointly established by the disputing parties or by the arbitration board.

In the FBiH, a strike may not be initiated before an arbitration procedure has been carried out if the disputing parties have jointly agreed on this kind of amicable dispute settlement. The arbitration decision is binding.

3.5 Reconciliation and Arbitration

The Labour Code stipulates that **reconciliation** shall be carried out by the Reconciliation Council, and that a Reconciliation Council shall be established for each canton. The disputing parties may agree to entrust an **arbitration** board with the settlement of the collective labour dispute.

The **Reconciliation Council** established for FBIH, as well as in RS comprises three members: an employers' representative, a trade union representative and a representative selected by the disputing parties from the directory provided by the Federal Minister of Labour and Social Policy (in RS the third member is appointed by the Ministry of Labour). The appointment of arbitrators or the members of an arbitration board and other issues related to the arbitration procedure are regulated either by the collective agreement or by agreement of the disputing parties.

Experience indicates frequent use of alternative labour dispute resolution: it involves little expenditure, is completed swiftly and reduces the number of judicial disputes. The number of successful reconciliation procedures is lower, because the disputing parties often take entrenched positions, so that it is difficult to reach a compromise. In the case of strikes, alternative dispute settlement is cost effective because there is no cessation of work.

Discussion

After the presentation the representative of the Confederation of Trade Unions of Albania asked the BIH presenter to clarify the selection of the Reconciliation Council and the arbitration procedure.

The representative of the Ministry of Labour of Republika Srpska explained that the members of these bodies are appointed by each of the disputing parties, including the trade unions.

Ms Mihes (ILO) noted that in the presentation different initiatives and some embryonic institutions were mentioned. She wondered whether there were any specialised training courses for mediators in the two entities and the Brcko District. Also with regard to the Association of Mediators of BiH and broader areas of dispute, including commercial ones, she wondered whether it would be possible to create a special section for labour disputes within the Association.

According to the representative of the the Ministry of Labour of Republika Srpska there are no special training courses for mediators, but in the selection process they are required to have some experience and specific attributes. As far as the Association of Mediators is concerned, at this stage he could not see any possibility of creating a special department since they can mediate in all types of disputes before the courts in BiH. In his view this will be easier once the state-level ESC is established. He also said that it would be possible to develop this idea, but that he is not sure about its prospects of success.

The representative of the Employers' Association of Bosnia added that the ADA project deals with two levels of activity, one related to the establishment of the state-level ESC and the other with alternative labour dispute settlement.

III. FYR of Macedonia

The government representative gave a short overview of the different types of labour dispute resolution in FYROM.

1. Mediation and Arbitration

In both individual and collective labour disputes the parties may agree that the conflict may be settled by a special mediation council. On the other hand, an arbitration procedure may be instigated if a collective agreement provides for this kind of labour dispute resolution. The composition, procedure and other issues relevant to the arbitration process shall be regulated within the agreement. If the parties agree to settle the labour dispute by arbitration, the arbitration decision is final and binding. Moreover, the parties cannot file a legal motion against the arbitration decision before a court.

2. Law on Peaceful Resolution of Labour Disputes

The Macedonian Law on the Peaceful Resolution of Labour Disputes contains regulations on the method and procedure for settling collective and certain individual labour disputes. It stipulates the selection, rights and obligations of mediators and arbitrators and other issues which are relevant for the peaceful resolution of labour disputes.

Within the meaning of these regulations collective labour disputes are conflicts about the conclusion, amendment or implementation of a collective agreement and the realisation of trade union rights and the right to strike. By contrast, an individual labour dispute concerns the termination of the employment contract or the payment of a minimum wage.

3. Council for the Peaceful Resolution of Labour Disputes

The task of the Council for the Peaceful Resolution of Labour Disputes is to provide for the peaceful resolution of collective and certain individual labour disputes. It is responsible for the selection and training of mediators and arbitrators, the maintenance of a directory of mediators and arbitrators, decisions concerning the removal of mediators and arbitrators from the directory, keeping records about the procedures for the peaceful resolution of labour disputes and other activities prescribed by law.

4. Participation of the Mediator in Collective Agreement Negotiations

During collective agreement negotiations it is the task of a mediator to attend the discussions and to indicate whether the participants' proposals are inconsistent with the law and to provide legal and other assistance.

5. Disputes in the Public Sector – Mandatory ALDR

Within the public sector, where a work stoppage could endanger people's lives or health or cause large-scale damage, the disputing parties are obliged to initiate a peaceful resolution of the collective dispute.

6. Individual Disputes

By contrast, there is no such obligation in an individual dispute, though the parties may try to resolve the dispute before an arbitrator. The Law provides that an arbitration procedure may take place if the subject of the dispute is the cancellation of an employment contract and/or the payment of a minimum wage.

IV. Moldova

The government representative explained how collective labour disputes are settled in the Republic of Moldova.

1. Institutional Framework of Collective Labour Dispute Settlement

Several institutions may become involved in the resolution of such disputes. Moldovan law provides extrajudicial bodies for this purpose, called conciliation commissions. There are also regular extrajudicial bodies, the National Commission for Consultancy and Collective Bargaining, and Commissions for Consultancy and Collective Bargaining at branch and territorial levels, as well as commissions for 'employer–employee' social dialogue at establishment level.

2. Extrajudicial Settlement of Collective Labour Disputes (Conciliation)

The conciliation procedure is carried out between the parties forming a conciliation committee that represents all the disputing parties equally. It is constituted at the request of one of the parties after the labour dispute occurs. The members of the conciliation commission are appointed by the employer or his representatives and the workers' representatives. If the members of the conciliation commission reach an agreement, the commission shall adopt a mandatory decision for the disputing parties.

3. Judicial Procedure in Collective Labour Dispute Settlement

If the disputing parties do not reach an agreement or if they disagree with the conciliation commission's decision, each of them has the right to submit the issue to the competent judicial body, which considers the issue and makes a decision, against which an appeal can be lodged in accordance with the Civil Code.

4. Strike Action as a Means of Settling Labour Disputes

Strikes are initiated by the workers' decision to call a strike. The employer must be given 48 hours' prior notice. The right to call a strike is allotted to the trade union body at the appropriate territorial level (establishment/region/branch/national), and the responsibility for considering the strikers' demands lies at that level too.

Strikes are prohibited during natural calamities, epidemics, pandemics, states of emergency, martial law or war. In these circumstances collective labour disputes are settled by special bodies according to the Labour Code.

5. The Social Partners' Role in Collective Labour Dispute Settlement

The social partners play a decisive role in collective labour dispute prevention and settlement. Not only are trade union bodies authorised to call and organise strikes, but the social partners are represented in the conciliation committees and the national and territorial commissions for consultancy and collective bargaining and in the 'employer–employee' committees at establishment level.

V. Montenegro

The government representative presented a summary of labour dispute resolution. In Montenegro, ALDR is subject to the Law on Peaceful Labour Dispute Resolution which contains regulations on the procedure for the out-of-court resolution of collective and individual labour disputes.

1. Regular Courts

The regular courts are responsible for all labour disputes arising from an employer's final decision. Every court decision in this regard is final at first instance.

2. Labour Inspectors

Labour inspectors have the right to suspend or delay the execution of a final decision on the cessation of employment until an effective court decision is made, if the court procedure was initiated by the employee in order to protect his or her rights and if the employee asked the Labour Inspectorate to delay or suspend enforcement.

3. Arbitrators and Conciliators

Instead of seeking to resolve labour disputes in court the parties may engage in peaceful dispute resolution. In that case, the decision is made by a conciliator or an arbitrator, depending on the nature of the conflict.

3.1 Conciliators

A conciliator assists the parties in the case of collective disputes with a view to getting them to sign an agreement settling the dispute.

Collective labour disputes may arise in the process of signing and amending collective agreements or when the employer fails to implement provisions of a collective agreement. Disputes may occur in particular with regard to the right to organise and to strike. The parties to a collective dispute are either those affected by a collective agreement or its signatories, trade union and employer representatives, or the Strike Committee and the employer, or a negotiating body appointed by the employer.

Unlike an arbitrator, a conciliator does not make a decision, but makes a recommendation on the resolution of the dispute which is not binding on the parties. If the disputing parties accept the recommendation, an agreement on resolving the dispute is signed. If the dispute is related to a collective agreement, this agreement becomes an integral part of it. Otherwise the agreement has the same effect as a court decision.

However, if one of the parties does not accept the conciliator's recommendation, it must state its reasons within three days of receiving the recommendation.

The conciliation procedure is voluntary except in the case of services of general interest. In the latter, the disputing parties are obliged to submit the proposal for a conciliation procedure within three days of the dispute arising, or to inform the Agency for Amicable Labour Dispute Resolution about the dispute. The latter will then initiate the conciliation procedure ex officio.

In terms of the Law on Peaceful Labour Dispute Resolution, services of general interest relate to electricity supply, water supply, transport, information, PTT services, communal services (refuse disposal, energy and water supply), fire services, production of basic food products, health and veterinary protection, education, culture, social care for children and social welfare. They also include activities necessary for the defence and security of Montenegro, as well as for the fulfilment of obligations stipulated in international agreements.

3.2 Arbitrators

Unlike a conciliator an arbitrator is involved in individual disputes and not only manages negotiations for the settlement of the dispute but also rules on it if it cannot be settled. Individual disputes usually concern the exercise of employees' rights based on the employment contract. The parties to an individual dispute are the employee and the employer.

According to the Law on Peaceful Labour Dispute Resolution the arbitrator shall adopt a decision within 30 days of initiating the hearing. While the arbitration procedure is in progress, the deadline for initiating a court procedure is postponed. The disputing parties may agree to initiate an arbitration procedure even during a pending court procedure.

An arbitration procedure ends with the reaching of a decision, which comes into force on the date of delivery to the disputing parties.

It is not possible to lodge an appeal against a decision made in an arbitration procedure, but a lawsuit can be lodged with the competent court for an annulment. The decision of an arbitrator may be annulled if it is proven that:

- an agreement has not been reached on the appointment of the arbitrator;
- there were reasons for recusing the arbitrator from the case;
- the disputing party was not properly informed about the initiation of the procedure;
- the disputing party was illegally prevented from discussing the case before an arbitrator; or,
- the decision of the arbitrator relates to a dispute which is not stipulated in the appointment agreement.

VI. Serbia

The employers' representative explained the system of industrial relations and the different labour dispute settlement mechanisms in Serbia.

1. Industrial Relations in Serbia

Following the break-up of the former Yugoslavia, Serbia entered a period of major reform in relation to property law and regulations concerning the structure of the state. There are many small trade unions in Serbia at the company level, but only a few umbrella associations. The strongest – and to begin with the only – umbrella association, the Confederation of Autonomous Trade Unions of Serbia, now has a 'colleague', the UGS Nezavisnost trade union confederation. On the employers' side, the Serbian Employ-

ers' Association (SAE) was formed in 1994 and is the only representative employers' organisation in Serbia.

Relations between employers, employers' organisations, employees and trade unions are governed by the Serbian Labour Code. This regulates, for example, the registration of employers' organisations and trade unions and collective bargaining procedure at all levels.

In 2008, the social partners signed a General Collective Agreement. In addition, special agreements are in force between the SAE, the Serbian government and smaller trade unions.

2. System for the Settlement of Labour Disputes

The Serbian Labour Code provides for labour inspection and the judicial protection of employment rights. The Labour Inspectorate is a department of the Ministry of Labour and Social Policy and responsible for the supervision and enforcement of the Labour Code in Serbia.

Judicial protection is provided by special councils for labour disputes at the regular courts. The labour court procedure comprises two instances with a limited possibility of extraordinary appeal to the Supreme Court. Despite a labour law regulation that provides for a maximum of six months for a case, an average labour court case still takes about four years.

Labour law on civil servants is governed by the Law on Civil Servants, which differs from the general Labour Code. There are internal Appeal Committees, which decide on appeals by state personnel regarding their rights and obligations. The Appeal Committees are bound by the Law on General Administrative Procedure and it is possible to initiate an administrative lawsuit against Appeal Committee decisions.

3. Alternative Settlement of Labour Disputes in Serbia

General labour law envisages an arbitration procedure for disputes between employers and employees. In addition, the Law on Mediation stipulates a mediation procedure in case of labour disputes. However, cases regarding dismissal or the payment of minimum wages are excluded from mediation procedures.

Moreover, based on the Law on the Amicable Settlement of Labour Disputes, an institution for the peaceful settlement of labour disputes was established, the Federal Agency for Amicable Settlement of Labour Disputes.[2] Its main purpose is to create a faster, cheaper and more efficient procedure for resolving labour disputes and to prevent disputes in relation to collective agreements. For individual labour disputes, arbitration is applied, while in collective labour disputes, conciliation is the ADR route chosen by the legislator.

4. Procedure for the Peaceful Settlement of Labour Disputes

The procedure for the peaceful settlement of labour disputes is initiated by filing a motion with the Agency. The parties may then mutually agree on an arbitrator or conciliator from a directory provided by the Agency. The selection of conciliators and arbitrators to be included in the list is carried out by the (tripartite) Panel for the Selection of Conciliators and Arbitrators. Should the parties be unable to agree on a conciliator or arbitrator, the Agency Director has to appoint one.

The Agency then submits the motion and the documentation relating to the dispute to the appointed conciliator or arbitrator, who is obliged to schedule a hearing or meeting of the Conciliation Board (in case of a collective dispute) within three days. The overall duration of the procedure is 30 days.

2 Website: http://www.ramrrs.sr.gov.yu.

4.1 Arbitration

The hearing within the arbitration procedure is public and written minutes are kept. Experts may be engaged if necessary.

The parties are informed about the results of the dispute resolution process and they must accept them in writing. The parties have the right to call on legal assistance, to adduce evidence, to hear witnesses and to present closing arguments. When the arbitrator considers that the dispute has been adequately discussed and that he is able to give a ruling, he closes the hearing and presents his conclusions on the merits of the dispute. The decision is conclusive and legally binding on the parties. No other judicial action can be taken from this point and there is no second instance.

4.2 Conciliation

Conciliation proceedings in a collective dispute are conducted in front of a so-called Conciliation Panel. The Panel is composed of one representative of each party and an independent conciliator.

Generally, the panel makes a recommendation by consensus. If no consensus can be reached, the conciliator makes a recommendation which shall also state the reasons for doing so.

If the parties do not settle within 30 days, the conciliator has the right to continue the proceedings directly with the parties. However, in this case he is not allowed to deliver a recommendation, which is the sole right of the bipartite Conciliation Panel.

5. Statistics

Up to now the Agency has resolved 3,343 individual and 29 collective disputes (22 concerning essential services). Only 2 per cent of the individual disputes were related to the termination of labour contracts. An increasing number of collective disputes are settled in areas not related to the public interest. Furthermore, it is considered to be very encouraging that more and more collective agreements contain a peaceful settlement clause that makes a motion to the Agency mandatory if labour disputes occur. The mere existence of such clauses underlines the quality of the Agency's work.

Discussion

Following the presentation of the ALDR system in Serbia, the representative of the Agency for Peaceful Reconciliation of Labour Disputes, Serbia, provided additional information and emphasised the importance of 2009 for the Agency's work:

1. A new group of conciliators and arbitrators will be elected soon since the mandate of the current conciliators and arbitrators is coming to an end.
2. It is planned to adopt the Law on Amendments to the Law on the Peaceful Settlement of Labour Disputes in 2009, which will make it possible to correct shortcomings in the current Law related to the number of arbitrators, the personal characteristics of both conciliators and arbitrators, the inadequate definition of the disputing parties and of the dispute as such, and the need to introduce a clearer distinction between the jobs of conciliators and arbitrators, and between conciliation and arbitration in general. The Law on Amendments should also clarify in what circumstances arbitration and mediation shall be compulsory. In addition, the representative of the Agency mentioned the need to clarify the issue of minimum services to be provided during a strike, as well as specific activities related to public health, public transport, and so forth.

VII. Kosovo (within the meaning of UNSC Resolution 1244 [1999])

The two members of the Kosovo (within the meaning of UNSC Resolution 1244 [1999]) delegation summarised social dialogue developments and the mechanisms for settling labour disputes.

1. Social Dialogue – Tripartite Consultative Council (TCC)

In Kosovo (within the meaning of UNSC Resolution 1244 [1999]), the Tripartite Consultative Council (TCC) is the highest supervisory body concerned with social dialogue. It was founded in 2001 by the Union of Independent Trade Unions of Kosovo, the Chamber of Commerce of Kosovo and the Ministry of Labour and Social Welfare. The TCC is an independent and politically unaffiliated institution which represents the government, employers' and employees' organisations.

Its task is to initiate and develop major activities in the field of socio-economic and labour policy. It observes, analyses and evaluates the effect of social policy and measures taken to enact it with regard to the strengthening of social stability. In addition, the TCC analyses the composition of collective agreements and makes proposals for the amendment of regulations. It also observes the situation in the employment field, especially with regard to invalidity pension insurance and promotes activities for reducing illegal employment.

Important achievements of tripartite social dialogue include the signing of the General Collective Agreement and Annexes, the composition and analysis of legislative drafts in the area of labour law, and the establishment of the Office of the Technical Secretary of the Social-Economic Council.

2. Labour Disputes and Their Settlement

2.1 Labour Courts

From 1976 until 1991, labour disputes were settled by so-called 'joint labour courts'. The legal system provided two levels of jurisdiction. The main principles for the settlement of labour disputes, such as organisation, competences, procedure and selection of judges, were laid down by the Constitution. In the course of fifteen years, the labour courts became specialised and experienced in the hearing and settlement of labour disputes.

After the abolition of the labour courts, the settlement of labour disputes came under the jurisdiction of municipal and county courts, depending on the type of dispute. Many labour disputes remain unsettled.

Although a new court system was introduced in 1999, the former labour courts were not re-established. This resulted in a lack of confidence on the part of employers and employees in the capacity of the courts to solve labour disputes.

2.2 Protection of Employees' Rights

There are two kinds of protection with regard to employees' rights: internal protection within the enterprise, and external protection by the judicial system.

Both kinds of protection consist of two instances. Within enterprises, rights are protected by the director in the first instance and by a supervisory body in the second instance. Only after having exhausted these possibilities of internal protection may an employee ask for judicial protection.

In fact, the internal protection of labour rights does not function properly as many enterprise directors are indifferent towards such rights. In many, especially small and medium-sized enterprises, there

is no ombudsman either. In addition, due to political influence, employees rarely manage to realise their rights in court. Finally, another weakness is related to the enforcement of court decisions.

2.3 Collective Agreements

The parties to a collective agreement may propose an amendment to it which must include the reasons, motives and objectives. If the other party does not accept the proposal, or if it does not define its position within 30 days, the proposing party may initiate the procedure of Conciliation with Indemnification.

Each party nominates two members of the Conciliation Commission, who then appoint a chair. Afterwards, the Commission tries to reach an agreement.

The arbitration committee makes its decisions in senates consisting of three members. The contracting parties nominate the chair and his/her deputy, who are usually acknowledged experts on employment relations.

2.4 Law on Intercession (Mediation)

This Law strengthens the procedure of mediation (or 'intercession') as a whole. A mediation procedure may be initiated at any time during a court procedure. The court may, at any time during the trial, propose to solve the dispute by way of mediation.

It is the task of the mediator to help the parties to reach an agreement. The mediation procedure may last up to 90 days. It ends with the signing of the agreement; the withdrawal of one of the parties, who declares that he is not interested in continuing the procedure; or the confirmation of the mediator that he believes that the procedure cannot be feasibly continued after consulting with the parties, or after the expiry of the time limit.

2.5 Kosovo Economic Chamber (KECH)

The Kosovo (within the meaning of UNSC Resolution 1244 [1999]) Economic Chamber (KECH) has a permanent institution for arbitration (Arbitration Board) at its disposal which is in charge of resolving business disputes between members of the KECH or between members and other natural or legal persons.

2.6 The Role of the Social Partners

On 26 October 2001, an agreement for the establishment of a Tripartite Consultative Council was signed by the Independent Union Syndicate of Kosovo, the Kosovo Economic Chamber (KECH) and the Ministry of Labour and Social Welfare. The aim of this council is to initiate consultations between employers' and employees' organisations. Thus, government institutions in Kosovo (within the meaning of UNSC Resolution 1244 [1999]) have strengthened the dialogue between the social partners.

Conclusions

The main conclusion one can draw from the Conference discussions is the general consensus of the participants on the great potential of Alternative Labour Dispute Resolution for establishing harmonious relations between the two sides of industry and its advantages compared to the judicial route. At the same time, it was agreed that much has still to be done if existing mechanisms are to reach their potential beneficiaries, namely workers and employers who are parties to individual and collective labour disputes.

As regards the current legal framework, it appears that political decision-makers have in all cases adopted statutory provisions regulating individual and collective dispute resolution. In some cases, there is general labour law, supplemented by rules contained in various statutes, regulations and government decisions (Albania, BiH, Moldova). In other countries (Serbia, FYROM, Montenegro), there is a special law on the amicable settlement of labour disputes, which enforces or complements a general provision of the Labour Code.

Collective agreements are also an important normative source for Alternative Labour Dispute Resolution (Serbia, BiH, FYROM, Albania). They are used to provide rules for bilateral arrangements regarding labour dispute resolution out of court. In some cases (Serbia), tripartite general collective agreements also envisage recourse to alternative resolution methods.

In contrast to current law and practice in the EU Member States, there is no distinction between rights and interest disputes as regards the law/voluntary arrangements. The only two categories regulated are individual and collective labour disputes covering both rights and interest disputes. Furthermore, when it comes to practice, the available statistics show that most alternative settlements concern individual labour disputes, while the majority of collective disputes concern rights laid down by law or collective agreements in the public sector. The reason for this is that the unions are active mainly in the public sector and to a much smaller extent in the private one, both at company and branch level.

Whereas in many EU Member States individual (rights) disputes are the exclusive competency of the courts, in the Western Balkan countries they are usually settled by arbitration or by the Labour Inspectorate (Albania).

Labour dispute definitions also differ concerning the right to strike. In most Western Balkan legal systems, the right to strike can be subject to a collective dispute. In BiH (at the entity level) a labour dispute can be individual, collective or strike-related. In the latter case, labour law and the Law on Strikes provide for an obligation of the parties to jointly settle the dispute or to bring it before a special reconciliation or arbitration body before going on strike. In Albania, resort to mediation and reconciliation procedures is required by law before a strike may be called.

In all the Western Balkan countries, boundaries between conciliation and mediation tend to overlap or to become blurred. Their outcomes are generally recommendations, which, once agreed by the parties, become legally binding. In the case of collective disputes, the recommendation becomes part of the collective agreement.

The institutional framework belongs to the public sphere. The structures are within the labour administration, irrespective of whether they are government agencies (Serbia, FYROM, Montenegro), tripartite bodies (Albania) or ad hoc reconciliation councils (BiH).

While in the EU the social partners generally enjoy considerable autonomy in settling their own disputes, it is noticeable that so far no bipartite autonomous arrangements have been set up in Western Balkan countries or Moldova.

Alternative Labour Dispute Resolution procedures are conducted by panels or councils consisting of representatives of the parties in conflict, along with an independent conciliator/mediator (Serbia) or a government representative selected by the parties from a list provided by the Ministry of Labour (BiH).

In some countries, the procedure of the appointment or selection of conciliators/mediators or arbitrators is regulated either by collective agreements or by law (BiH). In other countries (Serbia, FYROM), the neutral party is selected by a special body.

Taking a Step Forward

I. Action Plan – Albania

Identified problems	Lack of well trained and experienced mediators/ conciliators at regional and national level	Lack of knowledge of the mechanisms for the amicable settlement of collective labour disputes	Lack of bipartite and tripartite agreements
Action to be taken/ objectives	Upgrade the knowledge and skills of mediators/conciliators	Public information concerning mechanisms for the amicable settlement of collective labour disputes	Capacity building of the social partners for engagement in bipartite and tripartite social dialogue
Activities foreseen	Tripartite workshops to improve the skills and knowledge of mediators and conciliators	Awareness raising workshops to promote ALDR advantages	Campaigns to promote trade union membership in the private sector Tripartite workshops to draft relevant legal provisions
Responsible	MOLSA Social partners with the technical assistance of the ILO within the ADA-ILO project	Social partners ILO within the ADA-ILO project	
Timetable	2011	2011	

II. Action Plan – Bosnia and Herzegovina

Identified problems	Lack of skills of conciliators, arbitrators and mediators	Harmonisation of existing regulations in the field of labour and employment	Lack of adequate resources, structures and personal capacity of the social partners
Action to be taken/ objectives	Training of conciliators, arbitrators and mediators in the available legal instruments	Adoption / improvement of special regulations on ALDR Creation of normative framework for the state level Economic and Social Council	Capacity building of social partners at BiH level
Responsible	Goverment and the social partners with the technical assistance of the ILO within the ADA-ILO project	Council of Ministers of BiH, employers' associations and trade unions at BiH level with the technical assistance of the ADA-ILO project	Goverment and the social partners with the technical assistance of the ILO within the ADA-ILO project
Achievement indicators	Number of trained and certified arbitrators, conciliators and mediators	Enactment of harmonised new regulations or the improvement of existing ones; Establishment and proper functioning of the Economic and Social Council of BiH	The social partners are able to engage in meaningful bipartite and tripartite social dialogue
Timetable	May–December 2009	June 2009–December 2010	By 2011

III. Action Plan – FYR Macedonia

Identified problems	The Council for Peaceful Settlement of Labour Disputes is not operational	
Actions to be taken/objectives	Appointment of the Director of the Republic Council for the Peaceful Settlement of Labour Disputes Selection of arbitrators and mediators	Capacity building with regard to the Council for the Peaceful Settlement of Labour Disputes
Activities foreseen		Training for arbitrators and mediators in the amicable settlement of labour disputes
		Communication strategy of the Republic Council for the Peaceful Settlement of Labour Disputes
		Information campaign to inform employers and workers concerning the options for the amicable settlement of labour disputes
Responsible	Government	Council for the Peaceful Settlement of Labour Disputes with the technical assistance of the ILO within the ADA-ILO project
Timetable	End of 2009	2011

IV. Action Plan – Moldova

Identified problems	The current system for the amicable resolution of labour disputes is incomplete	Lack of awareness of the advantages of amicable labour dispute resolution	Deficiencies in the quality of social dialogue at branch and territorial level
Actions to be taken/ objectives	Consultations with social partners to identify the best system for the amicable resolution of labour disputes Amendment of current legislation	Awareness raising on the ALDR advantages	Strengthening social partners' capacities at branch and territorial levels
Activities foreseen	Drafting the relevant law (especially amendments to the Labour Code)	Training of representatives of parliament, government, employers and trade unions in amicable labour dispute resolution	
Responsible	Ministry of Economy and Trade, employers' organisations, workers' organisations with the technical assistance of the ILO within the ADA-ILO project	Ministry of Economy and Trade, employers' organisations, workers' organisations with the technical assistance of the ILO within the ADA-ILO project	Ministry of Economy and Trade, employers' organisations, workers' organisations with the technical assistance of the ILO within the ADA-ILO project
Achievement indicators	Determination of the best system for the amicable resolution of labour disputes The draft law on the amendment of and addenda to the Labour Code of the Republic of Moldova examined by ILO experts The Labour Code of the Republic of Moldova amended and completed.	Number of trained parliamentary and government representatives Number of trained employers' and trade union representatives	Increase in the number and quality of collective agreements at branch and territorial level
Timetable	December 2009	September–October 2009	Ongoing

V. Action Plan – Montenegro

Identified problems	The Agency for Amicable Labour Disputes Resolution has not yet been established	Social partners are not aware of the advantages of Alternative Labour Dispute Resolution	Lack of skills of would-be mediators
Actions to be taken/ objectives	Launch of the Agency for Amicable Labour Dispute Resolution	Raising the awareness of the social partners on the importance of alternative labour dispute resolution	Upgrading the knowledge and skills of selected conciliators and arbitrators
Activities foreseen	Enforcement of Decision on the establishment of the Agency for Amicable Labour Dispute Resolution of October 2008	Seminars/round tables for the social partners, presenting experiences and best practices in other countries Publication of promotional materials, information materials, lectures, information campaigns, and so on (technical assistance necessary) Promotion via electronic and print media of the importance of alternative labour dispute resolution (technical assistance necessary)	Training of conciliators and arbitrators on techniques and procedures of conciliation and arbitration National and regional seminars to facilitate the exchange of experiences and best practices of conciliators and arbitrators Exposure of conciliators and arbitrators to other countries' experiences in alternative labour dispute resolution Development of a database of mediators and arbitrators
Responsible	Government	Agency for Amicable Labour Dispute Resolution ILO within ADA-ILO project	Agency for Amicable Labour Dispute Resolution with the technical assistance of the ILO within the ADA-ILO project
Achievement indicators	– Establishment of various subdivisions within the Agency for Amicable Labour Dispute Resolution – Number of cases entrusted to the Agency – Number of cases resolved in extra-judicial procedures – Length of time needed for the resolution of labour disputes		
Timetable	– Establishment of subdivisions within Agency and initiation of its work: to be completed in the second quarter of 2009 – Training courses, seminars, campaigns, study visits, regional seminars, promotional campaigns, and so on (continuously over the next three years)		

VI. Action Plan – Serbia

Identified problems	Need to amend labour law	Lack of branch structures, resources, personal capacity of the social partners	Upgrade the knowledge and skills of the mediators/conciliators
Actions to be taken/ objectives	Amendments especially with regard to the chapter related to the social partners and establishing representation criteria	Capacity building of social partners with regard to collective bargaining (conclusion of branch level agreements)	Capacity building with regard to the Agency for Peaceful Settlement of Labour Disputes
Activities foreseen	Taking a look at comparative practices connected to flexible forms of employment that are supposed to be legally regulated – with ILO assistance	Training in techniques and methods of collective bargaining, good practical experience	Training of new conciliators and arbitrators Improvement of skills of experienced conciliators and arbitrators Training for social partners on benefits and use of ALDR instruments Informing the general public about the benefits of ALDR
Responsible	Ministry of Labour and Social Policy with the technical assistance of the ILO within the ADA-ILO project	Representative employers' associations and representative trade unions with the technical assistance of the ILO within the ADA-ILO project	Agency for Peaceful Settlement of Labour Disputes, Serbian Employers' Association, Confederation of Autonomous Trade Unions of Serbia, UGS Nezavisnost with the technical assistance of the ILO within the ADA-ILO project
Timetable	Term for implementation: by end of 2009	2011	2011

VII. Action Plan – Kosovo (under UNSCR 1244)

Identified problems	Lack of dialogue between workers' and employers' organizations	Lack of information on ALDR advantages
Actions to be taken/objectives	Capacity building of workers' and employers' organizations	Awareness raising
Activities foreseen	Participation in training courses organized by ILO International Training Centre in Turin	Public debates with participation of influential international organisations
Responsible	Workers' and employers' organizations with the technical assistance of the ADA-ILO project	UNMIK relevant institutions and the social partners
Timetable	Ongoing	End of 2009

	Albania	BiH	Macedonia	Montenegro	Moldova	Serbia	Kosovo
Legal framework	– Labour Code – Regulation No. 2083 on the establishment and functioning of the State Mediation Network	– Labour laws – Strike laws – RS Law on ESC – Law on Mediation Procedure – Law on the Transfer of Mediation Affairs to the Association of Mediators – Collective agreements	Law on Peaceful Resolution of Labour Disputes	Law on Peaceful Labour Dispute Resolution		– Labour Law – Law on Amicable Settlement of Labour Disputes – Law on Mediation	– Law No. 03/L-057 on Intercession
Arbitration	–	+ (individual labour disputes)	+ (individual labour disputes)	+ (individual labour disputes)	–	+ (individual labour disputes)	+ (either individual or collective labour disputes)
Mediatio	+ (collective labour disputes)	–	+ (either individual or collective labour disputes)	–	–	–	+ (either individual or collective labour disputes)
Conciliation	+ (collective labour disputes)	+ (collective labour disputes)	–	+ (collective labour disputes)	+ (collective labour disputes)	+ (collective labour disputes)	+ (collective labour disputes)
Labour Inspectorates	+ (individual labour disputes)	–	–	+ (individual labour disputes)	–	+ (individual labour disputes)	–

Judicial protection	Courts	Courts of general jurisdiction		Regular courts		Courts – Council for labour disputes	Municipal and county courts
Institutions for ALDR	– Reconciliation offices (in 12 regions) – National Reconciliation Office (NCO)	– ESC (Economic and Social Council)	Republic Council for the Peaceful Resolution of Labour Disputes		– National and territorial commissions for consultancy and collective bargaining – Employer–worker committees at establishment level	– The 'Agency' – Conciliation Panel	– KECH (Kosovo Economic Chamber) – TCC (Triple Consultative Council)
Requirements regarding mediators/ arbitrators/ conciliators	Labour expert	Labour expert	Labour expert + – citizenship of Macedonia – university degree – 5 years' experience in employment relations – no criminal convictions – eligible to perform the duty of a mediator/ arbitrator – certificate of completion of training	Labour expert	Labour expert	Labour expert + – citizenship of Serbia – university diploma – 5 years' experience in labour relations – no criminal convictions – eligible to perform the duty of a conciliator/arbitrator	Labour expert

	Albania	BiH	Macedonia	Montenegro	Moldova	Serbia	Kosovo
Role of social partners	– Establishment of social dialogue by Prime Minister's ordinance 'On the appointment of the government representatives intended to establish collaboration with social partners' – NCO as tripartite body	Involved in the drafting of legislation and in the procedure for establishing lists of conciliators, mediators and arbitrators			Represented in conciliation committees and national and territorial commissions for consultancy and collective bargaining and in 'employer–worker' committees at establishment level	– Included in tripartite committee that selects arbitrators and conciliators – Promoting ALDR	TCC as highest supervisory body with regard to social dialogue: to strengthen dialogue between social partners

Annex 1

Austrian Practice in the Prevention and Amicable Settlement of Labour Disputes

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1. The Austrian System of Industrial Relations and Its Formal and Informal Implications for Labour Dispute Resolution

1.1 The Political Framework

First, some general information. Austria's territory encompasses both the Eastern Alps (which cover some two thirds of its surface area) and the Danube Region. It has a land surface of about 84,000 square kilometres (32,000 square miles). According to recent census data (for 2006), Austria has 8.2 million inhabitants.[3]

Austria is a democratic republic in which political parties play the dominant role. After the Second World War the two major parties, the **Social Democrats** and the conservative **Austrian People's** Party, embarked on a virtually unopposed coalition that was to last for 20 years. Initially, the 'camp mentality' of the first republic – that is, the period between the two world wars – persisted among large groups of party loyalists. Over time, however, party membership became less strongly rooted in ideological convictions or family tradition, and instead came to be based on simple political opportunism. The two parties had the huge state administration, including nationalised industries, banks, transport, communication, media, schools and hospitals under their control and patronage. Party membership became essential for finding a job, housing and various other benefits. The system became increasingly rigid and politicised. The principle of *Proporz* – that is, proportional job placement for party members – led to overstaffing and duplication of administrative mechanisms. An important instrument in this system was the party-controlled **Social Partnership** between employers' associations and labour unions, which we shall examine later. Most decisions in economic and social policy were taken within this framework and subsequently ratified by Parliament. The Social Partnership avoided the economic problems suffered by other countries as a result of open labour conflicts, including strikes, which were and remain virtually unknown in Austria. This is one of the major achievements of social partnership and Austrians are still proud of it.

The grand coalition eventually outlived its usefulness (mainly its stabilising effect). This was instrumental in accomplishing the economic reconstruction of Austria after the Second World War and in regaining its independence (Austria was occupied for 10 years after the war). From the end of the 1960s until the beginning of the 1980s Austria had single-party governments: first, the Peoples Party and then 13 years of the Social Democrats until 1983. During that time generous social welfare benefits were provided, even in economically less prosperous times. This resulted in a rapidly rising government debt. Nationalised industry and other sectors of the economy and administration were used to create and sup-

3 http://www.statistik-austria.at/web_de/statistiken/bevoelkerung/volkszaehlungen.

port jobs, regardless of economic efficiency. Despite massive state subsidies, they could no longer be maintained in the 1980s. Growing structural unemployment aggravated social problems such as xenophobia and other irrational fears, as well as a growing disaffection with politics, leading to a loss of confidence in the Socialist government.

In 1983 the Socialist government lost its absolute majority. It formed a 'small' coalition with the then third largest party, the Freedom Party. This party developed out of the Association of Independents, whose members were about 80 per cent former Nazis. Initially isolated and often stigmatised as 'nationalist', it began to emphasise liberal ideas in the mid-1960s in order to become more acceptable politically. In 1985 a new nationalist chairman, *Jörg Haider,* replaced his liberal predecessor, reshaping the Freedom Party into a new type of political party: a populist movement to the right of the political spectrum. Thanks to his efforts a party which had polled only 5 per cent of the vote managed to obtain nearly 27 per cent 15 years later and to overtake the conservative People's Party. A major part of *Haider's* impact can be attributed to protest voters who support his criticism of the domination of society by the 'old' parties. In addition, Haider has been playing on popular fears, especially regarding the European Community and foreigners.

When *Haider* was elected chairman of the Freedom Party in the mid-1980s, the 'small coalition' was dissolved. There followed **grand coalitions** of Social Democrats and Conservatives until 1999. This was the time of Austria's EU accession (1995) and also of the diminution of government influence on the economy. Efforts were made to gradually privatise the nationalised industries, such as telecommunications and oil. The budget no longer permitted state intervention to maintain jobs or stimulate the economy. The European Community also forbids the subsidising of individual companies on the grounds of competition law. The Social Partnership began to lose its reputation as the guarantor of economic prosperity and social peace. Nowadays conflicts cannot be resolved solely by traditional Austrian ways.

The elections of 1999 reflected popular insecurity, triggered by profound economic and social transformation processes, especially European integration and globalisation. The opposition parties made strong gains. The Social Democrats were still the strongest party but fell back to only 33 per cent of the vote. The conservative Peoples' Party and the right-wing Freedom Party both had about 27 per cent, with the latter slightly ahead by only 400 votes. After a lot of haggling the Peoples' Party and the Freedom Party formed a coalition government after more than four months of negotiations. Not only in Austria but also internationally (unsuccessful) attempts were made to prevent the Freedom Party's participation in the government. It was possible to obtain the resignation of *Haider* as Chairman of the Freedom Party, however. From that point until his death in October 2008 he was Governor of the southern federal state of Carintia *(Kärnten),* the only one ruled by his Party.

In 2002 the People's Party triggered an election after a political conflict with the Freedom Party about the acquisition of tactical aircraft and tax reform. The other reason was that the Freedom Party was no longer a reliable partner. After an internal conflict the Vice-Chancellor, Minister of Finance *Heinz Grasser* and the head of the party's parliamentary faction resigned. Unexpectedly, the conservatives were the clear winners this time, winning 42 per cent of the vote, against the Social Democrats' 36 per cent, the latter coming in second for the first time in decades. The big loser was the Freedom Party, which lost more than half its vote and is now down to 10 per cent. A centre-right government was formed which struggled heavily due to internal conflicts in the Freedom Party. In April 2004 all its government members and most of its parliamentary representatives quit the Freedom Party and launched the newly established 'Alliance Austria' *(Bündnis Österreich).* The reasons given included their desire

to remain part of the government (something most members of the Freedom Party no longer wanted) and their problems with the German-nationalist wing of the Party.

The elections in 2006 saw the Social Democrats as relative winners with 35.3 per cent of the vote, closely followed by the conservatives with 34 per cent. The Freedom Party gained 11 per cent of the vote, with Alliance Austria as the clear loser with a mere 4.1 per cent.[4] After a long drawn out process a grand coalition was formed again, with the government programme's social chapter showing clearly the renewed influence of the social partners: it had more or less the same wording as the joint declaration of the social partners.

After 18 months of intense power struggles within the coalition between the two government partners the conservative People's Party triggered new elections, which resulted in heavy losses for the two large parties in government: the obvious winners were the right-wing parties. Again, a grand coalition was formed and the bickering between the partners ended only when the global economic crisis reached Austria and it was necessary to cooperate.

1.2 Industrial Relations at the National Level[5]

1.2.1 Trade Unions

The representation of employees' interests in dealings with employers and with the government in Austria is handled by two organisations: the Chamber of Labour, which is established by law and has mandatory membership and fees (described later[6]), and the trade union organisation, membership of which is voluntary. In Austria all unions are part of the Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund,* or ÖGB) which was founded in 1945 after the overthrow of the Nazi regime, as part of the reconstruction of Austria. Nowadays, it is subdivided into 14 member unions which between them cover all branches of the economy. Although the boundaries of these unions' respective domains are complementary, the system does not constitute industrial unionism in the strict sense – that is, only one union for each sector and hence only one for each establishment. In the private sector, manual workers and white-collar workers are organised in separate unions.

The division of functions between the Federation and its member unions is as follows. The former is responsible for issues that affect all employees, while the member unions represent the specific interests of employees within their respective membership domains. This means, in practice, that the Trade Union Federation concentrates on representing employees' interests vis-à-vis the state, while the member unions focus on collective bargaining. Collectively agreed pay policy in particular falls within the member unions' sphere of autonomous action.

On an informal level the Trade Union Federation is divided internally into ideological factions broadly mirroring the structure of Austria's party-political system, each linked to their corresponding party through members who simultaneously occupy posts in both union and party. As a result of these links, union representatives have regularly occupied parliamentary seats and government posts since 1945. There are particularly close links with the Social Democratic Party, within which the union faction is very influential.

Its internal ideological division into political factions strengthens the motivation to operate by compromise, that is, attempting to ensure that decisions have the support of – preferably – all factions in or-

4 http://wahl06.bmi.gv.at/.
5 The following sections on the actors in Austrian industrial relations are based on the glossary on Austria of the European Foundation on the Improvement of Living and Working Conditions, available online at: http://www.eurofound.europa.eu/emire/austria.htm.
6 See 1.2.2.

der to maintain unity. This, in turn, fosters an attitude of compromise towards external groups and so promotes Austria's system of social partnership.

The Trade Union Federation presently has over 1.2 million members, a union density of around 40 per cent. The figure varies considerably across employee categories and sectors of the economy; it is highest for manual workers in the secondary sector (manufacturing industry), followed by public services, and relatively low for private-sector white-collar workers and for the service sector.

1.2.2 Chambers of Labour

The Chambers for both manual workers and white-collar workers *(Kammern für Arbeiter und Angestellte)* are established by law for the representation of employees' interests and constitute the second element of such representation in Austria alongside the trade unions. Unlike the trade unions membership is mandatory for all employees in the private sector and they pay 0.5 per cent of their wages as a fee.

In Austria, the Chambers of Labour constitute an additional resource in terms of advisory and other services, and in particular expertise in matters of economic and social policy, in a manner which complements the unions' interest representation function and increases its effectiveness. Created as a counterpart to the Economic Chambers (representing business) under the Chambers of Labour Act of 1920, the Chambers of Labour have 3.2 million members[7] and cover about 90 per cent of all employees.[8]

The Chambers are charged by law with the task of representing employees' interests, which includes both interest representation in dealings with the public authorities and consultation on government regulatory functions. They are also invested with the authority to conclude collective agreements. They provide advisory and a wide range of other services, both to their members and to works councils, and their Institute for Retraining is one of Austria's largest further training institutions.

Historically, the formation of the Chambers in 1920 had its origin in the struggles of the trade union movement, and in accordance with this tradition there is close cooperation between them and the Trade Union Federation. The Chambers leave collective bargaining to the unions, however, and operate mainly as a source of expertise both for the unions and for the government in matters related to employees' interests. This close cooperation with the Trade Union Federation results in numerous instances of multiple office-holding, not only between the Chambers and the Trade Union Federation, but also between the Chambers and the political parties.

1.2.3 Economic Chambers

Everyone licensed to run a business, with the exception of agriculture, the liberal professions and the non-trading public sector, is obliged to become a member of an Economic Chamber, a representative body established by law with mandatory membership and fees, as well as regulatory autonomy.

The tasks performed by the Economic Chambers cover a broad spectrum, including the representation of members' interests in dealings with government bodies and collaboration in public regulatory functions. They are also invested by law with the capacity to conclude collective agreements: on the employers' side, some 95 per cent of all collective agreements are concluded by the Economic Chambers (in practice, by their sectoral subunits). In addition, they provide a wide range of advisory, further training and service facilities for their members. Their Business Promotion Institute (Wirtschaftsförderungsinstitut) is one of Austria's largest further training institutions.

7 http://www.akeuropa.eu/de/About-AKEU/(12.2.2009).
8 Employment statistics, see: http://www.statistik-austria.at/web_de/statistiken/arbeitsmarkt/index.html

The Federal Economic Chamber is part of Austria's system of social partnership, and since almost all collective agreements are concluded on behalf of the employers'side under its umbrella it occupies a key position in that system.

1.2.4 Social Partnership

At national level the system of social partnership is the salient feature of industrial relations in Austria. Based on close voluntary cooperation between employers, employees and the state this system constitutes a specifically Austrian version of what in the social sciences is known as corporatism. By international standards, Austria is one of the countries in which corporatist structures are most highly developed.

Within this system employers and employees are represented by a small circle of major organisations (the so-called 'social partners'): on the employees' side, the Austrian Trade Union Federation and the Federal Chamber of Labour, and on the employers' side, the Federal Economic Chamber, the Standing Committee of Presidents of the Chambers of Agriculture and the Federation of Austrian Industry.

The collaboration between state and social partners is an important link between industrial relations and government policy. It provides a means of attuning collective bargaining to national economic and social policy and, conversely, opens up all aspects of that policy to possible influence by the social partners.

The origins of social partnership lie in the violent class struggles and high unemployment of the years between the two world wars, culminating in the civil war of 1934 and the annexation of Austria to Nazi Germany in 1938. These bitter experiences prompted employers' and employees' representatives, after 1945, to give shared interests and cooperation precedence over class interests and conflict. The fact that since these beginnings social partnership has developed into a permanent and stable element of Austrian society is due to a number of factors:

- One factor is the predominance of small firms in the Austrian economy, which favours a system of collective regulation by the social partners. Similarly, after the overthrow of the Nazi regime the employers' and employees' representatives resolved not to restore the ideologically and sectorally divided system of organisations that had existed under the First Republic, but instead to create unitary and comprehensive collective interest organisations which are better suited to the needs of social partnership.
- The social partners are all linked to the political parties through the practice of simultaneous office-holding mentioned above, particularly with the Austrian Social Democratic Party and the conservative Austrian People's Party – these personal links foster tripartite concertation.

Formally, the social partners are involved in the following fields:

- Government proposals of new laws are reviewed by the Economic Chambers and the Chambers of Labour.
- They also appoint lay judges to the Employment Courts, who decide in panels of three, as well as to Conciliation Boards that adjudicate in disputes over works agreements.
- The Austrian social security system is based on public corporations that are 'self-governed'. This means that their administration is carried out by representatives of the persons concerned, who in turn are delegated by the respective statutory interest groups, the Chambers.

Table 1: Strike Statistics

	No. of employees participating	No. of days on strike	Hours spent on strike	Time spent on strike Per participant			No. of employees	Time spent on strike per employee		
				Hour	Min.	Sec.	In 1,000	Hour	Min.	Sec.
1989	3 715	2 986	23 887	26	6	0.0	2 815	0	0	3.0
1990	5 274	8 870	70 962	0	27	13.0	2 881	0	1	28.0
1991	92 707	58 341	466 731	0	2	5.0	2 939	0	9	18.0
1992	18 039	23 437	181 502	12	1	10.0	2 964	0	3	32.0
1993	6 869	13 008	104 502	0	15	15.0	2 956	0	2	2.0
1994	0	0	0	0	0	0.0	2 972	0	0	0.0
1995	60	120	894	55	55	14.0	2 972	0	0	1.5
1996	0	0	0	0	0	0.0	2 956	0	0	0.0
1997	25 800	2	153 000	49	56	5.0	2 969	0	0	0.0
1998	0	0	0	0	0	0.0	2 998	0	0	0.0
1999	0	0	0	0	0	0.0	3 036	0	0	0.0
2000	19 439	2 947	23 579	47	12	1.0	3 065	0	0	27.1
2001	0	0	0	0	0	0.0	3 078	0	0	0.0
2002	6 305	9 306	74 445	26	48	11.0	3 064	0	1	25.0
2003	779 182	1 305 466	10 443 727	12	24	13.0	3 071	0	16	48.0
2004	30	178	1 422	0	24	47.0	3 079	0	0	1.6
2005	0	0	0	0	0	0.0	3 110	0	0	0.0
2006	0	0	0	0	0	0.0	3 162	0	0	0.0

Source: ÖGB, Streikstatistik. Zahl der ArbeitnehmerInnen vom Hauptverband der Sozialversicherungsträger: http://statistik.arbeiterkammer.at/seite_274.htm

1.3 Industrial Relations at Branch Level

1.3.1 Collective Agreements

Collective agreements are defined by the Austrian Labour Constitution Act *(Arbeitsverfassungsgesetz)* as a written agreement concluded between collective bodies of employers and of employees with the authority to conclude collective agreements. There is a distinction between these and works agreements in terms of both legal status and the parties involved.

Collective agreements may be concluded only by bodies directly invested with that authority by the Act or recognised as possessing it in accordance with a procedure regulated by the Act. It restricts the authority to conclude collective agreements to collective interest organisations which, whether established by statute law or on a voluntary basis, are independent of the opposing side, representative, operative above company level and in a position to wield effective bargaining power. Individual employers may conclude collective agreements only by way of exception in the case of legal entities governed by public law (social security organisations), major associations (such as political parties), or specifically identified employers, such as the Austrian Broadcasting Company.

A collective agreement has two parts. The first consists in provisions regulating the legal relationship between the collective parties to the agreement, and the other in provisions regulating the rights and obligations of individual employers and employees arising from the contract of employment. The latter have a direct mandatory effect in one direction: they operate on the employment relationship from outside, as if laid down by statute, and any individually agreed arrangements to the contrary are valid only if they are more favourable to the employee.

A collective agreement is binding on all employers who were members of the signatory party on the employers'side or who subsequently become members, and on all employees working in establishments at which the employer is bound by the agreement (this applies whether they are union members or not, and is referred to as the ‘non-member’ or ‘outsider effect’). Since in Austria collective agreements are normally signed, on the employers'side, by the representative bodies membership of which is obligatory by law for all firms within a given branch of economic activity, in most areas of industry and small-scale craft production there is virtually blanket coverage by collective agreements.

1.3.2 Collective Bargaining

In Austria the conclusion of collective agreements is essentially confined to the private sector. These agreements are negotiated, almost without exception, at sectoral – multi-employer – level.

The sectoral pay bargaining system is differentiated according to employee category (manual workers and white-collar workers) and also, in the area of goods production, according to manufacturing industry and small-scale craft production. Most of the sectoral agreements concluded cover the whole country. More than 400 collective agreements are concluded per year, the majority covering small numbers of employees in narrowly defined sectors, with separate agreements on specific issues.

1.4 Industrial Relations at Enterprise Level

1.4.1 Works Councils

In legal terms, the works council is a body that represents the entire workforce at all establishments with a minimum of five employees and exercises the workplace-level consultation and codetermination rights conferred by law on the workforce as a whole. It is elected by the workforce for a four-year term,

and its members (normally all employees, although by law 25 per cent can be external union officials) enjoy special protection against dismissal, including summary dismissal.

In Austria the works constitution establishes a dual system for the representation of employees' interests based on formal separation between the works council and the trade union. However, in the day-to-day practice of industrial relations this formal separation is eliminated to such an extent that the works council can be said to be incorporated into the trade union structure. The clearest demonstration of this practical circumstance is the fact that some 87 per cent of works council members are also union members. Many union officials, particularly at the lower levels in the hierarchy, are also works council members. In some member unions this combined office-holding is even prescribed by a formal rule, stipulating, for example, that all officials must be works council members or that shop floor union representation must be headed by works council members. This integration makes the works councils the backbone of the union organisation. In many cases they are the channel through which union dues are collected, the union is kept informed of employee attitudes, union policy is explained to employees and, above all, union members are recruited. The strength of the unions is crucially dependent on whether establishments have a works council and the extent to which the council is union-committed. Reciprocally, the unions (in conjunction with the Chambers of Labour) perform important advisory and support functions for the works councils, the most significant of which, from the councils' point of view, is union back-up in the event of a dispute with management.

The cooperation which is formally required of the works council under the works constitution is also the guiding principle for its interest representation in practice. Empirical studies show that works councils see themselves, as a rule, as intermediaries between workforce and management. This cooperative approach on the part of the works council, which is imposed by law and shapes its activities in practice, fosters, in turn, the cooperative stance adopted by the unions in the system of social partnership. The integration of the works council with the union and the manner in which they work together in the overall system of social partnership would not be possible without the complementary division of competences between them laid down under the works constitution, which removes any basis for rivalry. The most important elements of this division of competences are the reservation of the capacity to conclude collective agreements to independent trade unions and the exclusion of negotiated pay increases from the scope of works agreements.

1.4.2 Works Agreements

A works agreement is defined by the Austrian Labour Constitution Act as a written agreement concluded between the employer and the works council on matters whose regulation is reserved by law or collective agreement to such agreements. The parties to works agreements therefore do not have unlimited regulatory competence but may regulate only individual matters which are referred to in the Act as 'social matters'. The competence to fix (basic) pay is not, however, delegated by law to the parties to works agreements. This restriction is intended to reserve the fixing of rates of pay essentially to the parties to collective agreements and to prevent union pay policy from being undermined by company-specific policies based on different priorities.

A works agreement, like a collective agreement, is binding; conflicting provisions agreed between the parties to the individual contract of employment are valid only if they are more favourable for the employee.

- There are certain measures which the employer is permitted to introduce only after a works agreement to that effect has been concluded with the works council (mandatory works agreement).
- There are other measures and matters in relation to which a works agreement can be imposed by one of the parties: in the event of a failure to reach agreement, the interested party is entitled to refer the matter to a public conciliation board which is responsible for attempting to conciliate, and empowered, if this fails, to decide the matter itself (arbitration).

2. The Austrian Labour Dispute Resolution System

In Austria, jurisdiction in matters relating to labour and social security law falls within the system of ordinary courts. The competent courts of first instance are the Regional Courts *(Landesgericht),* which act as labour and social security courts along with their other areas of jurisdiction (with the sole exception of Vienna, which has a special labour and social security court). The courts of second instance are the four Regional Courts of Appeal *(Oberlandesgerichte),* and the third and last instance is the Supreme Court of Justice *(Oberster Gerichtshof).*

All these courts hear cases in panels which have, in addition to professional judges, lay judges who are nominated by the Economic Chambers and the Chambers of Labour and possess essentially the same powers as the professional judges. At the first-instance level the panels consist of one professional judge and two lay judges (one each from the employers'and the employees'side), and the second– and third-instance levels have three professional judges and two lay members representing both sides of industry.

These labour and social security courts are competent to rule on all employment rights disputes, that is:

- all disputes arising between employers and employees in connection with the employment relationship, and its commencement and termination (for example, unfair dismissal, back pay);
- all disputes between employer or employees and members of the works council in connection with their activities;
- disputes between employees concerning their common activities (for example, claims for damages); as well as
- disputes concerning collective rights at enterprise level, arising from labour law.

3. Alternative Labour Dispute Resolution (Conciliation, Mediation, Arbitration)

3.1 Classification of Labour Conflicts

Labour conflicts can be divided into disputes of rights and disputes of interest:

- **Disputes of rights** refer to the application and interpretation of current law or existing individual or collective agreements, and are mainly dealt with before a court. Rights disputes concern mostly individual conflicts between employees and employers (for example, working hours, payment, dismissal), or those among employees (for example, sexual harassment of an employee by a colleague). Legal questions in connection with the works council's election, organisation and common activities, as well as the rights and duties of its members, count as collective conflicts.
- **Disputes of interest** are disputes about establishing new rights, for example changes in individual contracts (for example, higher wages, changes in working time – individual disputes of interest) or

the conclusion or amendment of a collective agreement or works agreement (collective disputes of interest). These disputes are usually handled by a representative body (works council, union) and are the subject of negotiation and possibly industrial action. Sometimes the law or applicable collective agreements offer procedures of conciliation as well as arbitration.

3.2 Development and Relevance

3.2.1 Rights Disputes

Austria does not have a long history of formal alternative dispute resolution (conciliation, mediation, arbitration) in rights disputes. Only in 2003 was an attempt first made in this direction with the adoption of the Act on Mediation. In practise, mediation – as well as arbitration – in general does not play an important role at all in the resolution of employment rights disputes as they tend to be resolved almost exclusively in the employment courts. Only in some sub-areas of individual employment law has newer legislation attempted to stress the importance of alternative dispute resolution by obliging the parties to take this route before filing a law suit (equality law, parental part-time work, termination of the employment of apprentices).

In practice it seems that those who drafted the law did not see a need to formally refer parties to a dispute of rights to means of alternative dispute resolution, for two reasons:

1. On the one hand, it seems that the courts do a good job in settling disputes (see below 3.6.4.).
2. The other reason might be the unique system of Austrian industrial relations described above – the tripartite social partnership at national level and a system of codetermination with works councils at company level. These two institutions, which very much stress the collective side of the employment relationship, have significantly shaped the perceptions of Austrian employers and employees on how to deal with conflicts in the workplace. Social partnership and works councils are also used to resolve employment disputes, but they do it in a very different way – not by using neutral parties but representative bodies that raise the individual conflict to a higher level, that is, the company or even the branch. In this way, the inequality of powers typical of employment relationships – and in fact one of the major reasons for the establishment of these institutions – is overcome and a resolution often achieved. In Austria therefore often another route of 'alternative' employment dispute resolution is used: the use of employees' interest representatives to resolve individual employment disputes.

3.2.2 Interest Disputes

Conflicts concerning collective disputes of interest are not dealt with in the courts, therefore alternative forms of resolution were established quite early. The Labour Constitution Act and its predecessor provide for conciliation boards in disputes concerning the conclusion or amendment of certain types of works agreements, as well as of collective agreements.

3.3 Legal Framework and Categories of Labour Dispute that Might Be Submitted to ADR

3.3.1 Arbitration

Arbitration – that is, the settlement of a dispute between parties by referring it to an arbitrator for a decision instead of going to court – is **seldom used in Austria** in employment matters. The reason for this is procedural provisions that largely forbid arbitration:

- arbitration concerning **collective conflicts of rights** is explicitly prohibited;
- in case of **individual rights disputes,** arbitration is possible only if it deals with an already existing conflict or concerns the service contract with executives of joint stock or limited liability companies.

Even if arbitration is agreed on, arbitration awards are subject to court supervision. The overturning of arbitration awards may be sought at the Labour and Social Courts on the ground of severe irregularities.

In cases in which the law provides for the conciliation of disputes of interest concerning the conclusion, change or termination of collective agreements or works agreements, the body in charge of the conciliation process may also adjudicate the dispute. The decision then has the effect of a collective agreement or a works agreement.

3.3.2 Conciliation

Different from an arbitrator, whose task is to issue a decision in a dispute like a judge, a conciliator assists the parties by driving forward their negotiations and directing them towards a satisfactory agreement. Unlike a mediator the conciliator plays a relatively direct role in the actual resolution of a dispute and even advises the parties on certain solutions by making proposals for a settlement. In conciliation, the neutral party is usually seen as an authority figure who is responsible for figuring out the best solution for the parties. The conciliator, not the parties, often develops and proposes the terms of settlement.

Disputes of Rights[9]

A conciliation clause may lawfully be included in an employment contract, as well as in a collective agreement. This clause provides for an agreed neutral third party or a conciliation board to bring the parties together to discuss a settlement before going to court. It may be applied to all conflicts arising out of the employment contract, as well as out of the collective agreement, such as questions of termination and working hours. If the conciliation procedure is obligatory the parties have to turn to the impartial institution; otherwise the case is likely to be deemed inadmissible in court. In practise, conciliation clauses are found in only a few sectors, such as contracts with professional football players or the collective agreement covering theatre actors.

Only exceptionally does the state provide for conciliation procedures to solve individual rights disputes:

- For cases of **discrimination** there are two equal opportunities commissions (one for discrimination based on gender and the other for all other areas[10]) which are in charge of conciliation between the affected employee and the employer. They may pass a decision which states the breach of equal opportunities legislation, but which is not binding on a court deciding the matter subsequently. For discrimination cases there is also an **ombudsman/woman** who may intervene with the employer on the discriminated employee's behalf.
- In cases of discrimination against **employees with a handicap** the authority in charge of the integration of those workers provides for a conciliation procedure.

9 F. Marhold, 'Labour Conciliation, Mediation and Arbitration in Austria', in F. Valdés Dal-Ré (ed.), *Labour Conciliation, Mediation and Arbitration in European Union Countries,* Informes y Estudios, Serie Relaciones Laborales Núm 53 (2003) 55 – also available online: http://ec.europa.eu/employment_social/labour_law/docs/disputeresolution_austria_en.pdf.

10 Sexual orientation, religion or belief, age, race or ethnicity.

Disputes of Interest – Collective Agreements

Disputes on the conclusion and amendment of collective agreements are dealt with by the Federal Conciliation Board at the request of either party to the intended collective agreement. The decision of this board may be treated as a collective agreement, if both parties agree in writing to abide by the Board's decision in advance.

Disputes of Interest – Works Agreements

In some matters the employer needs the works council's permission in the form of a works agreement; without it the foreseen measure is illegal and void. For some of these 'mandatory' works agreements (computer-aided personal data systems or personnel evaluation systems) the Labour Constitution Act provides for mandatory conciliation and arbitration procedures, while for others it does not (for example, certain means of employee control, disciplinary procedures, some forms of performance-related pay).

In other matters, the employer may take measures without the consent of the works council, but a works agreement may be concluded. In some topics both the employer and the works council may use the conciliation and arbitration procedure offered by the Labour Constitution Act. This 'imposable' participation concerns, among other things, the following: general rules to regulate employee conduct at work; principles governing the employment of temporary workers; general rules on working hours (beginning and end of daily working hours, length and timing of breaks); measures to prevent, eliminate or alleviate adverse effects of changes in the company (so-called 'social plans').

3.3.3 Mediation

Mediation is a method of alternative dispute resolution in which a neutral and impartial third party, the mediator, facilitates dialogue in a structured multi-stage process to help parties reach a conclusive and mutually satisfactory agreement. A mediator assists the parties in identifying and articulating their own interests, priorities, needs and wishes to each other.

If appropriate, Austrian rules of civil procedure oblige the judge to direct the parties towards institutions which are qualified to settle conflicts amicably. The argumentation for the Act on Mediation, which introduced this provision, explicitly points out that the word 'mediation' was deliberately avoided to leave room for other methods of alternative dispute resolution.

Mediation in civil matters – that is, conflicts that fall within the jurisdiction of civil courts and include employment disputes – is governed by the new **Act on Mediation**[11] which became effective on 1 May 2004. Mediation is based on the parties' voluntary agreement, in the course of which a trained and neutral intermediary (the 'mediator') tries to bring the parties together by accepted methods aimed at enabling them to solve the conflict on their own account.

3.4 Cost of Dispute Resolution

When bringing a claim before the Labour Court the plaintiff has to deposit a **court fee,** which depends on the amount in dispute. During the procedure each party pays for its own **legal representation.**

The losing party pays the winner's costs, including court fees as well as legal fees up to the amounts specified in the Attorneys Tariffs Act. Under this act, for every action before the court (for example, claims, petitions, attending trial) a tariff is provided for, depending on the amount in dispute. Although

11 Bundesgesetz über Mediation in Zivilrechtssachen (Zivilrechts-Mediations-Gesetz) BGBl I 2003/29. It can be downloaded (in German) at: www.ris.bka.at.

other fees for representation in court may be agreed on, it is uncommon that lawyers receive more than the tariff. Therefore the winner of a case in Austria fully recovers his or her legal costs.

An important exception to this rule are conflicts concerning works councils, in which case cost recovery is possible only in the courts of third instance. These conflicts also concern contesting the termination of an employment contract (see above).

It is important in employment matters that trade unions and the Chambers of Labour and the Economic Chambers provide legal representation, by either providing in-house lawyers or covering the cost of lawyers for their members. The majority of employees suing their employer therefore do not bear their own legal costs.

These rules of cost recovery **apply only to costs connected directly with the trial.** Non-recoverable by statute therefore are the costs of negotiating an out-of-court settlement or for alternative dispute resolution, especially mediation. In these cases an agreement has to be reached about who bears which costs. It seems that parties who believe they have a strong case – at least as regards costs – do not have a strong incentive to use alternative forms of dispute resolution.

3.5 Legal Obligation to Have Recourse to Alternative Dispute Resolution

3.5.1 Disputes of Rights

With few exceptions the parties to a rights dispute have to have recourse to alternative dispute resolution. This is mostly due to recent changes in the law:

- If a handicapped worker claims damages because of discrimination or if they wish to contest a dismissal, they must instigate a conciliation procedure. Only if a settlement is not reached within three months (one month in the case of dismissal) may they file a lawsuit with the Labour and Social Court. The conciliation is conducted by an employee of the authority charged with integrating handicapped workers.
- If an employer wants to dismiss an apprentice he has to try to do so by way of mediation, the costs of which he must bear. Only if this proves unsuccessful and if at least one session with a mediator has taken place may the employment contract be terminated.

3.5.2 Disputes of Interests

If one of the parties to a collective agreement or an enforceable works agreement demands it the other party has to enter into a conciliation procedure. If the responsible body is not vested by law with the power to arbitrate the dispute (which is the case with the Federal Conciliation Board in charge of conciliating disputes concerning collective agreements) the conciliation procedure is not used in practise.

The conciliation boards that deal with conflicts concerning 'enforceable' works agreements are used by both parties, though at first sight the number of conciliation and arbitration procedures actually taking place may suggest otherwise. Between 1975 and 2008 only 81 petitions were filed for the establishment of a conciliation board,[12] though works councils exist in more than 10,000 enterprises.[13]

12 Source: author's calculations based on the decisions of conciliation boards available from the Ministry of Labour and Social Affairs.
13 Of Austria's 249,786 enterprises 168,835 have fewer than five employees. A works council should therefore be established in 80,951 enterprises. In practice, however, only about 10,000 enterprises have a works council (Schneller and Vlastos, 'Betriebsratsarbeit im Wandel, Arbeit und Wirtschaft 2002': http://www.arbeit-wirtschaft.at/servlet/ContentServer?pagename=X03/Page/Index&n=X03_999_Suche.a&cid=1192029258417.
Numbers for 2007: http://statistik.arbeiterkammer.at/seite_252.htm.

The reason for this low number seems to be the possibility of having the conflict arbitrated and that employers and works councils prefer to reach their own decision than have somebody else make a decision on the general rules applicable in the enterprise.

3.6 Specialised Institutions and Procedures of Conciliation, Mediation and Arbitration

3.6.1 Conciliation

The two **Equal Opportunities Commissions** in charge of the conciliation of cases of discrimination consist of a chair and 10/11 other members appointed by the social partners and the different ministers.[14]

The **Federal Conciliation Board** is in charge of conciliating in matters related to the conclusion or amendment of collective agreements. It is established in the Ministry of Labour and Social Affairs and consists of a presiding chair and deputies nominated for an indeterminate but revocable term by the Federal Economic Chamber and the Federal Chamber of Labour; the other members are nominated at the suggestion of the Federal Economic Chamber and the Federal Chamber of Labour for a period of five years.

A **conciliation board** is established for specific disputes concerning the conclusion, amendment or termination of specific works agreements. Its composition therefore varies from case to case because the members are always different. According to the law the presiding judge is appointed from among the professional judges of the respective Labour and Social Court. In addition, each party has to appoint two lay members, one of which shall be appointed from a list provided by the Austrian Chamber of Commerce in case of the employers, and for the employees' side from a list provided by the Federal Chamber of Labour. The other members (for both the employer and the works council) have to be employees of the company concerned.

3.6.2 Arbitration

The abovementioned bodies in charge of the conciliation of disputes of collective interests also have the power to arbitrate the conflict and make a binding decision that has the effect of a works agreement or a collective agreement. This power is vested in the conciliation board either by law (conciliation board) or if the parties agree in advance to abide by the board's decision (Federal Conciliation Board).

3.6.3 Mediation

The state does not maintain a specialised agency (a mediation service or something similar) to provide services to parties who seek to mediate an employment dispute. In general, the state does not sponsor the mediation of disputes of rights or of interest.

As an exception the authority dealing with the integration of handicapped workers sponsors the cost of mediation provided by specialist private mediators registered with the authority.[15]

Since May 2004 mediation in civil matters may be provided only by **registered mediators.** The register is kept at the Ministry of Justice. Appropriate persons at least 28 years of age[16] may be registered if they:

14 http://www.frauen.bka.gv.at/site/5467/default.aspx#a1.
15 www.bundessozialamt.at.
16 A certain maturity and experience is deemed necessary.

- have had a minimum 380 hours' training with a registered training institution (members of some professions, for example, lawyers, need only 235 hours); and
- have liability insurance (minimum of €400,000 per insured event).

The Act on Mediation provides for an **Advisory Board on Mediation** at the Ministry of Justice, which consists of about 25 members. They are appointed by the representative associations of mediators, as well as by the social partners, professional associations (for example, judges, attorneys and psychologists) and related ministries. The Advisory Board provides expertise in the form of opinions and has to be heard before regulations are issued concerning the content of mandatory training. It may also be consulted before the registration of a training institution or individual mediators.

The Act on Mediation also lays down **professional duties** for registered mediators. They have to be impartial and avoid possible conflicts of interest; in particular, they may not have represented or advised one of the parties in the past. It is also illegal for a mediator to decide the conflict he is or was mediating. Mediators may not disclose information they obtain during mediation. In order to conserve evidence, they must document all important stages of the mediation process.[17] If both parties demand it the mediator also has to document the outcome and the required implementation steps. As already mentioned, mediators are obliged to have insurance cover for professional liability. To maintain a high standard, mediators have to undergo a minimum of 50 hours' further training over five years.

3.6.4 The Role of the Labour and Social Courts – Settlements

Procedural rules provide that courts may try to reach a **settlement** in a lawsuit or on individual issues within it at any stage of the proceedings. In practice, a large number of lawsuits are ended by a settlement. As a matter of fact, in 1991 only 11 per cent of the 2,924 cases initiated by employees concerning personal grievances (excluding contestation of dismissals) before the Labour and Social Court in Vienna were decided with a ruling by the court. Another 22 per cent were settled by a court order to pay wage arrears.[18] About 31 per cent ended by way of a settlement and in 19 per cent of cases the parties agreed not to pursue the matter any further.[19] The latter indicates that the parties reached an out-of-court settlement. Therefore about 50 per cent of all lawsuits ended by way of a settlement. This seems to be a persistent trend as these percentages were the same in both 1989 and 1999.[20]

Before filing a complaint with the court the prospective plaintiff may also apply for a summons of the prospective defendant to appear in court in an **attempt to reach a settlement** (settlement hearing). Although this seems to be a very reasonable way of solving employment disputes, it is very seldom used. The recent amendments to the legislation dealing with parental leave now provide for a mandatory settlement hearing before the employer is able to file a suit that a request for part-time work on the part of a parent would adversely affect the business.

Procedural rules also provide for a **preference for out-of-court settlements.** If the defendant did not cause the filing of a suit by his behaviour and acknowledges the entitlement of the plaintiff on the first possible occasion, the plaintiff has to bear all legal costs. He has to refund all costs of the defendant caused by the litigation. As regards costs it is therefore advisable to try to reach a settlement before filing a suit.

17 This is necessary because limitation periods are delayed during mediation.
18 This order becomes final without hearing the defendant if he or she does not object to it. Otherwise the formal procedure is initiated.
19 infas 1991/5a. This was the most recent survey conducted by the Chamber of Labour on the outcomes of court cases in employment matters; more recent data do not exist.
20 infas 1989/5a and 1990/5a.

It is also interesting that in less than 5 per cent (1989 2.4 per cent, 1990 2.4 per cent and 1991 4.2 per cent) of cases an employee sued his employer while still employed. In more than 95 per cent of cases, in other words, legal action was taken against the employer only after termination of the employment contract.[21]

4. Statistics concerning Labour Disputes Settled by Conciliation, Mediation and Arbitration

At present, to my knowledge, no official data are collected on the settlement of labour disputes by way of ADR.

Informal information from the Ministry of Labour and Social Affairs confirmed my impression that the parties to collective agreements never use the Federal Conciliation Board to help them to conclude or amend collective agreements. What the parties to collective agreements do instead is to obtain an expert opinion interpreting collective agreements at the request of courts or administrative bodies (on average, two to five times a year).

I have made some tentative calculations based on the 81 decisions of the conciliation boards available from the Ministry of Labour and Social Affairs for the period 1975 to 2008. This provides an overview of the main topics dealt with by conciliation boards.

Table 2: Main topics dealt with by conciliation boards, 1975–2008

Topic	**Number of filed petitions**	**Arbitration**	**No decision** (Dismissal of petition, no jurisdiction)	**Settlement** (Works agreement concluded)
General rules of conduct	5	5		
Employment of temporary agency workers	2	1	1	
Pension fund	1			1
Working time	44	32	4	8
Social plan	30	11	15	4
Form of payment of wages	1	1		
Not classifiable	1		1	
Total	84	50	21	13

21 infas 1989/5a, 1990/5a and 1991/5a.

5. Role of the Social Partners in Alternative Labour Dispute Resolution

5.1 Works Council

The Labour Relations Act also states that one of the purposes of establishing works councils is to bring about a compromise and a balance of interests between employees and employers. Therefore works councils have a range of participation rights.

Works councils have the right to monitor whether all the general legal regulations (statutes, collective agreements, work agreements) affecting employees in the establishment are being observed. Among other things, it can inspect establishment records of wage payments and how they are determined. Works councils also have the right to intervene in all matters concerning employees' establishment-level interests, where necessary also involving unions, the Chamber of Labour and executive authorities.

The Act also compels employers to provide information, at the request of the works council, on all matters concerning the establishment's employees in their capacity as employees. This also applies to economic matters. However, works councils are entitled to inspect an employee's personal files only with the employee's consent.

Although no data are available, employees' representatives stress the role of the works councils in settling workplace conflicts out of court. It seems that there are fewer legal actions against the employer in companies with works councils.

The Labour Relations Act also states that works councils shall act in accordance with trade unions, as well as with the Chambers of Labour. In particular, works councils may consult with these employees' organisations. For such purposes they even have the right to enter the workplace without the employer's permission. Works councils and employers may ask their interest representatives (unions or chambers) to attend consultations dealing with matters significantly affecting employees' interests. If they intend to do so they have to inform the other side in due time to make it possible for them to consult their own interest representatives.

5.2 Social Partners

Two subsystems of social partnership can be differentiated: bipartite consultations and negotiations between the social partners, and tripartite consultation and concerted policy-making between the social partners and the state:

- Bipartite social partnership encompasses the informal practice of negotiations and discussions at cross-sector level as institutionalised in the Parity Commission, and the collective bargaining system, which focuses on the sectoral level.
- Tripartite social partnership relates to all social and economic policy issues that in formal terms fall within the purview of state powers and responsibilities. The influence of the social partners on public policy is formally institutionalised in a wide range of corporatist councils and committees.

In addition to this formal aspect, informal discussions take place at central level between representatives of government and the social partners. When the social partners, in this context, are able to present a united front on a given issue, their influence amounts to far more than just consultation; their joint position usually becomes the guideline for government policy. In addition to tripartite concertation, the social partners have individual opportunities to influence the government through their right to be consulted on all matters affecting their members. Compared with other structures of interest representation,

the social partners are de facto accorded a privileged voice in social and economic policy. As a result, in order to obtain support for their particular interests organisations outside the social partnership system have to direct their lobbying towards the social partners rather than the government.

5.3 Conclusion

In practise the use of works councils and the social partners to resolve not only disputes of interest but also individual disputes of rights plays an important role. By means of these institutions individual conflicts are raised one level, that is, to the enterprise or even the branch level. Therefore the inequality of powers which is often inherent in the employment relationship can be circumvented and more pressure can be applied to the employer to reach an agreement. It must be stressed that this is a very different approach from those found in most other venues of alternative dispute resolution: here a neutral party is not used to facilitate negotiations but employees are provided with representation that balances mutual bargaining power. One may call this a ‘representative model of dispute resolution’.

Annex 2

Prevention and Amicable Settlement of Labour Disputes in Bulgaria

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Abbreviations

BIA – Bulgarian Industrial Association
BCCI – Bulgarian Chamber of Commerce and Industry
CITUB – Confederation of Independent Trade Unions in Bulgaria
CL 'Podkrepa' – Confederation of Labour 'Podkrepa'
CCP – Code of Civil Procedure
GM – General Meeting
LC – Labour Code
NICA – National Institute for Conciliation and Arbitration
SCLDA – Settlement of Collective Labour Disputes Act
NICA – National Institute for Conciliation and Arbitration
OCA – Obligations and Contracts Act

1. Industrial Relations in Bulgaria

1.1 Legal Basis and Key Issues

The economic and political transition in Bulgaria has had a major impact on industrial relations, particularly as regards the social partners. The transition from centralised and state-governed labour relations to modern social dialogue with all the requisite institutions is undoubtedly one of Bulgaria's major democratic achievements. The trade unions have also been transformed in parallel with the economic and political system.

The rapid disintegration of the monolithic trade union system also had an impact on trade union density. Membership, which previously stood at almost 100 per cent, decreased significantly over a few years and many members joined new, alternative trade unions. By 1993, trade union density had already fallen to 82.5 per cent, but by 1998 it had plunged to 37.3 per cent. According to the latest trade union census, in 2003 trade union density was only 24.8 per cent. In Bulgaria, the rate of trade unionism is considerable, however, at 67.5 per cent. The largest representative confederation has 74.5 per cent of the country's trade union members, the second largest 21.4 per cent and the rest, which are not representative, 4.1 per cent.

The establishment of trade union pluralism in Bulgaria has helped to obtain recognition for the key role of the trade unions in the reform process, especially in the years when tripartite cooperation and collective bargaining were being prepared. According to some commentators, a policy of support for reforms at an acceptable 'social price' and a new consensual culture of labour relations based on social dialogue also created a climate in which the trade unions have been able to play a leading role in creating a new system of industrial relations.

1.2 Social Partners

Associations of workers and employers are enshrined in the Constitution, Art. 44 (1), and in the Labour Code, which establishes the right of free association for all Bulgarian citizens.

The first version of the present Labour Code entered into force in 1986, with various amendments in recent years, the latest in 2008. Despite these amendments, Bulgarian labour market regulation still requires further modernisation. Labour law has undergone substantial changes, but some parts of the Labour Code remain archaic. The lack of objectivity in relation to the representativeness criteria pertaining to trade unions and employer organisations,[22] for example, led to a breakdown in social dialogue. As a result, changes were proposed in light of the EU Monitoring Report of 26 September 2006. The European Commission recommended the development of objective and impartial criteria for the representativeness of the social partner organisations, so that participation in tripartite dialogue would be restricted to organisations with a social mandate. Ideas on such changes were further developed in the Pact on Economic and Social Development of the Republic of Bulgaria 2007–2009 (Paragraph 13.2 of the Pact), signed by the social partners in September 2006.

After discussions in the National Council for Tripartite Cooperation, an agreement was reached between the social partners in February 2007 and the Parliament adopted amendments to the Labour Code concerning the representativeness of trade union and employers' organisations, which were published in May 2007. In the amended articles, quantitative criteria were enhanced and new criteria were introduced for the number of employers and employees within an organisation claiming representativeness to ensure the participation of employers of small and medium-sized enterprises. The Labour Code sets out four requirements that must be met by trade union organisations (Art. 34) and employers' organisations (Art. 35) to be eligible for representative status, participating in tripartite dialogue and managing funds in line with the tripartite principle. A four-year mandate of representativeness was introduced for workers' and employers' organisations.

Employees' and employers' organisations are recognised by the Council of Ministers on request (Labour Code, Art. 36 [2]). The Council of Ministers initiates a procedure to verify compliance with representativeness criteria once every four years (Labour Code, Art. 36 [2]).

The four criteria for recognising trade union organisations as nationally representative are as follows. The organisation must:

1. have at least 50,000 members and
2. more than 50 organisations,
3. each with more than five members, and
4. be established in more than one third of industries, determined in accordance with the National Classification of Economic Activities.

1.2.1 Trade Unions

At the end of 1989, the Bulgarian trade unions embarked on a radical reorganisation geared towards organisational and political independence, with the protection of employees' interests as its main objective. In February 1990, an extraordinary congress saw the formation of CITUB (Confederation of Independent Trade Unions in Bulgaria). Since then, it has made considerable progress, managing to transform itself by strengthening its position and gaining recognition as the largest trade union organisation

22 See http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/REPRESENTATIVENESS.htm

in the country. It now has 31 regional coordination councils, 234 municipal coordination councils and 7,000 organisations which are members of 24 branch federations.

LC Podkrepa (Confederation of Labour Podkrepa) was established in 1989, prior to Bulgaria's socio-political changes, as a semi-legal opposition organisation. Its initial purpose was to protect employees' civil rights. It is Bulgaria's second largest trade union structure. Podkrepa is a voluntary union based on the principles of free confederation of trade union organisations established at regional level. It has 35 regional units and (at sectoral level) 26 branch federations.

In 1996, the united trade union association 'Promiana' was established and in 2004 the government granted it representative rights. The recognition of this additional trade union organisation proved controversial among the previously established confederations. According to the most recent census data (2003), CITUB reported 393,843 members, Podkrepa 106,309 and Promiana 58,613.

1.2.2 Employers' Organisations

In 2004, six employers' organisations met the representativeness criteria of the Labour Code.

1. BCCI (Bulgarian Chamber of Commerce and Industry) is the largest national business organisation in the country. It has 46,000 members, generating 33.4 per cent of GDP and representing 41 per cent of the entire workforce on individual employment contracts. It has 70 sectoral organisations.
2. The BIA (Bulgarian Industrial Association) is made up of more than 14,000 industrial, trade and service companies from the private, public, cooperative and municipal sectors, as well as banks, universities, economic and scientific bodies, insurance and leasing companies, pension and health insurance funds and other organisations and establishments. It incorporates 81 regional organisations, municipal associations and chambers, as well as local bodies corresponding to the administrative divisions of Bulgaria. It also incorporates 73 branch organisations representing all sectors of the Bulgarian economy. BIA estimates that it represents in the region of 15,000 to 18,000 member enterprises.
3. The Union of Private Entrepreneurs in Bulgaria 'Vazrajdane' (UPEB) has 2,000 members, local (based in municipalities) and sectoral or branch organisations.
4. The Union for Economic Initiative (UEI) has almost 4,000 member companies and 50 regional and branch offices.

In 2004, the Bulgarian government conferred national representative status on two new employer organisations:

5. The Confederation of Employers and Industrialists of Bulgaria currently has 828 affiliated employers, according to census data. The CEIB is an umbrella organisation for Bulgaria's major private companies (employing more than 100 workers). It currently claims more than 3,000 member companies, some of which are direct members (or part of a member holding group) and others are members through branch organisations. The combined annual turnover of member companies exceeds USD 2.8 billion. Together they employ more than 200,000 workers and are present in virtually all sectors of the Bulgarian economy.
6. The Bulgarian Industrial Capital Association (BICA) has 862 affiliated employers, according to the latest census data. BICA claims that its member enterprises (often part of holdings and investment companies) employ more than 70,000 workers, with combined annual revenue of more than USD 900 million in 2003. BICA has a well-developed network of regional structures, covering more than 50 municipalities.

In May 2006, these two organisations merged to form a new organisation called CEIB, GBB (Confederation of Employers and Industrialists of Bulgaria, the Voice of Bulgarian Business). The new employers' organisation embraces large and medium-sized businesses, covering more than 400,000 workers, generating two-thirds of GDP and three-quarters of Bulgarian exports. The merger of the two organisations was a major step towards creating a new centre of representativeness in Bulgarian business and a powerful instrument through which the voice of business may be heard in Europe.

Bulgarian legislation does not establish clear criteria defining the national representativeness of branch employers' organisations. According to current legislation, it is enough for a branch organisation to be a member of one of the six nationally representative employers' organisations.

However, it is often the case that a branch organisation is a member of several employers' organisations at once. The establishment of sectoral councils is a new idea now under consideration. Branch employer organisations would be able to discuss any issue at these councils, including legislation on the relevant sectors, together with representatives of the respective state institutions. However, some opposition to this idea has already emerged.

On 26 September 2006, the Bulgarian government, the two main trade union confederations (Confederation of Independent Trade Unions in Bulgaria and the Confederation of Labour Podkrepa), as well as the six national representative employers' organisations signed the first 'Pact on Economic and Social Development', effective for the period 2007–2009. This process will probably lead to further partnerships or mergers of employers' associations representing small business interests. Analysts of the development of Bulgarian industrial relations believe that, in time, employers' organisations will unite under two conglomerates – for large and small companies – similar to the practice in other EU member states.

1.3 Joint Bodies

In 1993, the **National Council for Tripartite Cooperation** was established. It is a consultative body for labour, social insurance and living standards issues. It is consulted on the government's legislative decisions in spheres regulated by the Labour Code. It consists of an equal number of government representatives and representatives of employers' and trade union organisations.

The **Economic and Social Council** was established in 2000, although it has been operating only since the end of 2003. It is an independent consultative body that represents civil society organisations on economic and social development. Its task is to draft positions, at the request of the President of the Republic, the Prime Minister, the Chairman of the Parliament or on its own initiative. Trade unions and employers are represented here, but not the government. The third party is a representative of a broad spectrum of non-governmental organisations (NGOs).

Several other bodies cover social affairs, and social insurance funds and institutions, such as the Supervisory Board of the National Social Security Institute, the Assembly of Representatives, the National Employment Promotion Council, the National Council on Working Conditions, the Management Board of the 'Working Conditions' Fund, the Supervisory Board of the fund to guarantee workers' pay claims in the event of employer's insolvency, the Management Board of the Social Investment Fund, the Management Board of the National Agency for Vocational Education and Training, the Advisory Board of the National Institute for Conciliation and Arbitration (appointed by the government with equal representation of all parties) and the National Council for Gender Equality.

The efficiency of the different tripartite structures varies. Employers' and trade union organisations have different opinions on their degree of success in social dialogue. There is a shared belief that cer-

tain structures are designed to be advantageous to one organisation and disadvantageous to others. The overall assessment should be based on the abovementioned tripartite structure, however. It is generally agreed that the National Council on Working Conditions is an example of successful social dialogue. According to the trade unions, another is the Economic and Social Council, in which the state is not represented.

1.4 Collective Bargaining

1.4.1 Legal Basis and Key Issues

Collective bargaining is regulated by the Labour Code and takes place at three levels: branch or sector, municipal and enterprise.

After lengthy negotiations, representative trade unions and employers'organisations drew up a National Framework Agreement on sectoral and branch-level collective bargaining procedures and mechanisms. However, a number of employers' organisations have refused to sign it. The gradual withdrawal of the state from active participation in economic life has been reflected in the various degrees of centralisation of collective bargaining. This has led to decentralisation towards company-level collective bargaining.

Employers and trade unions express the common opinion that there is still much to be done as regards collective bargaining at sectoral and branch level to achieve effective dialogue. Regional bargaining is not well developed, indeed practically non-existent. Both representative trade unions are in negotiations with the Association of Municipalities to combine efforts in the bargaining process. All the mayors in Bulgaria are members of this Association. There are no legal provisions as regards the relationship between collective bargaining agreements and other forms of labour regulation. An agreement regulates issues on the labour and social security relations of employees that are not regulated by mandatory legal provisions (Labour Code, Art. 50).

Under Art. 58 of the Labour Code, employers are obliged to inform all employees of all the collective agreements concluded in the undertaking by which the employees are covered and to make copies available. In the event of a breach, (Labour Code, Art. 59) the parties to the agreement, as well as every employee concerned, may file a claim in a court of law.

1.4.2 Main Features

The period of validity of a collective bargaining agreement is established at one year, unless otherwise specified in the agreement (but never more than two years). The parties may agree to shorter periods of validity applicable to individual clauses of the agreement (Labour Code, Art. 54).

Collective bargaining agreements must be registered, according to their level, in a special register held at the local or General Labour Inspectorate. They cover only employees who are members of the trade union organisation which has signed the agreement. Employees who are not trade union members can apply in writing to be covered by it to the employer or to the trade union leadership (Labour Code, Art. 57, para. 2). No accurate information is available on the coverage of collective bargaining agreements.

Experts at CITUB estimate that in 2003 38–40 per cent of all employees were covered by a branch or enterprise collective agreement. This can be attributed to the lack of representative trade unions in a number of branches. There are no accurate data on the extent of collective bargaining. Certainly it has decreased in the last five years due to the major privatisation programme. Most private enterprise owners refuse to bargain and even break the law by banning union organisations, the only bodies entitled to conclude a collective agreement.

At sectoral and branch level, some 70 agreements are currently in force, 11 of which are branch agreements. At enterprise level, there are about 5,000. At municipal level, 105 agreements are in force.

Unionisation is very weak in small and medium-sized companies. Only trade unions have the right to participate in social dialogue, which means that 98 per cent of Bulgarian enterprises and more than 45 per cent of the workforce are excluded. The only avenues open to them for direct participation in dialogue are the creation of a works council (at companies with 11 to 50 employees) or strong trade unionisation at branch level.

Despite this constitutional right, a ban on strike action in three sectors (health care, communications and energy) was continued without any alternative mechanism for settling labour disputes until early 2007, when the ban was lifted. However, securing civil servants' right to strike still remains high on the agenda. Going on strike is not a frequent form of protest in Bulgaria, even though there are persistent hotspots of social tension at micro-level.

Article 20 of the ZULCS states that: 'after announcing a strike and during it, employers do not have the right to cancel the activity of the enterprise or to dismiss employees', and Article 21 goes on to say that '[d]uring a legal strike, employers do not have the right to hire new employees to replace those taking strike action'.

2. Employee Representation in Undertakings

2.1 General Issues and Types of Representation and Bodies

In general, the functions of employee representation can be carried out via two channels: trade unions or persons elected as representatives at the General Meeting of Employees.

Before the amendment of the Labour Code in 2001, only trade unions were recognised as employees' representatives. According to Article 6 of the amended Labour Code, a general meeting (GM) of all employees can be established. Employees can elect GM representatives to represent their common interests before the employer on labour and social security issues. According to Art. 7 of the Labour Code, the general meeting elects representatives to carry out information and consultation activities.

Employee rights to information and consultation via their representatives is something new, and an implementation system needs to be developed. As it stands, the Labour Code makes provision for a dual system of employee representation in undertakings:

- trade union representatives, elected by trade union members;
- authorised employee representatives elected by the general meeting.

There is no system in place which establishes rules for interaction between employee representatives and trade unions within an enterprise. Under Art. 7 (2) of the Labour Code, the general meeting can assign the functions of information and consultation to representatives of the leadership of the trade union organisation in the relevant undertaking.

2.2 Legal Basis and Scope

The Labour Code is the major body of legislation in the labour field. However, it only contains minimum requirements as regards representation, labour protection, rights of employees and working conditions. Many avenues remain open for negotiation in social dialogue at different levels.

The Labour Code regulates labour relations through provisions on:

- principles of social dialogue and social partnership (Art. 2 and 3);
- freedom of association (Art. 4 and 5);
- functions of the general meeting (Art. 6);
- rules for electing employee representatives for information and consultation tasks (Art. 7);
- fulfilment of labour rights and obligations (Art. 8);
- formation and rights of trade union and employer organisations (Art. 33–49);
- collective agreements (Art. 50–60);
- individual employment contracts and work regulations (Art. 61–356);
- settlement of labour disputes (Art. 357–98); and
- monitoring of adherence to labour legislation and penalties (Art. 399–416).

2.3 Entitlement to Representation

In an undertaking, a trade union organisation may be created with a minimum of three members. The organisation decides which Federation and which representative Confederation to join.

Trade unions are involved mainly in collective bargaining, the composition of the collective bargaining agreement and representing employees before state institutions. Trade union organisations may also, at the request of employees, represent them in court (Labour Code, Art. 45).

Employee representatives elected at the general meeting have the following functions:

- to adopt the social programme;
- to select a collective bargaining agreement if more than one has been negotiated by the different trade unions in the undertaking; and
- to carry out information and consultation activities (Labour Code, Art. 7), as follows:
  - to request the necessary information from the employer (or the employer's representative), if the employer has not provided it within the established time frame;
  - to participate in consultation with the employer and to express their opinion on the measures envisaged, which should be taken into consideration in decision-making;
  - to request meetings with the employer whenever necessary in order to communicate issues posed by the employees;
  - to undergo training in order to ensure that they perform their information and consultation functions properly.

There is no special provision in the Labour Code authorising them to represent the employees in court in the event of a labour dispute. Trade union organisations and their divisions are entitled, at the employees' request, to represent them in court. They are not entitled to conclude agreements, recognise claims, resign, withdraw, reduce the claims of employees or collect sums on behalf of the represented employees unless expressly authorised to do so. Trade unions have the right to represent their members before state authorities and other institutions in respect of labour relations, compensation for damage to health, housing and other social and economic interests, the adjudication of individual and collective disputes and to apply to a court for protection of the rights and interests of trade union members, (Labour Code, Art. 45).

2.4 Composition

The trade union structure generally reflects the hierarchical structure of the undertaking. It consists of primary trade union organisations (trade union groups) created by employees in the workplace (minimum of three persons), who elect a committee. Where the enterprise has a multi-level hierarchical structure, the committees elect representatives to a trade union council. The council elects representatives to the central leadership of the trade union. In general, having selected the Federation (different for each sector) and Confederation to which it will be affiliated, the trade union establishes its structure in accordance with the statutes of the relevant Confederation. The committees, councils and central body of the trade unions elect their chairs, deputy chairs and secretaries.

The employee representatives are elected by the General Meeting (Labour Code, Art. 7). The number of representatives is determined beforehand by the General Meeting, as follows:

- for undertakings/establishments with 50 to 250 employees – from 3 to 5;
- for undertakings/establishments with more than 250 employees – from 5 to 9;
- for certain branches – from 1 to 3.

Concerning the establishment of an information and consultation system that does not restrict opportunities for trade union action, the opinion of both nationally representative trade unions is that the British model is the most appropriate, involving the election of employee representatives rather than institutionalising a permanent body. To date, no system has become entrenched in enterprises.

2.5 Protection Granted to Members

In accordance with Art. 333, para. 5 of the Labour Code, employees elected as representatives are protected against dismissal in the following instances: staff cuts, reduction of work, lack of the necessary skills or qualifications.

As a general rule employees who are members of the managing bodies of the trade unions on the different levels cannot be dismissed without the consent of managing bodies of the trade union at the higher level.

2.6 Functioning and Decision-making

There are no provisions in the Labour Code on the work of employee representatives. Employee representatives are entitled to lay down their own operational rules.

The Labour Code contains no provisions on the financing of elected employee representatives, either. According to Art. 7c of the Labour Code, reduced working time, additional leave, and so on may be agreed, if necessary, through a collective bargaining agreement or a separate agreement with the employer.

Trade unions' financial resources come from a number of sources, including membership fees, funding from the undertaking and donations. In the majority of trade unions in Bulgaria, the membership fee is 1 per cent of gross monthly salary.

According to Art. 159 of the Labour Code, for the purpose of carrying out trade union activities the unpaid members of the trade union leadership at the enterprise have the right to paid leave for a period specified in the collective agreement, but no less than 25 hours per calendar year. This may not be compensated in cash, meaning that the enterprise may not refuse to grant the leave, offering a cash payment in its place. The trade union representative chooses when to exercise such leave and must notify the em-

ployer in a timely manner. The time and duration of the leave used is recorded in a special register held by the employer. Under Art. 161 of the Labour Code, in the absence of a specific provision in the collective agreement, paid elected trade union officials are on unpaid leave from the enterprise during their period of office.

Under Art. 406 of the Labour Code, in performing their functions, representatives of trade union organisations may, at any time, visit the enterprises and other locations where work is done, as well as the premises used by employees. They may also demand from the employer explanations and provision of the requisite information and documents, and obtain information directly from employees on all issues concerning compliance with labour legislation.

Under Labour Code, Art. 46, paras 1 and 2 on the performance of trade union functions, the employer has to provide the necessary conditions and cooperate with the trade unions, including free use of premises and any other resources required for performing trade union functions, as well as transport, if requested in advance and for a limited period of time. In practice, collective agreements include provisions establishing that the employer, at the request of the trade union, will provide the necessary technical equipment, computers with an Internet connection, modem and printer, photocopying machine, fax, and so on. Within certain limits, the employer shall also pay for telex, phone and fax services.

There are no provisions in the Labour Code concerning the provision of facilities for the work of employee representatives. Art. 7c of the Labour Code establishes the right of employee representatives to training associated with the performance of their duties. The rights of employee representatives are generally laid down in the collective agreement, if the enterprise has one.

According to the Labour Code, there is no obligation for the employer to cover any expenses related to external assistance provided to the employee representatives by experts. Employee representatives and trade unions may call in such experts provided that they are able to cover their fees themselves.

2.7 Authority and Rights

Under the amended Labour Code, the employer is not required to take any steps to establish an information and consultation system. Such a system shall be established on the initiative of the employees. With the transposition of Directive 2002/14/EC into Bulgarian labour law, employers have the following new obligations (Art. 130 LC):

- To assist – and provide the necessary conditions for – the representatives to carry out their duties, in accordance with the agreement signed with the employer. All employee representatives elected or chosen by the trade union organisations participate in the preparation of the agreement.
- To provide the trade union organisations and the employee representatives in the establishment with the information required by law, and to consult them.
- To provide information, consult and coordinate, in the cases stipulated by law, with trade union organisations, or with representatives when there are no trade union organisations or no elected representatives in the establishment, or when one of them refuses to participate in the information and/or consultation procedure.

2.8 Information and Consultation

Under Art. 7a of the Labour Code, the employer and the employee representatives will determine through an agreement:

- the contents of the information and the terms of its presentation;
- the terms in which the employee representatives will present their opinion on the presented information;
- the terms and subject of the consultation;
- the representatives of the employer appointed to present the information and to carry out consultations.

According to Art. 7c of the amended Labour Code, elected employee representatives have the right to be informed by the employer or by a person appointed by him in a way that allows them to assess the possible impact of intended measures, and to request the necessary information from the employer if the employer has failed to provide it within the established time frame. They can also participate in consultation procedures with the employer and express their opinion on intended measures, which must be taken into consideration when making a decision, or may request meetings with the employer when necessary to inform him of issues posed by employees. Finally, they can participate in training in order to ensure the effective exercise of their information and consultation functions.

Trade unions may be authorised by the General Meeting to carry out the functions of employee representatives, in which case they will have the abovementioned rights. If not, they have the right to request information from the employer before drafting the collective agreement. Partnership with the employer manifests itself in the various Councils (Council for Social Partnership, Council for Interests, Conciliation, and so on) made up of representatives of the trade union leadership body (normally the chair, the general secretary, and so on, of the Federation) and of the employer (human resources director, head of personnel training and education, chief accountant, and so on). In the Council, there are representatives of all the trade unions present in the undertaking. On developing the enterprise's business plan, the Council discusses the annual wage policy. The employer is also obliged to submit to the Council, annually, information about measures on occupational health and safety. The employer shall provide timely information to the trade unions as regards training courses, qualifications and further qualifications, both at home and abroad.

The employer provides information, consults and coordinates activities with the trade unions only if there are no elected employees, or with the employee representatives when there is no trade union in the undertaking. Employee representatives have the right to request and receive timely, correct and comprehensive information on the economic and financial situation of the employer as it affects employees' labour rights and obligations. Employee representatives may agree to other methods of information and consultation with the employer through a collective agreement or a separate agreement.

It is important to note that the persons receiving information do so under the explicit requirement of confidentiality, and they are responsible for damages caused to the employer if there is a breach (Labour Code, Art.7d). Art. 130 of the Labour Code establishes the right of employee representatives and trade unions to information and consultation in the event of collective redundancies. It also defines:

- the terms of information and consultation – information related to forthcoming changes must be presented one month in advance, as must information related to the implementation of measures affecting employment;
- information and consultation obligations in the event of a change of ownership;
- the right of employee representatives to receive information in the event of changes in the undertaking related to its activities, economic situation and work organisation.

Through the Councils, the employer provides the trade union organisations with timely and correct information on the company's economic and financial situation, in line with the provisions of the Labour Code. The trade union organisations provide the employer with timely and correct information on the structures and number of trade union bodies, the number of trade union members and any other information related to social partnership.

The trade union organisations in the various parts of the company must update their membership lists on an annual basis.

2.9 Bargaining

Under Art. 52 of the Labour Code, the employer must negotiate with employee representatives to conclude a collective agreement. The employer must make available to the employee representatives the concluded agreement binding the parties, as well as timely, authentic and comprehensive information on the employer's economic and financial position which is relevant for the conclusion of the collective agreement. The provision of information may be granted or refused by the employer, depending on whether the disclosure of such information could harm his interests. The employer may decide to grant such information under a confidentiality agreement.

In an enterprise, the collective agreement is concluded between the employer and a trade union organisation (Labour Code, Art. 51a). The trade union organisation prepares and submits a draft of the collective agreement. Where more than one trade union organisation exists in an enterprise, the trade unions submit a joint draft. If the trade union organisations fail to submit a joint draft, the employer concludes the agreement with the trade union organisation whose draft has been approved by more than half of the General Meeting. The collective agreement regulates labour and social security issues not regulated by law (Labour Code, Art. 50).

2.10 Other Functions and Responsibilities

According to Art. 7, para. 2 of the Labour Code, employee representatives are obliged to inform workers of information received and the results of consultations. There are no other specific requirements regarding the terms and procedures of the provision of information.

The management of the trade union organisation (this is a standard text in the provisions of collective agreements and there is no example of it being subject to collective bargaining) assumes the obligation to assist the employer in preparing the corporate strategy and achieving the corporation's approved objectives and tasks; to assist the employer in complying with the approved annual budget, and in increasing labour productivity and enhancing labour discipline; to assist and demand from all its members adherence to discipline at work and proper use of equipment, as well as to the internal labour regulations of the company; to assist and demand from all its members adherence to health and safety provisions and standards; and to inform all its members of any significant events related to the company in a timely manner.

2.11 Other Representative Bodies

Under Art. 27 of the GMH Act (Law on Safe Working Conditions), a working conditions committee must be established in all enterprises with more than 50 employees. The committee will consist of an equal number of employee and employer representatives, with a maximum of 10 members. Employee representatives will be elected according to the rules laid down in Art. 6 of the Labour Code. They are elected for a term of four years, which may be suspended if so requested by at least one-third of all em-

ployees in the undertaking and if voted for by a qualified majority of those attending the General Meeting.

The employer is the chair of the committee and an employee representative is its deputy chair. The working conditions committee will also include, as representatives of the employer, civil servants assigned to deal with safety at work, and a physician from the occupational health service. The committee may invite external experts and representatives of the inspection authorities on an ad hoc basis.

Working conditions committees will be established in undertakings with fewer than 50 employees, as well as in individual establishments of undertakings. The working conditions committees will consist of the employer or manager of the respective establishment and one employee representative. The working conditions committees will:

- discuss the whole range of activities related to the health and safety of employees once every quarter, and adopt measures to improve it;
- discuss the results of occupational risk assessment and analyses of the health of employees, reports by specialised occupational health and safety services and other issues concerning the health and safety protection of employees;
- discuss the planning and introduction of new technologies, work organisation and equipment, and also propose solutions to ensure the health and safety of employees;
- carry out inspections to ensure that occupational health and safety provisions are in place;
- monitor work accidents and occupational illnesses; and
- participate in drawing up information and training programmes on healthy and safe working conditions.

2.12 European Works Councils

On 1 January 2007, the law on information and consultation with employees of multinational (Community-scale) undertakings, groups of undertakings and companies entered into force. The Law transposes the EU Directive on European Works Councils. This law regulates the terms and procedures for the establishment and operation of a European Works Council or other procedure for employee information and consultation in multinational (Community-scale) undertakings and groups of undertakings.

The Law also establishes that a special negotiating body consisting of at least three members will represent the employees. Central management will determine the number of its members so that each Member State in which a transnational undertaking has one or more branches is represented by at least one member.

The special negotiating body will have the task of determining, with central management and by written agreement, the scope, composition, functions and term of office of the EWC, or the arrangements for implementing another procedure for employee information and consultation. There are more than 100 multinational companies and approximately 40 of them fall under the requirements of the Directive.

2.13 Codetermination Rights

Strictly speaking, employees and trade unions have no codetermination rights in the case of substantial changes in the undertaking. Their rights are restricted to information and consultation.

The employer offers representatives of trade union organisations the opportunity to participate in the work of the company's management bodies on problems concerning social partnership so that they may present their views and proposals.

2.14 Employees' Representation in Corporate Bodies

Bulgaria still has no legislation or practice on employee participation at board level.

However, in public limited companies with 50 employees or more, employees can participate in shareholders' meetings on a consultative basis. In private limited companies, they can participate in shareholders' meetings regardless of the number employed, but only on social issues.

Also, employee representatives participate in board meetings to present the position of the employees on the amount of funds allotted for social expenditure. The programme for the distribution and expenditure of social funds is issued on an annual basis by a joint working group with representatives of the employer, the employees and the trade union organisations.

Only the law on employee information and consultation in multinational undertakings and groups of undertakings (Community-scale) regulates employee information and consultation and the participation of employees in the undertaking's decision-making processes when European companies (SEs) and European cooperative societies are established. It also sets out obligations concerning the provision of information, the election of employee representatives to the special negotiating body and the rules of procedure.

2.15 Employee Involvement in External Decisions that Affect the Undertaking

There is no system for direct involvement and employee participation in decisions and actions taken outside the undertaking which affect employees in some way.

3. Settlement of Labour Disputes in Bulgaria

3.1 Definition of Labour Disputes

Labour disputes are an inherent part of labour relations. The legal regulation of such disputes has consistently attracted the interest of Bulgarian jurisprudence. Before considering the procedures of dispute settlement we must clarify the *concept of labour dispute* within the meaning of Bulgarian legislation.

Bulgarian labour law does not provide a general definition of 'labour dispute'. An explicit definition is given only of individual labour disputes in Art. 357 of the Labour Code,[23] while the concept of collective labour dispute is derived from Art. 1, para. 1, SCLDA.[24] The concept of labour dispute is therefore constructed on the basis of the general legal doctrine of disputes and specific features of labour disputes derived from an analysis of their legal regulation.

A labour dispute therefore is a *disagreement* between parties concerning a given substantive legal relationship: their position regarding the rights and obligations arising from this substantive legal relationship, or the rights and obligations to be established by the legal relationship, do not coincide.

The labour aspect of such disputes is related to *the performance of hired (dependent) work under an employment relationship*. Such rights are established by labour law, a collective agreement or an agreement between the parties governing the employment relationship. The employment relationship is a legal relationship involving various individual or common interests emerging from the performance and utilisation of labour. Such interests are expressed in labour and associated relations under Art. 1, para. 1 of the Labour Code and Art. 1, para. 1, SCLDA.

23 Article 357 (Amended – SG, No. 25/2001): labour disputes are disputes between an employee and an employer concerning the establishment, existence, implementation or termination of employment relationships, as well as disputes on the implementation of collective agreements and ascertainment of length of service.

24 Art. 1, para. 1: this Act stipulates the manner of settlement of collective labour disputes between workers and employers on issues of employment, social insurance relations and living standards.

Labour disputes arise between parties to an employment relationship. These are the *employee* and the *employer,* or a *group of employees* and the *employer* or *employers' organisation*. They are the bearers of the rights and obligations pursuant to the substantive employment relationship.

3.2 What Is the Distinction between Disputes of Rights and Disputes of Interest?

Depending on the subject at issue, labour disputes can be categorised as disputes of rights (legal) and disputes of interests (non-legal). This is important for the procedure for settling the labour dispute and sort of decision ending the dispute.

Legal labour disputes (labour disputes of rights) are those whose subject is already existing labour rights and obligations. Such disputes are related to existing rights and obligations under the employment relationship – by virtue of a legal act, collective agreement, internal act of the employer or individual agreement between the employee and the employer. These include disputes related to implementation of the collective labour contract (Art. 59 and Art. 357 LC), the termination of individual employment relationships (Art. 344 LC), and so on. They shall be settled by the court.

Non-legal labour disputes (labour disputes of interests) are those whose subject is the establishment of new labour rights and obligations. They are non-legal because they are related to new regulation of the interests of the parties to an employment relationship by relevant legal acts: collective agreement, individual agreement, and so on. Disputes of this kind include disputes on the signing of a collective labour agreement to establish higher initial wages at the enterprise. Such disputes are settled by mutual agreement between the parties (individual labour disputes) or in compliance with the special procedure for settlement of collective labour disputes.

3.3 What Is the Distinction between Individual and Collective Labour Disputes in respect of the Court System and the System of Conciliation and Arbitration?

Depending on the interest that is the subject of the dispute, labour disputes can be categorised as individual or collective.

Individual labour disputes are those that emerge between the parties to an individual employment relationship (employee and employer) and their object is rights and obligations expressing the individual interests of these parties. The objects of individual labour disputes are laid down in Art. 357 of the Labour Code. These are rights and obligations related to:

- *the establishment of an employment relationship* – for example, related to the lawfulness of a recruitment process as a basis for the creation of the individual employment relationship (Labour Code, Art. 87);
- *the existence of an employment relationship* – for example, cancellation of an employment contract (Labour Code, Art. 74, para. 2);
- *conduct of an employment relationship* – for example, payment for work (Labour Code, Art. 242);
- termination of an employment relationship – for example, a claim for the rescindment of unlawful dismissal (Labour Code, Art. 344, para. 1, item 1);
- *failure to implement a collective labour contract* where it entails individual rights for the employee under his/her individual employment relationship – for example, longer duration of regular paid leave than that stipulated by the law (Labour Code, Art. 156a);
- determination of length of service by the court (Art. 1 DPWELP).

According to Art. 360 of the Labour Code, individual labour disputes shall be settled by the court.

Collective labour disputes are those that arise between parties to a collective labour relationship (a group of employees, on the one hand, and an employer or employers' organisation, on the other) and are related to *general interests*.

The object of collective labour disputes is expressly defined in Art. 1, para. 1, SCDA. It covers issues related to:

- *Employment relations*. These are relations established upon hiring and relations directly associated with them, within the meaning of Art. 1, para. 1 of the Labour Code.
- *Social insurance relations*. These are relations concerning material provision for employees in case of disability and in other cases stipulated by the law, when employees are not able to earn their own living.
- *Standard of living*. The effect of employees' labour and insurance rights on their living standards.

To be collective in nature, disputes in this category need to reflect the interests not of a single employee but of a *group of employees*. According to Bulgarian legislation, trade unions are not involved in collective labour disputes on a mandatory basis. They are not a party to such disputes, but they can represent the employees involved.

Collective labour disputes are settled in accordance with the procedure provided for by the Law on the Settlement of Collective Labour Disputes – through *voluntary settlement (direct negotiations, mediation, arbitration, instruments for influencing the public, symbolic strikes) or strike action*. All these methods are out-of-court.

The court settles disputes related to the validity of collective labour contracts or their implementation (Labour Code, Art. 59–60[25] and Art. 357), as well as those related to the declaration of a strike as illegal (Art. 17 SCDA).[26]

3.4 Background of the Settlement of Collective Labour Disputes

The Labour Code of 1986 for the first time provided for the settlement of labour disputes by *labour dispute committees* within the enterprise. Like the conciliation committees under the Labour Code of 1951, they comprised an equal number of employer and trade union representatives, but they were elected by the general assembly of employees and reached their decisions by simple majority. They were responsible for settling all labour disputes for which no alternative jurisdiction – for example, the court (disputes related to unlawful termination of the employment relationship), or, for example, administrative proceedings – was prescribed. These committees functioned in compliance with a specific proce-

25 Article 59 (Amended – SG, No. 25/2001): in the event of default on the obligations under the collective agreement court action may be instigated by the parties to the agreement, as well as by any employee who is subject to the application of the agreement.
Article 60 (New – SG, No. 25/2001): any party to the collective agreement, as well as any employee who is subject to the application of the agreement, may submit a claim to the court requesting the invalidation of the collective agreement or individual clauses thereof, provided such clauses are contrary to or circumvent the law.

26 Art.17. (1): The employer, as well as workers who are not striking, can submit a claim for the establishment of the illegality of a declared, ongoing strike or a strike that has already ended.
(2) The claim shall be submitted at the district court at the location or headquarters of the employer. When employers are party to the dispute with headquarters and resident in different judicial districts, the claim shall be submitted, at the choice of the employers, at one of the district courts.
(3) The case shall be heard within seven days in an open session, by order of the Civil Procedures Code, with the participation of a prosecutor.
(4) The Court shall make its decision within three days of hearing the case.
(5) (repealed SG 25 / 2001 r.).
(6) The Court decision is final and shall be announced to the parties immediately.

dure established by the Labour Code (1986). Their decisions could be appealed before the relevant regional court.

The court was competent to settle those labour disputes specifically mentioned in Art. 366 of the Labour Code (1986), including disputes related to the establishment of employment relationships in the cases prescribed by the Labour Code, disputes related to the full material liability of the employee, and so on. The competent court was the general civil court.

The superior administrative body settled the types of individual labour dispute specified in Art. 369 of the Labour Code (1986) – for example, disputes related to the dismissal of elected employees.

An amendment of the Labour Code adopted in 1992 prescribed the *court settlement of all individual labour disputes*. However, this raised a number of problems, including the delayed settlement of disputes because of the general overload of the civil courts, lack of specialists, and so on. The need to establish specific mechanisms for the settlement of labour disputes is becoming increasingly urgent. A whole range of complex legal, psychological and financial issues need to be addressed by the government and the social partners, as well as academia. The new Code of Civil Procedure represented a particularly good opportunity for introducing changes but unfortunately this did not happen due to a lack of political will.

3.5 Reasons for Introducing Conciliation Committees in 1992, Later Abolished

In 1992 a major reform was carried out in the procedure for settling individual labour disputes. Such disputes were henceforth considered entirely by the court. The argument behind this was that it provided citizens with the highest level of protection – judicial – in the case of employment disputes. In practice, the majority of the decisions of labour dispute committees ended up before the court of appeal. The members of such committees – who in general had no legal training and were directly or indirectly dependent on the employer – could not guarantee effective enforcement of labour rights. In addition, Art. 117 of the Constitution (1991) prescribed that 'the judicial authority shall protect the rights and legal interests of citizens, legal entities and the state'. All the benefits of court protection were also made available to the parties in an employment relationship. The Constitution did not provide for the establishment of specific jurisdictions, which is what the labour dispute committees amounted to, and this led to their abolition.

The Labour Code of 1986 established regulations on collective labour contracts which were not applied in practice. In fact, the beginning of a new era in the implementation of collective labour agreements was marked by the Labour Code amendments adopted in 1992. Disputes related to their enforcement were submitted to the competence of the *courts*. The Law on the Settlement of Collective Labour Disputes of 1990 for the first time established general provisions on collective labour disputes and did not restrict them to collective labour agreements. This act contains the legal regulations currently in force on collective labour disputes and their settlement in either of two ways: voluntarily (through direct negotiations, conciliation and arbitration) or by strike action.

The need for voluntary settlement of collective labour disputes led to the creation of *NICA*. The legal regulation of such disputes follows the regulation of professional associations and collective labour agreements as a way of settling disputes related to the conclusion and implementation of such agreements.

The new role of these agreements and the procedures for their conclusion required a new procedure for the settlement of disputes arising from them.

Initially, conciliation and arbitration were vested in the higher bodies of the employer and the trade unions and employers' organisations. This proved ineffective, however. A need emerged to create a specialised institution to perform such activities. This was NICA. The amendments to the Act on the Settlement of Collective Labour Disputes of 2001 introduced mediation instead of a conciliation procedure and assigned this task also to NICA.

The history of *collective labour dispute* settlement is shorter. It began in 1936 with the establishment of conciliation courts under the Ordinance-Law on Collective Labour Agreements and Labour Dispute Settlement, and proceeded through the conciliation committees for the interpretation and implementation of collective labour agreements pursuant to the law of the same name, dated 1945 and the superior administrative and trade union body pursuant to the Labour Code of 1951, and then to the system of voluntary instruments and strikes under the Law on the Settlement of Collective Labour Disputes of 1990, and the court for the invalidation and enforcement of collective labour contracts under the Labour Code of 1986 and the proclamation of the unlawfulness of strikes under the Law on the Settlement of Collective Labour Disputes. The trend is to seek more efficient methods, predominantly the voluntary settlement of collective labour disputes. The main flaw in the current regulations is the **lack of legal guarantees for the enforcement of agreements and arbitration decisions.**

3.6 Court Hearings in the Case of Collective Labour Disputes

As already mentioned, these are used in the case of disputes regarding the validity and performance of collective labour contracts (Labour Code, Art. 59–60), implementation of agreements and arbitration decisions on collective labour disputes (Art. 1, para. 2, ATP SCLDA in conjunction with Labour Code, Art. 60) and the legitimacy of strikes (Art. 17 SCDA). Most academics think this status should be retained. As far as *judicial procedure* itself is concerned, all rules regarding *individual labour disputes* should apply to it. Furthermore, with regard to collective labour disputes one party is always a group of employees. This makes it necessary to introduce a regulation on the *legitimacy of the parties,* especially with regard to *the effects* of the court ruling. Inter alia, Bulgarian procedural legislation does not go into sufficient detail concerning possible circumstances of such collective claims (like those envisaged for other fields of law, such as protection against discrimination, consumer protection, and so on). Unfortunately, even the new Code of Civil Procedure does not have provisions governing such collective claims and this is one of the most important tasks for future amendments.

The NICA Supervisory Board has made several suggestions to that effect. Similar suggestions may be found in the legal literature. More specifically, it is necessary to establish in legislative form the main rules regarding the conciliation and arbitration procedure, presently contained in acts issued by the NICA Supervisory Board. More particularly, it is necessary to provide for *legal guarantees for the enforcement of agreements* and arbitration decisions – for example, through the introduction of administrative liability in cases of non-performance, recognition of arbitration decisions as *grounds for enforcement* under the Code of Civil Procedure, and so on. To that effect, the delay in the adoption of the Law amending and supplementing the Law on the Settlement of Collective Labour Disputes is unreasonable.

3.7 Strikes

Although socially undesirable, strike action is a legally permissible instrument for the settlement of collective labour disputes. Its legal arrangements, as set forth in the Act on the Settlement of Collective Labour Disputes, are good and in line with international practice. Improvements should be sought in *the*

procedure for declaring a strike, the performance of *minimum required actions,* the *declaration of the illegitimacy* of strikes, and so on. These and other issues await regulation by the long-awaited amendments of the Act on the Settlement of Collective Labour Disputes. Amendments have been adopted to the legislation regarding the extension of the right to strike for workers in emergency medical care, gas supply, power supply, central heating and communications. The strike prohibition was revoked, subject to the obligation to provide the population with a minimum package of services related to power supply, communications and health care. This happened only after the two representative trade unions lodged a complaint – no. 32/2005 – with the European Committee of Social Rights and a decision on the merits followed in October 2006, which found violations of the revised Social Charter.[27]

The ILO supervisory mechanism has also looked into the Act, which was first developed with its assistance in 1990. As regards the requirements for exercising the right to strike, pursuant to section 11 (2) and (3) of the Act of March 1990 on the settlement of collective labour disputes, the ILO CEACR has asked the Bulgarian government on several occasions: (a) to indicate the measures taken or envisaged to amend section 11 (2) of the Act of March 1990 to ensure that, in strike ballots, only the votes cast would be counted and the quorum would be fixed at a reasonable level; and (b) to amend section 11 (3) of the Act so as to eliminate the obligation to notify the duration of a strike. In its last report, the Bulgarian government indicated that decisions for starting strikes must be adopted by an absolute majority of the votes cast and that the requisite quorum should be half of 'all workers'.[28]

With regard to negotiated minimum services, the Committee takes the view that, since the establishment of a minimum service restricts one of the essential means of exerting pressure available to workers to defend their economic and social interests, workers'organisations should be able, if they so wish, to participate in establishing the minimum service, together with employers and the public authorities.

3.8 The Mediation Act 2004

Meanwhile, on 2 December 2004 the Bulgarian Parliament finally adopted the long-expected Mediation Act. The Act was promulgated in State Gazette No. 110 on 17 December 2004 and came into force on 20 December 2004. Considering that the pre-enforcement history of the law was fraught with difficulties, this was a major step forward.

Although in the last decade mediation (in all fields, civil, penal, labour, and so on) has had numerous proponents among academics and NGOs it attracted the attention and support of policy-makers and MPs rather late, and not without a push from outside. There has been strong opposition among the judiciary because of its fear that its jurisdiction will be diminished. The Recommendations of the Council of Europe on mediation in penal, civil, family and administrative matters, as well as the regular progress reports of the European Commission on judicial reform in Bulgaria while still awaiting EU accession, no

27 '[T]he Committee considers that the provision of electricity, communications and health care may be of primary importance for the protection of the rights of others, public interest, national security or public health. A restriction of the right to strike in these sectors may therefore serve a legitimate purpose within the meaning of Article G. However, the Committee considers that there is no reasonable relationship of proportionality between a general ban on the right to strike, even in essential sectors, and the legitimate aims pursued. Simply prohibiting all employees in these sectors from striking constitutes a restriction that cannot be regarded as being necessary in a democratic society within the meaning of Article G. Thus, the Committee holds that the general ban on the right to strike in the electricity, communications and health care sectors pursuant to Section 16 (4) of the CLDSA goes beyond the restrictions to the right to strike permitted by Article G of the Revised Charter and therefore constitutes a violation of Article 6, para. 4 of the Revised Charter.'

28 Art. 11. (1) When, under the collective agreement, an agreement is not reached under Art. 3 or Art. 4, given that mediation and/or voluntary arbitration have been requested, or the employer does not fulfil his obligations, the workers can strike by temporarily interrupting the performance of their duties.
(2) The decision to declare a strike shall be taken by a simple majority of the workers in the enterprise or subsidiary.
(3) The workers or their representative are obliged to inform the employer or his representative in writing at least seven days before the beginning of the strike, stating its duration and the body that shall lead the strike.
(4) Under the conditions of the preceding paragraph the workers can declare a solidarity strike in support of a legal strike by other workers.
(5) The workers can, without preliminary notification, declare a warning strike, which cannot last longer than one hour.

doubt accelerated the process. However, the draft law was developed exclusively by academics and some NGOs who had already done considerable research work and started pilot projects and training in a legislative vacuum and against the resistance of professionals. While developing the draft, the experts worked entirely on a voluntary basis over a period of three months. The contributions and support of the American Bar Association Central and Eastern Europe Legal Initiative and the European Forum for Victim–Offender Mediation and Restorative Justice should also be recognised.

The Mediation Act is an enabling, organisational act – it opens the window to mediation in many fields of the Bulgarian legal system. Moreover, according to Article 1, 'The Act shall apply to mediation as an alternative method of resolving legal and non-legal disputes.' Article 3 defines the subject matter of mediation; this method can be used in 'civil, commercial, labour, family and administrative disputes, related to consumers' protection rights, as well as other disputes involving natural and/or legal persons. Mediation may be used also in cases provided under the Code of Criminal Procedure.'

In conclusion, the importance of the procedure for labour dispute settlement for labour protection within the meaning of Art. 16 of the Bulgarian Constitution should be highlighted. Both the state and the social partners should make constant efforts to improve procedures, and parties to labour disputes must exercise their procedural rights in good faith. We can expect that the forthcoming discussion of the issues in this report by representatives of all stakeholders will contribute to the achievement of these goals.

4. National Institute for Conciliation and Arbitration (NICA)

4.1 Goals and Objectives of NICA

In 1990 the National Assembly adopted the Settlement of Collective Labour Disputes Act. This marked a development very much desired by the social partners. CITUB initiated and submitted the Act using the right to initiate legislation that trade unions still had at that time. There was an urgent need to adopt this law in view of the numerous workers' protests and wildcat strikes which took place at the end of 1989 and the beginning of 1990. From the viewpoint of conflict settlement, a strike is meant to be the last resort: all means of negotiation must be exhausted before a strike can be called. The *Act on Collective Disputes* sets out the circumstances in which the right to strike can be exercised (Art. 10–19). The Law recognises four types of strike:

1. *symbolic strike* – if the demands of employees are not met they may call a symbolic strike without stopping work; printed protest materials – posters, ribbons, badges and other symbolic signs – are the usual paraphernalia (Art. 10);
2. *warning strike* – workers can stop work for one hour without prior notification to the employer (Art. 11, para. 5);
3. *solidarity strike* – by its nature, this is a full strike in support of other workers who are on lawful strike; seven days' notice to the employer and a simple majority vote of the workers in favour are obligatory;
4. *full strike* – if the employer and employees do not reach agreement on matters which are the subject of a labour dispute, or the employer does not fulfil his obligations under a collective agreement, the workers can go on strike.

The Law also states some preliminary procedures that must be followed if a strike is to be called and conducted lawfully (Art. 11–14):

- Participation in the strike must be voluntary.
- A simple majority vote (50% + 1) of all workers in the enterprise or unit is needed to take a decision for a strike.
- At least seven days' prior written notice must be given to the employer about the duration of the strike and the bodies leading it.
- Strikers must be at the workplace during working hours while on strike.
- It is prohibited to obstruct or make difficulties for non-striking workers.
- Workers and the employer must sign, at least three days before the strike, a written agreement on the continuation of activities whose interruption or stoppage would endanger essential public services; public transportation; radio and television broadcasts; personal and public property; the environment; and public order.
- The right to strike is not restricted to trade unions, so it may be exercised by any group of employees.
- Either the employer or the non-striking employees may file a request with the district court to have the strike declared illegal. The decision of the court is final.
- Strikers are not entitled to any compensation during the period of the strike, but they are covered by social security and the time out on strike is taken into account in determining length of service (provided the strike is recognised as lawful).
- Strikers enjoy legal protection against dismissal and are indemnified against liabilities arising from their participation in a lawful strike.
- The Law envisages a complete ban on lock-outs by employers.

In the period after 1990 the government, the trade unions and the employers' organisations did intensive research work, directed towards improving social dialogue and the settlement of labour disputes by the instruments of conciliation, mediation and voluntary labour arbitration.

The efforts of the nationally represented trade unions and employers' organisations to assist the swift and mutually beneficial settlement of industrial disputes yielded their first results in the development of the Association for Voluntary Labour Arbitration, and later the National Agency for Conciliation and Arbitration.

In 1996 and 1997 a considerable theoretical contribution to the exploration of labour conciliation and arbitration in industrial relations was made by the members of the work team on Project 04 'Legal Issues of Social Dialogue, Conciliation and Arbitration' under the PHARE Programme 'Social Dialogue – Bulgaria'. They included: Professor Vasil Mrachkov, Chairman of the Advisory Council on Legislation at the National Assembly, and Professor Krasimira Sredkova, Chief of the 'Labour Legislation and Insurance Relations' department, Faculty of Law, Sofia University St Kliment Ohridski, member of the Supervisory Board of the National Institute for Conciliation and Arbitration (NICA), as well as Professor Emil Mingov and others.

At the beginning of 2000 the National Assembly ratified the European Social Charter. According to it the contracting parties of collective agreements should promote the development and use of appropriate procedures of conciliation and voluntary arbitration to settle labour disputes

As a result, **in 2001,** in Article 4 of the Settlement of Collective Labour Disputes Act, the relevant amendments were introduced, providing for the establishment of a National Institute for Conciliation and Arbitration, with the Ministry of Labour and Social Policy as executive agency.

NICA was established with the intention of developing a unified tripartite structure which includes the state, the employers' organisations and the trade unions. It is intended to facilitate:

- the swift and mutually agreeable settlement of industrial disputes;
- improvements in social dialogue;
- the establishment of a model in accordance with European social standards for the settlement of industrial relations disputes.

NICA's aim is that collective labour disputes be resolved quickly, before tensions between the disputing parties become too strong, resulting in strike action. This will reduce the economic, social and psychological cost of efforts to settle collective labour disputes. Within the framework of the Settlement of Collective Labour Disputes Act NICA is intended to assist in the settlement of collective labour disputes by means of its basic activity, mediation and arbitration, as an alternative, out-of-court tool for dispute resolution.

4.2 Basic Activities of NICA

The basic activities of the Institute – mediation and arbitration in the settlement of collective labour disputes – are performed by the Institute itself or in collaboration with the social partners. In the course of its activities, NICA:

- collects, stores and analyses data about:
  – collective bargaining;
  – collective labour disputes;
  – the causes of collective labour disputes;
  – means and terms of collective labour dispute settlement;
- categorises information according to:
  – type of economic activity;
  – type of enterprise – small, medium or large;
  – nature of requests;
  – number of employees affected by the collective labour dispute;
- develops training programmes;
- conducts training of mediators and arbitrators;
- maintains a database of mediators and arbitrators and of training provided for them;
- works in partnership with Bulgarian and international institutions and organisations;
- conducts consultations;
- publishes information, arranges lectures, and so on, related to its activities;
- arranges specialised training in Bulgaria and abroad;
- participates in drafting legislation and submits proposals to the Minister of Labour and Social Policy concerning the improvement of legislation in the field of collective labour dispute settlement;
- studies and promotes best international practice in the field of collective labour dispute settlement;
- performs other functions arising from current legislation.

4.3 NICA Statute

The Institute was established by the Amendment of the Settlement of Collective Labour Disputes Act, Promulg. SG 21/1990, am. SG 27/1991, SG 57/2000 SG 25/2001, in force from 31 March 2001. According to Art. 4a, para. 1, NICA renders assistance in the voluntary settlement of collective labour disputes between employees and employers. It is a legal entity under the Minister of Labour and Social Policy, based in Sofia, and has the rank of an executive agency.

NICA is structured as a tripartite organisation. Its management bodies are the Supervisory Board[29] and the Director.[30]

The Supervisory Board has six members, two each from the representative organisations of employees, employers and the state. The state representatives are appointed by the Minister of Labour and Social Policy. The Director of the Institute is a member of the Supervisory Board *ipso iure*. The representatives of the employees' and employers' organisations are appointed by their national bodies. The members of the Supervisory Board elect a Chair from their ranks for a period of one year based on a system of rotation.

The Supervisory Board:

- adopts regulations for its organisation and activity;
- approves programmes of activity for the Institute;
- adopts a draft annual budget, which shall be approved by the Minister of Labour and Social Policy;
- adopts rules for carrying out mediation and arbitration;
- adopts selection criteria and approves the lists of mediators and arbitrators drafted on the basis of proposals by employees' and employers' organisations and by the state;
- promulgates approved lists under subparagraph 5 in the State Gazette.

The Director conducts NICA's operational management and represents the organisation.

NICA's activities, staff, structure, functions and organisation are stipulated in the Rules of Organisation and Procedure of the National Institute for Conciliation and Arbitration.[31]

Thirty six mediators[32] and 36 arbitrators[33] at the National Institute for Conciliation and Arbitration, selected by proposal of the social partners, are approved by the Supervisory Board on the basis of criteria determined in advance.

4.4 Services Provided by NICA in 2007

– *Settling collective labour disputes through mediation and voluntary arbitration*

The years 2007 and 2008 were marked by a series of protests in the public sector. Workers in transport, energy supply, forestry, mining, education and also in some private companies demanded pay increases and better working conditions. Social workers, teachers and forestry workers planned protest actions, despite the government's dismissal of their pay claims. The successful protests of bus drivers in Sofia and of railway workers in May 2007 – which led to a significant wage increase – provoked a wave of

29 See http://www.nipa.bg/?page_id=8&ln=en.
30 See http://www.nipa.bg/?page_id=17.
31 Promulg. SG 35/ 16.04.2003. The Institute is structured as a Directorate. The maximum number of staff is 30. See http://www.nipa.bg/?page_id=11&id=17 for the rules (in Bulgarian).
32 For the list of NICA's mediators see http://www.nipa.bg/?page_id=7.
33 For the list of NICA's arbitrators see http://www.nipa.bg/?page_id=7.

pay claims elsewhere in the public sector. Strikes and discontent also hit many private sector companies, most of them owned by foreign investors. High economic growth in Bulgaria gave rise to expectations of income growth after the country's accession to the EU in January 2007. Therefore, the ongoing protests have some justification, although they are unrealistic in certain cases.

In 2007, four arbitration procedures were initiated under Art. 14 (amended SG, 87, 2006). When the parties cannot reach an agreement on minimal activities during a strike, when failure to perform these activities or their discontinuation might constitute a danger, the parties may ask NICA that the issue be referred for settlement by a single arbitrator or an arbitration commission. One of these four cases in 2007 – the strike at the emergency hospital – is described below.

Strike at the Emergency Hospital

In mid-May 2007, medical workers at the General Hospital for Active Treatment and Emergency Medicine in Sofia took part in a series of protests, lasting more than 40 days. The workers demanded higher wages, improved working conditions and better quality equipment. The first warning strike was held on 18 May and consisted of a one-hour work stoppage; however, workers threatened to go on all-out strike if their demands were not met. The duration of the strike action was not specified. Trade unions and doctors' and nurses' organisations were involved in organising the protests.

Pirogov is the main emergency hospital in Bulgaria's capital city, Sofia, and the largest in the country. The hospital provides 24-hour continuous care for patients in critical condition from around the country.

On 4 June, consensus was reached between the protesters' representatives, the hospital's management and the Minister of Health, R. Gajdarski. The minister announced the presentation of a draft law for a status change of the hospital to the Parliamentary Health Commission. On 7 June, the protesters' representatives had a meeting with the Parliamentary Health Commission. The hospital workers' demands focused on four main issues:

1. Changing the status of the Pirogov hospital to that of a National Institute for Emergency Medical Services – this would, in turn, allow the hospital to receive state subsidies (according to Article 5 of the Law on Medical Institutions). Many patients who need immediate medical help, for instance in the case of mass accidents or an emergency crisis, may not be covered by health insurance; their treatment is therefore provided at the expense of the hospital. The same issue arises with emergency aid, which is not fully financed by the state.
2. Higher wages – the Pirogov hospital has a highly qualified workforce of some 2,100 specialists. According to trade union data, the average monthly wage of workers at the hospital is currently about BGN 500 (€256 as of 11 July 2007). Hospital attendants receive an average of BGN 180 (€92) a month, while nurses receive a monthly wage of BGN 250 (€128) and physicians a monthly wage of BGN 1,000 (€511). Given the cost of treatment in most emergency cases, which is not compensated by the Health Insurance Fund, the hospital cannot afford to increase the wages of its staff.
3. Better quality equipment – due to the economic constraints outdated technical equipment cannot be upgraded, making it impossible to implement the rules on good medical practice.
4. The resignation of the hospital's board of directors.

Although the government agreed to change the hospital's status, as requested, the workers' protest action continued, as the reform still had to be agreed by the Parliament.

After the commission rejected the draft law, the trade unions declared that they would initiate the procedure for an 'effective strike', in accordance with the Law on the Settlement of Collective Labour Disputes. This stipulates the provision of a prior written agreement, three days before a strike, guaranteeing minimum health services. The elected strike committee instigated negotiations with the hospital management; however, an agreement on minimum health services was not reached. In this case, the law stipulates that the parties concerned should request arbitration. Accordingly, the arbitration panel ruled on 27 June that doctors could go on all-out strike if they continued to treat emergency cases that could not be taken by other hospitals, and as long as the departments treating children continued to operate as normal. However, planned surgeries would be put on hold, and all patients who did not need emergency medical help would be redirected to other hospitals. Other issues were not dealt with.

– Providing consultations on collective labour disputes

Seventy four consultations and written answers were provided to questions posed in relation to collective bargaining, conclusion of collective agreements, pay, redundancies, and so on.

– Popularising non-judicial methods of settling collective labour disputes

– Analysis of collective bargaining processes and industrial conflicts

5. Findings and Conclusions

1. NICA's activities in 2005–2007 (described in its annual reports) clearly show that arbitration on minimal activities in the case of all-out strikes (Art. 14 SCLDA) is the basic form of amicable settlement in Bulgarian practice.
2. The social partners have not exercised the option of voluntary arbitration. Mediation continues to be an unknown and unpopular method of amicable settlement despite information campaigns and projects on social dialogue.
3. Problems of the enforcement of arbitration awards or agreements in cases of mediation have not been solved with the reform in the Code of Civil Procedure 2008.
4. The idea of labour courts has not been promoted in the agenda of legislative reform, despite the support of the social partners.
5. No progress has been made in clarifying NICA's mandate with amendments in the SCLDA – for example, what type of disputes it should settle.
6. Employers continue to avoid NICA services, as they believe that NICA will act as a supervisory and sanctioning body like the General Labour Inspectorate. They are also not convinced that NICA will maintain confidentiality in relation to information obtained for the purpose of settling disputes.
7. The trade unions continue to consider strikes as a more effective way of achieving their goals and do not make a serious effort to maintain good relations with employers. They also point to the fees due to NICA in the case of the voluntary settlement of collective labour disputes as a hindrance to workers. They are also unwilling to discuss the option of establishing strike funds, which could also be used to finance the amicable settlement of collective labour disputes.
8. A culture of dialogue and negotiation is developing slowly in Bulgaria.

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