

**Development of social dialogue
in the Czech Republic**

Jaroslav Hála, Aleš Kroupa, Zdenka Mansfeldová
Jaroslav Kux, Renáta Vašková, Igor Pleskot

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Introduction

The present study is a final report designed to support component 1 of the Phare Twinning project CZ-IB-1999-CO-02 “Developing Social Dialogue in the Czech Republic”. This component aims at “enhancing the level of general awareness concerning the state of social dialogue in the Czech Republic” and “improving the social partners’ information base and common understanding for necessary action to be taken to promote social dialogue”¹.

The first draft of the present study was completed in December 2001 and subjected to extensive discussion in the form of workshops with participants from all interested parties. The authors also discussed the report with the Working Team for Labour Law Relations, Collective Bargaining and Employment of the Council of Economic and Social Agreement during January 2002. Subsequently, in February 2002, comments were offered by various trade unions and employees’ organizations, including minor ones, either during face-to-face discussion with their representatives or through detailed written assessments. Taking account of these discussions and of the fact that a number of both oral and written observations were included in the text, the report was finalized. It can now serve as a basis for further action to be taken by the Twinning partners.

The study strives to fulfil one of the main requirements, i.e. to provide a comprehensive picture of social dialogue in the Czech Republic. Even though the planned scope of the text was considerably exceeded, it became clear during the work that it was unrealistic to expect that the original objective could be exhaustively covered by means of a single, albeit rather voluminous, study. It is evident that a number of analyses would have to come first: there was a lack of objective information allowing us to assess the real impact of social dialogue and of the results achieved by it, in particular in terms of the real economic impact of collective bargaining and collective agreements concluded at industry and company levels. Also missing was balanced and reliable information on social dialogue and collective bargaining in the public sector, information on the specific reasons for diminishing trade union membership in the Czech Republic, including information concerning the weight of the individual contributing factors. Not enough information was available on the reasons why certain employers continue to show great reluctance to engage in collective bargaining and to join their respective associations and more detailed information would be needed on the formation of a joint employer platform for implementing social dialogue in the regions.

The selection of facts and information and arguments used had to take account of the purpose that was to be achieved. Even considering the fact that many observations made during the discussions were included in the report, it should be realised that the text will be studied by two groups of readers of different background and speaking different languages. Many descriptive parts might be considered redundant by Czech professionals, while the same information might be of real value to foreign experts. This was the reason behind this English version.

The following people contributed to the report: J. Kux, RILSA (part A), Z. Mansfeldová, SÚ AV (Part B), A. Kroupa (Part C), J. Hála (Parts D and E), R. Vašková (background material for Part C, Chapter 2 and Part E, Chapter 3), all of them RILSA, I. Pleskot (Part F). A. Kroupa and J. Hála conducted the consolidation of the text.

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¹ Covenant concerning the Twinning Phare project CZ-IB-1999-CO-02, page 5.

A. Overall description of economic development

Throughout the transition process, economic and social development in the Czech Republic can be divided into several distinct stages. As in other transition countries, the first years of transition to a market economy were characterised by a deep slump, caused both by the abrupt interruption of trade relations with the former COMECON countries and very gradual reorientation towards western markets, and by the sharp decline in internal demand that resulted from the diminishing buying power of the population. The 12 percent drop in GDP between 1990 and 1993 was accompanied by a slightly lower reduction of employment (by less than 10 percent). More than half a million people lost their jobs; some of them left the labour market altogether (employed women exchanged workplace for household, older workers retired). The rest became unemployed, an entirely new phenomenon (at least as far as visible unemployment was concerned). In addition, some people moved into the grey sector of the economy, consisting in work abroad (often illegal), unregistered activities in the Czech Republic etc.

A characteristic feature of the subsequent transition stage (between 1994 and 1996) was a relatively fast economic recovery with high yearly GDP growth rates (between 4 and 6 percent). This was followed by a period of economic slowdown and even recession, with GDP falling by approximately 1% a year between 1997 and 1999. The most recent period can be characterised by renewed growth - GDP grew by almost 3% in 2000. The preliminary figures show that that GDP growth was, at least, maintained in 2001. To a certain extent this development was reflected in employment figures, which started to improve midway through the 90s. Economic recovery in the 1994-1996 period was accompanied by a halt in the previous downward employment trend and moderate increases in employment could be observed (mostly around 1% a year, by 2.5% in 1995). The following years of stagnation and economic recession resulted in a steady decrease in employment figures (by 2 and nearly 4 percent a year). Thus the decline in employment was higher than the corresponding decrease in GDP. However, despite the economic recovery, employment continued to decline in 2000 and 2001 (by 2 and 1 percent respectively).

The period of the initial economic recovery (1994-1996) and the following years were also characterised by the gradual deepening of external economic imbalance accompanied by high balance of trade deficits - around CZK 130 to 150 billion in 1996-1997 and again in 2000. This development resulted in a high, and recently growing, imbalance of the current account of the balance of payments. This ranged from USD 1.3 to 4.3 billion, which corresponded to an alarming 7, 6 and 5 percent of GDP in 1996, 1997 and 2000 respectively. From 1997 onwards, this was compounded by the worsening internal imbalance related to the growing deficits of the state budget, which rose from CZK 15 billion to the recent 50 billion, or 1-2.5% of GDP. The increase in the overall public finances deficit and the consequent growing public debt are characteristic features of the last few years. However, public debt is still relatively low by international standards.

Wage levels had to take account of, on the one hand, high inflation and high increases in consumer prices, particularly during the first years of transition. However, wages did not always respect economic performance. Seen from this angle, average wage development was evidently not always consistent with productivity development. It is true that the sharp decline in the value of real wages in 1991, ensuing after the liberalisation of prices, was not matched by a corresponding increase in wages. The price of goods and services was 26% higher in 1991 than 1990 (and 30% higher than in 1989), whereas productivity declined by just under 7%. However, there was an endeavour to offset this sharp fall in the value of real wages during the whole period of 1992-1999 (except 1996). During this period wages in terms of real value grew more rapidly than labour productivity. This

trend essentially continued even after 1995, the year when real wages and the productivity growth rate again reached their 1990 levels for the first time, even though there were no marked differences between the annual growth rates of the two indicators. However, the difference between the productivity and wage levels was narrower in the following years. The desired turning point came in 2000 when growth in real wages amounted to just one half of that of productivity. The development of these ratios continued to be roughly balanced in the first half of 2001.

Taking the period 1995-2000 as a whole, productivity improvement nevertheless fell behind the growth of real wages by 14.5% (real wages grew by 19%, nominal wages by nearly two thirds). This was reflected in an increase in unit wage costs.

In general, the pressure on average wage increases should take into account both the inflation in consumer prices and growth in economic output; disproportionate pressure on wage increases in the public sector comes into conflict with the actual capacity of the state budget. In this context it should be noted that the strategy for further development of the Czech economy suggested that yearly growth of real wages should not exceed 2/3 of the rate of productivity growth. These trends would put in place the right conditions for a marked and sustained economic growth and improvement of living standards of the population and were jointly approved by the CR government and EC representatives ("Joint Assessment of Economic Policy Priorities of the Czech Republic", Brussels, 1999).

B. Social dialogue at national level

1. Origin and development the tripartite system

1.1 Origin of the Council

Parallel with economic deregulation and transformation of the legal system, negotiations were initiated at national level. The aim was to create a genuine tripartite system in order to strengthen collective bargaining and making collective agreements more significant. The reform strategy needed a specific political and institutional background, a system, which would be able to prevent, minimise and ultimately solve possible disputes. Both the federal and the two national governments adopted a similar system as other countries of Central and Eastern Europe. An institution was established with a view to reconciling existing interests and enabling feedback. Various similar systems already proved their value in democratic countries of Western Europe.

In the Czechoslovak and, respectively, the Czech case, the tripartite institution was a “preventive” institution (Wiesenthal 1995, p 11), which was initiated by the government and supported by trade unions². The requirement to create an institution for social dialogue can also be found in the programme covering the first stage of economic transformation adopted in September 1990 by the Czech and Slovak trade union confederation, (Hrdlička 1992).

The government, in co-operation with trade unions and the newly established associations of employers and entrepreneurs, decided to create a negotiating tripartite forum, known as “tripartita”³. This body was first called “Council of Social Agreement”. However, when employers and trade unions started to discuss economic policy subjects the title was changed to “Council of Economic and Social Agreement” (hereafter RHSD). An act on establishment was signed on 3 October 1990 and within one month similar tripartite bodies were established at the level of the Czech and Slovak Republics. However, this structure was not developed further at regional levels. The reason was that it was only in 2000 when the respective act on establishment of regions was adopted, as envisaged in the Czech Constitution. The tripartite bodies - one at the federal and two at national levels - were established as joint voluntary negotiating bodies of the government, trade unions and employers. The underlying idea was that, in addition to the opposing interests of the parties concerned, there were also common goals and objectives for the attainment of which it was necessary to develop joint action, harmonise conflicting interests and seek consensus.

When considering the idea of establishing this supreme tripartite body discussions were held on possible adoption of a legal act to define the legal framework and binding nature of adopted (general) agreements. This idea was finally dropped. This means that the origin of tripartite bodies, their content and the ways and means to organize their activities were not regulated by a legal instrument, but were based on the principle of good will as a “gentlemen’s” agreement between the social partners and the government. The same applied to the general agreements that were signed during the 1991 to 1994 period. The documents were not legally binding and only political responsibility was attached to them. As political documents, they were products of consensus among the parties concerned; the respective provisions could not be enforced. At that time, trade unions were in favour of making these agreements more binding, but their moves in this direction were strongly opposed both by employers and the government. This opposition ceased to be so pronounced in the second half of the decade but no demands were put forward by either side with a view of adoption of a legal instrument. It is possible that a move in this direction would now meet with more understanding than in the past. However, the sole attempt to this effect – a bill on economic

² During our discussion with social partners’ representatives the Confederation of employer organisations alleged that, in fact, the idea was launched jointly by trade unions and employers and then accepted by the government.

³ This word widely used in the Czech version translates “tripartism”, which in English has a different meaning.

and social partnership tabled in the Chamber of Deputies of Parliament by Mr. Štrait (Communist Party deputy) – was rejected by other political parties and also by trade union and employer representatives. The alleged reasons included both material and legal defects.

1.2 Partners in the supreme tripartite body

There are three partners in RHSD: the state represented by the government; employers represented by the Confederation of Employer and Entrepreneur Associations (later by the Confederation of Industry of the Czech Republic and Confederation of Entrepreneurs' and Employers' Associations); and employees represented by the most representative trade unions. Trade union membership of RHSD was conferred on the Czech-Moravian Confederation of Trade Unions (ČMKOS) and Confederation of Arts and Culture (KUK). In 2000, the latter was replaced by the Association of Independent Trade Unions (ASO), which met the established criteria of representativeness while KUK ceased to be representative.⁴

Initially, the employer delegation consisted of seven representatives of the Co-ordination Council of Entrepreneur Unions and Associations of the Czech Republic (KORP), which was later renamed Co-ordination Council of the Confederation of Employer and Entrepreneur Associations ČR (KR KZPS). Economic or agrarian chambers established by acts adopted in 1992 were not represented here (they are in other post-communist countries). The reason was that, by their nature, they do not represent employers in collective bargaining and thus cannot be partners in social dialogue. We can note that the different roles of chambers on the one hand and employer and entrepreneur organizations on the other hand were clearly distinguished. Later attempts by other than employer associations to join the employer delegation in the supreme tripartite body (e.g. the Economic Chamber) were sporadic and not successful.⁵ However, representation of new employer associations in the employer delegation is still under consideration and open to discussion. At present, the employer delegation consists of representatives of the Confederation of Employer and Entrepreneur Associations and the Confederation of Industry and Transport of the Czech Republic.⁶

This put in place the basic prerequisite for the smooth working of social partnership, namely the existence of representative interest groups. The existing central bodies (confederations), both on the employer and trade union side, present a synchronised strategy for negotiations at the sector, branch and regional levels. In some regions this is a somewhat experimental process; in others structures already exist and work (see Section F). Also, it can be said that represented interests cover the whole spectrum of member organizations. Of course, the operation of these structures is not free of problems. This is especially true of the rather loose relationship between the representatives and represented members, where vertical links need to be strengthened without endangering the autonomy of the member organizations.

The representative character of the parties to social dialogue is both a practical and theoretical problem. The practical problem consists in the selection of organizations and associations that truly represent the interests of the parties concerned and the selection of persons to represent the chosen organizations and associations. The representativeness

⁴ This meant a marked deterioration of the KUK's position in national social dialogue. However, KUK continues to be a partner for certain ministries and continues to be entitled to submit comments on draft legal texts thanks to the existing Co-operation Agreement with the Ministry of Culture. KUK signed this document on behalf of the culture sector's employees.

⁵ More recently, the economic and agrarian chambers have developed their co-operation with KZPS in order to ensure effective employer representation.

⁶ The Confederation of Industry and Transport left KZPS in 1995 and is now the strongest and best-organised employer association.

problem is linked to the plurality of trade union and employer organizations. The RHSD statutes of 1992 did not define representativeness in terms of a requirement to meet specific criteria. It was merely stated that trade union representatives would be appointed by the Czech-Moravian Chamber of Trade Unions (later renamed “Confederation” instead of “Chamber”) and Confederation of Arts and Culture, and that employer representatives would be appointed by the Co-ordination Council of Entrepreneur and Employer Associations. The possible representation of any newly established trade union and employer organizations was to be first decided on by the trade union and employer parties. In these matters the original RHSD statutes assumed that the social partners would be able to reach agreement.

RHSD was later transformed into the Council for Social Partners’ Dialogue and, in its Statutes of May 1995, representativeness criteria was laid down in an annex to the Statutes. They read as follows:

- a) employers shall be represented by representatives of big, medium and small enterprises in the sectors of industry, construction, transport, agriculture and services where a decisive part of employees and members of co-operatives of those sectors can be found;
- b) organizations having the right to appoint their representatives to the Council must operate at national level, associating employer organizations in regions and in various branches;
- c) any employer association applying for membership in the Council must register at least 500,000 employees.

On the part of trade unions, only those organizations were considered to be representative, which:

- a) carry on trade union activities consisting in defending the economic and social interests of their members, in particular by means of collective bargaining at company and industry levels;
- b) are independent of both the government and employers;
- c) have a confederation structure, i.e. associate at least three unions representing different industries;
- d) any confederation applying for membership in the Council must prove the existence of at least 300,000 organized members.

There continued to be pressure to open up membership in the delegations to other parties, in particular on the trade union side. The Council, and particularly its government representatives, did not want to make changes in the Statutes and invited the trade union delegation to propose other possible trade union organizations for participation. The Confederation of Arts and Culture did not meet the minimum requirement for organized members and was commonly accepted as a constituting RHSD member. Gradually, its status became a historical relic.

When discussing new Statutes and Standing Orders in 1997, the government side proposed to reserve the seventh place in the union delegation for a representative of those unions not affiliated to ČMKOS. The unions concerned were supposed to reach agreement on a common representative. The trade union side was opposed. The most recent version of the Statutes (September 2000) changed the criterion under letter (d) to require only 150,000 organized members. This amendment enabled the Association of Independent Trade Unions (ASO) to become a member of RHSD in its own right and replace KUK. According to a view expressed by a former KUK representative, the reasons for this change were not only based solely on the quantitative criterion of representativeness, but were also related to problems in the KUK-ČMKOS relations.⁷ Since it was founded in 1990, KUK hardly ever met the

⁷ For example, KUK did not support the demand to increase the minimum wage level without ensuring the corresponding increase of the available financial resources (particularly in community budgets). KUK was afraid

quantitative criterion, but was respected as representative of the specific sector of culture. KUK agreed that the application for RHSD membership put forward by ASO was justified but wanted ČMKOS to give up one of its six post in the delegation in favour of ASO. According to KUK, participation of a third trade union member in the RHSD delegation would be a step towards trade union plurality and provide a real opportunity to open up democratic social dialogue on the trade union side. ČMKOS did not agree with this view and argued that the agreed criteria should continue to apply for all.

The amendment of the quantitative criterion is a reflection of shrinking trade union membership in general. Strict adherence to the representativeness criteria, in particular the minimum number of members, led to the exclusion of certain influential organizations and placed additional responsibilities on the TU confederations represented in RHSD to truly represent common trade union interests. The fact that unions not affiliated to ČMKOS or ASO have no opportunity to be represented in RHSD has so far not led to any attempt to establish an alternative body for social dialogue, as was the case in Slovakia in 1997.⁸

As far as employers are concerned, the 1997 criteria of representativeness remained unchanged from 1995, with a major exception of item (c), where a substantial reduction of the originally required minimum number of employees from 500,000 to 100,000 was agreed. In the Statutes of 2000 this minimum requirement was again increased to 200,000.

The answer to the question whether more members should be represented in the Council is related to a practical problem. The Council needs to be operational and thus the number of members should not be too large. Broader representation could have a theoretical advantage but, in practice, broad participation of marginal interests always leads to endless discussions and hinders meaningful action.⁹

1.3 Government attitude towards social dialogue

Social partnership (and its institutionalised expression - the supreme tripartite body) had an important role in the transition process and, at the same time, underwent gradual development following changes in political, economic and social conditions. The social partners also went through a “maturing” process. Changes could be registered in relations between the social partners and between the state and the social partners, as well as in the roles and organizational set-up of the parties. These changes were largely caused by the progress being made in privatisation.

Discussion in RHSD aimed at reaching agreement or formulating a position on fundamental economic, social and remuneration issues, as well as on problems arising in labour relations and in the area of employment. The scope of issues under discussion was very wide; nonetheless, decisions on privatisation projects, for example, have never been on the RHSD agenda. The responsibility for the privatisation process was entirely with the government. The act covering privatisation of big enterprises was never submitted for tripartite discussion and the government was clearly opposed to any debate at this level. However, RHSD discussions regularly and frequently covered the impact of privatisation on both employers and workers.

RHSD has never become an institution to which draft legislation has to be formally submitted for observations. However, certain important government plans and strategies were

that unless the income side of those budgets was strengthened, the very existence of cultural organisations would be endangered.

⁸ A new body, the Economic and Social Council, was established in Slovakia in November 1997, aiming to broaden the forms of participation in social dialogue at national level. In the newly established body trade unions were represented by the “Association of Trade Unions” established by unions that were not affiliated to the Trade Union Confederation and thus were not represented at the national RHSD level. This development occurred at a time when RHSD was largely inactive.

⁹ This statement is based on an interview with the RHSD secretary held in 1998.

discussed by RHSD and the same applied to certain draft legislation before it was submitted to sessions of the government. The government's intention was to obtain maximum possible support from the social partners and thus to avoid problems when dealing with these issues in the Parliament (Kubínková 2001, p 15).

As economic reform proceeded and large-scale changes were made in the ownership in companies, where the state gradually ceased to be an employer, the rightwing government stepped up its efforts to minimise the role of RHSD. The range of subjects discussed by this body had also become very broad and a systematic reduction of the number of items on its agenda was thought necessary. The strongest political party (the Civic Democratic Party "ODS") did not conceal its views and exerted strong pressure in order to change RHSD into a mere platform for consultations between employees, employers and the government. (The interviewed employer representative of the Confederation of employer associations said that the intention was to have bipartite discussions where the government would assume only a consultative role¹⁰). The government conceived RHSD as an ancillary institution needed only during the transition period. It was believed that the functioning market would subsequently be able to maintain social equilibrium without any supporting institutions. The government signalled that it would leave RHSD altogether within two years and become a mere observer of discussions between trade unions and employers. The trade unions opposed these intentions and demanded that the existing arrangement be preserved at least temporarily. In this unfavourable climate it was important that trade unions, despite the frequent critical situations, did not leave RHSD altogether. The government's attitude was reflected in the amended Statutes of 1995.

Under the twin pressures of the worsening economic problems of 1996-97 and increasingly alarming signs of ruptures in social peace, the government came to understand the need to maintain social dialogue and agreed to start negotiations on new RHSD Statutes. However, this positive change in the government's attitude was left unfulfilled due to the overthrow of the government led by Mr. Klaus and the short reign of the Tošovský government, which was partly manned by government officials.

When the social democratic government took office following general elections in June 1998, the general environment for social dialogue greatly improved. This was in line with the attitude of the Czech Social Democratic Party as declared in its election programme. What is more, the government inherited a very difficult economic situation and this strengthened its resolve to improve communication with the social partners. The government continues to attach great importance to social dialogue and the social partners appreciate this attitude. The government is not merely following its own programme: another important contributing factor is preparation for EU accession, where various important issues need to be consulted with social partners. The social partners appreciate the fact that the Czech Republic ratified the European Social Charter and declared its intention to ratify additional ILO Conventions. The unions had earlier made frequent demands for the ratification of these international instruments, but ratification did not take place, even though this was envisaged by the signed General Agreements. (Kubínková 2001, p17).

2. Development of organizational structures and mutual relations

2.1 Changes made in the tripartite body and its organization

Four Statutes and Standing Orders have been adopted to date - in 1992, 1995, 1997 and 2000. The Statutes of 1992 defined the issues to be discussed by RHSD as follows:

- the strategy of economic and social development, including its regional aspects,
- the conditions on which economic competition is based,

¹⁰ Interview with the president of confederation the employer associations, 2002.

- labour relations and collective bargaining,
- employment and labour market trends,
- trends in work incomes and living costs,
- occupational health and safety and the working environment,
- conditions to ensure sustained development of culture, education and training,
- concepts to develop tripartite negotiations and institutional safeguards,
- important input coming from regional tripartite bodies,
- links to international conventions concerning issues under discussion,
- RHSD operational contacts with European social dialogue institutions,
- negotiation of a tripartite general agreement to provide guidance for the labour market, work incomes, living standards and terms of doing businesses.

The following seven ministers represented the government:

- deputy prime minister and minister of finance (chairman),
- minister of agriculture,
- minister of industry and trade,
- minister of economy,
- minister of health,
- minister of education, youth and sport
- minister of labour and social affairs.

The pressure by the government to curtail RHSD's activities resulted in the adoption of new Statutes (May 1995). They provided for changes in RHSD's role and composition and in the range of issues discussed; the RHSD competencies became narrower and shrank to only four subjects:

- labour relations, collective bargaining and employment,
- wages, salaries and related issues,
- occupational safety,
- social issues.

This was coupled with a change of title. The tripartite body was renamed, first as the Council for Social Dialogue and then as the Council for Social Partners' Dialogue. The structure of the Council changed too. The Presidency became the supreme body. It met twice a year and was composed of nine members (three delegations of three members). Discussion topics covered fundamental position documents, such as statutes, standing orders, draft general agreements, and problems endangering social peace (for example, the strike in rail transport in February 1997). A deputy prime minister and two ministers represented the government. Operational matters were dealt with by the Executive Committee of the Council (meeting monthly), which was composed of three delegations, each having five regular members. One minister and four deputy ministers officially represented the government.

The newly adopted concept put emphasis on providing information to Council members, consigning the negotiation role to the background. This change essentially implied acceptance of the government's veiled intention to get rid of the Council as a negotiating body and to shift the discussion of various interests to Parliament. The social partners, and in particular the trade unions, interpreted the government's intentions in this way and changed their strategies accordingly. They made increased use of lobbying in Parliament to put forward their demands and did not rely so much on discussions in the Council. General expectations in relation to the Council changed too. The trade unions reached the conclusion that the role of the Council was not to be overestimated. While they continued to regard social dialogue as vital, they realised that decision-making took place elsewhere.

During the grave economic situation in 1996 and 1997 the government showed a greater willingness to discuss issues with the social partners. Negotiations on an amendment

of the Statutes were launched; the version adopted in November 1997 essentially resulted in a return to the platform of 1992. The new Statutes restored the original title, “Council of Economic and Social Agreement”, and the role of the Council was defined as being a “common, voluntary body to discuss initiatives brought forward by trade unions, employers and the Czech government and to conduct tripartite negotiations with a view to reaching consensus on issues of economic and social development”. The following issues were defined as being of common interest:

- economic policy
- labour relations, collective bargaining and employment,
- social issues,
- wages and salaries,
- the public sector,
- occupational safety,
- integration of the Czech Republic into the European Union (with special attention to the role of social dialogue)

RHSD delegations were composed of seven members each, four of whom were permanent regular members; delegates could alternate on the three remaining regular posts, depending on the subject discussed. Such replacement had not been possible before. The composition of delegations became more flexible and provided more flexibility in the themes discussed. This led to problems being dealt with more effectively. Personnel changes in the composition of the delegations were a matter to be decided by the parties concerned. Membership in the employer and trade union delegations was regulated by representativeness criteria as defined by the Statutes.

The new Statutes brought a new philosophy – to separate practical issues from policies. Emphasis was laid on activities in working groups, while discussions in the plenary sessions focused on policy issues. This meant that the role of bodies called upon to prepare drafts was strengthened: the first exchange of views took place in working groups where professional and businesslike discussions prevailed. Working groups were called upon to prepare a draft report containing views put forward by the parties and providing full information to the plenary session. Given that the working groups were chaired by deputy ministers, preliminary decisions taken by the groups carried more weight and were closer to the final position adopted by the government. The 1997 Statutes provided some degree of flexibility, in that they envisaged the creation of ad hoc working groups, in addition to regular ones, to cover new subjects or new problems. For example, a new working group for public administration and education was established in 1998.

This pattern of dealing with current problems has continued to this day. Compared with the situation before November 1997, a new role has been envisaged for working parties composed of experts. These teams are called upon to prepare professional positions and background documents for RHSD bodies. They help prepare legislation. They have no more than 9 members, each delegation appointing 1, 2 or 3 members. Teams for the following issues existed in 1998:

- labour relations, collective bargaining and employment,
- wages, salaries and related issues
- occupational safety,
- social policy,
- economic policy,
- the public sector,
- integration of the Czech Republic into the European Union,
- RHSD composition and organizational issues.

The amended RHSD Statutes of 2000 state that RHSD discusses selected issues of common interest, particularly in the following areas:

- economic policy
- labour relations, collective bargaining and employment,
- social issues,
- wages and salaries,
- public services and public administration,
- occupational safety,
- human resources development,
- integration of the Czech Republic into the European Union.

RHSD is composed of the plenary assembly, the presidium, working groups and working teams (teams?? Shall we consequently call them working teams). Since the inception of this arrangement, the secretariat forms an integral part of RHSD bodies.

Sessions of the plenary are attended by:

- the government delegation, consisting of 5 ministers and 2 deputy ministers,
- trade union delegation, consisting of 7 representatives of trade union confederations,
- employer delegation, consisting of 7 representatives of employer associations.

Four of the seven regular members are permanent and three can alternate in line with the subject under discussion. This arrangement has contributed to greater flexibility. The present composition of delegations in the various bodies of the Council of Economic and Social Agreement is as follows (January 2001):

RHSD presidium:

- government: deputy prime minister and minister of labour and social affairs (chairman)
- trade unions: deputy president of ČMKOS (deputy chairman of RHSD); secretary of the ČMKOS delegation,
- employers: president of the Confederation of Industry and Transport (deputy chairman of RHSD); chairman of the Co-ordination Council of Employer and Entrepreneur Associations; director general of the Confederation of Industry of Transport (secretary of the employer delegation),
- executive secretary of RHSD.

RHSD plenary sessions:

The government delegation is composed of:

- first deputy prime minister and minister of labour and social affairs (RHSD chairman),
- deputy prime minister and minister of finance,
- deputy prime minister and chairman of the Legislative Council of the Government,
- minister of industry and trade,
- minister of agriculture,
- deputy minister of transport and communications,
- deputy minister of health.

The trade union delegation is composed of:

- deputy president of ČMKOS (deputy chairman of RHSD),
- chairman of the KOVO union (metalworkers),
- chairman of the union of health and social workers,
- chairman of the union of workers in mining, geology and petroleum industry,
- chairman of the STAVBA union (construction)
- chairman of the CHEMIE union.

and

- chairman of the Association of Independent Trade Unions and chairman of the Union of Workers in the Food Industry and in Agriculture of Bohemia and Moravia,
- head of ČMKOS department of external relations (secretary for RHSD),
- ASO secretary and head of the legal department (secretary for RHSD),
- alternating member: deputy president of ČMKOS and member of ČMKOS Council,
- Alternating member: chairman of the Union of Workers in the Energy Sector and member of ČMKOS Council,
- Alternating member: chairwoman of the Union of Public Authorities and Organizations,
- Alternating member: deputy chairman of ASO and chairman of the Union of Railway Workers.

The employer delegation is composed of:

- president of the Confederation of Industry of Transport (deputy chairman of RHSD),
- four deputy presidents of the Confederation of Industry and Transport,
- chairman of KZPS
- three deputy chairmen of KZPS (depending on the subject under discussion),
- director general of the Confederation of Industry and Transport (secretary for RHSD),
- KZPS secretary, assisting the KZPS chairman,
- alternating member: president of the Association of Entrepreneurs in the Construction Sector,
- alternating member: deputy president of the Confederation of Industry and Transport,
- alternating member: deputy president of the Union Medium-sized Businesses.

The RHSD secretariat is represented by its executive secretary.

At present (December 2001) RHSD has eight working teams, one committee and eight working groups. Working parties (teams) are permanent expert bodies; working groups are expert bodies that deal with topical issues of common interest on a case-by-case basis.

The secretariat, headed by the general secretary, takes care of preparation of the agenda of the above RHSD bodies and of organizational matters. The secretariat is also responsible for taking minutes of meetings of various RHSD bodies, organizes press conferences and provides information on the outcome of RHSD discussions and deliberations. The general secretary and other members of the secretariat are employees of the Czech government office. All three delegations agreed that the Czech government would appoint the general secretary.

2.2 Social partners and political parties

The relationship between political parties on the one hand and social partners on the other can be considered from different angles. These are:

- a) Theoretical discussions and debates with participation of politicians and journalists on whether the models of representative and corporate democracy are mutually exclusive. Or whether these arrangements can co-exist, and whether the social partners' representative organizations do not compete with political parties in areas that are believed to be a domain of political parties.
- b) Discussion on whether top representatives of trade unions and employer organizations should make interventions in supreme representative bodies.
- c) Whether social partners should or should not maintain special relationships with certain political parties with a view of seeking political support and political alliances.

Employer members of RHSD have declared their independence of political parties and their willingness to maintain their autonomy. Exception to this rule was The Association of Entrepreneurs of the Czech Republic (SPCR), the chairman of which was, at the same time, chairman of The Party of Entrepreneurs, Small business and Farmers of the Czech Republic.

KZPS declared being against co-existence of deputy or senator role with having official role in employer associations. This position is based on concern that such arrangement would mean making the association concerned, and the confederation as a whole, prone to political influence exerted by the relevant party. According to KZPS representatives, “our political system cannot guarantee a true independence of deputies and senators”.

Since 1989 trade unions have made a great effort to be free from any political influence and to establish themselves as independent players of the civil society, without having any special relationship with a political party, let alone institutional ties. Exceptions to this rule are the Christian trade union coalition and the Trade union association of Bohemia, Moravia and Silesia; they are not represented on RHSD. However, trade unions have continued to seek political support for their demands from all political parties. Of course, they tended to rely on support of those parties whose political programmes were similar to trade union ideas. For example, unions affiliated to ČMKOS have repeatedly declared that all political parties (except those promoting extreme views) can become natural partners of trade unions. Needless to say, the social democratic party (ČSSD) comes closest to ČMKOS’s thinking.

The unsatisfactory functioning of the Council, in particular after 1994, compelled both trade unions and employers not to rely on social dialogue at national level, putting instead more emphasis on lobbying in the Parliament. At the end of 1995, certain actors in both trade unions and employers even considered the possibility to participate in the elections to the Chamber of Deputies of Parliament in order to move the focus of problem solving to Parliament.¹¹ However, these attempts encountered inconsistent reaction both in the Confederation of Employer and Entrepreneur Associations and in the mainstream trade unions. In addition to that, trade unions were severely criticised by the media and by the right-wing coalition parties. Trade unions decided not to engage directly in political struggle, which of course does not mean that they are completely apolitical. During political campaigns in 1996 and 1998 they informed their members about attitudes that prevail in the main political parties towards trade unions concerns and needs.

2.3 The General Agreement, its content, shifts and fortunes

The General Agreement (hereafter “GA”) was a core document, the product of the social dialogue at national level and outcome of RHSD deliberations in the 1991-1994 period. GA constituted a framework and conceptual basis for collective bargaining at industry and company levels. It is fair to say that the first GAs defined the margins within which the social partners could and should operate.

GAs were signed each year during the period 1991 to 1994. Negotiation of the text was lengthy and painful and many conflicts had to be settled. GAs were very important in the first transition years because both trade unions and employer associations had little experience with collective bargaining and dominant role was played by the government. This was the reason why it was necessary to conclude GAs and insist on their fulfilment. The first GAs included certain frameworks (concerning the development of prices and wages), they defined social concerns and objectives and roles and responsibilities of those concerned. Such definition of roles and responsibilities for all the involved parties was very important for the progress of economic transformation and privatisation.

¹¹ The first attempts by trade unions to enter politics could be registered in summer 1991, when the Czechoslovak Trade Union Confederation considered the possibility of establishing a new labour party. It was envisaged that the new party should define its programme to cover the gap between the existing right-wing parties and the communist party. However, after consideration, this idea was soon abandoned and trade unions left it to their members to support individual candidates of various political parties in the 1992 elections.

Comparison of individual GAs in chronological order has shown that the respective provisions revealed various degrees of maturity and reflected the emerging definition of interests and the changing economic situation linked to the privatisation process. Due to these developments, trade unions dropped their original demand for the provisions of concluded agreements to become legally binding. The 1993 GA included relatively clear formulations specifying the stage reached and describing the operation of mutual relations. The 1994 GA included very general formulations defining the room in which mutual relations should be articulated and aggregated further.

Attempts to negotiate a general agreement were unsuccessful in 1995 and no agreement was signed in 1996 either. No efforts were undertaken to conclude GA in 1997 and 1998. A draft concerning GA in 1995 was available already early in the year, however the government made the eventual signature conditional on adoption of new Statutes to amend the very concept of tripartite negotiations and to narrow the coverage of the tripartite dialogue. The new Statutes were eventually adopted and negotiations concerning the text continued. Employers declared themselves ready to accept the proposed new formula and were prepared immediately sign the draft text. Trade unions wanted to include certain core demands, more concretely, to increase minimum wages. Incidentally, this was the only specific provision to be included in the otherwise general text. The government opposed any increase in minimum wages. Trade unions put the decision before the ČMKOS congress, which decided against the proposed text and general agreement was not signed. The social partners made contradictory assessments of the outcome and registered their opposing positions. However, they essentially agreed that the absence of a GA has not been felt too strongly in subsequent years.

In 1996, the government took the initiative and proposed a new document to declare a new pattern of co-operation and of social dialogue among social partners. Essentially, the text was jointly prepared by the government and employer side. The draft “Agreement among Social Partners” was submitted to the Council for Social Partners’ Dialogue in October 1996. The draft declared the common will of social partners and the government to engage in social dialogue. The government considered it useful to have this willingness confirmed by a written agreement. Trade union representatives rejected the proposed text arguing that such an agreement would be nothing more than a formal and empty declaration with no binding effect for the parties concerned.

When a new social democratic government was constituted in 1998, social partners saw new opportunities for signing a general agreement and expressed their support to making efforts in this direction. On the employer side, two types of views could be observed. Firstly, there were those supporting a rather loose concept, a framework agreement of social partners covering a longer period (for example the four years’ election period) with formulations of the type “quid pro quo”. Others preferred the original concept of GA retaining its title. Proponents of both concepts expected maintenance of social peace, which was an overriding requirement. The trade unions demanded that more specific obligations be included on the employer side.

Finally, social partners agreed in principle that the document (the term “social pact” was used) should take the form of a framework medium-term agreement expressing the partners’ willingness to negotiate and defining main targets and rules for providing mutual information. It was also agreed that this should merely be a political document, a gentlemen’s agreement between the parties concerned without formulating specific commitments, working on the assumption, however, that the parties would abide by their declared intentions. The drafting of the text of a general agreement of this type was referred to a working party composed of experts. However, it appeared that the drafts submitted by the two sides could not be reconciled and no agreement was reached.

3. Development of activities, forms of social dialogue

3.1 Coverage of social dialogue, levels of generality

The range of issues covered by tripartite council negotiations has gradually changed in accordance with the progress of economic transformation, with the implemented reforms and their success or failure and the corresponding impact on citizens and, last but not least, with changes in the political climate.

Among the widely discussed and contentious issues, where solution could not be found among social partners, the following could be mentioned in respect of the first part of the 90s:

- Pension insurance and the demand, not met, to separate and remove the chapters of sickness, accident and pension insurance from the state budget;
- Financing of labour market policies was not separated from the state budget and an independent “employment fund” was not established;
- Wage regulation, enactment of minimum wages (wage regulation was abolished in 1995, an agreement to make regular adjustments of minimum wage levels was only reached in RHSD in 1999);
- Trade unions made unsuccessful attempts to enforce collective bargaining in the public sector (ROPO - organizations fully or partly financed from the state budget);
- The strike act (no agreement was reached on the need to have the present regulation amended, a comprehensive solution is expected to be part of the new Labour Code, which is under preparation);
- The Labour Code: amendments of the Labour Code were, since the very beginning of transformation, an important subject for the two sides of industry. Negotiations held between 1990 and 1994 led to the adoption of the first amendment. The need for further legislation was felt but from 1995 on, negotiations resulted in a deadlock, where proposals ranged from making the labour law provisions part of the Civil Code, to adoption of several new separate acts. Real willingness to negotiate only re-emerged after the 1998 elections and consensus was finally reached.

In the context of the worsening economic situation in the second half of the 90s, the social partners’ discussions tended to focus on solutions for topical social problems. These included the impact of restructuring measures in the sectors of mining, energy, iron and steel and heavy industry, as well as issues related to the process of EU accession. Here is a more detailed list of some of the issues:

- The public service act. The draft prepared by the government met with opposition on the part of trade unions and no solution has yet been found, in spite of the continued criticism contained in the assessment reports prepared by the European Commission.
- The area of labour legislation. The proposed amendment of the Labour Code was subject to prolonged debate in the RHSD working party where teams of experts tried to find commonly agreed solutions. The RHSD plenary discussed the text before it was submitted to the official round of observations, and again before it was submitted to the government and before it was submitted Parliament. There were 700 observations during the official observations round but all of them were successfully dealt with and the government was able to adopt a text without incurring dissent among the parties concerned. That is testimony to the parties’ good will. (Kubínková 2001, p 26).
- Protection of employees’ interests. A serious social problem emerged in 1999, namely the non-payment of employees’ wages. Social partners (in particular the trade unions) insisted on adoption of a legal instrument that would provide due protection for employees in the event of the employer’s insolvency. They exerted substantial pressure on the government to this effect. This finally led to the adoption of an act on employees’ protection in the

event of their employer's insolvency. An amendment was also adopted concerning the act on bankruptcy and composition.

Problems continue to exist concerning pension reform and changes in health insurance. However, this is not an issue to be settled by the social partners alone. Broad debate at all levels of society is needed to define the fair degree of solidarity. No government has yet dared to launch this kind of debate.

One relatively new addition to the tripartite agenda is issues that are related to EU accession. A working group, headed by the chief government negotiator, was established within RHSD on issues of European integration. The group did not start its work until April 1998. Both trade unions and employers have appreciated the opportunity to obtain information and to make observations on position documents. This is important because of the fact that social partners were not invited, in spite of their efforts, to become regular members of the government's negotiating team.

3.2 New forms of social dialogue (activities performed by committees of the Parliament)

The social democratic government has actively promoted social dialogue and both sides of industry have commended its efforts. Immediately after taking office, the government began to promote certain new forms of social dialogue at national level. In doing so, the government tried to involve the broadest possible range of the civil society, in particular non-government organizations, various organized initiatives and independent experts, in the development of strategies and legal standards in the area of employment, social security, labour law, etc. One of the new arrangements is the "Social Conference", whose activities are sponsored by the Ministry of Labour and Social Affairs (MLSA). The Social Conference provides a forum in which to discuss measures envisaged by the government and documents to be submitted to Parliament, e.g. concerning the planned pension reform or other reforms in the social sphere. Views are sought from all relevant parties. The social conference in 1999 dealt with the proposed reform of social assistance and a similar conference in 2000 considered various pension reform alternatives. Among the participating non-governmental organizations were representatives of trade unions, employer associations, the Association of Pension Funds, the Association of Insurance Companies, the Demographic Society, universities, the Liberal Institute, Union of Investment Funds, the Pensioners' Association, etc." (Kubínková 2001, p 25).

Another new form of social dialogue is the co-operation between the state (the government) and the social partners in the preparation of new labour legislation. This arrangement is implemented by means of "round tables". The ministry that prepared the draft convenes the meeting. It is attended by, in addition to union and employer representatives, deputies sitting on the Parliamentary Committee for Social Affairs and Health and various selected experts. The purpose of the round tables is to make full use of the expertise of the broadest possible range of relevant professionals and, at the same time, obtaining support for the new legislation in the Parliament. This procedure proved particularly valuable during the debate on the amendment of the Labour Code referred to above, and during the discussion of other labour laws and regulations (Kubínková 200, p 26).

One of the other new forms of social dialogue is the mechanism established to develop a new "social doctrine" of the state. The work is organized by a non-governmental association for the theoretical and practical development of social policy ("Socioklub") in collaboration with the Ministry of Labour and Social Affairs, institutions of higher education, scientific institutes, etc (Kubínková 2001, p 22).

Another form of social dialogue is participation in the dealings of the relevant committees of the Chamber of Deputies of Parliament and in senate sub-committees, when discussing issues of pension reform, for example. (Participation is not restricted to union and

employer representatives and includes, for example, representatives of pensioner associations). The social partners' representatives can participate in public sessions and, though they do not have the same status as deputies or senators, they can contribute to the discussion.

These new forms of social dialogue are not only concerned with social policy and social development; they also focus on the bulk of problems related to EU accession. The ministry officials concerned with adoption of EU *acquis* need close contact with the social partners in order to learn about the situation in the field and to appreciate the possible impact of the envisaged changes. The social partners have their representatives in certain ministerial committees dealing with implementation of European standards. Additionally, the social partners frequently discuss the adoption of EU *acquis* within their own systems, thus improving their members' understanding of the problems involved in the planned accession. The overall level of understanding is still far from satisfactory.

C. Social partners and their organizations

1. Legislation concerning the right to organize

Establishment of trade unions and employer organizations, and their federations and confederations, is regulated in greatest detail by Act no. 83/1990 Coll., on freedom of associations, as amended. Associations of citizens established in accordance with this act need to register with the Ministry of Interior of the Czech Republic (hereafter MI). In accordance with the relevant Conventions adopted by the International Labour Organization (ILO), the registration of trade union and employer organizations is only a routine procedure: there is no possibility for MI to ban the organizations concerned or otherwise to intervene in their establishment or activities. Trade union and employer organizations automatically become legal entities the day after they lodge their registration application with MI. The act does not stipulate any criteria of representativeness for trade union and/or employer organizations.

Additionally, the provisions of the Charter of Fundamental Rights and Freedoms, which is integral part of the Constitution, does not allow any restrictions on the plurality of trade union organizations or preferential treatment for some of them. An employer is not allowed to prohibit his employees to become members of existing trade union organizations. To do so is to violate the law. The same applies to the establishment of new trade union organizations and their activities. An employer must not discriminate against his employees, or put them at any disadvantage, in connection with their trade union membership or activities (on the other hand, he has no obligation to support the establishment of new trade union organizations).

The right to organize does not apply to the military (professional soldiers). The right to engage in trade union activities in the units of the police or in fire brigades is restricted only to units of these services where at least 40% of staff is organized.

Trade union rights in the Czech Republic are not regulated by a specific trade union act. The provisions concerned can be found in various acts, including the generally binding legislation.¹²

Employer organizations can also be established in accordance with Act no. 83/1990 Coll., on freedom of associations. Additionally, employer organizations are also established in accordance with Section 20f of the Civil Code as associations of legal entities. In the light of this fact an issue of principle remains unresolved: can associations established in this way can become a partner for the trade unions and can they acquire the competency to conclude higher-level collective agreements. The Collective Bargaining Act does not expressly prevent this procedure. The act only provides that the right of employer representatives to participate in collective bargaining must be based on internal regulations of the employer organization concerned. In spite of this, there is a legal opinion¹³ that claims that higher level collective

¹²Legislation concerning trade union rights is an essential factor for defining the potential of social dialogue and collective bargaining in the Czech Republic. More detailed information on this subject can be found in other chapters and footnotes of this report.

¹³ MLSA has held this opinion right from the start. MLSA has consistently refused to register higher-level collective agreements concluded on behalf of employers by an association that was not established in accordance with Act no. 83/1990 Coll. In addition to legal arguments, MLSA officials maintain that “new registration” would not place any financial or administrative burden on the associations concerned. It is also true that employer organisations established in accordance with the Civil Code are rather reluctant to engage in collective bargaining (considering these attitudes it could be concluded that the decision concerning the legal procedure of establishment has been influenced by efforts to avoid collective bargaining). On the other hand, there are cases where MLSA, on the basis of the legal opinion referred to above, refused to register a higher-level collective agreement (HLCA) concluded on behalf of employers by an organisation established under the Civil Code. Most recently, this was the case of HLCAs concluded between the union KOVO and Association of Aviation Manufacturers (ALV). ALV has observer status with the ministry of industry and transport. A similar refusal by MLSA to register HLCAs concerned the earlier agreement concluded between the union of workers in

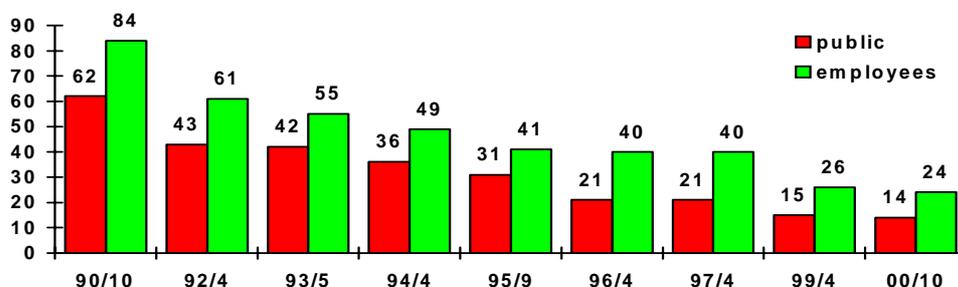
agreements (KSVS) can be concluded only by associations established in accordance with the act on freedom of associations. However, the social partners have expressed doubts about the validity of this legal opinion.¹⁴ In previous years employer associations established in accordance with the Civil Code wishing to enter into collective bargaining found a way to avoid these complications: they delegated the powers to bargain collectively and to conclude KSVS to higher-level employer associations that were established by the procedure recognised by MLSA and were also willing to participate in collective bargaining.¹⁵

2. Trade unions¹⁶

2.1 Trade union organization rate

Trade union membership has for long been in decline. This is true for all confederations and unions. More pronounced changes in membership have sometimes been linked to unions' moves from one confederation to another. The figures given by the unions are corroborated by sociological research. Trade union membership in 2001 was 60% than that registered in 1990, (see table below). Workers tend to be less willing to organize and participate in union activities. Research on the potential willingness to participate in union activities confirmed that this willingness fell by 12% between 1995 and 1998. In 1998, only one in ten respondents indicated that he or she would be willing to participate in trade union activities (Pleskot, 1999). The Public Opinion Research Institute (IVVM) stated in its report (2000) that only 21% of respondents would welcome the establishment of a trade union organization in their workplace. A breakdown by respondents' standard of education shows that less support for trade union activities comes from those with higher education (12%) compared with respondents with a medium-level qualification (with complete secondary education) (30%).

Graph 1 Trade union membership among the population as a whole and among employees in 1990-2000 (in %)



Source: Mišovič, J. *The Public and Trade Union Influence (Report on the results of IVVM survey no. 0010)*. The report is available on IVVM's electronic archives.

agriculture and food industries (affiliated to the Association of Independent Trade Unions - OSPZV-ASO), on the one hand, and the Association of Employers in the Sector Agricultural Produce Purchase and the Association of Agricultural Co-operatives and Companies, on the other.

¹⁴ ASO and ČMKOS disagree most vehemently and other trade union confederations and unions support them. The ČMKOS council adopted a decision on 17 January 2001 to try to convince the state authorities that HLCAs concluded with an employer organisation established in accordance with Section 20f of the Civil Code is a genuine higher-level collective agreement (in accordance with the act on collective bargaining).

¹⁵ For example, this is the case of HLCAs concluded between the Confederation of Industry and Transport on behalf of the Association of the Automobile Industry.

¹⁶ Because reliable written information on trade union membership is sometimes difficult to obtain, in a number of cases it was necessary to rely on oral information. As regards employer organisations, reliable data exist on member companies (called collective members), less so on "individual" members.

Despite the evident reluctance to join trade unions, the prevailing opinion among the population is that trade unions are necessary to protect the interests of employees, viz. the following table. At the end of the first half and start of the second half of the 1990s, three-quarters of respondents believed that trade unions are necessary in this regard. In 1997 the number of those seeing trade unions as necessary to safeguard employees had risen further (but fell back in the year 2000). This trend is probably tied up with the worse economic situation in the Czech Republic in the second half of the 1990s.

Table 1 Answers to the question “Are trade unions necessary to protect employees’ interests?” (in %)

	1994	1996	1997	2000
absolutely essential	33.4	32.7	41.0	24.5
they are necessary, but not essential	41.9	44.3	41.0	48.3
sub-total	75.3	77.0	82.0	72.8
unnecessary, do more harm than good	12.7	12.2	8.8	15.5
it’s better without them	2.2	1.9	1.3	2.2
sub-total	14.9	14.0	10.1	17.8
don’t know	9.8	8.9	7.9	9.4

Source: Kadava, Ch.: Position of the Trade Unions and Their Roles based on the Current Form of Labour Relations. Pohledy 3/2001

The large number of those who regard the trade unions as necessary for protecting employees’ interests suggests good prospects for the trade unions.

The decline in trade unions’ member bases was mainly caused by the extensive privatisation in the 1990s. The owners of new firms and operational units generally did not want trade union organizations set up at the workplace and employees sometimes established what are called local organizations. The available figures often confirm concerns about joining trade unions at the workplace in view of the employer’s possible response. It has been shown (by the “Transformations in Employment Relations” research project conducted in 1998) that as many as 46% of employees at least partially agreed that trade union activity could be a “thorn in the side” of the company management and hinder employees in their career. The decline in trade union membership is also linked to the fact that society continues to repeat formulae of behaviour and expectations that are the legacy of the past and generally support formal or passive membership from the times of the past regime. Some employees still have not realised that the main role of the trade unions is to bargain on the basic certainties of employment, on wages, work conditions etc. Continued decline in membership would highlight even more the problem of the trade unions’ legitimacy to represent employees and act on their behalf, however.

In the past the trade unions repeatedly failed to react quickly to this problem and to recruit socio-professional groups who, though able to articulate their interests clearly, had insufficient support for them within existing organizational structures. The outcome was often the establishment of a new organization (e.g. the Doctors’ Trade Union Club) seeking to defend the interests of its members independently. A similar situation (but with a different result) has occurred in education.

According to the available data and estimates by representatives of trade union confederations and trade union organizations, the number of trade union members had probably dipped below 1.3 million employees by 2001. According to the Czech Statistical Office, the total number of employees in primary employment in the civil sector was

3,980,700 in the second quarter of 2001. Approximately 33% of all employees were trade union members in 2001¹⁷.

2.2 Characteristics of trade union organizations and their associations

As far as the highest level of trade union association is concerned, several trade union confederations grouping together independent trade unions and organizations gradually emerged after 1989 and after the collapse of the Revolutionary Labour Movement (ROH). Some of them, particularly those with fewer members, associate both legal entities and natural persons. Below is a list of trade union confederations and larger independent trade unions registered with the Ministry of the Interior in 2001. Figures for the membership of trade unions were mainly acquired by interviewing their leading representatives. Precise figures are often not intended for the public.

T a b l e 2 **List of trade unions**

organization name	number of members
Association of Independent Trade Unions	200 000
Agriculture and Nutrition Workers Trade Union – Association of Independent Trade Unions of the Czech Republic	
Integrated Union of Private Employees	
Czech Trade Union of Northwestern Power Companies	
Sheet Glass Trade Union	
Railway Workers Trade Union Association	
Air Traffic Controllers Trade Union Association	
Nuclear Power Employees Trade Union	
Trade Union Association of the Nuclear Fuels Institute attached to Skoda a.s.	
Czech and Moravian Confederation of Trade Unions	900 000
Mining, Geology and Oil Industry Workers TU	
Power Workers TU	
KOVO TU	
Czech Republic Chemicals TU	
STAVBA	
Universities TU	
TU of Workers in Woodworking, Forestry and Water Management in the Czech Republic	
TU of Workers in the Textile, Clothing and Leather-working Industries of Bohemia and Moravia	
UNIOS	
Independent TU of Workers in Foodstuffs and Related Industries of Bohemia and Moravia	
TU of Workers in Transport, Road Management and Automobile Repairs of Bohemia and Moravia	
Postal, Telecommunications and Newspaper Services Workers TU	
Trade Workers TU	
State Organs and Organizations TU	
Finance and Insurance Workers TU	
Czech Republic Healthcare and Social Care TU	
Bohemian and Moravian Education Workers TU	
TU of Civic associations	
Bohemian and Moravian TU of Civilian Employees in the Army	
PROJEKT	

¹⁷ Within the interviews with the representatives of social partners, skeptical comments were sometimes made (not only from the side of employers' representatives) about this data on rate of employees membership within trade unions, which was considered to be too high – given the allegedly overestimated data on membership declared by the trade unions. On the other hand, in account of total rate of trade union organization a proportion of considerable amount of TU members-seniors was being mentioned.

Bohemian and Moravian TU for Catering, Hotels and Tourism	
Independent TU of the Police of the Czech Republic	
Fire Services TU	
Transport TU	
Sailors TU	
Science and Research Workers TU	
TU of Workers in Production and Special-purpose Cultural Organizations	
Aviation Employees TU	
Radiocommunications Workers Trade Union Organization	
TU of Cultural and Environmental Protection Workers	
Cultural Organizations Workers TU	
Confederation of Art and Culture	90 000
Association of Czech Cameramen	
Association of Film and Television Editors of the Czech Republic	
Association of Commercial Musicians	
Association of Make-up Artists and Wig-makers	
Association of Sound Workers of the Czech Republic	
Association of Interpreters and Translators	
International Trade Union of Cinematography Workers – KINOS	
Independent Lawyers Club	
Theatre Workers Trade Union Association	
Restorers Trade Union Organization	
Syndicate of Translators and Interpreters	
Syndicate of Creative Artists of the Czech Republic	
ARTES Artistic Association	
Unia – Trade Union of Professional Orchestral Musicians of the Slovak Republic	
Christian Trade Union Coalition	15 000
Trade Union Association of Bohemia, Moravia and Silesia	50 000

Czech-Moravian Confederation of Trade Unions (ČMKOS)

The largest trade union confederation was formed after the Czech and Slovak Confederation of Trade Unions ceased its operation in November 1993¹⁸. As of 30 June 1995, ČMKOS was composed of 36 trade unions with 2.45 million members in basic organizations. In 2001 their number fell to 31 trade unions associating 900,000 members. These trade unions (hereinafter referred to as “TU”) have legal identity and have retained most of their competencies. The basic organizations work at company or company organizational unit level. Some trade unions also have local organizations, but these are a minority. In the process of building new trade union architecture, the confederation was established democratically, by the will of trade unions, as the result of “co-ordinated autonomy” (Fisera, 1994).

The most numerous trade union is KOVO, which associated 517,000 members in almost 1,100 base organizations in 1996. In the year 2000 KOVO still had 311,500 members. Second place is held by the Czech-Moravian Trade Union of Education Workers, followed by the Mining, Geology and Oil Industry Workers TU. The fourth place by number of members goes to the Public Authorities and Organizations TU and the Woodworking Industry Workers TU (Kubinková 2001 p. 8). The number of members in the individual TUs has been constantly falling.

Confederation of Art and Culture (KUK)

After the collapse of ROH (Revolutionary Labour Movement) in February 1990, cultural workers’ TU formed (of their own will and “by a democratic and free decision”, as

¹⁷ The Czech and Slovak Confederation of Trade Unions was formed in March 1990 after the dissolution of ROH, taking over (together with the KUK) its membership basis and all trade union assets.

stated in a written statement by the President of KUK concerning this study)¹⁹ their own confederation, which grouped together 17 autonomous trade unions in 1996. In 2001 the number of affiliated trade unions fell to 14. KUK maintained its federative form and also included two Slovak trade unions until the year 2000: Unia, the Slovak Trade Union of Professional Orchestral Musicians, and the Trade Union of Libraries of the Slovak Republic. The latter TU left the confederation in 2001. After the Czech and Slovak Federative Republic split, KUK became an international confederation based in Prague and Bratislava. Negotiations with Slovak social partners are a matter for the Slovak trade unions. The Confederation of Art and Culture is based on a purely confederative principle of associating entirely autonomous trade unions, which made use of KUK's membership of RHSD CR until the year 2000 and of RHSD SR to the present day and assert its own opinions at the national level. KUK provides health and safety control for the basic organizations of member trade unions and professional associations through union health and safety (H&S) inspectors²⁰.

KUK members strongly advocate the principle of professional association, whereby the individual interests of various professions stand side-by-side with trade union interests. There has been a drop in the number of trade union members in KUK. According to leading representatives of KUK, there were 90,000 registered members in 2001.

Association of Independent Trade Unions (ASO)

ASO was founded in 1995 by the TU of Bohemian and Moravian Agriculture and Nutrition Workers, which left ČMKOS in the same year. Its other founder members are the Czech Trade Union of Northwestern Power Companies and the Integrated Union of Private Employees. In 1996 it had around 130,000 members. By the year 2001 the membership base had grown to 200,000. This increase was mainly caused by the accession of the Railway Workers Trade Union Association, which left ČMKOS in 1998. This extended membership base and the changed RHSD Statutes in the year 2000 enabled the ASO to take part in tripartite talks. According to ASO representatives, a general trend of lower involvement in trade unions has become evident even in ASO, despite the mentioned overall growth of the membership base.

The largest ASO trade unions are the Agriculture and Nutrition Workers TU and the Czech Association of Independent Trade Unions and the Railway Workers TU Association.

Trade Union Association of Bohemia, Moravia and Silesia (OSCMS)

This association was founded as the Trade Union Association of Bohemia, Moravia and Slovakia by the former chairman of ROH, Mr Heneš²¹ in spring 1991. These trade unions see their goal in influencing the transformation process in society in favour of employees, ensuring that the unemployed, families with dependent children and pensioners enjoy reasonable living conditions, in stopping the decline in social security and the standard of living of most of the population.²² In its orientation OSCMS is close to left-wing parties (there is a personal connection between OSCMS and the Communist Party of Bohemia and Moravia (communist party?), the party also receives election support) and is strongly critical of government policy. In 1996 a figure of 80,000 members in basic and local organizations or

¹⁹ It should be mentioned that this (democratic way of establishment) applies to all trade union confederations mentioned.

²⁰ As stated by the KUK President within written comments on this study. 2001

²¹ The Trade Union Association of Bohemia, Moravia and Slovakia (OSCMS) came into existence de jure in April 1991, de facto at the founding congress on 9th November 1991. Its name was changed to the Trade Union Association of Bohemia, Moravia and Silesia in 1993. OSCMS is not an ROH successor in property and legal terms, nor has it managed to legally claim a share of ROH property.

²² The results of the 4-year work of the Trade Union Association of Bohemia, Moravia and Silesia. Internal material of the OSCMS Central Committee, November 1995.

professional clubs was given.²³ In 2001 OSCMS had 50,000 members (Draus, 2001, p. 16). A quarter of the members are registered directly at the Central Representation Committee of OSCMS as individual members not associated in basic organizations. The middle point between the Central Representation Committee and the basic organizations are representation committees that have been formed in major towns and, in two cases, at the regional level. OSCMS is represented in Prague, Ostrava, Opava, Karviná, in North Moravia and North Bohemia. Within OSCMS there are some 160 trade union organizations of which approximately 1/4 are engaged in collective bargaining²⁴.

Christian Trade Union Coalition (KOK)

KOK was founded in 1990. It was meant to be a continuation of the Christian trade unions that operated in the inter-war period. It was founded by party officials of the Christian Democratic Union (KDU-ČSL) as the Christian Trade Union, which was renamed the Christian Trade Union Coalition in 1993. According to the president of KOK, the word “Christian” in the title does not signify a link to the Church or KDU-ČSL, but is related to Christian social teachings (Anton, 1996). In 1996 KOK had approximately 11,000 members, most from Moravia. In the second half of the 1990s the membership base gradually grew, approaching 15,000 in 2001. Membership is currently stagnating or slightly declining even²⁵. KOK unites its members regardless of political stance and religion, from all kinds of economic and budgetary organizations, pensioners and also individual members. The members are organized in individual professional sections (according to the KOK president, KOK officers at multi-company level have for some time worked for the Coalition for free, and all the collected fees are retained by the member TU organizations to sustain their own activities). These are at present the transport, education, state administration and local government and machine engineering sections. The large majority of the membership base, i.e. organizations or individual members, work in these fields. The fact that KOK came into existence after trade union property had been officially redistributed put it at a material disadvantage. This disadvantage can be felt to this day, mainly in KOK’s lack of funds for an information and consultation service for its basic members and for setting up a functional administrative apparatus. KOK provides assistance to its members for drawing up and signing collective agreements and advice in occupational safety and labour law.

The organizations affiliated in KOK can operate under their own name (if the word “Christian” in the name does not suit them), but they must respect the mission statement, statutes and pay in their contributions. This agreement has been considered invalid, however, since 1997, when an agreement on collaboration with ČMKOS was concluded, on the basis of which KOK let itself be represented by ČMKOS in tripartite negotiations.

Independent Trade Unions

Besides the aforementioned trade union confederations, there are a number of independent trade unions and trade union organizations (see list below) that were either independent since their inception or left one of the trade union confederations, particularly ČMKOS. These trade unions are structured along local or company lines. The unions are divided either by branch or profession. The only exception is the Doctors’ Trade Union Club/Association of Czech Doctors (LOK/SCL), which, as its name suggests, is simultaneously both a trade union and professional organization. LOK/SCL’s membership base consists solely of doctors and, in exceptional cases and with the board’s approval, other

²³ OSCMS internal data, November 2002

²⁴ Qualified estimates given by an OSCMS representative in an interview regarding the process of commenting on this study, 2002

²⁵ Internal KOK data, KOK president’s estimates, 2002

university healthcare workers²⁶. In 2001 LOK merged with the Association of Czech Doctors, resulting in a significant growth in the membership base, which is now 4800. In its mission statement of April 1995 LOK addresses both state-employed and private doctors²⁷. According to LOK/SCL representatives, collective agreements are in place in most hospitals.

Besides the Railway Workers TU Association, there are 5 minor professional railwaymen's trade unions among the Independent TUs (the Czech Engine Drivers Federation, the Train Crew Federation, the Railway Workers Federation, the Train Conductors Federation and the Railway Station Operational Workers Federation), the Czech Engine Drivers Federation, with its membership of 11,000, being the largest. The other unions have roughly 1,000 members each. Their operation is limited to the Czech Railways and the public sector.

T a b l e 3 List of independent trade unions

organization name	number of members
Trade Union of Glass, Ceramic, Bijouterie Industry and Porcelain	
Typographers Club TU	
Justice TU	
TU of Non-teaching Education Workers of the Czech Republic	
TU of the Mass Media	
TU of Publishing and Book Trade Workers of Bohemia and Moravia	
Doctors Trade Union Club/Union of Czech Doctors	4 804
Federation of Engine Drivers of the Czech Republic	11 000
Federation of Train Crews	1 000
Union of Railway Workers	1 000
Federation of Carriage Inspectors	1 000
Federation of Railway Station Operational Workers	1 000
Tram Drivers Federation	
TUs in the sector of culture (not confederation members)	

Note: The size of members of many trade unions wasn't known by the authors.

Independent Basic Trade Union Organizations

Besides the trade union confederations and federations, the Ministry of the Interior's register contains a number of trade union organizations that are registered under Act no. 83/90 Coll., as amended, without being a member of a trade union federation or association. These organizations exist independently, usually operating within a company and sometimes conducting collective bargaining. The only overview of their existence is the aforementioned register.

3. Employers' Organizations

After 1989 the new entrepreneurs founded a number of associations to represent their newly formed, specific interests. Their confederations and some of the individual associations are civic associations arising under Act no. 83/1990 Coll. A number of other organizations (e.g. 2/3 of the members of the Confederation of Industry and Transport of the Czech Republic²⁸) associating employers were set up under a different law (the Civil Code).

Employers' organizations have been based on a specific sector or profession and the type of ownership. There have been no major changes to the membership of these

²⁶ Statutes of the Doctors' Trade Union Club/Union of Czech Doctors (civic association of doctors) from 10.4.2001

²⁷ This particularly includes the issues of agreements concluded between private doctors and health insurance companies, the interrelation between the state employment and private practice, etc.

²⁸ Confederation of Industry and Trade internal data

associations in recent years. Rather, there have been some movements by individual organizations from one representative association to another. Based on the data provided by the associations, the total number of enterprises and wage-earning individuals associated equals to roughly 10,000 – 12,000. Just to compare, as of the end of the year 2000, 2,063,883 enterprises, including wage-earning individuals, were registered with the Czech Statistical Office; 32,000 of these had more than 20 workers. Data on the number of workers employed by companies associated in employers' organizations are not generally sufficient either. Some sources indicate that companies associated in enterprise unions and their associations employ 1,500,000 workers (Draus, 2001, p.8). These figures corroborate the assessment that employers' organizations are not generally very representative. (Draus, 2001, p.4)

As the statutes of most employers' organizations make clear, their mission is to represent, co-ordinate and promote the shared business and employers' interests of their members in co-operation with state bodies, trade unions, the law-making bodies and other employers' organizations. They often represent the interests of their members in international employers' and professional organizations as well. These functions, as well as attitudes towards social dialogue, are elaborated to various degrees in policy documents of the individual federations and associations. In their work employer organizations primarily concentrate on the protection of equal conditions of business, on harmonising the conditions of trade with those in the EU, etc. They also provide services and advice to their members and mediate business contacts and economic and technical information. Educational work is also important. Additionally, they help their members achieve success on the domestic and international markets, ensuring business conditions comparable with those of their competitors. It is clear that employers' organizations mainly perform those activities that their members cannot effectively perform themselves. One exception is the Confederation of Employer and Entrepreneur Associations, whose aim (as set out in its statutes) is restricted to representing, co-ordinating and promoting shared interests, including building ties with organizations with similar interests.

Confederation of Employer and Entrepreneur Associations (KZPS)

KZPS was originally founded as the Co-ordination Council of Entrepreneur Unions and Associations of the Czech Republic (KORP) in August 1990 to represent entrepreneurial interests in the Council of Social Agreement of that time. It took on its current name in 1993. KORP grouped together and represented all enterprises in the Czech Republic, both large sectoral entrepreneurial associations (e.g. the Confederation of Industry of the Czech Republic of that time), and smaller private entrepreneurs organized in the Association of Entrepreneurs of the Czech Republic, as well as various professional communities. The crystallisation and fragmentation of interests resulting from economic and social transformation brought organizational changes and the largest member, the Association of Entrepreneurs, left KZPS in 1995. At present it has the following members: the Association of the Textile, Clothing and Leather-working Industries (ATOK), the Association of Entrepreneurs in Building Industries in the Czech Republic, the Czech Confederation of Commerce, the Co-operative Association, the Association of Entrepreneurs of the Czech Republic, the Association of Agricultural Co-operatives and Companies, the Union of Employers' Associations of the Czech Republic. KZPS is represented in RHSD bodies.

The supreme body of the KZPS is the Co-ordination Council, which is composed of statutory representatives of all the member organizations. Based on a rotation principle, the chairperson of KZPS is elected by the Co-ordination Council for the period of 1 year.

Association of Textile, Clothing and Leather-working Industries (ATOK)

In 1990 representatives of the textile and clothing industry founded the Association of Textile and Clothing Industries, which was later renamed to Association of Textile, Clothing and Leather-working Industries (ATOK). Originally, ATOK was a member of Confederation of Industry and Transport of the Czech Republic, but it resigned its membership. It associates legal entities, self-employed persons and particularly manufacturing companies, but also research institutes, schools and trade organizations, whose activities have to do with the textile, clothing and leather-working sectors. It represents companies whose production forms approximately 70%²⁹ of the total output of the textile and clothing industries. There were 90 firms in ATOK in 2001, but its membership basis is rather on the increase.

Association of Entrepreneurs in Building Industries in the Czech Republic

Its members include construction companies, manufacturers of building materials, design, research and engineering organizations. In 1996 the Association brought together a total of 1356 establishments. In 2001 the figure is 1300, which represents more than three quarters of the construction capacity in the Czech Republic

Czech Confederation of Commerce

The Czech Confederation of Commerce was founded in 1990. In 2001 there were 224 members registered in the federation (229 in 1997), employing 205,000 employees.

Association of Agricultural Co-operatives and Companies (SZDS)

The association represents business and employers' interests in agriculture. It has 1002 members comprising agricultural co-operatives and trading companies with a total of 67,000 employees. Natural persons – private farmers – are merely affiliated members at the moment, but regular membership for private farmers is being prepared. The members of the Association farm roughly 40% of all agricultural land in the Czech Republic. In order to prevent (Isn't this the opposite way around?) higher-level collective agreements becoming binding for the members of SZDS, the Association made a commitment to the Trade Union Association of Agricultural and Nutrition Workers to re-register as a civic association. This change will allow SZDS to conduct collective bargaining and to enter its own higher-level collective agreement with the aforementioned trade union. SZDS expects this and subsequent expansion of this collective agreement to bring an increase in the level of wages, putting a stop to the departure of qualified workers to other sectors.

Co-operative Association of the Czech Republic

The Co-operative Association operates as a co-ordination centre for Bohemian and Moravian co-operatives and represents their interests in relation to legislative and executive components of state power and the public. It provides an advisory service to its members, puts forwards legislation initiatives and co-ordinates joint action in matters of common interest. It also promotes the interests of Czech co-operatives abroad. It only associates legal entities and its members are the following four co-operative federations: the Federation of Bohemian and Moravian Housing Co-operatives (SCMBD), the Federation of Bohemian and Moravian Consumer Co-operatives (SCMSD), the Federation of Bohemian and Moravian Manufacturing Co-operatives (SCMVD) and the Association of Agricultural Co-operatives and Companies (SZDS). A specific feature of the association is that some of its members are also members of other employer organizations. SCMVD is at the same time a member of the

²⁹ Association of Textile, Clothing and Leather-working Industries, information brochure

Confederation of Industry of the Czech Republic and SZDS, besides its membership of the Co-operative Association, is also a member of the Confederation of Employers' and Entrepreneurial Associations.

The Association of Entrepreneurs of the Czech Republic (SPCR)

SPCR is an employer association of private small and medium-sized entrepreneurs. Founded in 1989, it associates 3,400 independent business entities and 7,232 business entities grouped in professional associations that are collective members of SPCR. The organizations associated in SPCR employ 95,146 workers³⁰. The Association of Entrepreneurs of the Czech Republic consists of the Association of Entrepreneurs of Bohemia, the Association of Entrepreneurs of Moravia and Silesia, the Association of Prague Entrepreneurs, the Association of Entrepreneurs in Agriculture, trade communities and collective members of SPCR. Personnel ties with the Entrepreneurs and Traders Party were criticised by some members as politicising the problems the association is supposed to advocate and as an obstacle to the promotion of SPCR members' interests. Among other things, this was the reason former leading representatives of SPCR founded the Union of Medium-sized Businesses in 1996 and became a collective member of the Confederation of Industry and Transport of the Czech Republic.³¹

Union of Employers' Associations of the Czech Republic

The union came into existence at the same time as the Confederation of Industry of the Czech Republic under the name Federation of State and Joint Stock Companies. It covers a broader range of fields of business than SPCR. Its members, 19 associations, bring together employers from various branches of industry, trade, services, education, healthcare and culture. This differentiation came about gradually when some associations left the Union to join SPCR and vice versa, justifying this by the fact that the SPCR or the Union better represented their interests and was closer to their field. Some of the unions are also members of SPCR. The Union of Employers' Associations members are: the Association of Entrepreneurs in Polygraphy, the Association of the Secondary Raw Materials Industry, the Federation of Water Management, the Federation of Employers in the Wood-processing Industry, the Employers' Association of the Mining and Oil Industries, the Association of Bohemian and Moravian Hospitals, the Association of Contract Doctors of Health Insurance Companies of the Czech Republic, the Association of Pharmacy Owners, the Association of Large-scale Distributors of Medicines, the Association of Private Schools of Bohemia, Moravia and Silesia, the Association of Apprentice Training Facilities, the National Schools Council, the Association of Bookshops of the Czech Republic, the Association of Museums and Galleries of the Czech Republic, the Council of Galleries of the Czech Republic, the Free Association of Non-governmental Non-profit Organizations in Culture and Art, the Universal Health Insurance Company.

Confederation of Industry of the Czech Republic (SP CR)

The confederation was established in 1990, taking up on the tradition of the inter-war Central Federation of Czechoslovak Industrialists. The confederation was part of KZPS until 1995. The membership base is made up of individual members (100 in the year 2001, 162 in the year 1996) and collective members (31 in the year 2001, 29 in the year 1996), associated on the basis of sectoral, branch and regional affinity. As of 30 October 2001 there were 1453

³⁰ What We Want and Will Strive For. Mission statement of the Association of Entrepreneurs of the Czech Republic. Prague, October 2000.

³¹"The middle class in the Czech situation is no chimera and it's not just entrepreneurs." Interview with a founder member of the Union of Medium-sized Businesses Jaromir Subert, Pravo, 23.1.1997, p.11.

(1742 as of 1 July 1996) organizations and companies with nearly 600,000³² workers. A specific feature is the collective membership of professionally oriented organizations – the Czech Managers Association, the Association of Machine Engineers, the Club of Personnel Managers of the Czech Republic and the Association of Jewellers and Watchmakers of the Czech Republic. Today the confederation includes fields like insurance and banking; the Association of Investment Funds, for example, is a member. There are also three joint stock trading companies as individual members among the branch associations represented. Besides large enterprises, the confederation also represents medium-sized and small enterprises. These interests are represented by the Union of Medium-sized Businesses, which is a collective member. Besides the ones already mentioned, the following are also members:

The Czech Association of Innovative Enterprises, the Czech Association of Pension Funds, the Czech Association of Glass-making and Ceramic Industries, the Association of Research Organizations, the Czech Association of Insurance Companies, the Czech-Moravian Electro-technical Association, the Czech Workers in Power Energy, CKD Praha Holding, Inc., the Sectoral Union of Ferrous Metallurgy, R.D.P. Group, Inc., the Association of Automotive Industries, the Information Society Association, the Association of Air Conditioning Producers and Suppliers, the ZeT Association of Agriculture and Forestry Instruments, the Association of Industrial Enterprises of Moravia and Silesia, the Union of Czech and Moravian Co-operative Societies, the Union of Czech Chemical Industries, the Union of Paper and Wood-Pulp Producing Industries, the Czech Union of Foundries, the Union of Engineering Equipment Producers and Suppliers, the Union of Textile Machine Producers, the Czech Union of Transport Employers and Entrepreneurs, the Czech Union of Plastics Processors, Skoda Holding, Inc., the Employers' Association of Mining and Oil Industries.

The Confederation of Industry and Transport is a member of RHSD. Even so, until 1999 there was not much mention of collective bargaining and social dialogue in its strategic materials; however, the confederation now professes its participation in social dialogue, particularly through the co-ordination of collective bargaining at the level of sectoral confederations. The confederation is willing to negotiate on the Social Stability Pact and the General Agreement (Mission Statement) in order to promote the interests of the industrial sphere and to preserve social harmony.

4. Organizational structures of trade unions and employer confederations and associations

The basic organizational and competency structures of the supreme bodies of employer associations and trade unions are basically alike. Employer and trade union federations usually form larger units under an agreement of co-operation or through membership approved by the supreme body. The organizational structure of social partners at the highest level is usually four-tier or five-tier.

The role of the supreme body is played by a collective body, i.e. the congress (conference, general assembly) formed of delegates of the individual federations or organizations. As a rule, the collective body approves or is authorised to make alterations to the statutes, approves the main objectives or company policy and elects and dismisses members of the board, etc. The supreme body generally meets on a 2 to 3 year basis.

The second level is again a collective body, the assembly of delegates of individual members (it can also be a congress) – mostly consisting of chairpersons of the associations and federations. Assemblies of delegates are convened by the congress and co-ordinate the association's activities between sessions of the congress and decide on matters the congress is not in charge of. In some organizations this second competency level is governed by two

³² Confederation of Industry and Transport, information brochure, confederation's web site

bodies; the first one convenes the congress, collectively deals with urgent issues and, in some cases, may also take the place of the supreme body. The second body performs more of an executive function and is thus in terms of its competency closer to the third level, i.e. the board of directors.

The board of directors (representation committee) is an executive and sometimes also a statutory body. Members of the board of directors are elected by the delegates of individual associations and are confirmed by the supreme body. Where there is no second collective body the board of directors carries out the executive function. Activities of the board of directors are directed by a president (chairperson).

The fourth level of authority (though not in terms of significance) is the review body or commission.

At the regional level, too, trade unions – and to a lesser extent employer organizations – have a similar competency structure, consisting of general assembly (congress in the case of trade unions), board of directors (council), chairperson and supervisory commission. In the case of some trade unions (such as the largest TU – KOVO) the basic organizations are associated in so-called mandate districts (or, in some cases, in associations of mandate districts). The aim of these associations is to pursue the regional policy of the respective trade union. Sometimes, smaller trade unions set up organizational structures in the regions, too, such as the TU of Bohemia, Moravia and Silesia, which has created regional and local sections in the form of an association of organizations' chairpersons.

The social partners' organizational structure also includes various expert teams. In the case of employers' organizations these are interest sections, commissions and expert teams of 10-15 members set up to handle both long-term as well as and momentary problems. These expert panels often take part in sessions of the board of directors and generally provide advice. Membership in employers' organizations is on a voluntary and unpaid basis. This organizational platform of employers has minimal material resources, which are dependent on what each company with a representative in the body pays.

Trade unions have also set up similar advisory bodies at all levels, including the regional level. Members of these bodies are generally the representatives of the relevant supreme executive bodies, who are supported in material terms by the relevant "sending" organization. Additionally, some trade unions (in particular KOVO, but others as well, even those outside ČMKOS)³³ have regional professional workplaces forming an integrated service network. ČMKOS operates a region-based legal advisory network of 15 centres in total, employing counsellors-at-law who provide advisory services to ČMKOS-associated members of trade union organizations (including in-court representation). The Trade Union of Agriculture and Nutrition Workers and the Association of Independent Trade Unions of the Czech Republic run a large number of law centres providing consultancy to ASO members.

Legal advice to its members is also provided by a number of other TUs as well as some smaller confederations (e.g. OSCMS runs 6 law centres using the services of its sympathisers – lawyers, free of charge).

The executive apparatus of employer organizations is generally composed of a director and his/her team (secretariat). The secretariat consists of professional divisions and other organizational staff, usually not exceeding 5 persons in small organizations. The secretariat is at the disposal of the individual bodies of the employer organization and, in the case of an umbrella organization, it is also in charge of communication with the individual unions.

³³ E.g. as stated by the ASO Secretary within the commenting process on this study (2002), OSPZV has a total of 26 regional workplaces within ASO, represented by Regional Secretaries in all regional towns. The Trade Union of Railway Workers has regional councils, too, in Prague, Plzeň, Olomouc, Hradec Králové, Ústí nad Labem, Ostrava, Brno.

The professional apparatus of employer organizations often draws attention to the chronic lack of resources for operational needs and the necessary broader staffing. Sometimes the executive apparatus is even dramatically reduced in size. As a result of this lack of specialists, the specialist workers have to cover a wide spectrum of issues, which ultimately limits the outcomes both in terms of quantity and quality. This particularly applies to commenting processes on laws and conceptual materials. The employer organizations do not even possess a constantly updated information and analytical base comparable to that of trade unions (particularly ČMKOS). Moreover, it should be stressed that employer organizations cover a much broader range of activities than trade unions (advice, technical advice, business contacts, PR etc.).

The trade unions have a substantially larger professional staff base as regards both their expert apparatus (collective bargaining specialists, labour law, health and safety etc.) and the administrative apparatus. Some of the trade unions even publish their own TU-edited periodicals and a number of them make use of their own training facilities.

Most of the trade unions have substantial tangible and intangible assets that form a constant source of income. There are considerable differences between ČMKOS and its trade unions and other trade union confederations and independent federations in terms of their material and staff resources. These differences arose when the property of the ROH was redistributed in the early 1990s and they continue to influence the range of trade union activities to this day.

In terms of material resources, employers' organizations are in a worse position than trade unions. Their activities are financed through contributions (sometimes voluntary) from their members, based on the number of workers. Voting rights often also depend on the size of the contributions. Some organizations pursue additional activities, in particular advisory services.

So far Czech employers seem to not perceive associating as a standard current need. What is more, from the tax point of view member contributions are taken out of net profit. Representatives of employer federations (and in this they are supported by trade unions) are striving to have employer contributions treated as tax-deductible expenses. The goal is to make employers more willing to form associations to defend joint interests, which is a fundamental precondition for reinforcing social dialogue and collective bargaining at the sectoral level.

D. Social dialogue at the sectoral level

1. The legislative framework and its development

1.1. Constitutional guarantees of social rights and freedoms

At the start of the transformation of the Czech society, one of the priorities was to bring the current legislation in harmony with international documents on citizens' social and economic rights.³⁴ In addition to incorporation made by a series of legislative amendments,³⁵ these rights, which form an integral part of the system of human rights and freedoms, have been enshrined in Czech law through the most important legal document of legislative transformation - the Constitutional Act no. 23/1991 Coll. of 9 January 1991, the Charter of Fundamental Rights and Freedoms. This created the guarantees in law necessary for the systemic application of social partnership principles, as well as setting out general conditions for the creation of mechanisms and procedures of social dialogue, including collective bargaining in practice.

1.2. The Labour Code

A key piece of legislation covering individual labour law relations is the Labour Code (also referred to here as "LC"),³⁶ which comprises the material law basis for negotiating collective agreements at company and higher levels. The LC stipulates that employees' wages and other labour law entitlements may only be increased and extended within the framework set out by the labour law regulations.³⁷ In practice, that means that labour law entitlements beyond the framework defined by law may only be incorporated into collective agreements if explicitly covered by the Labour Code (i.e. it is not possible to negotiate labour law entitlements for matters not covered by a legal regulation, even though they are not prohibited³⁸). That concerns employers operating business activities; other employers may only use that narrower framework when the law so provides. In addition to that, there is still

³⁴ For labour law, that has primarily involved eliminating compulsory work by means of legislation, ending forms of discrimination at work, and creating legal guarantees of trade unions' and employers' rights and freedoms, including the autonomy essential for collective bargaining. As for the conditions for achieving that autonomy up to the end of the eighties, prior to the November revolution the paternalistic state essentially negated social partnership, collective bargaining and collective agreements. The planned economy excluded the principles of social partnership as a forum for independent and free actors. The form and content of collective agreements, which naturally lacked a broader real impact, were determined centrally by the state and the trade unions. There was no association of employers' organizations, and trade union rights were represented by a single monopolistic trade union organization. The foundations of the modern history of social dialogue and collective bargaining in the Czech Republic were laid down in the first third of the nineties, when social partners were also able to acquire practical experience in conducting social dialogue and concluding collective agreements.

³⁵ E.g. see in more detail part E. The representation of employees' interests and collective bargaining at company level for legislation on freedom of associations and the status of trade unions in labour law relations.

³⁶ The Labour Code was adopted in 1965 as the first codification of labour law in the Czech Republic. Since then it has been revised almost thirty times, formerly with the aim of the meeting the needs of central management, and since 1990 the terms of the market economy, international agreements and European Community (EC) norms. Positive features of the Labour Code are its thoroughness and its well-planned structure. Following 1989 there was a diversification of labour law, and new legislation on collective labour law relations, wages, etc. was taken out of the Labour Code. Today, labour law encompasses a number of legal norms (including regulations on employment). The most recent extensive revision (harmonisation with EC law) in Act no. 155/2000 Coll. is seen as a substantial change to the legal system and a major success of social dialogue in the Czech Republic, as social partners at the tripartite level made a major contribution to its drafting.

³⁷ LC article 20

³⁸ That opinion is not universally accepted. It is possible to find contrary opinions (cf. e.g. M. Steiner's standpoint in *Právní zpravodaj* no. 5/2000, in *Právo a zaměstnání* no. 5-6/2000, etc.). Entitlements to unnamed labour law performance can quite often be found in collective agreements themselves.

the general principle that no part of a collective agreement may run counter to the legal regulations, otherwise that collective agreement is invalid.

The aforementioned mentioned labour law entitlements restriction has from the start been considered – both in terms of legal theory and the practice of collective bargaining – a crucial obstacle which seriously restricts social partners’ contractual freedom³⁹ (this does not apply to wage entitlements - the legislation on negotiating wage entitlements has been substantially more liberal since the start of the transformation period). Labour law entitlements other than wages, which can be agreed at a level going beyond the scope defined by law include the following:

- Reducing working hours below the number stipulated by the LC,
- Reducing the level of standby availability for work at the workplace,
- Extending vacations with additional weeks,
- Increasing or extending entitlements to paid leave or salary compensations in the event of some actions in the public interest,
- Extending leave of absence and subsidies for training and vocational study and for time off owing to serious personal reasons,
- Increasing redundancy payments to include additional multiples of an employee’s average earnings, and stipulating additional terms under which an employee is entitled to increased redundancy payments,⁴⁰ etc.

Legislation on employees’ labour law entitlements includes the problematic - especially in terms of the potential for collective bargaining in the Czech Republic - option for employers to regulate certain labour law entitlements by means of internal regulations.⁴¹ The employer has that option on condition that no trade union organization operates at his enterprise. An internal regulation issued in accordance with Article 21 of the LC does not apply to entitlements to wages and travel expenses; those entitlements are governed by separate acts and related legal regulations. An internal regulation may not establish new legal obligations, nor specify in greater detail the obligations ensuing from legal regulations. An internal regulation is subsidiary to a collective agreement. The law stipulates that if certain entitlements are covered by a collective agreement or internal regulation issued prior to the establishing of a trade union organization, the arrangements contained in the collective agreement apply, and that agreement is also of higher legal “quality”, as agreement between the partners to the collective agreement is required to change or annul it, which is not the case for internal regulations. Despite all the aforementioned legislative aspects and arguments in favour of internal regulations, that labour law institute remains a unilateral normative act, representing indirect competition to collective agreements. If the terms stipulated by law are

³⁹ Opinions have been expressed that Article 20 para. 2 of the LC is at odds with Article 2 para. 3 of the Charter of Fundamental Rights and Freedoms, but the findings of the Constitutional Court have not confirmed those opinions.

⁴⁰ Since the beginning of the nineties, that labour law institute has undergone substantial changes. Earlier legislation had allowed increases within the range stipulated by law, but throughout the second half of the nineties redundancy payments had not been included in collective bargaining, as the level of redundancy payments was stipulated by the law. A further change - the waiving of the agreement principle - was introduced by the aforementioned “harmonisation” revision of the LC, allowing redundancy payments to be negotiated as an unlimited number of multiples of average earnings.

⁴¹ This measure, on which there are various opinions concerning its suitability both from the viewpoint of practice and in legal theory, has been laid down by a major revision of the LC by Act no. 74/1994 Coll. It was justified on the grounds of the needs of companies where no trade union organizations operated, so employees could not achieve the relevant entitlements by means of a collective agreement (they still had, of course, the legally guaranteed option of establishing a trade union organization at their employer’s establishment and, following a preparatory phase, moving to collective bargaining). On the basis of similar arguments, the option of governing labour law entitlements by internal regulations remains in place even now, following the latest revisions of the LC.

met, it can - like a collective agreement - cover all the labour law entitlements whose extension is permitted by law to the same extent as a collective agreement. In extreme cases it may be misused by the employer as an instrument for social dumping, and in general it acts against the expansion of collective bargaining, interfering as it does with collective legal regulations.⁴² That in no way alters the fact that replacing the institute of internal regulation with another legal solution (acceptable to the social partners) that will ensure that all employers have the option of providing employees with extended entitlements will not be an easy task.

The crucial factor affecting the normative potential of collective agreements, however, is the poor overall conception of the Labour Code. It remains too embedded in the previous socio-economic arrangements, and has from the start been based on the prevalence of cogent norms over dispositions or provisions regulating collective agreements.⁴³ The Labour Code has yet to come to terms with the basic constitutional principle that everything not explicitly prohibited by the law is allowed; nor does it cover the option of negotiating more significant deviations from the law on the basis of agreement between the parties. In labour legislation it is often difficult to distinguish binding norms from methodical guidelines and general proclamations, which, alongside the fact that apart from courts there is no one competent to give a binding interpretation of the individual provisions for a specific case, is another factor which hinders the drafting of collective agreements (there is no way of anticipating the outcome of a particular disputed problem in the event of a legal dispute).⁴⁴ Almost since the beginning of the nineties, a second stage of labour law reform has been anticipated, aimed primarily at drafting a new Labour Code fully meeting the needs of the market economy, which would relax all the restrictions on the social partners' autonomy that remain in the present Labour Code.⁴⁵

⁴² Here it is necessary to mention the "Opinion of the Institute of State and Law of the Academy of the Czech Republic on Certain Theoretical Matters of Further Procedure in Labour Law Reform", *Právník* no. 9/1993.

⁴³ In addition to MLSA and the Czech Academy of Science's Institute of State and Law, since 1993 the discussion on the conception of labour law (with the stress on resolving issues of collective labour law relations) has been joined by e.g. the Association to Support Collective Bargaining (AKV), which publishes the opinions of its chairman and other officials, and the standpoints of the AKV Board of Experts. AKV aims to use its expertise to improve the standard of collective bargaining and collective agreements, to the benefit of trade unions and employers. From the start it has worked for a general liberalisation of the conception of labour law norms, aiming to provide as much room as possible for entitlements and other terms to be governed by collective agreements, primarily in the business sector.

⁴⁴ The existence of certain controversial provisions, which have for long been needed changing in practice (the impossibility of agreeing a trial period longer than 3 months, the restriction on linking employment agreed for a specific period, a change to the legislation on providing leave for study which still corresponds to the situation at the end of the sixties, etc.) has also complicated the negotiating of valid and enforceable undertakings in collective agreements.

⁴⁵ It is expected that the new Labour Code will significantly enhance the importance of collective agreements by giving employers and trade unions greater room to negotiate working conditions more appropriate to their needs. A fundamental expansion of social partners' autonomy (in the sense of an autonomous creation of working conditions primarily by means of higher-level collective agreements), despite the unsatisfactory state of labour law culture in companies, is regarded by the social partners (who are quite in accord on this matter) as imperative for the additional expansion of social dialogue in the business sector, including further approximation to practice in advanced European countries. The programme of an MLSA working group drafting the new Labour Code indicates the extent of the liberalisation of labour law relations under consideration, including the following principles: the incorporation of the principle that what is not prohibited is permitted; legislation on the minimal entitlements primarily ensuing from EU directives and ratified ILO conventions and with regard to the protective function of labour law; the relation between the law, collective agreements and employment contracts; the issue of the exclusivity of collective agreements; the issue of the scope of trade union powers and the option of introducing separate powers for a number of employees and trade unions; etc.

1.3 The Collective Bargaining Act

Legislation on collective labour relations is primarily contained in Act no. 2/1991 Coll., on collective bargaining (the Collective Bargaining Act), whose adjective law approach is primarily aimed at implementing the material law provisions of the Labour Code and other labour law regulations.

Collective bargaining⁴⁶ is opened when one of the parties submits to the other party a written proposal for the conclusion of a collective agreement. That partner is then obliged to respond to the proposal in writing without undue delay, and to make a statement on those parts of the proposal which have not been accepted. Rejecting the proposal as a whole is not admissible under the law, regardless of the reasons given. The partners are obliged to negotiate with one another and provide any co-operation requested. 60 days at the latest before the expiry of a collective agreement, they are obliged to commence negotiations on concluding a new collective agreement. It is clear that while the collective bargaining procedure is based on the principle of contractual freedom, the act is dominated – in the name of social concord - by the common interest in the successful conclusion of those negotiations. The law also stipulates additional binding regulations for collective bargaining, including the resolution of collective disputes. In this way it is possible for one party to force the other party to conclude a collective agreement and accept certain aspects of it.

A collective agreement is concluded for a period explicitly specified in it. If not stipulated otherwise, it is presumed that the agreement has been concluded for one year. The parties to a collective agreement may agree in it on the possibility of changing it, including the scope of any changes. When making changes or supplementing the agreement, they proceed as when concluding the original collective agreement. If, however, the option of changing the agreement was not agreed in it, it cannot be demanded by means otherwise available to the partners when negotiating a collective agreement (including extreme means such as strikes and lock-outs).

Collective agreements are concluded as bilateral agreements between employers and trade unions. Employers are primarily legal entities employing citizens in labour law relations. Employers may also be citizens, natural persons, who employ staff in their enterprises, etc. Employers' organizations may act on behalf of employers. The relevant trade union authority or its authorised representative acts on behalf of a trade union,⁴⁷ that may be

⁴⁶ The goal of collective bargaining in the Czech Republic is the conclusion of a collective agreement. Other forms and phases of collective bargaining which are not aimed at negotiating company collective agreements (CCA) or higher level collective agreements (HLCA) or changes thereto are also part of social dialogue; while not disqualified by law, they are not subject to legislative regulation and in practice are governed by the partners' procedural customs.

There is ambiguity over the meaning of "social dialogue", which is generally regarded as communication between social partners, but is usually reserved for bargaining at the super-corporate level, particularly as part of tripartite negotiations. However, the expression "collective bargaining in the broader sense of the term" is often used for negotiations between social partners beyond collective agreements (as opposed to "collective bargaining in the narrower sense of the term", aimed at concluding collective agreements). Those differences in the understanding of social dialogue are more apparent if compared with the concept of collective bargaining in the European Social Charter, which understands collective bargaining as any kind of negotiations between an employer and a group of employees (legal or de facto) at which problems involving any kind of common interests are resolved.

⁴⁷ In collective bargaining and concluding collective agreements, trade unions act on behalf of all employees, regardless of whether or not they are members of those trade unions. That principle, explicitly stipulated by the Collective Bargaining Act, applies not only to collective bargaining at company level, but also at the level of the social partners' organizations. Whether substantively justified or not, this principle has not yet been uniformly accepted. Trade unionists have pointed out that the results of their work also benefit those employees who make no contribution to financing the trade unions' work. Nor do employees who are not members of trade unions and do not wish trade unions to represent them and negotiate on their behalf always agree with that principle. This representing of all employees, regardless of their membership of trade unions, is also sometimes considered to be

the trade union organization as a whole or an organizational unit, e.g. a company union (provided it has legal personality), or a higher trade union authority.

The law distinguishes between company collective agreements (CCA), concluded between the relevant trade union authority and the employer, and higher-level collective agreements (HLCA), concluded between the relevant higher trade union authority and an employers' organization or organizations for a larger number of employers. The law does not recognise sectoral collective agreements, concluded for an entire sector or an economic branch (economic sectors are not defined in Czech law)⁴⁸. In practice, when there is talk of sector collective agreements in the Czech Republic, it usually refers to higher-level collective agreements (HLCA), regardless of the true scope of the agreement in question.⁴⁹

Neither does the law recognise collective agreements concluded for a holding company, even though such collective agreements were concluded in the nineties (of course extra lege - e.g. Škoda Plzeň, CKD Praha). Given the special features of holding companies, they are required as an intermediary level between the present CCA and HLCA. In some cases, holdings require common integrating standards for human resources, arrived at by collective bargaining, which goes beyond the company scope.⁵⁰

Another problem area is concluding collective agreements for a plant (company organizational unit). Negotiating CCAs can be considered if a trade union authority operates at a plant or other company organizational unit, and that authority has been delegated bargaining powers by the trade union's articles of association. In such cases there is often no partner on the employer's part at the plant, in view of the absence of legal personality.

Nor are collective agreements (HLCA) concluded⁵¹ with a territorially defined scope, having significance with regard to conditions on the labour market which vary from one territory to another, including wage levels.

The identification of the legal identity of partners in collective bargaining is therefore a crucial factor in the conclusion of collective agreements. Insufficient legitimacy for either party invalidates collective agreements and the undertakings therein. For higher-level collective agreements, in practice it is not so much the absence of a social representative for employees that causes serious problems as the absence of competent bodies or ambiguity over competencies for collective bargaining with some employers' organizations. That concerns instances where employers' organizations have not been established in accordance with Act no 83/1990 Coll., or in case they are (or they claim to be) unable to conduct collective bargaining⁵² because their articles of association do not authorise it, or authorise it only for

one of the reasons for the declining trade union membership and the limited significance and authority of collective agreements.

⁴⁸ So far, HLCAs have not been extended to cover entire sectors.

⁴⁹ Higher-level collective agreements covering entire sectors may in practice be negotiated between partners who, if their articles of association so provide or if they are so commissioned by members covering an entire sector, are authorised to act on behalf of the sector of economic activity in question as a whole.

⁵⁰ E.g. AKV (Association to Support Collective Bargaining) has spoken out in favour of including the option of concluding valid holding-group collective agreements in the forthcoming recodification of labour law, *Práce a mzda* no. 13/98).

⁵¹ In practice it does happen, but only exceptionally, as in the case of HLCA agreements negotiated by the Association of Moravian and Silesian Industrial Companies with KOVO TU.

⁵² Various legal opinions have been expressed in connection with this unwillingness to conclude HLCAs among a number of employers' organizations, see e.g. the opinion of J. Šubrt, AKV chairman, at the 3rd AKV national conference (J. Sádková, *On the Practicality and Purpose of Collective Agreements*, *Sondy* no. 3/1996), according to which employers' associations are authorised for collective bargaining under the Collective Bargaining Act and no body of an employers' association is entitled to reject collective bargaining. If then an employers' organization refuses to participate in negotiations to conclude an HLCA, it acts as a mere entrepreneurs' association and is in defiance of the law, as collective bargaining is one of the priority functions of employers' associations. This problem has also been dealt with by a ČMKOS document "Report on the Outcomes of Higher-level Collective Bargaining in the Year 2001": "...the trade union party has already made an attempt to resolve

certain members of the organization and it has to be renewed on a case by case basis, etc.⁵³ A particularly serious problem is legitimacy to conclude HLCAs in the public sector⁵⁴, and that is even more the case in public administration⁵⁵.

this issue through a negotiator or an arbitrator, however the decision reached was not favourable for the TU. In one case the arbitrator upheld the position of the employers' organizations and came to a decision that they were not obliged to conduct collective bargaining with the TU, as their articles of association did not provide for this. In a second case the legal expert agreed on by both of the parties concluded that this issue could not be resolved on the basis of Article 13 of the Collective Bargaining Act – no unobjectionable solution could be found. We could deduce from the ILO agreements and the Collective Bargaining Act that being a member of an employer organization automatically brings with it the right and obligation to conduct collective bargaining and that the articles of association cannot change that. However, as long as this interpretation is not validated by an independent authority (which should preferably be a court of law), there is no way of compelling those employers' organizations that refuse to do so. However, an appeal to court on this subject would be limited by the Article 14, paragraph 1 of the Collective Bargaining Act, which enables a regional court to annul an arbitrator's decision under certain conditions. This, however, applies to carrying out the obligations set by a collective agreement; the mentioned provision does not take into account the possibility of a court reviewing decisions concerning a dispute over concluding a collective agreement". The said ČMKOS document also reflects the relevant position of the Ministry of Labour and Social Affairs, whose opinion concerning the dispute about whether employers' organizations are entitled to conclude HLCA for their members is that it is not a dispute over the conclusion of collective agreements as set out in Article 13 of the Collective Bargaining Act and thus the Ministry cannot appoint a negotiator or an arbitrator for this dispute.

⁵³ A possible solution could be a legislative provision introducing compulsory membership of employers' associations, which would be obliged by law to participate in collective bargaining, but this is evidently unacceptable. Furthermore, if there is no partner for social dialogue, or if neither social partner is truly interested in conducting social dialogue, then that is not in our opinion solely a problem of legislation, but rather a particular feature of social relations in the Czech Republic, where social dialogue and collective bargaining are rejected not only owing to ideological standpoints, but also because of experiences from the pre-November 1989 era.

⁵⁴ The following description of collective bargaining situation in the public sector is based on written information provided by the President of the Union of Employer Associations of the Czech Republic, P. Ernst, on 15 Feb 2002 in the union's comments on this study.

In the sphere of public services such as the health service, the educational system and culture, there are associations, federations and unions in accordance with the act on freedom of association, which were established in the 1990s. These organizations associate legal entities in the form of state or public allowance organizations, which execute common employer functions. In these associations there are public and private entities, or just private ones. The conditions for social dialogue differ from department to department, however. In the department of health the two associations of hospitals are both recognised partners of the state administration; lately a draft HLCA has been prepared between the Association of Bohemian and Moravian Hospitals and the Health Service and Social Care Workers' TU. In the sector of education, however the activities of school associations are considered private activities that can only be pursued in leisure time and the expenses incurred may only be covered from private funds. In the field of culture, there has been a tripartite system working at the Czech Ministry of Culture since 1997. Besides the representatives of the Union of Employer Associations, whose initiative led to the origination of the tripartite system, there are representatives of the Ministry and of the Confederation of Art and Culture.

In addition to the above-mentioned HLCA proposal, HLCAs have been concluded for already a number of years between the Association of Apprentice Facilities and the KOVO TU.

As regards collective bargaining in the field of culture, the written comments on this study by the KUK President A. Jirkova of 14 January 2002 include the following excerpt:

"The main hindrance to social dialogue and conducting collective bargaining among member TUs and associations at a higher level is the legislation, but in certain cases also...the absence of employer organizations in the respective areas. As far as cultural organizations are concerned, these are mostly partly or wholly budget-funded organizations, whose directors.....are themselves employees dependent on the decisions and financial resources of the founder. It followsthat any association of directors of individual branches of the culture sector (directors of cinemas, theatres, orchestras, etc.) are not in fact employers qualified to conduct a higher-level collective bargaining. ...nor are the existing associations at the level of their founders (the Association of Towns and Villages) qualified to conduct collective bargaining on basic wage and working conditions.... . In the film-making or audiovisual sphere especially, there is no employers' side; despite this, professional TU associations seek to conclude agreements at least on the minimum wages with some companies (such as with Czech Television for cameramen and sound engineers). Nevertheless, these agreements are not based on the

In view of the two-tier nature of collective agreements, the law also deals with the relation between CCAs and HLCAs, favouring higher-level collective agreements. Any part of a CCA covering employees' entitlements in a smaller scope than a higher-level collective agreement is invalid, as is any part which guarantees employees wage entitlements in a greater scope than stipulated by higher-level collective agreement as the maximum admissible (This I do not really understand, please explain a bit more??). Another consequence of the superiority⁵⁶ of higher-level collective agreements over company collective agreements is the fact that the undertakings contained in an HLCA apply directly to an employer (and his employees) belonging to the employers' association that negotiated the HLCA. That means that if a CCA has not been concluded for whatever reason, including the absence of a trade union partner, the undertakings agreed in the HLCA are binding for the employer and employees.⁵⁷ On concluding an HLCA, the partner acting on behalf of the employer is obliged to deposit the collective agreement with Ministry of Labour and Social Affairs (MLSA). The ministry is obliged to store the HLCA and record that fact in the Collection of Laws⁵⁸ but is not obliged,

Collective Bargaining Act ... This problem relates to the absence of a legal definition of "free-lance work" and what is referred to as "intermittent employment" in the Czech system of law, as these professions presently bear the status of "tradesman" or "businessman" in the Czech Republic. The same problem also applies to interpreters, restorers and other professions.

⁵⁵ A definitive appraisal of the situation in this field is given by M. Kubínková, National Study on Social Dialogue in the Czech Republic), ČMKOS 2001, p 24: "The TUs operating within the sector of public administration are unable to conclude collective agreements of a higher level because of the absence of a contractual partner to conduct collective bargaining with, as the legislation does not enable employers in this sphere (public bodies) to form employer associations. ČMKOS is endeavouring to bring about a situation where TUs would be able to negotiate with the relevant central state administration bodies over the wage funds available for the respective year even before the state budget is approved. This should be a special type of an agreement which is not yet legally regulated".

⁵⁶ That does not mean that the CCA is subordinate to a higher-level collective agreement in the sense that the HLCA would be authorised to instruct parties that certain issues must be agreed in a company collective agreement. Any restrictions on the freedom of parties to company collective agreements are legally inadmissible (e.g. in the opinion of MLSA), although many HLCAs have regularly featured such restrictions (despite MLSA criticism). This idea of laying down duties within HLCAs for CCA contractual parties is welcomed by the KOVO TU.

⁵⁷ In practice the options for applying that regulation, correct as it may be, are limited. That is a consequence of several factors (including the structure and quality of collective agreements), which mean that HLCAs are not commonly used in companies. This primarily involves problems with the availability of HLCAs in the business sector, and especially for the ordinary company employee. Supposing an employee has been informed that an HLCA has been concluded and has the opportunity to inspect it, when there is also a "competing" CCA the employee is often forced to make difficult comparisons of the undertakings in order to ensure he receives his entitlements. Quite often this involves making sense of general and not entirely clear, nor fully compatible formulations and constructions; sometimes undertakings may be included in an appendix or supplement to the collective agreement which is not available to employees. The reason employees tend not to be informed of HLCAs is that employers do not wish them to be, for reasons which are entirely pragmatic; or the trade union organization at the company keeps the HLCA a secret so that the employer does not refuse to conclude a CCA. An obstacle to the wider use of HLCAs is that collective agreements in general and HLCAs in particular have relatively little authority.

⁵⁸ A failure to submit the HLCA (or failure to comply with the 14-day time limit stipulated for submission to MLSA) may result in a considerable penalty. It is clear that thanks to the aforementioned legislative mechanism for recording and storing HLCAs, these documents are available for independent appraisal, and knowledge can be applied in practice. Unfortunately that does not apply to company collective agreements, where the parties are only obliged by law to store the CCA for at least five years following the date on which they expire. There are no central records of CCAs, so they are not widely available. Trade unions have the best access to CCAs (limited of course by the trade union partner's membership of a particular trade union) – they are available to regional offices (if the trade union has them), trade union authorities, ČMKOS authorities. Trade union authorities and offices systematically and regularly evaluate, analyse and compare the data and information included in CCAs, for their work and for operative and strategic decision-making. There is however a question mark over the completeness of that data, as trade union officials and regional trade union office staff admit that they cannot

for example, to check that the content of HLCAs complies with labour law⁵⁹ before it puts them in safekeeping, is not responsible for its content, and does not confirm its correctness⁶⁰). Higher-level collective agreements stored at MLSA are - if certain conditions are met - available to the public. There are no material law effects relating to the duty to store HLCA at MLSA. While failure to submit a HLCA is a breach of the labour law regulations, it does not invalidate the agreement.

The Collective Bargaining Act also regulates collective disputes, i.e. disputes about collective agreements and fulfilling undertakings agreed in them, which disputes do not entail entitlements for individual employees.⁶¹ In the event of a dispute over the conclusion of a collective agreement, the parties to that agreement negotiate in the presence of an intermediary,⁶² whom they appoint following mutual agreement, or who is allocated to them by MLSA at the proposal of one of the parties. If proceedings before the intermediary are unsuccessful, the matter is decided on the basis of agreement between the parties in the presence of an arbitrator. If the parties still cannot reach an agreement, the dispute may be resolved by a strike⁶³ (or a lock-out). Workplaces where the Collective Bargaining Act

properly examine some CCAs, while many of them are not available at all. The majority of employers' organizations do not work systematically on CCAs, nor do they record them or store them. At present, the availability of CCAs is relatively limited and is not guaranteed - this situation must be rectified by adopting systemic measures for the needs of controlling and carrying out any warranted investigations.

⁵⁹ It is different in the case of extending collective agreements, when MLSA is obliged to review the content of HLCA for compliance with the labour law regulations prior to storing them - see below.

⁶⁰ Cf. J. Týc, P. Michal, *Collective Bargaining Issues in the Czech Republic*, *Práce a mzda*, no. 6/1995, p. 38.

⁶¹ According to Article 20 of the LC, individual entitlements from CCAs and HLCAs are applied and satisfied in the same way as employees' entitlements under their employment contracts (disputed entitlements are resolved by courts in civil cases).

⁶² The intermediary can be a citizen competent for legal acts or a legal entity, or an intermediary recorded in the list of intermediaries kept by MLSA. The work of intermediaries is irreplaceable, as they prevent disputes culminating and relations between the parties being broken off. MLSA also keeps a list of arbitrators - their work is more demanding than that of intermediaries, as the latter do not issue decisions. To be included in the list, arbitrators must, among other things, sit regular examinations of expertise before a MLSA committee.

⁶³ Strikes, as an extreme yet legitimate aspect of labour relations, are in Czech law covered only by the Collective Bargaining Act. The act only deals with strikes concerning the conclusion of collective agreements, and solidarity strikes to express support for employees striking in a dispute over the conclusion of another collective agreement. Strikes for the fulfilment of undertakings in a collective agreement are inadmissible, and a collective dispute on the fulfilment of the agreement is resolved in the presence of an intermediary or, should that fail, an arbitrator whose decisions may be reviewed in court. A decision by an arbitrator concerning the fulfilment of undertakings in a collective agreement is enforceable in court. When there is a dispute over the conclusion of a collective agreement at a workplace where it is forbidden to strike or announce a lock-out, negotiations in the presence of an arbitrator can be considered, but any decision taken by the arbitrator is final and cannot be reviewed in court. Other kinds of strikes, i.e. strikes which do not involve collective bargaining, are admissible provided they are not contrary to the Charter of Fundamental Rights and Freedoms, but are not covered by legislation. The present state of legislation in this area reflects the fact that so far strikes have been relatively rare in the Czech Republic, nor are there complete nationwide records of them or strike alerts. Relevant data on this issue, including various industrial actions, meetings and TU organized demonstrations, are most likely to be accessed through TUs, which keeps records (e.g. a document entitled "Odborový svaz KOVO na přelomu tisíciletí 1997 – 2001 (The KOVO Trade Union at the turn of the millennium 1997 - 2001), which is a representative sample of newspaper and magazine reactions to various collective manifestations of TU dissatisfaction organized by a TU or, to be specific, by TU organizations associated within the KOVO TU in the relevant time period).

As far as collective disputes are concerned, MLSA does not keep records of collective disputes in which it is not directly involved, i.e. when the parties to a collective agreement turn to an intermediary directly or via MLSA, but do not inform MLSA of the outcome (nor is the intermediary obliged to do so). By law, MLSA stores decisions by arbitrators concerning HLCAs. The Collective Bargaining Act empowers MLSA to issue a decree to govern particulars of proceedings in the presence of intermediaries and arbitrators (it did so in Decree No. 16/1991 Coll., on intermediaries, arbitrators and storing higher-level collective agreements, as subsequently amended).

prohibits strikes or lockouts include medical and welfare facilities, provided the strike or lockout might endanger life or health. Strikes are also prohibited for workers operating nuclear power stations; those dealing with fissionable material, oil pipelines, gas lines; for fire-brigade members and members of emergency units set up at workplaces under specific regulations; for those responsible for the operation of telecommunications, if a strike could result in danger to life or health or damage to property; for those working in areas affected by natural disasters where emergency measures have been declared by the relevant state authorities, etc. Judges, public prosecutors, and members of the armed and security forces must not participate, as dictated by the Charter of Fundamental Rights and Freedoms, in any strike organized for whatever reason.

The current legislation governing the procedure contractual partners are to follow in collective bargaining is has been considered satisfactory right from the start, in particular thanks to its modern conception. If there are any doubts or objections,⁶⁴ these are linked with a lack of detail and explicitness (e.g. qualification to conclude collective agreements, the scope of application of collective agreement standards, or the binding force of their regulations for the participants). Deepening (what is meant?) the legislation governing extension of an HLCA's binding force remains a fundamental task, as these regulations are at present too brief and fail to deal with a number of system aspects. On the other hand, over the years this situation has enabled the social partners to seek and verify in practice the optimal criteria and procedures, reaching consensus and implementing changes in a more flexible way than they would have been able to if they had to comply with the requirements of the legislation process.

A problem apparent from the start of collective bargaining in the Czech Republic is the quality of the legal environment for the application of labour law norms, including the instruments to enforce them. The risks involved in the lack of a proper legal environment are understandably proportionate to the level of freedom in concluding collective agreements. Therefore, and in the light of the authority and significance of collective bargaining and its results, it is necessary to bring about a state of affairs whereby it will be possible under labour law to assert and enforce rights promptly and effectively, so that endeavors to prevent their infringement is worthwhile, and any failure to fulfil duties is punished.⁶⁵

2. Higher-level collective agreements

Collective bargaining, as a form of social dialogue between social partners at the super-company level regulated by legislation, has been implemented practically simultaneously with the establishing of the essential institutional partnership structures, i.e. since the beginning of the 1990's.

The following table shows developments in the scope of HLCAs in terms of the number of employees, or in this case union-member employees, to whom HLCAs apply. The only such available information of the required detail is that for part of the trade unions associated in the largest trade union confederations - ČMKOS.⁶⁶

⁶⁴ E.g. J. Kostečka, Kolektivní smlouva jako autonomní právtvorná lex contractus a některé teoretické otázky s tím spojené (Collective Agreements as an Autonomous Right-establishing Lex Contractus and Some Related Theoretical Issues), Právník, No. 10-11/96 or J. Týc, P. Michal, Problematika kolektivního vyjednávání v ČR (Collective Bargaining Issues in the Czech Republic).

⁶⁵ So far, civil court cases rather tend to be extended, as shown by the EC evaluation report for 2001.

⁶⁶ Besides the ČMKOS-associated trade unions, more than one HLCA has also been concluded by the Agriculture and Nutrition Workers TU – Association of Independent Trade Unions of the Czech Republic (4 HLCAs).

T a b l e 4 ČMKOS data on the extent of higher-level collective bargaining 1995 – 2001

	1995	1996	1997	1998	1999	2000	2001
HLCAs concluded	33	30	30	25	22	22	20
Trade union organizations covered by HLCAs	2 020	1 946	1 725	1 352	1 347	1 395	1 457
Employees covered by HLCAs (excluding extensions)	770 550	730 080	648 079	521 651	584 067	469 249	446 997
Employees (trade union members) covered by HLCAs	566 887	513 957	432 844	330 855	323 257	272 214	249 528
Employers to whom HLCAs have been extended	6	0	0	0	399	2 074	3 482
Employees to whom HLCAs have been extended						174 272	288 314
Employees covered by HLCAs following extension						643 521	735 311

Source: Report on the Results of Higher-level Collective Bargaining in 2001, ČMKOS, 2001

The general reason for negotiating HLCAs is the need to establish minimum⁶⁷ standards for working conditions, quantitative limits, undertakings and models of conduct, which are binding for a larger group of employers. As has already been mentioned in this document, HLCAs have from the start run up against the problem of the legitimacy of the partner on the employer's side, i.e. the unwillingness of certain employers' representatives to engage in collective bargaining.⁶⁸ Employers' associations are either not registered as associations in the sense of Act no. 83/1990 Coll., or their articles of association do not authorise them to conduct collective bargaining on behalf of their members, or they only negotiate on behalf of a very limited number of members.⁶⁹ That has of course resulted in a limited number of employees covered by HLCA. At the end of 2001, HLCAs concluded by trade unions in ČMKOS only covered⁷⁰ 19% of all employees in the civil sector. That low figure (compared to CCAs, which in the same year covered 26% of employees in the civil

⁶⁷ It seems that the social partners' strategy in collective bargaining is so far not focused on identifying optimum socio-economic criteria for determining the values of the undertakings. In our opinion that is partly due to the absence of a specifically defined and relatively stable framework HLCA, i.e. for a sector of economy.

⁶⁸ According to the aforementioned Report on the Outcomes of Higher-level Collective Bargaining in the Year 2000, of 18 August 2000, intended for discussion by the ČMKOS Council, 12 of the total 30 ČMKOS trade unions concluded HLCAs for the year 2000. Three of those trade unions concluded more than 1 HLCA. 18 trade unions did not conclude HLCAs "owing to the absence of a partner" for collective bargaining. According to an analogous report for 2001 (dated 22 November 2001), 12 of a total of 31 ČMKOS trade unions concluded HLCAs. As in the previous year, 3 trade unions concluded more than 1 HLCA (KOVO trade union concluded 5 collective agreements). 19 trade unions did not conclude collective agreements, due either to the absence of a partner, or to unwillingness to engage in collective bargaining on the employer side.

Some employers' organizations do not conclude HLCAs because they have not received a mandate to do so from their members. In one case the situation worsened, with the employers' representation losing its authority to negotiate. According to the ČMKOS report, it lost its mandate owing to members' dissatisfaction over the extension of the HLCA concluded for the previous year.

⁶⁹ Trade unions have commented on the chronic shortcomings of collective bargaining and worsening conditions for concluding HLCA for several years, cf. e.g. M. Kubínková, Where We Stand With Collective Bargaining – worrying facts about social dialogue, Sondy no. 19/1995, p. 10.

⁷⁰ Based on total employment in the civil sector, which according to Czech Statistical Office data was 3 972 400 persons as of 30 June 2001.

sector) was recorded despite the relatively widespread extension of HLCAs that took place in 1999 - 2001.⁷¹

The approach employers take to concluding HLCAs, as with CCAs, is particularly dependent on the restructuring underway in the business sector, and the consequent uncertainty. Subjective factors, often based on negative predictions of the impact of social dialogue on business efficiency, are also important. The common denominator, especially for Czech management, is a poor approach to human resources.

The period for which HLCAs are concluded has been gradually lengthened. One-year HLCAs, which dominated in the first half of the nineties, have gradually been replaced by HLCAs running to several years, usually two or three. Some parts of HLCAs, primarily those concerning wages, are still negotiated for one year, or changes are negotiated. The fact that longer-term HLCAs are being negotiated is a positive development, as longer-term collective agreements are more conducive to strategic planning by social partners and establish a more stable framework for employees' working conditions and relations between the parties to such agreements. HLCAs covering several years can help improve the specification of undertakings in, for example, corporate social policy and its financing, or negotiating more stable terms for the work of the trade union organization in company collective agreements.

According to the ČMKOS report for 2001, 8 to 26 weeks are required to negotiate and conclude HLCAs.

In addition to the aforementioned ČMKOS annual reports, which are not intended for the public, the content of HLCAs is featured in MLSA information in connection with its agenda for storing and extending HLCAs, and is also the subject of magazine articles in the trade union and specialised press.⁷² A survey is organized each year under the Information System on Working Conditions (ISWC), featuring selected quantifiable parameters for the content of HLCAs⁷³ concluded, together with a relatively representative and expanding

⁷¹ The massive extension of HLCAs that occurred in those years resulted in a significant increase in the number of employees covered by HLCAs. That took place even though all the indicators displayed in the table (number of HLCAs concluded, number of trade union organizations and their employees) remained constant or fell.

⁷² Cf. e.g. J. Hrdý, Certain Findings from Higher-level Collective Agreements, *Sociální politika* no. 5/1996, or Information on Higher-level Collective Agreements Stored with MLSA and Effective in the Year 2000, *Sociální politika* nos. 7-8/2001. Cf. also e.g. J. Jakubka, Collective Agreements in 1995 and Legal Shortcomings, *Sondy* no. 32/1995, or M. Kubínková, What Aims for Collective Bargaining, *Sondy* no. 38/1996.

⁷³ E.g. In 2001 ISWC works with 22 HLCAs and features the following parameters:

- 1) Wages - monthly wage tariffs, hourly wage tariffs, bonuses, remuneration for availability to work, compensation (including the method for determining average earnings in an HLCA, the schedule for paying wages agreed in the HLCA, etc.), remuneration for anniversaries (in accordance with the number of years worked), remuneration for birthdays (reaching 50 years of age and retirement), manner of negotiating employees' remuneration (collective agreement, internal wage regulation, a combination of the two), forms of wages (time wages, piece wages, proportion wages, or a combination of the three, and whether terms were negotiated for providing specific forms of wages), the classification of work activities under functions, professions and tariff levels, whether the company catalogue is part of an HLCA, other wage elements (13th, 14th and 15th monthly wages), whether the HLCA has agreed to the work of parity wage committees, negotiating wages with regard to overtime, wage trends (increase in wage tariffs, increase in the total volume of funds for wages, increase to the average nominal wage, increase to the average real wage, maintenance of the real wage, or a combination of those factors),
- 2) Labour law entitlements - extent of standby availability for work (whether negotiated for another location agreed with the employee, whether reduced standby availability at the workplace has been negotiated, whether less standby availability has been negotiated), overtime, increases to redundancy payments beyond the framework of the Labour Code, whether terms have been agreed for the provision of redundancy payments, average number of days off provided beyond the framework of the Labour Code, compensation provided to bereaved beyond the framework of the Labour Code,
- 3) Social fund (fund for cultural and social needs, stimulation fund - method of stipulating allocations to the fund), structure for planning the use of the fund (monitors whether the purpose include recreation, medical

sample of company collective agreements. Outputs from the Information System on the Price of Labour (ISPL) also form the basis for negotiations on remuneration undertakings.

These systems were launched in 1992 with the aim of providing objective data for collective bargaining at all levels. The outputs are comprehensive information on the social aspects of labour, and on wages, working conditions and undertakings negotiated in collective agreements, and they serve as an independent and objective basis for partners in collective bargaining. In 1993 a commitment to support the development of those information systems was made part of the General Agreement for that year. The client for the systems is MLSA, and they are processed by TREXIMA s.r.o. Zlín, which works closely with ČMKOS to collate collective agreements. The system (i.e. the data files processed, including an expanding range of outputs) is growing, with a growing number of parameters analysed. Certain information indicates that, where required by MLSA, ISWC could be used to compare HLCAs and the relevant CCAs.⁷⁴

While the legislation does not stipulate obligatory content for collective agreements (HLCA and CCA), it does impose certain restrictions on them (viz. Chapter 2 of the Labour Code). The choice of areas covered, including their processing, therefore depends on a company's economic possibilities and labour law, tax and other legislation. While there are considerable differences between HLCAs negotiated at various times and between various partners, they mainly concern the levels of the undertakings agreed. In terms of their basic content, HLCAs have more points in common than differences.

To give an idea of the content of higher-level collective agreements, we present an HLCA agreed on by the Czech-Moravian Electro-Technical Association (ELA), on behalf of the employers, and by the KOVO Trade Union, on behalf of the trade unions. The HLCA for the year 2000,⁷⁵ and other HLCAs concluded between those partners for several years now, represent a very good standard⁷⁶ among the available documents of that kind; the HLCA for the year 2000 is, however, the last HLCA negotiated in the electronics sector on the basis of labour law legislation before the large "harmonisation" revision of the Labour Code came into force. That means that the parties had considerable experience in the application of relatively stable legislation, gained in the course of negotiating collective agreements in a period of over

services including spa treatment and rehabilitation, employee loans, contribution to company catering, social assistance, remuneration for birthdays and work anniversaries, contribution to pension insurance, contribution to accident insurance, transport allowance, whether life insurance and accident insurance is arranged for employees, transporting employees to work, initial medical examinations, preventative medical examinations, provision of uniforms, etc.), whether the trade union organization has a right to participate in decisions on the use of the fund, whether the use of the fund in the form of personal accounts has been agreed,

- 4) Selected aspects of occupational health and safety,
- 5) Co-operation between parties (whether there are details on the provision of financial information, whether trade union membership fees are deducted from wages, whether the employer pays insurance premiums for long-term trade union officials, etc.).

⁷⁴ In our opinion, a shortcoming of these information systems is that they cannot capture important unique and specific undertakings in the spectrum of commitments negotiated in HLCAs, e.g., innovative arrangements, inventive and atypical constructions, etc. It is precisely such unique elements in HLCAs which may signal new practical needs (departures from the present legislation), and monitoring them may prove important e.g. for labour law legislation.

⁷⁵ Alongside CCAs and other sources, HLCAs in the electronics industry have become the subject of research, organized by the Research Institute for Labour and Social Affairs, on corporate social policy and collective bargaining in that sector. That project, using case studies to verify inter alia the option of using collective agreements for analysing the formation of working conditions, has not yet been completed.

⁷⁶ The Czech electrical industries have undergone successful restructuring, and in recent years in particular have expanded rapidly due to extensive foreign investments. At present these industries use advanced technologies, producing competitive products exported to western markets and is generally regarded - along with the automobile industry - as one of the leading factors behind the economic growth in the Czech Republic.

6 years from the previous extensive revision of the Labour Code in 1994. The HLCA for the year 2000 was in force for one year. All of the HLCAs for the electronics sector were valid for one year, other than in 1995, when, in connection with the recent revision of the Labour Code, the HLCA was concluded with effect from the beginning of April. The HLCA for the year 2000 was not extended, although both partners had considered that option, and the text of the HLCA anticipated its extension. It applies to the employers listed in the appendix to the collective agreement –16 companies in total. In terms of the number of companies - ELA members - covered by an HLCA in the second half of the nineties, the 1998 HLCA had the greatest scope, covering 21 employers. In contrast, the 1997 HLCA only applied to 13 employers. Only the 1995 HLCA was valid for all ELA members. The HLCA for the year 2000 has 8 sections, with 63 paragraphs and two appendices. The HLCA structure, i.e. the number and order of the sections and the majority of the articles, have changed little since 1995. The total number of paragraphs was lower, however, in line with the objectives of economy and rationality. The “copying” of laws, i.e. the transcription of passages from legal regulations, has gradually been abandoned. That trend culminated in the HLCA for 2001/2, which has only 50 paragraphs. The appendices consist of the aforementioned list of employers covered by the HLCA and a scale of minimum wage tariffs. The interpretation of certain HLCA provisions and definitions of selected terms (e.g. “joint decision-making” by trade unions, or specification of conditions for the participation of trade union organizations’ members and officials in trade union training courses), which is not a part of HLCA, is of a traditional nature (and having a gradually growing extent). Those sections of the HLCA that changed the least were mainly the regulations on avoiding disputes, e.g. arrangements for the interpretation of the HLCA and the procedure in the event of failure to fulfil commitments, and the closing provisions of the HLCA. The HLCA for the year 2000 included a list of the obligations imposed on parties to CCAs⁷⁷ - on the contrary, the HLCA for 2001 (in view of the intended extension of its scope of application) accommodated a demand put forward by MLSA and no longer includes these cases of the so-called contractual obligation. The core of the HLCA consists of the following:

- A section stipulating collective rights and duties, e.g. co-operation between the parties, undertakings to secure the work of trade union organizations, employment commitments made by employers, etc. The majority of these arrangements have undergone material and formal evolution over the years; the paragraph changed most often is that containing the duties taken on by the trade union organization. The option of negotiating changes to the HLCA is also anticipated. Overall, this section focuses mainly on acquiring guarantees of the organizational and material arrangements for legitimate trade union activities, and there is a clear attempt to anticipate efforts by employers to restrict trade union activity in their companies, and to prevent them from doing so.
- The section devoted to remuneration is the most extensive. The majority of arrangements (with the exception of the HLCA for 2001) are relatively stable. New arrangements included the need for wages to be agreed in writing, primarily in employment contracts, and a specification of the superiority of collective agreements - for wage levels - over employment contracts. Defining pay rises is left to the CCAs (if that indicator is not agreed in the CCA, the HLCA stipulates the minimum annual increase to the average nominal wage). In this section, the HLCA also stipulates quarterly reviews of pay rises as the basis for evaluating actual developments in average nominal wages. The application of forms of wages is left entirely to the CCA. Agreement between employee and employer is a central aspect of the award of and changes to wage tariffs. The formulation of principles for applying non-tariff wages, other

⁷⁷ According to KOVO TU officials, a provision imposing within the HLCA certain obligations on the parties to a CCA was called for by the employers’ representatives. This applied to cases where no consensus was reached between the HLCA partners when discussing a particular matter.

than managers' salaries, is left to the CCA. Remuneration of senior managers is left out of collective bargaining. The HLCA expressly stipulates that CCAs may specify a wider range of wage benefits and supplements, and the benefits contained in the HLCA may be increased in the CCA (the HLCA has not used the option allowed for by the Collective Bargaining Act of stipulating maximum wages entitlements in the HLCA - the arrangements on wages in the HLCA have the function of minimum levels⁷⁸). It also stresses that such benefits may be replaced in the CCA with another form of wages.

- The section devoted to health and safety at work and the environment contains numerous, well-founded undertakings, clearly formulated and with a number of innovations (e.g. a system for training in occupational health and safety as part of risk prevention, the duty to inform on environmental aspects of an employer's activities, an annual written assessment of health and safety at work and the environment, including the duty to familiarise employees with the results, etc.).

- The HLCA arrangements in the social field include a provision proclaiming a preference for employment contracts for an unspecified period, arrangements for a longer break for food and relaxation, for one week's extra leave for all employees, provisions defining the terms and extent of entitlement to paid leave at the level of average earnings, etc. The section also features arrangements for employee training, but that is merely a specification of the cases when the employer should allow employees to improve their qualifications. Social care for employees is represented in the HLCA by provisions on health care for employees, company catering, compensation for relatives in the event of the death of an employee etc. The social arrangements as a whole are specific and, in view of the industrial character of the sector, are right to stress health care. Overall they are reasonably comprehensive; they specify financial entitlements and define minimum levels. A negative factor is their approach to partners' CCAs, obliging them to agree a number of commitments to make specific the entitlements defined in the HLCA.

In view of the CCAs in the electronics industry, the HLCAs negotiated by the partners in that sector (and in our opinion this is also true of many other HLCAs in other sectors) are archetypal in character, representing a starting point, a basic framework for certain subjects and their solution at company level; they set values for certain parameters etc. A comparison reveals that the influence of the HLCA is also apparent in some CCAs agreed between partners not covered by the HLCA. This fact indicates the potential importance that HLCA may acquire for defining common parameters for working conditions in certain sectors.

The significance of HLCAs in areas where they have not yet been fully appreciated is revealed by the undertakings in the majority of HLCAs to support the stability of labour relations and improve working conditions for citizens who are disadvantaged on the labour market.⁷⁹ That involves undertakings featuring measures setting more comprehensive labour law protection for unqualified people, women returning from maternity leave, school-leavers and university graduates, people over 50 years old, young people following the end of compulsory education who have not continued with any vocational training, handicapped citizens and citizens caring for children of up to 15 years of age, or for a severely handicapped family member requiring extraordinary care etc. In total, arrangements for those categories of

⁷⁸ It needs to be pointed out that no case has been reported of this possibility provided for by the law (Act 2/1991 Coll. on collective bargaining, paragraph 4c) being used by any of the HLCAs concluded since the said act came into effect.

⁷⁹ Cf. J. Hála, *Defined Categories from the Point of View of Trade Unions*, in: *The Role of Employment Policy in Motivating Employers to Employ Disadvantaged Persons on the Job Market*, survey report, RILSA, Prague 1999.

employees have contributed to creating an employment culture in the entire context of working conditions in the sector, and to the humanisation of labour in the Czech Republic.

3. Extending the binding force of higher-level collective agreements

According to Article 7 of Act no. 2/1991 Coll., on collective bargaining, MLSA⁸⁰ may stipulate in a legal regulation that a higher-level collective agreement is also binding for employers who are not members of the employers' organization that concluded the agreement. An HLCA may only be extended to employers with similar activities and economic and social conditions, and who are not committed to another HLCA. Those general principles are practically all the act has to say about extending HLCAs. There is no legal regulation stipulating detailed terms for extending HLCAs, including procedural aspects. The objectives, procedure, subject or participants of extension have only been made concrete by practice, accompanied since the act came into force in 1991 by discussions between the social partners,⁸¹ politicians and lawyers.⁸² Although the matter is a specialised one, it has also been of interest to the general public. The mass media has from time to time examined the issue of extending HLCAs.⁸³

The expert debate has gradually embraced not only all the elements in the system of extending HLCAs as defined by legislation, but also other factors directly resulting from the legislation. In this debate, material, political and legal standpoints have often contradicted one another. The highly controversial nature of the principles embodied in the institute of extending HLCAs, and in the actual extension process, which at one time influenced the concluding of the General Agreement, has yet to be overcome - despite the fact that the opinions of individual participants in the process of extending HLCAs have undergone considerable shifts in the context of the changing socio-economic situation and the growing experience in the given field of social dialogue.

The purpose or the function of this legislative provision itself has already come into doubt. In practice it is difficult to distinguish the purpose of the extension process itself from the criteria for selecting which entities an HLCA is to be made binding for. It is possible, for instance, to discuss⁸⁴ whether the factor of similar economic and social conditions that was used as one of the criteria for the extension of HLCAs is, instead, a goal that the institute of HLCA extension should help achieve in a particular sector. The criterion of "public interest"⁸⁵, too, which became a crucial factor for extending HLCAs under the procedure

⁸⁰ The legislation does not oblige MLSA to extend a specific HLCA. The crucial factor is the standpoint of MLSA and the Minister of Labour and Social Affairs. That was a particular feature between 1996 and 1998, in connection with the political conditions of the time. While 55 HLCAs were concluded in that period, none of them were extended to other employers (see the table). This may raise a hypothetical question of whether under present conditions it would be possible to enforce the extension of HLCAs in court. Far more realistic are talks with employers aimed at abolishing the MLSA decree on extension.

⁸¹ A commission set up on a parity basis, which works at MLSA as an advisory body to the Minister, negotiates extending HLCAs.

⁸² Present legislation does not feature the institute of "acceding to an HLCA". This accession has already been demanded by companies (rarely), but in practice the matter is usually resolved by negotiating an additional collective agreement.

⁸³ And in national newspapers, see e.g. "What to Do with Higher-level Collective Contracts?", *Hospodářské noviny* 16 April 1993, p. 8, or "Extending Collective Agreements in the Public Interest", *Práce* 19 January 1994, p. 9, or "Higher-level Collective Contracts Can Only Be Extended in the Public Interest", *Hospodářské noviny* 28 January 1994, p. 3, etc.

⁸⁴ This issue is still relevant today, as is clear from an interview with the representatives of the Confederation of Industry and Transport.

⁸⁵ Under the 1994 General Agreement, MLSA could only extend an HLCA to other employers for reasons of the public interest, i.e. in cases where employers with similar economic and social conditions offer their employees working, social and wage conditions (particularly wage levels, working hours, leave and conditions for

agreed between the social partners in 1994, could be understood as an objective of the entire process. In practice it proved too broad and vague, so the methodology used today no longer mentions it.

Interviews with the representatives of social partners represented in the RHSD commission for HLCA extension have indicated that there is a possibility that, in practice, a suitable opinion – suitable in our opinion – on the purpose of extension may be accepted. That purpose is “facilitating a relatively similar standard of labour law and wage conditions for groups of companies with similar activities for specific economic sectors” (Kalenská, *Právo a zaměstnání – a reference?*). After all, that involves the same principle adopted by RHSD in April 1998, according to which an HLCA is extended to eliminate the disadvantaged social situation of employees whose employers are not members of the employers’ organization which concluded the HLCA, and to eliminate the economically unequal position of employers who are members of the employers’ organization which concluded the HLCA compared to employers who are not members, as a consequence of which they have more favourable economic conditions for their enterprise.

The question of the subject of extension has also proved controversial - whether all or only a part of an HLCA should be extended.

MLSA’s power to assess the shortcomings of agreements concluded (which the state should rather eliminate using the judicature of its courts⁸⁶) is also problematic in legal terms. It is, however, impossible to imagine the process of extending HLCAs without MLSA checking the text of HLCAs for compliance with the law, and being able, where necessary, to demand that the parties to an agreement amend their HLCA. Today, the social partners generally accept that an HLCA must be fully in line with the law. The question remains, when an HLCA is proposed for extension, whether a certain degree of representation should be stipulated (i.e. the HLCA applies to a certain number of employees in the sector), so that the HLCA has the necessary authority.⁸⁷ It is also clear that it is much easier to extend HLCAs whose undertakings suit those employers who are the weakest in economic terms to other employers, and with lower risks of excessive severity⁸⁸ (that is however a tactical question for the parties to HLCAs).

The extension of HLCAs by means of sub-legislative norms is a problem area, which is related to the question of whether this imposes duties beyond the framework of the law. However, for reasons of time etc., it is in practice inconceivable that HLCAs would be extended in the standard way for legislation, by discussion in parliament. Equally, for reasons of time the discussion of companies’ comments on a proposed extension has also been abandoned. While that procedural simplification facilitated proceedings, it did not help make the process more democratic. It is, however, true that in talks with representatives of social partners, there have still been complaints about the slowness of the HLCA extension process.

All the problematic aspects mentioned, and perhaps others not mentioned, point to the central problem of the entire system, which is, in our opinion, the definition of the employers to whom an HLCA may be extended⁸⁹. The construction of the Collective

redundancy owing to organizational changes) at a substantially lower level than in the HLCA concluded by employers’ and trade union organizations in the department, sector or region in question.

⁸⁶ The standpoint of the Czech Academy of Science’s Institute of State and Law, *Právník* 1993.

⁸⁷ See e.g. B. Šubrt, What to Do with Higher-level Collective Contracts, *Hospodářské noviny* 16 April 1993, p.8.

⁸⁸ In discussions with some representatives of employers in the commission on the extension of HLCAs, the view was put forward that the extension of an HLCA is not just a matter of extending its authority to other employers, but also gradually cultivating employers’ attitudes to collective bargaining and social dialogue in general.

⁸⁹ The current methodology makes use of the principle of the multiple individual extension of HLCAs, replacing the unrealistic across-the-board extension previously demanded by trade unions (however, there have been cases that trade unions at company level were sometimes opposed to extending HLCAs, fearing that employers would

Bargaining Act causes problems here, as it does not recognise sector collective agreements as such. However, a consistent use of the sector-wide framework to define the scope of HLCAs is also problematic, since sectors are not reliably defined in the Czech Republic as a particular set of economic activities. Employers may modify their classification under the sectoral classification of economic activities (OKEC)⁹⁰ in connection with the scope of HLCAs. The Collective Bargaining Act does, however, admit the possibility of a number of employers - members of employers' organizations negotiating HLCA - remaining outside the process of HLCA extension, if they so desire. If an employers' organization's articles of association require authorisation from its members to negotiate and conclude an HLCA, those employers may avoid coming under the HLCA by failing to issue that authorisation, without having to leave the employers' organization.

The impact of extending HLCAs is undermined by inadequate controls on the implementation of HLCAs by those employers to whom they have been extended. The state lacks a mechanism to monitor the implementation of collective agreements in general and HLCAs in particular. In connection with state control of the implementation of collective agreements, it is of course always possible to query the purpose of such control. In our opinion it is necessary in view of the normative function of collective agreements, which future legislation should strengthen further in this country. We therefore believe that it would be ineffective to consider the issue of feedback on the implementation of HLCA by employers to whom they have been extended (i.e. an area where there is a clear need for state supervision) separately from the entire context of controlling the implementation of collective agreements.⁹¹

then be unwilling to negotiate CCAs with better terms for employees). That principle takes into account the employer's main activity in line with RHSD, and a certain minimum number of employees, stipulated individually for employers in the various sectors, below which an HLCA cannot be extended. Of course, that principle does not replace an assessment of the employer's individual socio-economic conditions.

The valid procedure and the terms agreed between MLSA and social partners for extending HLCAs are as follows (P. Michal, Sociální politika 2000):

- the parties to an HLCA submit to MLSA a list of the employers to whom they wish to extend the HLCA,
- extension may not be "across the board", i.e. for entire sectors, without specifying the individual employers,
- the basis must be the economic and social conditions of individual employers,
- employers must have the same main activities,
- an HLCA may not contain provisions which are contrary to the generally binding legal regulations,
- there is no distinction between employers on the grounds of whether or not a trade union organization operates in their companies.

⁹⁰ Although the OKEC classification can only be used as an (albeit essential) guideline in the whole process, many controversial issues arose in its application. For example, in October 2000 the HLCA Extension Commission dealt with the problem of whether the force of HLCAs should be extended to employers whose OKEC number does not correspond to any members of the given employer organization, although the same branch is concerned (no extension to such entities was recommended by the Commission). At the same time, the Commission had to make a decision on whether the extensions of force would only be based on the first two OKEC figures or on the figures which follow as well etc. During the same session of the Commission the representatives of the social partners came to an agreement that the contractual parties would compare the economic and social conditions of employers to which an HLCA is to be extended. Employers addressed by MLSA may object; their objections will be considered by the Commission. (a record from the Commission discussion).

⁹¹ Employment Offices (EO), which monitor employment in compliance with the labour law regulations, do not have the staff or know-how for the systematic supervision of the implementation of collective agreements. So far, EOs have only taken on random controls of employers to whom HLCAs have been extended. In controls of companies, EOs should determine whether employers respond appropriately in collective bargaining to proposals by the trade union partner, provide information when requested etc. At present, the relevant authorities only learn of problems with collective bargaining in a company when the social partners (or just one of them) request an intermediary.

Extending the binding force of HLCAs is without doubt a crucial point in collective bargaining.⁹² Alongside political aspects that have a clear impact on the outcome of the HLCA extension process, there are naturally conflicting approaches by the social partners here. However, despite their controversial nature, in our opinion the results achieved in HLCA extension testify, at least in quantitative terms,⁹³ to the substantial overall capacity⁹⁴ of that process. That is true for most of the period monitored (i.e. with the exception of the 3-year period 1996-1998, during which no HLCAs were extended because of the unfavourable position of the Ministry) as shown in the table below, produced by MLSA. The general trend in the field is one of quantitative growth, at least in terms of the number of employers to whom HLCAs have been extended.⁹⁵ All of that, together with the indirect influence which the increasing application of that legal institution has had on the behaviour of certain

⁹² In that respect, and given the size and complexity of MLSA's agenda for extending HLCAs, the staffing for that agenda at the relevant division of the Ministry is not in our opinion adequate. MLSA also lacks the information required for that continually expanding agenda, i.e. accessible and independent information on the financial results and overall economic situation of companies to whom HLCAs are to be extended. It is evident that under those conditions the information possessed by those proposing that a given HLCA be extended becomes more significant. In that context, however, it is necessary to stress that the majority of participants in HLCA extension questioned, and not just MLSA, complain of a lack of information on companies with regard to extending HLCAs.

⁹³ Given the amount of knowledge and experience acquired by those involved in the extension process, and verified by many years of practice, it would in our opinion be possible to consider a comprehensive analysis of the issue, with a proposal for new legislation.

⁹⁴ Since 1999 there has been a sharp increase in requests to extend HLCAs. Representatives of social partners in the extension committee rate MLSA's approach positively and are satisfied with the effectiveness of the committee's work, including the consensus usually reached.

⁹⁵ On the other hand, a growing disproportion was reported between the approximately comparable number of HLCAs whose binding force had been extended (with the exception of the 1996 – 1998 period when no previously concluded HLCAs were extended) and the extremely high number of employers covered by that HLCA extension. We believe that extending HLCAs to an extent approaching sector-wide coverage places greater demands on the individual analytical assessment of the economic situation of employers to whom HLCA are extended.

Likewise, the differences in the number of employers to whom individual HLCAs have been extended also raise questions concerning the need for balance and commensurateness in the HLCA extension process. The fact that these numbers vary greatly is not satisfactorily explained by differences between sectors. To a certain extent this may also be the result of different approaches in applying the same methodology.

These disproportions in the quantitative parameters of the HLCA extension process in recent years may also reflect changes in the social partners' approach that have come about during the period of extending HLCAs. Until the mid-nineties, trade unions demanded extension and HLCAs were only extended to employers where there was no trade union organization, meaning that no company collective agreement could be negotiated in the company. Today, the social partners often put forward companies for the extension process which, as sometimes emerges subsequently, have concluded a sound CCA that lacks certain institutes, however (e.g. increased leave). In our opinion, this shows that it is essential not to allow quantitative aspects to dominate the HLCA extension process in conditions when the predominant political will is to strengthen the capacity for social dialogue by means of greater use of HLCAs.

The current methodology has also substantially reinforced the social partners' role in the preparatory phase of HLCA extension. The opinion of their committee representatives on the conditions particular companies find themselves in is decisive. In that respect, representatives of trade unions and employers are taking on a major burden of responsibility in selecting the organizations to be extended. A promising factor for the future is that the extension initiative has not come only from trade unions, but in some sectors from employers as well (even if the opposite may be the case during negotiations in the committee, according to opinions expressed in interviews with the social partners). The relevant specialist division of MLSA ensures the conditions for the work of the commission, communications with employers for whom extension has been proposed, and administrative matters concerning decisions on extension. MLSA representatives on the committee do not vote (as was formerly the case). Alongside tactical reasons, better knowledge among employers and trade union representatives of the specific conditions in individual companies also plays a role here.

participants in social dialogue at the sector level,⁹⁶ shows the significance of extending HLCAs, and its potential to enhance the capacity of social dialogue in general and at the sectoral level in particular.

⁹⁶ We have in mind information on cases where extending HLCAs has forced a change in the behaviour of certain employers' organizations that had rejected collective bargaining. It is necessary to take into account the successes achieved by collective bargaining in some sectors (e.g. construction), where almost the entire sector has been covered by a higher-level collective agreement.

Table 5 Higher-level collective agreements extended to other employers in accordance with Article 7 of Act no. 2/1991 Coll., 1991 – 2000

Year	Number of HLCA concluded	MLSA regulations concerning the extension of HLCAs	Number of HLCAs extended	Number of employers to whom HLCAs have been extended	Field of activity
1991		472/1991 Coll.	3	119	Metal industry, chemistry, mining industry
total 1991	25		3	119	
1992		405/1992 Coll.	1	279	Construction industry
		459/1992 Coll.	5	267	Chemicals, catering industry, textile, clothing, leather, transport, food services
		498/1992 Coll.	1	104	
total 1992	34		7	650	
1993		236/1993 Coll.	10	268	Chemicals, catering industry, transport, services, textile, clothing, leather, car industry, food, SPPMS*-metal, secondary raw materials construction
		256/1993 Coll.	4	12	Electro-energy metallurgy, iron SVDST***-metal
total 1993	30		14	280	
1994		188/1994 Coll.	3	22	Services, SPPMS, construction
		249/1994 Sb.	3	34	Transport, textile, clothing, leather, SPPMS
total 1994	33		6	56	
1995		4/1995 Coll.	1	7	Textile, clothing, leather
		211/1995 Coll.	2	3	SVDST, electro
		311/1995 Coll.	2	2	SVDST, transport
total 1995	31		5	12	
total 1996	23		0	0	
total 1997	17		0	0	
total 1998	15		0	0	
1999		140/1999 Coll.	2	8	SPPMS, metallurgy, iron
		208/1999 Coll.	2	11	SPPMS
		207/1999 Coll.	1	2	Water industry
		214/1999 Coll.	1	381	
		237/1999 Coll.	1	1877	Construction industry
total 1999	14		7	2279	
2000		34/2000 Coll.	1	7	Chemistry
		176/2000 Coll.	1	187	Textile, clothing, leather
		259/2000 Coll.	1	1831	Construction industry
		312/2000 Coll.	1	1	Glass and ceramics industry
		416/2000 Coll.	1	21	Water industry
total 2000	12		4	2047	
2001		238/2001 Coll.	1	749	Textile, clothing, leather
		300/2001 Coll.	1	2293	Construction industry
		303/2001 Coll.	2	312	Electro-industry metallurgy, iron

*SPPMS = Association of Industrial Companies of Moravia and Silesia

** SVDST = Association of Machinery Industry and Suppliers

Source: MLSA

E. The representation of employees' interests and collective bargaining at company level

1. Legislation on the representation of employees' interests in companies

1.1 Legislation on trade union pluralism

One of the starting points for social rights legislation at the beginning of the nineties was new legislation on the right of association (primarily Act no. 83/1990 Coll., and its revision under Act no. 300/1990 Coll.). The keystone for trade union pluralism in companies was Act no. 120/1990 Coll., governing certain relations between trade union organizations and employers. That act set out the regulations for partnership between trade union authorities operating alongside one another, or for new trade union organizations. If matters concerning all or a large number of employees are involved, the employer, where so required by the Labour Code, must discuss his measures with the relevant authorities of all organizations involved, or request their consent (provided he does not reach another agreement with them). If the authorities of all trade union organizations do not agree within 15 days of being requested whether they do or do not grant approval, the decisive standpoint is that of the trade union organization with the largest number of members at the employer's. If the issues involved concern an individual employee, the employer negotiates with the relevant authority of the trade union the employee is a member of. If the employee is not in a trade union, the employer negotiates with the relevant authority of the trade union organization which has the largest number of members at the employer's (provided the employee does not specify an alternative trade union organization).

Needless to say, it is more appropriate for collective bargaining to be conducted between just two partners. The law therefore stipulates that the authorities of trade union organizations acting in parallel at an employer's may only negotiate a collective agreement jointly and in unison, unless they and the employer agree on an alternative arrangement.

Act no. 120/1990 Coll. has not been entirely satisfactory in practice, based as it is on the principle of absolute trade union plurality, and its application has sometimes resulted in practical problems when negotiating collective agreements. First and foremost, the rules laid down by the act allow trade union organizations to be formed with an abnormally small number of members (a minimum of three). That can easily be abused and can hinder collective bargaining in a company. Collective bargaining may in practice be blocked if one of the trade union organizations operating with an employer obstructs agreement on a common approach for a particular, albeit only minor matter. That trade union organization may have by far the lowest number of members of all organizations operating at the employer's. In the context of the existing legislation, there is a view that the principle of trade unions' representatives⁹⁷ should be taken into account, preferably in a new Labour Code or a separate trade union law.⁹⁸

In the opposite view, i.e. from the perspective of the less numerous TU organizations and confederations, Act no. 120/1990 Coll. is highly valued and is perceived as a crucial for them to be able to assert their influence.

⁹⁷ E.g. Jakubka, *The Labour Code*, 1999.

⁹⁸ There also are other problems in the application of the legislation on trade union plurality, related to the concept of "the appropriate trade union authority" in Act no. 120/1990 Coll. According to the act, the appropriate trade union authority is that trade union authority operating at the employer's. A trade union authority operating at the employer's is primarily a trade union authority established at the employer's with the full knowledge of the employer. Another possible legal opinion is that it could also be a local trade union organization with one or more members who are employees of the employer in question, which would establish the authority of the trade union organization in question. One fundamental aspect of this is that there is no obligation to declare membership of trade unions.

1.2 Employees' councils and representatives for occupational health and safety at work

EC directives and the Council of Europe's European Social Charter oblige member and signatory states to ensure communication between employers and employees or their representatives in national legislation, regardless of differences in their degree of organization. In view of these international legal documents and in connection with declining trade union membership, a revision of the Labour Code has ensured communication between employers and employees by means of employees' councils and representatives for occupational health and safety for the cases defined by law. The introduction of these forms of social representation⁹⁹ has made it possible to conduct social dialogue in companies with over 25 employees where no trade union organizations operate.

Unlike trade union organizations, employees' councils and occupational health and safety representatives are not legal entities. Under the Labour Code, they are institutions, which, if there is no trade union organization at an employer's, facilitate the exchange of opinions and the dissemination of information. If a trade union organization operates at an employer's, neither an employees' council nor occupational health and safety representatives may be elected. If employees' council and occupational health and safety representatives¹⁰⁰ are operating at the employer's when a trade union organization is established there, their activities are terminated on the day the trade union organization furnishes the employer with proof that it has been established. The relevant body of the trade union organization then takes over all powers to act on behalf of employees. The relevant trade union organizations' authorities also negotiate on a substantially greater range of labour law relations, and remain employees' sole representatives for collective labour law relations. That legislation is the outcome of demands made by the social partners, primarily trade union representatives. It came into force at the beginning of 2001, so experience in that field remains limited.

2. The position of trade unions in labour law relations and changes to TU competencies in the 1990s

The amendment of the Labour Code by Act no. 3/1991¹⁰¹ Coll. abolished the monopoly of a single trade union organization and significantly revised the trade unions' powers in labour law relations. This particularly included the cancellation of a number of powers relating to joint corporate economic decision-making. These original powers were partially transformed into the collective bargaining regime.¹⁰²

⁹⁹ The Labour Code also covers the right of employees in companies operating in the EC to multinational information and negotiation.

¹⁰⁰ In line with EC law and the European Social Charter, the Labour Code stipulates that if no trade union organization operates at an employer's, or if no employees' council or occupational health and safety representatives have been elected, the employer is obliged to inform employees and negotiate directly with them.

¹⁰¹ Even before this, many powers that had belonged to the TUs and substituted the functions of public authorities were annulled (by the adoption of Acts nos. 180/1990 Coll. and 110/1990 Coll. TU organizations were disentitled to decide on health insurance benefits, to exercise a control over the administration of health insurance benefits funds, and to the right of selecting spa health care candidates). More information on the development of TU rights in the beginning of the transformation period can be found in, for example, *What the Trade Unions Have Done for Us*, Z.Pernes, Praha 1991, p. 8 - 58

¹⁰² Act no. 3/1991 Coll. primarily made the following changes to trade union authorities' powers:

- the abolition of employees' right to participate in the development, management and control of the work of the employer's organization, replaced by the employees' right to information on the work of the employer's organization and fundamental questions relating to its finances and expansion,
- the abolition of the obligation to negotiate with the relevant trade union authority on the appointment and dismissal of senior management,
- the abolition of trade union participation in the preparation, drafting and control of company plans and in analyses of manufacturing and financial activities,

Trade unions have not accepted the new legislation on their position without certain reservations.¹⁰³ Moreover, despite the revision, ambiguities remain in collective bargaining. The interpretation of a provision¹⁰⁴ defining the general area in which trade unions' powers can be applied in labour law relations has created difficulties. Strengthening the trade unions' statutory powers (e.g. "consultation" is changed into "joint decision-making") through collective agreements, - something that commonly happens - for both HLCAs and CCAs¹⁰⁵, is at odds with the existing legislation.¹⁰⁶ According to a rather widespread opinion among employers, the strict legal¹⁰⁷ formulation of trade unions' powers prevents those rights from being negotiated in a more flexible way based on the specific needs of the partners involved in collective bargaining.

3. Employees' opinion of trade unions

Opinions on trade unions at the company level are shown by sociological surveys. According to the results of sociological research, for example, since 1995 up to 37% (low figure compared to the ones below in the paragraph) of the employed public have had confidence in trade unions. According to some research projects, the level of confidence varies in line with whether those queried are talking about their own company trade union organization, the industry trade union, or higher trade union authorities. For example, according to research project IVVM-9704 in 1997, the greatest confidence was in company trade union organizations (76%), industry trade unions (71%) and lastly higher trade union authorities (62%).

The greater confidence in trade union organizations operating at company level corresponds to the fact that employees see collective agreements at company level as the most effective way of promoting their interests (46% of employees questioned), and not collective

-
- the abolition of negotiations on fundamental issues concerning the generation and distribution of profit, financial management, investment construction projects, technical development, measures to improve occupational health and safety and employee care,
 - the abolition of trade unions' role in improving employees' qualifications, including their participation in selecting employees for training courses,
 - the requirement for the consent of the relevant trade union authority for immediate dismissal or dismissal with notice has been replaced by a requirement for prior discussion; similarly, the requirement for trade unions' consent to transferring an employee to another function or workplace etc. has been changed to prior discussion.
 - plus a number of other significant changes and transformations of existing TU powers.

¹⁰³ Owing to a lack of interest among members, planned demonstrations in favour of preserving trade union participation in corporate management came to nothing. The official trade union standpoint today rejects responsibility for financial results, in addition to protecting members' interests. In practice, however, trade unions often try to extend their labour law powers, consisting in being kept informed and consulted and even joint decision-making. That is demonstrated by the considerable number of collective agreements concluded at the company as well as at sectoral levels.

¹⁰⁴ Article 18b paragraph 1 of the Labour Code: "Trade union authorities have the right to participate in labour law relations, including collective bargaining, under the terms stipulated by law."

¹⁰⁵ This concerns that part of collective agreements where, according to some legal opinions, it is assumed that those undertakings are not treated cogently by the labour law regulations and can be decided beyond the framework of the law.

¹⁰⁶ The MLSA Legislation Division is fundamentally opposed, among other things, to the interpretation that the existing legislation allows trade unions to extend their powers in labour law relations by means of collective agreements. Even the Association to Support Collective Bargaining, whose published opinions otherwise endorse the validity of the social partners' endeavour to negotiate greater TU participation in labour law relations, including joint decision making, does not consider agreements embracing such extended powers to be acceptable in the present generally applied labour law form. A contrary opinion is usually maintained by TUs.

¹⁰⁷ Not even the Association to Support Collective Bargaining (AKV), whose published standpoints have otherwise supported the justification of the social partners' need to negotiate additional participation by trade unions in labour law relations, including joint decision making, regards undertakings containing such extended powers to be inadmissible given present labour law legislation.

bargaining at sector level or agreements under the tripartite system (according to a 1998 research project entitled Changing Employment Relations).

Where respondents had to evaluate trade unions' real influence in companies, less than half of those questioned between 1994 and the year 2000 considered that influence to be great or partial (see the table below). Other research projects from the same time have confirmed that finding. For example, according to research project IVVM-9704 from April 1997, one in two respondents regarded trade unions authority in companies to be low. In 1999 research projects recorded an increase in the number of respondents convinced that trade unions can influence matters at the workplace.

T a b l e 6 Trade unions' influence at the workplace, 1994 - 1997 (in %)

	1994	1996	1997	1999	2000
Large	5.1	2.8	3.2	6.9	6.1
Partial	39.6	38.6	36.4	47.0	42.4
Subtotal	44.7	41.4	39.6	53.9	48.5
None	39.9	42.0	40.3	36.0	35.7
Don't know	15.5	16.6	20.1	9.6	15.8

Source: Kadavá, Ch.: The Position of the Trade Unions and their Tasks based on the Current Nature of Labour Relations. Pohledy 3/2001, IVVM primary data set 9904

In the past, trade unions in Eastern Europe were characterised by solidarity not only among co-workers, but also with the company management, the latter also being organized under trade unions, against the state as sole owner (Ishikawa, 1992). The results of a number of empirical surveys in the Czech Republic confirm that this has remained the case among employees. In 1998 a third of respondents (employees) agreed with the opinion that trade unions are supported most strongly by the company management itself (Changing Employment Relations, primary data set, 1998). Other data published reveals that public opinion of trade unions lags substantially behind the pace of their changing role in companies. According to these surveys, respondents' expectations are substantially out of line with the modern conception of trade unions' role in companies. The following table gives information on the present opinions of employees on priorities for trade union activities.

Table 7 Responses to the question: Which problems should be primarily addressed by trade unions? (in %)

ranking		%
1	Occupational safety	37.3
2	Relations in the company hierarchy	17.3
3	Redundancy	9.6
4	Problems facing pensioners	8.4
5	Assistance to the unemployed	5.0
6	Pay rises	4.6
7	The health care system	4.8
8	Discrimination at the workplace	4.0
9	Support for company efficiency	2.6
10	Finding work following redundancy	2.4
11	Retraining	1.6
12	Implementing rationalisation	1.5
13	Employees' reactions	0.4
14	Child care for employees	0.3
15	Sexual harassment	0.2

Source: Kadavá, Ch.: The Position of the Trade Unions and their Tasks based on the Current Nature of Labour Relations. Pohledy 3/2001

Those findings correspond to the results of other research projects. For example, respondents in 1999 quite understandably expect trade unions primarily to protect their interests; paradoxically the expectation that trade unions will bargain collectively with employers comes in last, even below organizing out-of-work activities (see the table below). That does not, of course, reflect the role of trade unions, but it is perhaps more of a subjective evaluation of the significance of company collective agreements in companies today.

Table 8 Responses to the question: What does the public expect from trade unions? (in %)

ranking		%
1	Defending workers' interests	54.8
2	Protection of workers	16.6
3	Defending trade unionists interests	8.9
4	Resolving workers' problems	6.4
5	Compliance with the Labour Code	5.7
6	Others	3.8
7	Spare time activities	1.9
8	Collective bargaining	1.9

Source: Primary data set IVVM 99

4. Company collective agreements

Collective bargaining aiming at concluding a CCA represents, in terms of its impact in the Czech situation, the most important form of social dialogue at company level, particularly in relation to its real influence upon the quality of working conditions. There are thousands of CCAs concluded within the aforementioned period; from this perspective, as well as in the light of the number of workers covered by these collective agreements, CCAs are prevalent over higher-level collective agreements. CCAs are also important thanks to their accessibility to users, and thus their direct impact in a specific company environment, as well as for their easier evaluation and control of the fulfilment of the obligations agreed.

The general accessibility of CCAs remains low overall. There are a number of negative factors at work here:

- There is no regulated duty to record CCAs (other than their storage by the relevant partners); CCAs are not monitored by the state, sectors, etc.
- Trade union organizations at companies are not usually in favour of making CCAs accessible outside their companies (other than to trade unions, but that does not hold across the board), sometimes because the employer has committed them to keep the information therein secret, sometimes because they are ashamed of the poor quality of their CCA, etc.
- Employers' organizations do not store CCAs and do not usually work with them,
- Trade unions and related associations do not store CCAs long-term and do not store all of them,
- There is no institution with a systematic interest in CCAs in their entirety, i.e. without regard to the trade union provenance of the trade union authorities that negotiated them.

The only exception is the aforementioned surveys commissioned by MLSA, which only deal with the available, partial CCA files (primarily featuring CCAs concluded by trade union authorities under trade unions belonging to ČMKOS).

Comprehensive data¹⁰⁸ on the extent of collective bargaining at company level is only available to the largest trade union confederation, ČMKOS.¹⁰⁹ It emerges from the table passed on by ČMKOS that the number of employers where a trade union organization operates and the number of company collective agreements concluded have fallen each year.¹¹⁰ An exception was 1995, when there was a slight increase in the number of employers and a significant rise in the number of company collective agreements concluded. A similar situation was recorded in 1999 and 2000 for a sub-group of employers with full or partial foreign ownership. With small deviations, particularly in 1999, the same trend applied to the total number of employees covered by CCAs.

More favourable results - in terms of the extent of collective bargaining at company level - were recorded for small (up to 50 employees) and medium-sized (51 - 100 employees) companies. There was a sharp increase in the number of CCAs in those two sub-groups in 1999 and 2000, which was particularly due to the large increase in the number of employers in those size categories.

Developments in the most important part of collective bargaining, wage remuneration, are alarming. It emerges from ČMKOS data that the number of employees paid

¹⁰⁸ Besides ČMKOS, for which there is detailed data available, the approximate number of CCAs concluded is known for e.g. OSPZV-ASO, which concludes most CCAs within ASO (according to ASO Secretary, there are some 800 CCAs concluded yearly); for KUK, the number of CCAs being roughly 100 (information given by KUK President within the commenting process on this study). The KOK estimate is that some 40 member organizations are engaged in collective bargaining, the situation being similar for OSCMS (estimates by representatives of the mentioned TU confederations again within the commenting process). Of course, this is not a comprehensive picture of the CCAs concluded in the Czech Republic.

¹⁰⁹ We take the data on CCAs from the "Report on Collective Bargaining at Company Level in 2001", which summarises the results of a ČMKOS survey of wage and working conditions agreed in CCA for 2001. The document was produced for the purposes of that trade union confederation, member trade unions and trade union organizations, and is not ordinarily available to the public. ČMKOS has carried out similar extensive research in co-operation with its member trade unions every year since 1994 (data are always for 31 August of the year in question). Owing to their structure, scope and quality, these analytical materials, together with outputs from the aforementioned ISWC system, are a unique source of information on CCAs, for which there are no other central recording mechanisms or data files of a comparable significance.

¹¹⁰ Part of that decline - involving approximately 650 CCAs - is due to certain trade unions terminating their membership of ČMKOS.

on the basis of collective agreements is falling more rapidly than the other basic parameters for collective agreements in the corporate sector.

A criterion of the success of trade unions' work is the number of trade union organizations that have managed to conclude CCAs. In the context of a long-term decline in collective bargaining at companies, it is positive that the proportion of trade union organizations that have concluded CCAs is falling more slowly than the decline in the number of trade union organizations operating at companies (as revealed by ČMKOS data in the table 9).

The general reasons for not concluding CCAs given by the said ČMKOS report (and endorsed by several other TU confederations), traditionally include the following:

- the passivity and ineffectiveness of certain trade union organizations,
- the unwillingness of certain employers to enter collective bargaining, or to conclude excessive commitments in view of their company's financial situation,
- agreements between trade unions and employers not to conclude CCAs when an HLCA guarantee employees better terms than the trade union organization would be able to negotiate at company level,
- cases where collective bargaining is eliminated by the employer providing above-average benefits, etc.

In comparison with HLCAs, CCAs are more individual in nature and more differences can be found between their content, given their much larger number and primarily their more specific focus. In many companies there is the opinion that a collective agreement is a kind of calling card for the trade unions and their officials, the owners, management, the company as such, or even the employees themselves. Corporate management (primarily in larger companies) often regards the collective agreement as a management tool, and its issuing to be the adoption of a management act. That is due in part to the long tradition of collective bargaining in companies, which - especially in older companies - has been maintained despite personnel, organizational and ownership changes.

In spite of the above, it is necessary to note that the overall architecture and content of CCAs have many shared elements. All the available information to date has indicated that despite considerable differences in the length of text, the topics covered, the structure and formulation of undertakings and the quality of the undertakings adopted, CCAs have many identical features, and can therefore - with a certain degree of generalisation - be monitored together. That is primarily a consequence of the fact that as - unlike HLCAs - the content structure of CCAs is not legally defined, the authors of these far more specific collective agreements are compelled, when formulating the labour law entitlements contained in CCAs, to "weave" to a greater degree between the cogent provisions of the generally binding labour law regulations. Unifying influences can also be ascribed to the integratory role of HLCAs. Extensive information work by trade unions, which always publish specimen CCA texts along with instructions and general data on forecast economic, financial and wage parameters before the start of the collective bargaining season, also has an impact on eliminating differences between CCAs in a given sector. In view of those and other unifying factors, reasonable doubt can in our opinion be cast on the thesis that CCAs fully reflect, for example, the modern history of a company and could be a true guide to developments in social conditions for the company's employees.

The revision of labour law regulations in force since 2001 has extended the options for the content of collective agreements.¹¹¹ Non-wage labour law entitlements include increasing redundancy pay by additional multiples of average earnings; the option of increasing compensation in stoppages over 80% of average earnings; or compensation for

¹¹¹ Cf. B. Šubrt, Consequences of the Changes to Labour Legislation on the Content of Collective Agreements and a Criticism of Certain Opinions, *Práce a mzda* nos. 9-10/2000.

interruptions to work due to poor weather conditions over 60% of average earnings etc. Regarding working hours, a period can be specified over which working hours will be unequally spread; reducing the extent of standby availability for work at the workplace to less than 400 hours a year and stipulating the extent of standby availability for work outside the workplace; reducing the amount of overtime an employee can be instructed to work below the level specified in the Labour Code etc. In wages, it is possible to determine a higher minimum wage than that stipulated by the relevant government regulation; and to agree higher bonuses than those stipulated by the legal regulation for night work and work in environments detrimental to health (CCA may not, however, define the conditions under which those bonuses are awarded - these are stipulated by the relevant government regulation). There is greater room for collective bargaining concerning salaries, health and safety at work, and relations between social partners.

Output data from ISWC is crucial for the purposes of monitoring the content of CCA with the help of a broad representative sample¹¹². For CCA, this system includes the following aspects, distinguishing between the business sector, public services and administration, and municipalities and regions:¹¹³

- minimum wage and monthly wage tariffs,
- monthly wage tariffs in alternatives to 12-tier rate systems,
- minimum wage and hourly wage tariffs, in 12-tier and other rate systems,
- wage bonuses
- remuneration for standby availability for work and compensation,
- average compensation for stoppages and interruptions to work due to poor weather conditions,
- remuneration for work jubilees,
- remuneration for birthdays,
- number of organizations and their share of the total number of CCAs in the set in whose collective agreements remuneration has been agreed by collective agreement, internal wage regulation, individual agreement or a combination of the three,
- number of organizations and their share of the total number of CCAs in the set in whose collective agreements the use of wage forms has been agreed, divided into time wages piece wages, proportion wages or a combination of the three,
- number of organizations and their share of the total number of CCAs in the set in whose collective agreements is agreed the classification of work activities under functions, professions and wage levels, using a uniform catalogue, or a trade union catalogue, or a company catalogue; the number of CCAs of which the company catalogue comprises a part (in an appendix),
- the number of CCAs where the provision of 13th, 14th and 15th monthly salaries has been agreed (also designated allowances for leave, Christmas, etc.),
- the use of other wage components (remuneration from the manager's fund, performance bonuses, premiums, etc.),
- agreement on the work of parity committees,
- average overtime included in wages,
- wage rises agreed in CCAs by increasing wage tariffs by a fixed amount or a percentage, increasing the total volume of wages, the average nominal wage by a fixed amount or a

¹¹² In 2001 this involved a sample of 1 473 CCAs concluded by trade union authorities under 27 trade unions in the Czech Republic. The sample includes CCAs concluded by trade union authorities under trade unions which are not ČMKOS members.

¹¹³ On the basis of an enumeration of the quantitative aspects of the ISWC survey we believe that it is possible to get an idea of the content of CCAs. We do not consider it appropriate to use a case study for CCAs, as we did for HLCAs.

percentage, increasing the average real wage, maintaining the average real wage, a combination of the preceding,

- wage rises agreed depending on economic indicators,
- labour law entitlements agreed,
- creation of a social fund, including the method for its creation and its magnitude, and the use of the fund,
- the employer's role in health care for employees, pension insurance, contributions to life insurance, accident insurance, transport to work, and convalescence, reconditioning or rehabilitation,
- other benefits provided to employees (lending building machinery, tools and instruments, selling company goods at lower prices, etc.),
- measures promoting occupational health and safety,
- measures concerning co-operation between the parties: the provision of economic information by the employer, the collection of members' trade union contributions by deductions from wages, the employer paying health insurance and social security for long-term officials, etc.

Some aspects of CCAs are usually regarded negatively by experts, e.g. the disproportionate breadth of issues covered, which either means that some parts cannot be covered in sufficient detail, or makes the collective agreements difficult to use. There is also a wide range of shortcomings in legal terms, and many arrangements are general in nature, or mere proclamations. The formal and material aspects of CCAs are often rigid and conservative - partners who have found satisfactory solutions to certain issues do not want to change them. Some shortcomings in CCAs (a result of the low level of attention some employers devote to them) reflect the fact that motivational management is in its infancy in the Czech Republic and competition for good employees is not particularly intense. The absence of participatory elements in Czech management is also a disadvantage for the quality of CCAs. The range of opportunities and benefits provided by the employer for staff training is traditionally very poor - undertakings in CCAs rarely go beyond proclamations and generalisations. The trade unions are now considering the possible advantages for collective bargaining of using professional trade union negotiators, and making trade union participation in collective bargaining at the company level more professional.

Table 9 Data on the extent of collective bargaining at company level under ČMKOS, 1994 – 2001

	1994	1995	1996	1997	1998	1999	2000	2001	Changes (%) 2001/1994
Number of employers where trade union organizations operate	12 895	13 178	12 371	11 380	10 499	9 561	9 307	8 708	67.53
Number of employers with up to 50 employees where trade union organizations operate	x	x	x	x	x	970	1171	877	
Number of CCAs concluded by those employers	x	x	x	x	x	730	912	626	
Of which: number of CCAs containing provisions on wages, either directly or in an appendix	x	x	x	x	x	598	726	555	
Number of employers with 51 - 100 employees where trade union organizations operate	x	x	x	x	x	683	853	763	
Number of CCAs concluded by those employers	x	x	x	x	x	540	641	536	
Of which: number of CCAs containing provisions on wages, either directly or in an appendix	x	x	x	x	x	419	510	449	
Total number of employees at employers where trade union organizations operate	2 409 869	2 161 437	1 885 666	1 736 918	1 430 381	1 431 411	1 371 277	1 446 407	60.02
Of which: number of trade union members at employers where trade union organizations operate	1 954 264	1 818 794	1 524 201	1 375 135	1 053 462	920 343	838 188	761 382	38.96
Number of collective agreements concluded by employers where trade union organizations operate	5 506	8 888	6 299	5 332	4 971	4 698	4 339	4 205	76.37
Of which: number of collective agreements containing provisions on wages, either directly or in an appendix	3 787	3 541	3 607	2 936	2 868	2 695	2 433	2 631	69.47
Total number of employees covered by CCAs	1 883 318	2 044 667	1 884 296	1 709 773	1 412 017	1 418 544	1 379 333	1 038 772	55.16
Total number of trade union members whose wages are provided on the basis of collective agreements	1 790 535	1 547 612	1 435 176	1 266 234	949 630	945 066	928 587	828 337	46.26
Number of employers where trade union organizations operate, fully or partially foreign owned	x	x	x	x	x	307	484	456	
Number of CCAs concluded by those employers	x	x	x	x	x	224	353	382	
Of which: number of CCAs containing provisions on wages, either directly or in an appendix	x	x	x	x	x	211	336	353	
Number of trade union authorities empowered to conclude collective agreements	n/a	6 565	8 423	7 512	6 561	5 203	5 016	4 730	2001/1995 72.05
Of which: number of trade union authorities which did not conclude company collective agreements	n/a	1 150	1 749	1 309	1 318	927	1 122	1 010	2001/1995 87.83

Source: Report on the Outcomes of Collective Bargaining at the Company Level in 2001, ČMKOS, 2001

Note: the data given only refers to those ČMKOS trade unions that were involved in the ČMKOS survey in the relevant years

F. Social dialogue in the regions

1. The role of ČMKOS and trade unions in social dialogue in the regions in 1992 - 1997

The importance of social dialogue, which makes it possible to perform civic activities and to ensure a high level of participation in them, can be seen especially at the regional level where decision-making powers are intertwined with concrete activities and interests. As far as trade unions are concerned, their interest in social dialogue at the regional level has two interconnected aspects. However, their importance for the work and activities of trade unions and their confederations, as well as for basic trade union organizations and their officials, differs. It is a question both of internal trade union policy, i.e. of their internal structure and links between their leadership and apparatus, and of the external presentation of trade unions, i.e. trade union activities within the region and participation in regional development. The scope of trade union activities at the regional level is influenced by both regional and central organizational system of trade unions and by the willingness of social partners to be involved in social dialogue.

At the regional level, the ČMKOS, other TU confederations¹¹⁴ and the individual trade unions deal with the issue of their internal structure and representation. They are also involved in providing their own members, organizations and to a lesser extent to individual workers with the necessary service.

Trade union advice centres (referred to as “POSOS”) established in the regions (there were 65 of these centres up to 1994) provided primarily legal aid and service. With steadily growing costs and decreasing income from membership fees, financing the centres has gradually become a problem. Also, there have been disputes between individual trade unions over financial support for joint institutions. That was one reason that in 1994 a concept of ČMKOS regional legal counselling service (referred to as “RPP”), with 22 permanent centres and 60 “mobile” units, was established. In 1997, this relatively large network was for economic reasons reduced to 15 permanent centres (corresponding to the expected arrangement of the regional administration system) and 40 mobile units.

Since 1991, besides the service centres, different regional (and local) associations have been established by decision of the trade union organizations active in a given region, also on a voluntary participation principle. In some cases, these regional associations were active at a district level, some performed their activities in cities, city districts and, in some instances, their activities covered larger areas, such as several districts of larger territories. Some of these regional associations have adopted the name of regional chambers of trade unions (RKOS) in accordance with a ČMKOS decision of September 1991; some of them have issued their own statutes. At the beginning of 1994, a total of 14 regional associations existed, performing a wide range of activities with to varying standards. The following are the associations existing at that time (if no location is given in parentheses, activities at district level are assumed):

1. Association of Trade Unions of North Bohemian Region and the Sokolov Region (operating in the following districts: Most, Teplice, Louny, Chomutov, Sokolov, Děčín and, evidently, Litoměřice);
2. Free Association of Basic Trade Union Organizations of the Ústí nad Labem Region (Ústí nad Labem district);
3. Regional Chamber of Trade Unions in the Plzeň Region (Plzeň-city and its immediate vicinity);
4. Voluntary Association of Basic Trade Union Organizations of the Pardubice Region;

¹¹⁴ For example, according to the aforementioned written statement by ASO Secretary made within the comments process on this study, ASO representatives are at present joining, in cooperation with ČMKOS representatives, regional tripartite councils.

5. Regional Trade Union Association of Prostějov (with the surrounding area);
6. Beroun Trade Union Co-ordination Centre;
7. Regional Chamber of Trade Unions of the City of Brno and its Surroundings (Brno-city and the surrounding area);
8. Regional Chamber of Trade Unions in North Moravia (Frýdek-Místek, Karviná and Ostrava districts);
9. Bruntál Co-ordination Centre of Basic Organizations;
10. Regional Chamber of Trade Unionists of the Jindřichův Hradec Area (Jindřichův Hradec and the surrounding area);
11. Association of Trade Union Representatives of South Moravia (districts of Hodonín and Břeclav);
12. Regional Chamber of Trade Unions in Liberec;
13. Regional Chamber of Basic Organizations of the Příbram Area;
14. Association of Trade Unions of the Opava Area;
15. Regional Chamber of Trade Unions of the Kladno and Rakovník Districts;
16. Regional Chamber of Trade Unions of the Zlín Area.

Analysis of the activities of these associations in terms of social dialogue makes it possible to divide these activities into three groups:

- Co-operation at the level of the Economic and Social Council of the given region established by government resolution, where it constitutes one of the chambers of the respective Council (the trade union chamber). This is mainly the case in the basin regions of North Bohemia (the associations listed in nos. 1 and 2 participated) and of North Moravia (the associations in no. 8 participated). In these regions, social dialogue has been developed most fully and a large number of institutions have participated in it.
- Relatively systematic participation of trade union representatives in the co-operation of social partners in the region, taking the form of “local regional tripartite” – Hodonín (see association no. 11), Bruntál (no. 9), Jindřichův Hradec (no. 10) and Brno (no. 7).
- Occasional negotiations according to individual needs of social partners (nos. 3, 4, 5, 6, 12, 13, 14, 15, 16).

At the beginning of 1998, there were 21 regional trade union chambers (association no. 6 established in 1994 – Beroun – is being dissolved, probably due to the reduction of trade union members; on the other hand, 6 new RKOS are being established; and some associations are being reorganized). The associations have been registered by ČMKOS under the name of RKOS. Representation at the level of a district or several districts is assumed (for the following associations, activities performed in more than one districts are given in parentheses):

- 1) RKOS of the Příbram district,
- 2) RKOS of the Liberec district,
- 3) RKOS of the Jindřichův Hradec district,
- 4) RKOS of the Hodonín district (originally viz. the association in no.11),
- 5) RKOS of the Břeclav district (originally viz. also the association in no.11),
- 6) RKOS of the Šumperk district,
- 7) RKOS of the Bruntál district,
- 8) RKOS of the Opava district,
- 9) RKOS of the Přerov district,
- 10) RKOS of the Prostějov district,
- 11) RKOS of the Zlín district,
- 12) RKOS of the Olomouc district,

- 13) RKOS of the Brno city and surroundings (activities performed in the Brno-city and Brno-village),
- 14) RKOS of the Kladno and Rakovník districts (both districts),
- 15) RKOS of the Šumava area (districts of Domažlice and Klatovy),
- 16) RKOS of the Karlovy Vary region (districts of Cheb, Sokolov, Karlovy Vary),
- 17) RKOS of the Northern Moravia, (districts of Ostrava, Karviná, Frýdek-Místek, Nový Jičín),
- 18) RKOS Labe (districts of Ústí nad Labem, Litoměřice and Děčín, Most, Chomutov and Louny. Conversely, around 1998 the Economic Councils in the entire North Bohemian basin region became much more active, with the Most district becoming the centre of activity in the basin region. At the same time, trade unions are participating more in dealing with the problems in the industrially contracting regions both at the central and regional levels),
- 19) RKOS of the Plzeň area (districts of Plzeň-city, Plzeň-South, Plzeň-North, Rokycany, Tachov),
- 20) RKOS based in České Budějovice (districts of České Budějovice, Český Krumlov, Prachatic, Strakonice, Písek, Tábor, Pelhřimov),
- 21) RKOS East (districts of Semily, Jičín, Hradec Králové, Pardubice, Chrudim, Havlíčkův Brod, Trutnov, Náchod, Rychnov nad Kněžnou, Ústí nad Orlicí, and Svitavy).

In the materials submitted to the 2nd ČMKOS Congress, held in 1998, the following features were positively evaluated:

- Co-operation with regional legal advice centres, with employment offices, with the Association for the Protection of Tenants, economic councils, regional economic and social development councils, regional mass media, trade union educational and training centres,
- Participation of regional chambers in tackling regional ecological problems, issues related to the public transport system, health care and education,
- The role of regional chambers in co-ordinating the activities of member trade unions.

Exchanges of information on basic organizations, the support given to the activities of the Confederation headquarters, and co-operation with foreign trade unions mainly in border regions were also evaluated positively. The following associations were named as the most efficient ones: RKOS of the Plzeň area, of the North Moravian region, of the Brno area, RKOS based in České Budějovice and RKOS of the Karlovy Vary region, as well as RKOS of the Olomouc and Zlín districts. Regional councils performing less well were those of the Kladno, Šumperk, Prostějov, Přerov, Hodonín, Opava, Bruntál and Jindřichův Hradec districts.

Due to the fact that higher territorial self-governing units and later 14 self-governing regions have been established in the Czech Republic, the ČMKOS congress decided to terminate the activities of these regional chambers (RKOS). In order to enable social dialogue with locally relevant and competent partners, the congress suggested that they should be reorganized and 14 Regional Trade Union Councils (RROS) should be founded, corresponding to the newly established territorial self-governing units. This reorganization process was brought to an end 1999.

Since their establishment in 1990, some strong trade unions have established their own network of centres. These are partly regional centres, partly centres in those areas where companies employing the members of their trade unions are located. In some cases, these regional centres did not only serve the relevant confederations in the region, they also became organizational centres of basic organizations of the given trade unions in the region. However,

the fall in the number of trade union members led to a later reduction of the network or, in some cases, to its replacement by trade union advice centres.

The most pronounced organizational structure for grass-roots membership in the regions, combining the principle of all-union and regional representation, has been maintained by the KOVO Trade Union. Basic organizations are grouped into what are called mandate districts (MD) defined by their number of members and by their location. The MD Council, composed of the metalworkers trade union representatives, elects an MD representative who automatically becomes a member of the Council of the KOVO Trade Union. Based on the proposal by the MD, the central Council establishes an Association of Mandate Districts (AMD) preparing and implementing the union's program objectives at the regional level. Organizational service for the AMD is provided by the KOVO Trade Union's methodological centres. At the AMD conference, representatives of the AMD are elected who automatically become members of the presidium of the entire trade union. Thus, the trade union not only provides for the needs of its central representation but also for the needs of its membership in the regions, as well as for service and inputs into regional politics. Although the KOVO Trade Union is by far the largest trade union in the Czech Republic, also in this case the fall in its membership is making it difficult to maintain such a complex internal structure.

2. Current organizational conditions of social dialogue and its development in the regions

The current state of trade union organization at the regional level is as follows. Regional councils of trade unions coming under ČMKOS, have been established in all the new regions (practically all RROS were established by the end of 1999, so they have two years of experience by now). They are authorized to negotiate with the relevant regional bodies and self-governing bodies, as well as with regional employers' organizations and other regional representative bodies, including political parties. They may conclude binding agreements with social partners and state bodies, as well as with self-governing bodies at the regional level (they are obligated to inform the ČMKOS Council about the outcome of these negotiations)¹¹⁵. This regional council (RROS) is entitled to represent Confederation members (i.e. member trade unions) in common bodies together with social partners, state bodies, and self-governing bodies at the regional level (which is the precondition for establishing a regional tripartite system). At the regional level, they are also entitled to represent Confederation members at international negotiations, or to conclude agreements at this level (this mostly concerns cross-border co-operation between neighbouring regions).

In four regions (and to some degree in a fifth as well), tripartite bodies have been established in the form of Economic and Social Councils. This is true for the city of Ostrava (North Moravian Region), Olomouc and Brno where an agreement is about to be signed. The situation in the North Bohemian Region is specific: here the trade unions are social partners of Economic and Social Councils (ESC) established in all districts of the basin area across the border of the newly established region of Ústí nad Labem (ESC of the Most, Sokolov, Chomutov, Teplice, Ústí and Louny districts).

In most of the districts trade unions have been represented (to varying effect) in the counselling units of employment offices.

The structure of service and advice centres – today's Regional Legal Advice Service of ČMKOS – is adapted to suit the RROS structure. Approximately 18 trade unions (i.e. from 15 trade unions in the Zlín region to 21 a total trade unions in the Brno region) always participate in the RROS activities. Larger trade unions from the manufacturing sphere usually have large local centres which they want to keep, at the very least, in those regions with the

¹¹⁵ This is not collective bargaining but agreements on mutual co-operation, activities etc.

majority of their trade union organizations (the number of these centres lies in the range between 1 to 12 for individual trade unions).

The KOVO trade union, whose mandate district structure has 14 regional service centres in line with the new regional administration system, possesses the most professional staff. The STAVBA trade union has a specific position in this respect. In addition to 5 area centres it has 20 “regional centres”. Miners have their own organization made up of individual representations of the region, with central bodies having co-ordinating and umbrella functions. In the area of services and budgetary organizations (“ROPO”), regional centres have been established by the trade unions of commerce (10), health care (3), restaurants (8), post offices and telecommunications (7). Regional centres have also been established by the UNIOS trade union and the Trade Union of Civic Associations. The trade union of workers in education has established district councils in all the districts of the Czech Republic. These councils are legal entities and the idea of their adaptation to the newly established territorial administration system is being considered.

Besides the ČMKOS-associated TUs there are also other TU confederations engaged in the development of social dialogue, be it trade unions such as OSPZV – ASO, which has developed an extensive organizational regional structure for this, or KUK, which is taking part in the regional South-Moravian tripartite body and, in the case of North Moravian and North Bohemian tripartite bodies, contributed comments to recovery programmes aimed at restructuring the industrial structure of these regions.¹¹⁶

3. The focus of regional trade unions’ activities

The ČMKOS statutes, Article 25, define the activities of regional trade union representations. Their activities should be focused on the preparation and implementation of employment policy programs, development of public services (mainly public transport availability) and on the support of ČMKOS activities and trade union training programs.

In fact, trade union representations in individual regions have far larger aspirations – they would like to participate in tackling all the issues of their respective regions in the long run with the aim of creating and maintaining new jobs. This is true especially in the case of those regions where Economic and Social Councils have been established. Firstly, social dialogue at the regional level, as has been mentioned before, has certain traditions and results and, secondly, there is a real possibility of obtaining financial support from a number of sources, which makes the implementation of individual adopted projects more feasible. Trade unionists from regional centres become in some cases initiators of all-regional activities (e.g. RROS Plzeň in the issues related to employment). The above-mentioned conclusions are supported also by international co-operation based on the Euroregions program.

4. Preconditions for further development of regional social dialogue

Analysis of regional activities over the past 10 years shows that the following are fundamental preconditions for regional social dialogue:

- Sufficient number of professional activists,
- Existence of institutions to take part in the dialogue,
- Willingness to negotiate at the given level,
- Feasible objectives.

Social dialogue understandably includes negotiations related to conflict issues and efforts to find acceptable solutions by the social partners. The extensive future agenda is also reflected in this aspect. The institutions participating in dialogue are usually Economic and

¹¹⁶ Data acquired within the commenting process on this study

Social Councils¹¹⁷, although negotiations may be held at the level of regional administration and self-government.

The information confirming that Regional Employers' and Entrepreneurs' Councils have been established in nearly all regions is rather encouraging. Both KZPS and the Confederation of Industry and Trade initiated their formation; both employers' federations have representatives in them, along with representatives of other institutions in some of the regions (e.g. in the Brno region, the Regional Employers' and Entrepreneurs' Council also includes Economic Chamber representatives).¹¹⁸ However, experiences in the sphere of collective bargaining give rise to doubts as to the extent to which these bodies are representative and to which their conclusions are binding. Moreover, in some regions rivalry between commercial chambers and entrepreneurial and employer representations can be found. In this respect, however, it is amicable relations with the newly established regional representation bodies, i.e. regional commissioners and regional authorities and their apparatus, that are vital. Another cause for circumspection is the experience with the preparation of new regional development plans. The enclosed bureaucratic nature of an apparatus not used to working with the public poses the main problem. The newly established authorities display a concern about losing their competencies, rekindled by on-going disputes about the distribution of powers between central and regional bodies. The question is, to what extent and how it would be possible to prepare both regional and trade union representative bodies for task of overcoming the mistrust and fears, and what support they may expect on the part of trade unions and employers' organizations.

¹¹⁷ These are the Council of Economic and Social Agreement of the Ostrava Region, the Economic and Social Council of the Most Region, the Economic and Social Council of the Sokolov Region and the Economic and Social Council of the Chomutov Region. For more information on the major two - the Council of Economic and Social Accord of the Ostrava Region and the Economic and Social Council of the Most Region – see e.g. Kubínková M., National Study on Social Dialogue in the Czech Republic, ČMKOS 2001, p 25

¹¹⁸ As stated by KZPS Secretary within written comments on this study. 2002

G. Conclusion

After more than ten years' experience with the working of social partnership in the Czech Republic it is possible, as this study has shown, to identify the factors hindering the widest possible application of social dialogue at the decisive levels of economic life. The following recapitulation of the main obstacles and problematic system aspects limiting the functioning of social concord mechanisms at the national, sector and company level is a complete inventory of all the problem areas mentioned in the study. The summary also includes opinions and remarks of the representatives of the social partners, as presented at the end of the first stage of the twinning project, as well as some assessments of the foreign twinner.

Factors undermining the potential influence of the social partners

Social partnership in the Czech Republic did not take its first steps until the first third of the 1990s, when the social partners also gained their first experiences with autonomous collective bargaining. Besides this time factor that naturally limits the scope of the social partners' action potential, the chief obstacles are a number of general circumstances of a legal and ethical nature and certain material and organizational aspects. Image problems also exist.

- The public is insufficiently informed about the issue of social dialogue, about its development and results at all levels; the same is true for public understanding of the social partners' situation, objectives, aspirations and problems. The social partners in the Czech Republic often lack an information strategy and a detailed idea about building their own internal and external images. On a general level, representatives of the social partners taking part in the twinning agree that their organizations have long overlooked the matter of public relations; and the state also fails to provide sufficient information about the method of social dialogue as a tool for brokering various interests in society and its role in EU countries and in the *acquis*.
- Clearly linked to the above point, the public continues to reject social dialogue, not only for logical or ideological reasons, but also simply because memories of pre-1989 experiences have lingered.
- One of the fundamental questions about the working of the unions is the relationship between trade union organization members and non-member employees. Czech law has set in stone the principle that a trade union represents in dealings with an employer not merely its own members, but all the employer's employees – it expresses their interests and provides them with collective and individual protection. The trade union bodies therefore implement their authority relative to union non-members as well and are obliged to provide protection to all employees; an employee who is not a member of the trade union organization cannot refuse this authority. There are several interpretations of this principle, and its morality is questioned chiefly in firms where a trade union organization has failed to be representative or lost its representative status (here there is a link with the more general principle of the representativeness of a trade union body). It also tends to be regarded as one of the reasons for the fall in trade union membership and the diminished significance and authority of collective agreements.
- Although the law does not impose any criteria of representativeness on trade union organizations (or on employers' organizations), either at their inception or during their operation, the need for representativeness on the part of the trade unions is accentuated by the long-term decline in trade union membership.
- There is no legally enshrined duty for employers' organizations and trade union organizations, and their confederations, to provide information on the size of their member bases.

- Membership is declining in all trade union headquarters, but written data on the rate of decline tend – partly in view of the lack of a duty to provide information – to be hard to come by (we usually have only very guideline information or the exaggerated membership figures of certain trade unions).
- The year-on-year decline in the number of employees who are members of trade unions is also leading to a decline in the number of employers where trade union organizations operate and to a fall in the number of collective agreements concluded.
- Besides the objective reasons for the decline in trade union member bases linked with the transformation and restructuring of the corporate sphere in the Czech Republic, there have also been – and particularly so in recent years – signs employers trying to obstruct membership of trade union organizations.
- There is a widespread opinion that employer organizations are not very representative.
- Employers in the Czech Republic have so far not regarded association as a standard necessity.
- Employers take member contributions out of net profit, i.e. there is no tax incentive to promote the forming and joining of employers' associations.
- The above factors are linked to the fact that employers' organizations have much scarcer resources than most trade union headquarters. They do not have their own information and analytical base; membership of expert teams is usually on a voluntary and unpaid basis; the level of staffing of the permanent specialist and administrative apparatus is particularly low (with a tendency for further downsizing that limits the overall performance and quality of the resulting outputs even more, especially when the professional personnel of member firms, which has its natural restrictions and difficulties, cannot always be drawn on).
- In spite of a number of amendments, the legislation governing the status of trade unions is not sufficiently unambiguous, particularly for the requirements of collective bargaining. The main problem is interpretation of the provision (Section 18b par. 1 of the Labour Code) defining in general terms the room for applying trade union powers in labour law relations. Collective bargaining and collective agreements are causing a strengthening of the statutory powers of trade unions in labour relations (e.g. discussion is altered to decision making), an increase in the cases of joint decision making, decision making or control by the trade unions going beyond the bounds of the legislation. This process is based on the legal opinion that ascribes these undertakings to contractual settlements that are not dictated by the law as mandatory. Conversely, advocates of the view that the legislation applying to these trade union powers is prescriptive and mandatory regard these provisions of collective agreements as legally inadmissible and the undertakings invalid because they conflict with the law.
- There are also legal opinions pointing out the justified need for more flexible settlement of trade union powers according to the specific needs of the parties to collective bargaining.
- The aforementioned amendments to the Labour Code had a fundamental influence on the status and activities of trade unions, but not all changes to trade union powers made since the start of the 1990s were justified. One debatable change, viewed with hindsight, was the abolition of joint decision making by the trade unions on the severance of an individual employee's employment by notice or immediate dismissal, as brought about by the December 1990 amendment of the Labour Code, which abolished this fundamental entitlement of the trade unions without providing an alternative, thus divesting employees of trade union protection (protection that exists in a number of western European countries) from wrongful measures by the employer. Another problematic change was the weakening of the legal guarantees for employees' participation in managing a company,

which are contained in some international documents such as ILO Recommendation no. 129 of 1967, or Article 2 of the 1988 Supplementary Protocol of the European Social Charter, or the Charter of Fundamental Rights of Workers in the EC. The right of all employees to information and discussion was not enshrined in Czech law until the “harmonization” amendment of the Labour Code in the year 2000.

- The introduction of employees’ councils and representatives for occupational health and safety by the “harmonisation” amendment of the Labour Code (Act no. 155/2000 Coll.) paved the way for social dialogue in companies with more than 25 employees where there is no trade union organization; there is no monitoring of the establishment and working of employees’ councils, however, so there is a lack of information on this area. This form of social representation at the workplace has probably not developed much in practice, however, with the main reason thought to be the unsuitable arrangement of powers and lack of will on the part of employers.
- Employers’ organizations can be established either under Act no. 83/1990 Coll. or, as an association of legal entities, under Section 21f of the Civil Code. In this context the question whether associations thus formed may become partners to trade union organizations and negotiate collective agreements is still unresolved. MLSA refuses to store HLCAs where the employer side is a legal entity that was not established under the act on freedom of associations; by contrast, ČMKOS and ASO (some of whose member trade unions sign HLCAs with this kind of entity) hold the opposite opinion and disagree with the ministry’s actions. Although the gap between the opinions of the social partners and the government does not make it impossible for these kind of employers to negotiate HLCAs, and not even the fact that an HLCA is not stored by MLSA does not make it invalid, this is an issue that has long needed resolving and casts doubt on the effectiveness of the social partners’ dealings at the higher level.

Weaknesses of the social dialogue system at national level

However positively the overall tripartite scene, including its achievements throughout its existence in the Czech Republic, is assessed by both the social partners’ representatives and Danish experts, certain persisting weaknesses of the tripartite system have been identified.¹¹⁹ These are:

- The formation, substance and working of the tripartite bodies was not and still is not regulated by an act or any other legal regulation; it is based on the principle of good will and agreement between the social partners and the government. This fact, i.e. the lack of a legal basis for RHSD, may not have been perceived as an obstacle by the social partners, especially not during the last four years under the social democratic government, yet in general terms the absence of binding force in law makes it far more likely that the social dialogue system is going to be far more dependent on the political regime than in EU countries.
- The absence of clearly defined goals for social dialogue at national level is a consequence of the fact that, since the middle of the 1990s, there has been no General Agreement or any other fundamental common document defining the relevant economic and social tasks and the framework for macroeconomic and social development in the Czech Republic.
- Ties between national tripartite dialogue and social dialogue conducted at sector and company level are not being strengthened and the possibility for promoting social dialogue at these levels through the national tripartite system (e.g. by setting targets for wage development and employment and by making framework agreements regulating the

¹¹⁹ In addition to the latter, the Danish project co-ordinator N. Lubanski drew attention to the other weaknesses of the social dialogue system at national level.

behaviour of sectoral social representation and the social partners in companies) is being left unused.

- One of the crucial problems – in both practical and theoretical terms – of social dialogue at national level is the degree to which each side’s representatives are in fact representative. This problem is generally linked to the plurality of trade union organizations and employers’ organizations and is fuelled by the pressure to open up the trade union delegation to other trade union organizations. Applying representativeness criteria, particularly a minimum number of members, causes some influential trade union umbrella organizations to be excluded (e.g. KUK).

Factors determining the development of collective bargaining at higher level

Social dialogue conducted by trade union confederations and employers’ federations and associations tends to be regarded as underdeveloped¹²⁰ compared to the capacity of social dialogue achieved in other areas of social partnership (i.e. at the company and national level). The next list sets out the most important obstacles to progress in the area of collective bargaining and concluding HLCAs.

- HLCAs apply to a very limited number of employees; the legislation does not provide for sectoral collective agreements – that is linked to the absence of a consistently defined and relatively stable framework for HLCAs (business sector) in Czech law.
- the overall concept of the Labour Code continues to be one of mandatory, prescriptive norms rather than dispositional provisions or provisions giving empowerment for collective agreements that are subject to a different socioeconomic environment and undermines the normative potential of collective agreements. Right from the start, the restrictions listed below to negotiating labour law entitlements (especially wage claims) have been regarded as particularly serious obstacles to the contractual freedom of the social partners, both in terms of legal theory and in practice.
- Increasing and broadening employees’ wage-related and other labour law entitlements is only possible within the framework dictated by the labour regulations. Higher entitlements or extra entitlements going beyond the bounds of the law can only be negotiated in collective agreements if the Labour Code expressly allows the collective agreement to do so (this restriction on contractual freedom tends to be justified by the need to ensure thrift in the transitional period of economic transformation).
- Employers not carrying on entrepreneurial activity may use this already restricted framework only where the law expressly permits it.
- What is more, the general principle applies, under threat of the voiding of the agreement, that no part of a collective agreement may be at odds with the legislation and all parts must be formulated specifically and comprehensibly (in addition to this, the law defines cases where CCAs are void if they conflict with HLCAs).
- One of the existing legal opinions holds that no entitlements to performance that are not expressly regulated by a legal regulation may be established, even if it is not prohibited either. In reality, we commonly encounter what are called “unnamed provisions” in the area of labour law entitlements in collective agreements; but the ambiguity of the legislation in such an fundamentally important area for higher-level social dialogue and in

¹²⁰ N. Lubanski, in his assessment report titled Opportunities and Obstacles to the Further Development of Social Dialogue in the Czech Republic, discussed by representatives of the social partners in February 2002, points out that the lack of mandate on the part of a number of existing employers’ organizations for bargaining with the trade unions gives rise to the problem, how to integrate Czech organizations into sectoral dialogue in the EU. He states that “overall, this represents a major challenge and necessity to strengthen social dialogue at the higher level”.

companies undermines the legal certainty of the social partners and users of collective agreements.

- Of the factors influencing the potential capacity of social dialogue, the most problematic is the possibility for employers to regulate labour law entitlements by internal regulation, provided that no trade union organization operates in his place of business (this does not apply to wage entitlements and travel expenses) – it is said that this labour law institute is a unilateral normative act, which represents indirect competition to collective agreements and can, in extreme cases, be abused as an instrument of social dumping.
- The absence of legal legitimacy of either of the parties to an agreement results in the collective agreement and the undertakings set out in it being void. Considering the central importance of legal legitimacy for social dialogue, more detailed legislation on the issue of personality in collective bargaining is necessary.
- In connection with the above, one typical problem in higher-level collective bargaining – on the part of employers – is the frequent absence of entities qualified to bargain or the uncertainty of their legal qualification to conduct collective bargaining (i.e. the absence of authorisation for collective bargaining, the fundamental restriction of this authorisation solely for certain members, or possibly the need for its renewal, or an organization was established in a manner other than according to the act on association). By contrast, there are legal opinions that state that the authorisation of employers' federations to conduct collective bargaining stems directly from the law and that no employer federation is entitled to refuse collective bargaining. In the current legal situation, however (according to the experiences of ČMKOS, for example), it is not possible to find an unobjectionable solution and it is not possible to compel employers' organizations to engage in collective bargaining, not even by litigation. On the other hand, consideration must also be given to how appealing trade union offers made in HLCAs are to employers – for example, as far as we know there has been no instance where the possibility of stipulating the maximum admissible scope of wage entitlements in an HLCA (which can be important for employers) been used in any HLCA concluded since the Collective Bargaining Act took effect.
- Trade unions operating in the state administration in particular may not conclude HLCAs because they have no partner for collective bargaining – the legislation does not permit employers in this sphere, the state authorities, to form employer federations.
- The public sector is also characterised by a very limited number of HLCAs (owing to the absence of a legal definition of certain professions, such as freelance work and “intermittent employment”, in Czech law, which means that cameramen, sound engineers, interpreters, restorers etc. are unable to conclude legally binding collective agreements).
- The Collective Bargaining Act does not provide for holding company collective agreements, even though the practical need for such agreements does exist in some cases.
- The gap between legal opinions on the question of the interrelationship between HLCAs and CCAs persists, particularly in the case of the problem of restrictions on the contractual freedom of the parties to CCAs on the part of certain provisions contained in HLCAs that impose an obligation on the parties to negotiate certain particular undertakings in CCAs.
- One practical problem is the availability of HLCAs for users. Using HLCAs at companies is not usual; broader use of HLCAs is hindered by the persisting diminished authority of collective agreements in general and HLCAs in particular.
- One consequence is the very relative and weak reflection of the principle stipulating, in the absence of a CCA, that the HLCA has direct force on employers associated in the organization that signed the HLCA.

- An additional factor is the low level of awareness of the existence of HLCAs and employees' unfamiliarity with their content – often because employers do not want their employees to be well-informed.
- In the event of concurrent CCAs and HLCAs, users wanting to learn about the advantages and undertakings negotiated on their behalf have to compare what is often incompatible information about the undertakings and incompatible constructions in the two agreements.
- In connection with the existing system for recording concluded HLCAs, a question mark arises over the completeness of the list of HLCAs concluded (failure to submit HLCAs to MLSA is not associated with any material consequences – it may be a violation of the labour regulations, but it does not render the agreement void). What is more, MLSA itself does not store some HLCAs, as mentioned above, so these HLCAs do not feature in central records.
- The role of MLSA (de facto the state's role) and the set of its powers vis-à-vis HLCAs are not unequivocal. For example, the ministry is not obliged to check that HLCAs conform to the applicable labour legislation before storing them; it is not liable for their content and does not confirm that they are correct. This creates a legal problem as to MLSA's qualification to judge the shortcomings of HLCAs in general, which is particularly important for the extension of their force. The extension of HLCAs by other regulations subordinate to acts of parliament is also regarded as a problem.
- There are no legally defined central records of collective disputes; MLSA is merely obliged to store arbiters' rulings on HLCAs. MLSA does not record disputes it is not directly involved in. Parties to collective agreements are not obliged to inform MLSA of the outcome of proceedings before a mediator, not even in the case of HLCAs where the parties have turned to a mediator through MLSA. Not even the mediator is obliged to inform MLSA of the outcome of proceedings.
- There are no national records in the Czech Republic of strike action, not to mention less serious manifestations of trade union dissatisfaction.
- It is necessary to deepen the legislation on extending the binding force of HLCAs – the current legislation is too brief and a number of system aspects are not resolved. Doubts have arisen about its purpose and function; it is still unclear whether a certain degree of representativeness needs to be stipulated for HLCAs proposed for extension (i.e. that they apply to a certain number of employees in a sector) so that they might have the necessary authority.
- The Collective Bargaining Act even allows a whole series of employers who are members of employer organizations that have concluded HLCAs to remain outside the HLCA if they so wish, even if its binding force is being extended. If the statutes of an employers' organization demand authorisations of the organization members for collective bargaining and concluding HLCAs, these employers can easily get round HLCAs by simply not providing this authorisation, i.e. without even having to leave the employers' organization.
- The actual quality of the legal environment in the Czech Republic is a long-term, universally perceived problem, especially in connection with the enforceability of provisions in collective agreements.
- The relevant impact of collective agreements is to some extent also devalued by the absence of a mechanism enabling systematic and central monitoring of the performance of collective agreements in general and HLCAs in particular. The lack of control over employers to which binding force has been extended is also very serious – here, too, there is absolutely no feedback; yet there can no doubt about the need and justification for systematic state supervision on the grounds of responsibility for fulfilling the purpose of

extension. This is particularly unacceptable in a situation where the normative function of collective agreements in Czech conditions needs to be reinforced by legislative changes.

- MLSA lacks the information and staff base necessary for the extensive agenda associated with monitoring collective bargaining; as regards extended HLCAs, MLSA lacks independent information on the economic results and general economic situation of firms to which HLCAs are to be extended.
- The Employment Offices do not have the staff or know-how for systematic supervision over the performance of collective agreements; usually they only find out about problems with collective bargaining in a company when the social partners request a mediator.

Problematic aspects of the arrangement of the system of social partnership and social dialogue in the company level

Although the actual results achieved mean that the main domain of social dialogue in the Czech Republic is collective bargaining in companies, certain barriers to further progress remain here. There is little motivation for employers to enter collective bargaining and social dialogue is often underestimated by both employers and employees. There are also a number of other system obstacles. These are:

- Although Act no. 120/1990 Coll., which regulates certain conditions for social dialogue in the conditions of trade union plurality, is especially welcomed by the smaller trade union confederations, who regard it as absolutely essential for the assertion of minority trade union organizations' opinions, its application sometimes causes problems (listed below) for the conclusion of collective agreements due to the very fact that it is based on the principle of absolute trade union plurality.
- The rules laid down in the act make it possible to create trade union organizations with an abnormally small member base, which can be easily abused and can hinder collective bargaining in the firm.
- One of the trade union organizations operating at an employer's can prevent agreement on a common course of action in a certain, albeit minor matters, even though it may be by far the smallest trade union organization operating at the employer's. For that reason, new legislation should, in some opinions, take into account the principle of the representativeness of trade union representation.
- There is an application problem with the legislation on trade union plurality in a company, as regards the "relevant trade union body" referred to in the said act. One legal opinion states that, besides the trade union body that was formed at the employer's in the knowledge of employer, the relevant trade union body could also be a local trade union organization if it has one or more members employed at the given employer's.
- Concluding HLCAs at plant level can also be problematical, because where the appropriate trade union body for collective bargaining exists at plant level there is no contractual partner on the side of the employer with legal personality.
- The absence of a legally enshrined mechanism for collecting, recording and storing CCAs makes independent control and research difficult.
- Linked to this is the absence of systematic control of the performance of undertakings by an entity independent of the contractual partners. The availability of CCAs for independent examination and evaluation is generally low and, most important, not guaranteed. Merely partial sets of CCAs are usually worked with; more detailed information on the scale of collective bargaining at company level is only available to the largest trade union confederation ČMKOS.
- The number of employees covered by CCAs is falling; the number of employees paid on the basis of a collective agreement is falling even faster.

- Certain aspects of the substance of CCAs tend to be criticised by the expert public. These include their inordinate thematic breadth (not allowing sufficiently thorough regulation of some areas or making the agreement confusing) and shortcomings of legal certainty (unclear formulations, incomprehensible undertakings); moreover, some provisions are frequently general or mere proclamations, some are excessively rigid and conservative in both formal and substantive terms. One example of an area that is traditionally weak, proclamatory and general is the offer of opportunities and benefits in the area of employee training.

Summary

The many factors described above, most of which are system-related, have a negative impact on the quality of social dialogue. On the most general plane, the problem is the immaturity of negotiation and thinking by the social partners, the government, political representatives and the public¹²¹. There is a relative lack of participative elements in the management attitudes of Czech management – one reason is the fact that motivational management is still in its early days in the Czech Republic and competition for quality employees is not too fervent. The business sphere still has not fully understood that social dialogue and collective bargaining are an opportunity to make use of the motivation potential this area possesses.

The possibilities for accessing outputs from the social dialogue system are marked by the overall chronic shortage of reliable feedback (most notably, there is no institution monitoring and storing collective agreements – if this does partially take place, these activities are fragmented among the social partners). This is a broader problem, however: the lack of systematically established control functions in the system. The monitoring and control function of the state in the area of collective bargaining and the performance of collective agreements must be reinforced – in terms of legislation, staffing, material resources etc. In this context, it is essential for the employment offices to be more closely engaged than they currently are (by fundamentally widening, in clear terms, the scope of the employment offices' control duties in the area of collective bargaining and agreements), including providing the necessary staffing and material resources.

A new Labour Code and other related generally binding regulations are essential if social dialogue is to develop in the Czech Republic. It will evidently also be necessary to amend the Collective Bargaining Act (unless the issue of collective work relations becomes part of the new Labour Code): a procedure for extending HLCAs must be set out, reflecting the requirements for a certain degree of representativeness of an HLCA as a condition of extension etc.

It is right to expect that a fundamental transformation of the legislative framework for social dialogue at company level and above will bring new stimuli for collective bargaining, for deepening social dialogue and for boosting the authority and binding force of collective agreements. Needless to say, it will also create new problems, but that itself may induce the social partners to become more engaged in all areas of social dialogue.

¹²¹ The trade unions in particular (ČMKOS in a material intended for discussion at a seminar held under the project on 23.1.2002) stress that “this is chiefly a problem of finding a new view of social dialogue and bringing about a change in thinking” and in this sense “it is necessary to deal with the rejection of European traditions in this area”. They point out that “on the part of both employees and employers there is a growing lack of desire to contribute to the work of organizations conducting social dialogue”, yet so far no means has been found “to help create broader trade union and employer structures at all levels...”

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