European Foundation for the Improvement of Living and Working Conditions

Social dialogue and conflict resolution in Hungary

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Context

This report is part of a series of projects from the Foundation which focuses on aspects of industrial relations in the run-up to enlargement. The national report for Hungary is part of the second phase of a project on 'Social dialogue and EMU' carried out by the European Foundation for the Improvement of Living and Working Conditions in 2002-3, in cooperation with the Swedish 'Work Life and EU Enlargement' programme. This phase of the project looked at the current mechanisms for resolving industrial conflicts prevailing in each of the ten acceding countries involved in the project: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

The main report provides an overview of the whole project and is available online at http://www.eurofound.eu.int/publications/EF0421.htm. It looks specifically at the role of social dialogue in resolving industrial relations conflicts. In most of these countries, both the systems of industrial relations as well as conflict resolution mechanisms are relatively new and have been subject to intense upheaval during the transition phase to market economy. Collective and individual industrial disputes are a new phenomenon for these countries as well. The report gives an overview of the existing institutional and regulatory frameworks for industrial action prevailing in each country, then goes on to describe the various systems in place to deal with conflict resolution. The overall aim of the research is to show how social dialogue can be harnessed to devise a road map for industrial peace.

Introduction

In the past few years the conflict resolution mechanism in Hungary has undergone a substantial change as part of the far-reaching changes of democracy-building following the dismantling of the state-socialist regime. The amendment of the Labour Code in 1989, as part of the democratic transition, has institutionalised the freedom of industrial action. The same year saw the enactment of the Strike Law, which laid down some basic procedural rules concerning pre-strike negotiation duties between the parties in conflict. The new Labour Code, enacted by the XXII. Act of 1992, has stipulated some basic rules of arbitration, mediation and conciliation for collective interest disputes. In 1996, based on the decision of the national tripartite body, the *Érdekegyezteto Tanács* (Interest Reconciliation Council, ÉT) the *Munkaügyi Közvetítoi és Döntobírói Szolgálat*([Labour Mediation and Arbitration Service, MKDSZ) was set up in order to facilitate peaceful resolution of industrial disputes between employers' and employees' representatives by providing third party arbitration and mediation. The MKDSZ, however, has been barred to provide third party participation in individual legal disputes and in collective disputes over statutory rights, namely in legal disputes. Regarding legal disputes, in 2002 an Act on Mediation was legislated, with the aim to further the resolution of civil law disputes in out-of-court procedures.[1]

The paper gives an overview of the state of conflict resolution in Hungary and puts forward some proposals to increase the efficiency of pre-court conflict resolution, based on the agreement of the representatives of the Hungarian Government, social partners, with the co-operation of the authors of this paper, reached on the tripartite seminar on conflict resolution in CEEC, organised by the European Foundation for the Improvement of Living and Working Conditions, held in Prague on 17-18 November, 2003.

Section I of the paper gives an overview of the societal and industrial relations framework for conflict resolution. Section II describes the major aspects of legal regulation on resolution of industrial disputes and the experiences of third party involvement. The third section gives an insight on the practice of conflict resolution in light of statistical data sets.

[1] Act LV of 2002 on Mediation, came into force on 17. March 2003.

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Section four overviews the methods used in conflict resolution. Section five describes the organisation and activities of MKDSZ. The final, sixth, section of the paper summarizes the main features of the Hungarian system and puts forward a proposal for overcoming some shortages of the current system of conflict resolution.

Industrial relations framework for conflict resolution

The role of tripartism

In the world of work, since the transition from Soviet-style state socialism to political democracy, institutionalised national level tripartite concertation has been playing a leading role in conflict resolution. The national level tripartite body is practically providing a standing forum for conflict resolution in issues of major importance for national level actors and at the same time also serves as a model for effective and peaceful conflict resolution for sectoral and workplace level actors.

The first national-level tripartite forum, the National Interest Reconciliation Council (*Országos Érdekegyezteto Tanács, OÉT*) was established by the last non-democratic government in 1988 as part of a transition to a more democratic system in order to facilitate the social partners' participation in the decision-making process in certain limited areas. The forum had ceased to exist after the government's declared itself a caretaker government. In late autumn 1990, following the first democratic elections, the new freely elected government called upon the establishment of a new national tripartite body, the *Érdekegyezteto Tanács* (Interest Reconciliation Council, ÉT). The newly set up ÉT had been the forum of resolving a major political crisis caused by the taxi and lorry drivers' blockade of the roads following a major petrol price hike in October 1990. This success made the forum well-known, strengthened its position and increased its reputation. Over the years, ÉT has developed to be a complex organisation, including secretariats, plenaries and continuous functioning of several standing and ad-hoc committees overseeing a number of issues ranging from vocational training to labour market policies. Since its establishment, the ÉT has been the venue of social dialogue over draft bills concerning the world of work. The first major piece of consensus based draft bill was that of the Labour Code 1992. Since than the various governments, by and large, have upheld the principle that to submit an amendment of the Labour Code to Parliament pre-requires a discussion at the ÉT and the consensus of social partners.

The new Labour Code of 1992 obliged the government to negotiate with the national organisations of the employers and trade unions in the ÉT concerning issues of general interest in the field of employment and industrial relations. The Labour Code also stipulated that it is the task of the ÉT to determine the national minimum wage. It has also become a practice that the ÉT annually recommends a wage increase to employers and employee representatives for the coming year. The negotiations over annual recommendations are practically functioning as national level bargaining between the social partners with the involvement of the government.

Reconciliation of interest disputes

The ÉT also paved the way for setting up a new system of reconciliation of interest disputes in the field of industrial relations. On 16 February 1996 the government and the social partners agreed in the ÉT to set up the *Munkaügyi Közvetítoi és Döntobírói Szolgálat* (Labour Mediation and Arbitration Service, MKDSZ) in order to facilitate the peaceful resolution of industrial disputes between employer(s) and employee representatives by providing third party arbitration, mediation and conciliation. According to its Rules of Procedure of MKDSZ, the mission of the organisation is to assist effective and quick settlement of interest disputes in the workplace, to promote social peace at sectoral and workplace levels, and to improve the culture of industrial relations.[2]

[2] Rules of Procedure of the MKDSZ, see in English http://www.fmm.gov.hu/mkdsz/english/index_english.html as of 27 July 2003.

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The system of national interest reconciliation has been reorganised following the elections of 1998, which brought a right-wing government to power. The ÉT was disbanded and its tasks were divided between two bodies in 1999. The first body, *Országos Munkaügyi Tanács* (National Labour Council, OMT) has been set up to provide a forum for national level tripartite social dialogue in the fields of employment and industrial relations. OMT practically supposed to be the successor of the ÉT as far as standing tripartite concertation concerned. The second body, *Gazdasági Tanács* (Economic Council, GT) was set up to provide a forum for social dialogue on economic policy.

The GT, in its structure, was no longer a strict tripartite body involving the traditional actors of national level social dialogue, but chambers of trade and industry, representatives of multinational companies, of the banking and craftsman sector, etc. were invited beyond recognised national level social partners.[3]

The reorganisation of social dialogue, however, has been heavily criticised by trade unions. The main argument of the trade unions was that the splitting up of the tasks of ÉT into two bodies would reduce the coverage of effective social dialogue by transferring the social dialogue over economic policy to a new body. Some of the practices of the government further increased the tensions over social dialogue between the government and social partners. Employer organisations heavily criticised that the government has unilaterally introduced a new statutory minimum wage although it had not reached a consensus by the social partners over the proposed level. The unions repeatedly criticised the government for not having a meaningful social dialogue over a number of issues, including the amendment of the Labour Code regulation on works councils, again, without the consensus of the social partners.

New social dialogue structure

A new structure of national level social dialogue was devised in 2002, following the elections that year, which brought into power a new social-liberal government. The government, taking into account the complaints of trade unions concerning the ineffectiveness of the divided structure of social dialogue, proposed to re-establish the unitary national-level tripartite forum with responsibilities covering both employment and economic policy. The social partners welcomed that initiative of the government and have agreed to renew their cooperation within the framework of the re-newed unitary tripartite structure. Following this agreement, *Országos Érdekegyezteto Tanács* (National Interest Reconciliation Counci, OÉT) has been set up and the OMT and the GT ceased to exist. OÉT has the competence to negotiate on all employment-related issues, including legislation on employment and industrial relations issues, economic policies, labour market development, taxation and social security matters.

In addition to the national level standing tripartite council, interest reconciliation forums are operating in the public sector as well since the early 1990s. There are separate councils to reconcile the employment matters of public service employees[4] and those of public administration employees[5] at national and at sectoral level. These forums were also reformed considerably in 2001and in 2003.

[3] Additionally, further new social dialogue bodies have been set up to meet with specific tasks previously fulfilled by the Interest Reconciliation Council or its subcomissions, or provide new forums for new issues, like the European Integration Council, the National ILO Council.

[4] Their employment relationship is governed by the Act XXXIII of 1992.

[5] Their employment relationship is regulated by the Act XXIII of 1992.

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There is a widespread consensus, that tripartism has played a historic role in Hungary over the past decade of economic and political transition. As Mária Ladó pointed out, 'tripatism contributed to the peaceful transition in at least three different ways: (i) it has smoothed the economic and social change; (ii) it has facilitated the development of the social partners and their learning process; and (iii) it helped the government (the state) to withdraw gradually from the economy.' Nevertheless, she also noted, that the dominance of tripartism at national level has retarded the development of industrial relations at lower levels, especially that of the sectoral social dialogue.[6]

Institutional basis for conflict resolution

The Hungarian jurisprudence differentiates between individual and collective industrial disputes on the one hand, and disputes of rights and disputes of interests on the other.

In an individual dispute one or more employees as individuals are in dispute with the employer, while in the collective dispute a workers' representation organisation, like a trade union or a works' council is in dispute with an employer or an employers' organisation.

The notion of dispute of rights covers all disputes in which the interpretation or application of a certain piece of legislation is disputed, covering disputes arising from employment contracts, other agreements between the employer and the employee, work rules, collective agreements, or legislation.

A dispute of interests is taking place when at the outbreak of the conflict there is no applicable statutory or other agreed rule concerning its matter, and consequently the parties must engage in a dispute over their interests in order to set rules which will be applicable in the dispute and which may serve as a rule for future disputes. This type of dispute is frequently defined as regulatory dispute, as its solution may also provide a new regulation for future disputes over the same matters, most frequently in the form of collective agreement.

In the terminology of the Labour Code 1992 two terms are used to classify industrial disputes: employment-related legal disputes *(munkaügyi jogvita*) and collective industrial disputes (*kollektív munkaügyi vita*). The notion of 'legal dispute' covers both individual and collective disputes of rights, namely all disputes which may arise over the existence or non-existence of a right of one of the parties, or in which violation, non-performance or non-proper-performance of an obligation is disputed. The parties of legal dispute may be the employer, the employee(s), the trade union(s), and the works' council. Legal disputes are adjudicated by Labour Courts.

The parties in collective industrial disputes are the works council, the trade union(s) (including local branch, federation and confederation), the employer(s) and the employers' organisation(s). The collective industrial disputes are disputes of interests, which are to be solved primarily through negotiations, which may include conciliation or mediation and arbitration with the involvement of a third party. Failure of negotiations may lead to industrial action.

The Labour Code provides regulation for negotiations for partners in collective industrial disputes. The various forms of industrial action are regulated by other pieces of law. The right to strike is secured by the Constitution and its Art. 70/C (2), which allows the parliament to regulate some issues of the right to strike in a separate piece of Act. Act VII of 1989

[6] Mária Ladó: Why Develop Sectoral Social Dialogue? In Youcef Ghellab and Daniel Vaughan-Whitehead (eds): Sectoral Social Dialogue in Future EU Member states: The Weakest Link. International Labour Office, European Commission, pp. 225-282. p. 258.

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on strikes provides for a regulatory framework for strike action. Commentators often say that this act is an outstanding piece of regulation of the Hungarian legislation as maybe this act is the only one in the last decade which has not been modified since its adoption. Other types of protest action of organised labour - like demonstrations, mass-meetings, rallies, campaigning for signatures, etc., - are covered by Act III of 1989 on the Right of Assembly.

Picketing and lockout are not regulated by Hungarian law and are not used in practice.

The following governing principles determine the regulations on different methods of conflict resolution:

- An attempt to solve the dispute via negotiations has to precede industrial action.[7]
- An attempt to solve a legal dispute with the participation of the parties has to precede the hearing and adjudication of the court.[8]
- The rules of procedure have to be worded in a way that they support a quick resolution of the dispute.

Legal basis for strikes and lockouts

Right to strike and lockout

Lockout is not regulated by the Hungarian law and is not used in practice. Hungarian law gives workers a positive right to organise and participate in strike. This right is guaranteed by the Constitution, and is regulated by the Act on Strike. Employees have the right to organise strikes in order to protect and promote their economic and social interests. The law in principle does not restrict the right to strike to trade unions, with the exception of solidarity strike. In practice, however, unorganised employees usually do not organise strikes but stage other types of protest actions, like campaigning for signatures or organising a demonstration in front of a public institution.

Participation in a strike is voluntary; no one can be forced to participate in it or to refrain from it. It is forbidden to anybody to intervene with coercive measures aimed at bringing to an end the lawful strike of the workers. A decision of the Supreme Court, however, endorsed the right of the employer to call on non-striking workers to perform overtime in order to reduce the damages caused by the strike. Thus, this managerial measure does not qualify as coercive measure.[9] Abuse of the right to strike is also forbidden.

Conciliation during strike action

Before calling a strike, seven days must be allowed for conciliation. If the employer refuses to negotiate during this period to conciliate the dispute, a strike call is to be considered lawful.[10] If the employer aimed by the demand of the strikers cannot be identified because the strike's demand is concerned with a question falling out of the scope of one particular employer, like privatisation or level of statutory minimum wage, etc. the Government must appoint its representative to participate in the conciliation procedure within five days. If the strike affects several employers, they

[7] See Act VII of 1989 on Strike, Art 2 (1) and Art. 3 (1)

[8] See Act III of 1952 on Civil procedure, Art. 355.

[9] See BH (Decisions of the Supreme Court) 160/2002

[10] See BH (Decisions of the Supreme Court) 585/1993.

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are obliged to appoint their common representative with due negotiation authorisation. During the conciliation period it is allowed to call for a short, maximum two-hour warning strike. This rule applies even if two or more trade unions participate in one strike action.[11] If more than one union is negotiating over a strike demand with the employer, each of the unions has the right to call a warning strike.

During the strike the opposite parties have a joint obligation to continue further negotiations for the settlement of the dispute, and act jointly to protect persons and property.

Strikes in essential services

In case of employers providing essential public services - like public transportation, telecommunication, electricity, water, gas and other type of energy supply, etc. - it is possible to exercise the right to strike only in a way that will not impede the provision of these essential public services at a minimum level of necessity. The extent and the conditions of such a minimum level service are subject to a prior agreement by the parties. The agreement on provision of services at a minimum level of necessity in essential public services may be agreed upon during the conciliation period prior to the given strike or well ahead, as a generally applicable rule. Such agreement may be included in the collective agreement as well.

Breach of the agreement on providing essential public services at a minimum level of necessity during the strike will not result in the unlawfulness of the strike, according to the rules of the Act on Strike and the established case law of the Supreme Court.[121]

Unlawful strikes

According to the Act on Strikes and the established case law of the Supreme Court,[13] a strike may be adjudicated as unlawful if it meets with the requirements stipulated by Art. 3. of the Act on Strike:

- which has not been preceded by conciliation procedure for the minimum prescribed period of seven days;
- of which aim is anti-constitutional;
- which constitutes a legal, and not an interest dispute, which consequently should be decided by the courts;
- of which aiming to change the regulation of a collective agreement in force; and those
- that would directly and seriously endanger human life, physical integrity and the environment or which would hinder the prevention of the effects of natural disasters.

Strike action is banned in the judiciary, law enforcement organs, police and the armed forces as well as in security services.

In the public administration and public service sector (hereinafter public sector), the Act on Strike stipulates the right to strike must be exercised according to the special regulations set up by the agreement between the Government and the trade unions concerned. The agreement regulating the right to strike in the public sector has been concluded in 1994.[14]

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[11] As it was ruled by the Supreme Court in relation to a railway strike.

[12] BH 255/1991.

[13] See ibid.

[14] The agreement was published in No. 8/1994, the Hungarian Journal.

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The agreement restricts the right to strike of the civil servants in the following aspects: only those trade unions who participated in the conclusion of the agreement governing the right to strike in the civil sector may call a strike; the trade union may call a strike only if it is supported by at least half of the civil servants according to a ballot; a solidarity strike may be called only in order to support a strike in the civil service. According to Nacsa, the agreement on the right to strike in the civil service is unconstitutional because it restricts the right to strike in the civil service to a degree which is not allowed by the Constitution. The Constitution orders that the right to strike be regulated by an Act. The Act delegates the right to an agreement concluded by the trade unions and the Government to set up the detailed regulations of strikes called for in civil service. The Act does not authorise, and is not entitled by the Constitution to authorise, the parties involved to restrict substantially the right to strike, which is guaranteed by the Constitution itself. Their scope of activity covers only 'to set up specific rules'.[15]

The effects of lawful and unlawful strikes

Calling on and participating in a lawful strike is a legitimate activity for which an employee should not be penalised. Calling on and participating in an unlawful strike, is a breach of the employment contract for which the employer may apply due sanctions.

Those who have a legitimate interest to receive a judgement on the lawful or unlawful nature of a strike (employer, trade union, or a customer, etc.) may file an action to the Labour Court who adjudicates the case within five days.

The employees are not entitled to their wages from their employer for the period while they are on strike. According to the case law established by the Supreme Court, the elected trade union officials are also covered by this rule and they are not entitled to any kind of remuneration from the employer while organising and participating in a strike action.[16] During a lawful strike, however, only those benefits that relate to hours worked can be suspended. The period of being on strike, however, is considered service time as far as social security benefits are concerned, and it also counts as service time spent at the employer's for purposes of seniority, as well as.[17] Employees are not entitled to receiving any payment or compensation from the social security funds or from unemployment funds for the period while they are on strike.

Participating in an unlawful strike is a breach of the employment contract. Therefore, in this case the employee may be a subject of disciplinary proceedings, or summary dismissal for breaching the contract of employment. The organisers, especially the trade union(s) may be liable for damages caused by the unlawful strike. There is no case law yet on establishing the liability for damages of the unions at the moment. Nonetheless, based on the recent tendencies in legislation and in case law there might be developments in this area as there is great emphasis on the trade union's obligation to co-operate with the employers and to act with good faith in industrial relations.

Picketing and lockouts

Picketing and lockout are not regulated by law and are not used in practice.

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[15] See Beáta Nacsa: Sztrájk a közszolgálatban. [Strike in the civil service.] Manuscript.

[16] 2/1999. Jogegységi hatarozat and BH 2002/159.

[17] For calculating the working time, and dealing with the duration of the strike in the context of working time see BH 112/2002.

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Collective bargaining and strikes

According to the Labour Code, any party has the right to initiate collective negotiations, which should not be rejected by the other party. This is guaranteed partly by the basic principle of labour law stipulating that both the employer and the trade unions are obliged to co-operate while exercising their rights.[18] Detailed regulations of the Labour Code strengthen the above principle: none of the parties has the right to refuse the proposal to carry on negotiations about the collective agreement.[19] This legal obligation means that the employer should give an answer in merit at least once to the trade union's proposal. With regard to the employer, the legislator limited this obligation in the next sub-paragraph by ordering that the obligation not to refuse the proposal to negotiate applies to the employer only when a trade union makes the proposal. As far as workplace-level wage agreements are concerned, employers have greater obligations, as it is mandatory for them to initiate wage negotiations once a year. Simultaneously, the employers should provide the trade unions with all the data and information that are necessary to promote successful wage negotiations. Nevertheless, it is not mandatory to conclude an agreement.

The right to participate in the negotiations is separate from the right to conclude collective agreements for trade unions. All the trade unions that are represented in the enterprise may take part in the negotiations on collective agreement, irrespective of the fact whether they are representative or not.[20] The Labour Code stipulates that only that union organisation can be deemed as a representative union which got at least 10% of the votes in the last works council elections at that company or the union that represents two thirds of a professional group at the firm. Consequently, the non-representative trade unions should also be invited to the negotiations, their presence should not be hindered, and they should be granted the opportunity to express their opinion, but they do not have the right to sign a collective agreement. In contrast to this, representative trade unions have the right to conclude a collective agreement with the employer. Nonetheless, an agreement reached by the non representative union and the employer may be submitted to a ballot at the company. If the majority of employees are endorsing the agreement, it gets collective agreement status and its regulation becomes enforceable through litigation at the respective labour court.

Acceptance of the trade union that has the right to conclude collective agreements and the refusal of the right of the respective trade union(s) to conclude collective agreements by the employer may result in legal disputes. In such cases, although rapid decision-making might be the precondition to the conclusion and/or validity of the collective agreement, the Labour Code failed to prescribe the term of making a judgement in legal disputes in this regard.[21]

Legal conflicts (disputes of rights)

The labour court has an exclusive authority and exclusive competence to adjudicate industrial disputes. Formal rules of court procedure govern the procedure of the labour courts. Specific rules applied in course of hearing labour law cases are included in Chapter XXIII of the Act on Civil Procedure.[22] Most of the costs resulting from labour court cases are paid by the state. The worker losing a lawsuit should only cover the litigation costs of the opponent party, but has to pay neither the respective dues nor the other costs of the legal procedure (e.g. expert fee).

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[18] Art. 3 (1) of the Labour Code, being in force since 1 July 2001, defines the following obligation: Not only the employers, the works councils and the employees, but also the trade unions should co-operate, honestly and in good faith (also) with the employers when exercising their rights and meeting their obligations.

[19] Art. 37 (1) Labour Code

[20] Art. 33 (8) Labour Code

[21] Art. 37 (4) Labour Code

[22] Act III of 1952.

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The system of labour courts, as special courts, has been established in 1973. The labour court adjudicates labour law cases at the first instance. Labour courts comprise a panel of three: a legally qualified judge acting as chairperson and two lay members.[23] Hearings are held before a full panel of three members. At the beginning of the first hearing the chairperson is obliged to make an attempt to get the parties to reach a compromise agreement. In practice this attempt is usually very formal, takes only a few minutes and does not lead to an agreement of the parties. The parties, as mentioned above, frequently reach a compromise agreement, however, during the court procedure but usually only after getting to know the other party's standpoint and evidences, and also, after finding out the probable opinion of the chairperson of the labour court on the matter.[24]

Labour courts are organised at the county level (one for each county and one for the capital, Budapest) but occupy a position within the judicial hierarchy equal to the position of the local courts. If the decision of the labour court is challenged by an appeal, the case is referred to the county court whose judgement is final and binding. There is a possibility of extraordinary appeal against the judgement of the county court that is decided by the Supreme Court.

At the moment, there are four levels of courts in the judicial system: local (in the capital: district) courts, county courts, regional courts[25] and the Supreme Court. In most matters, the court of the first instance is the local court and in case of appeal, the county court acts as a court of the second instance. If the case begins at county level, the appeal is referred to the regional court. The Supreme Court adjudicates the extraordinary appeals that challenge the final and binding judgements of the county (or the regional) courts. Nonetheless, a major reform of the structure of the judicial system was decided recently. The reason for that judicial reform was that adjudication ordinary and extraordinary appeals overburdened the Supreme Court and resulted in a considerable backlog of cases. Furthermore, this situation endangered the fulfilment of the Supreme Court's main function; namely to ensure the consistent interpretation of law by the lower level courts. In order to remedy the situation, a series of measures were decided and partly have been put into action. The most significant change in the judicial system was the introduction of a system of five regional courts, which hear all the appeals against the judgements of the county courts within the region.[26]

As far as workplace-level resolution of individual right disputes is concerned, following the transition there has been a major reform of the workplace level conciliation procedure. During the socialist rule, company-level grievance boards, run by unions, were the first instance juridical forum in individual rights disputes. Nevertheless, due to the intertwining between company management, unions and the ruling party during the socialist time, it was widely questioned whose interests unions really represented. Thus, the post-socialist re-regulation of rules governing the world of work sought to re-establish the contractual freedom of employees and employers, and limit the intermediary role of unions. The 1992 Labour Code repealed company level grievance boards. It had only a brief passage of regulation concerning a pre-court conciliation procedure between the employer and the employee. It stipulated that within 15 days after having passed an injurious measure of the employer, reconciliation should be initiated in writing by the employee. If, however, within 8

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[23] Lay persons are not representatives of the social partners.

[24] Beáta Nacsa & Erzsébet Berki: A munkaügyi bíróságok joggyakorlata [The jurisdiction of the Hungarian Labour Courts] in Attila Harmathy (ed.): Jogi Tanulmányok 2000, ELTE AJK, Budapest. 2001. p. 165-202.

[25] Three regional courts started its operation 1 July 2003, and further two regional courts will be set up by 1 July 2004.

[26] Major changes were introduced by the Act LXVI of 1997 on the organisational structure and direction of the judiciary. This Act also consolidated the separation between the executive power and the judiciary. The creation of the National Judicial Council has shifted the control over the courts from the Minister of Justice to the judiciary. The National Judicial Council has 15 members (one of which is the Minister of Justice) and chaired by the President Judge of the Supreme Court.

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days there is no agreement between the employer and the employee, the employee may initiate a court procedure. This company level pre-reconciliation requirement was repealed in 1999, following an amendment of the Civil Procedure Law, which made it compulsory for the parties to hold a reconciliation meeting in the labour court before litigation begins. Nevertheless, the Labour Code still allows that at company level a stipulation of the collective agreement or the joint decision of the parties may involve a conciliator in order to reach an agreement. If the conciliation fails to produce an agreement, the claimant may initiate a court procedure until an expiry period set by law.

During the 1980s annually approximately 20,000 lawsuits were filed to labour courts. In the early 1990s the number of lawsuits increased by 50%, reaching 31,000 in 1992. The steep increase was partly due to the mass-scale reorganisation process, which took place in the early nineties, and partly to the effect of the introduction of the new Labour Code, which eliminated the in-house grievance boards handling industrial disputes at company level. The second half of the 1990s saw a gradual decrease of individual legal disputes. In 1998, there were only 10,500 lawsuits. In 2000, however, there was again a steep rise in lawsuits. That year over 23,000 cases were filed. The bulk of the increase is due to the recent extension of the responsibilities of labour courts to issue awards in legal disputes related to social security payments. Nonetheless, an approximately 10-20% rise can be observed in cases related to labour issues. This rise on the one hand is the result of the repeal of the pre-labour court workplace level reconciliation process and on the other hand, arguably, of the increasingly tight labour market conditions, which encourage employees to seek their justice through litigation. The labour court process is considered to be a very slow and painstaking one. Approximately, 10% of the cases are processed for a period longer than one year. The majority of cases have been won by employees, which, in fact, shows that only those turn to labour courts, who are fairly sure about the prospects of winning the case. The number of litigation is considered to be fairly low compared to more developed countries. This fact is due partly to cultural factors, partly to weaknesses of workers' representation and partly to the conditions in the labour market, which favoured employers. This imbalance of power is reflected in the fact that in the mid-nineties employees typically sued their employers after having left the company. In the majority of cases employees try to find remedy for their complaints individually in direct negotiation with their managers and they only sue the company as a last resort.

Although unions or works' councils have no statutory role in the individual legal dispute procedure, unions may assist their members or employees with legal advices or by providing legal representation during the court procedure. Generally, legal advising is deemed to be the most important service that unions provide to their members. Legal regulations and well-established traditions missing, there is not any solid patterns of grievance procedure with trade union involvement at Hungarian workplaces. Case studies on workplace level industrial relations revealed that only a part of the bigger companies have internal conciliation procedures established in order to facilitate a quick solution of disputes related to employment issues. In these companies, however, the management involves the works councils rather than unions to facilitate in-house solutions. Several private agencies, legal advisors and lawyers are offering conciliation and mediation services for companies to help avoid court process. There are no statistics, however, on the use of these private third party services. Union confederations have recently argued for the re-establishment of the workplace level pre-court conciliation process, with the involvement of a third party providing conciliation and mediation services. It should be noted, that the everyday practice of conflict resolution is changing only slowly, and the new institutionalised system of pre-court mediation is so recent that there is no experience of its application. Before passing the Act on Mediation, the MKDSZ had suggested to authorise the Service's scope to provide mediation in individual legal disputes concerning labour rights. It was suggested, that it would be especially important to have mediation in individual industrial disputes in cases when all or most of the employees of one employer are suffering from the same unlawful action of the employer, e.g. when the employer systematically violates the regulation on overwork, or on annual paid leave. According to our recent experience, in such cases, the employees are very reluctant to file the case to the court because they are not willing to risk any further retaliation upon them. The rapid and effective settlement of such conflicts is further hindered by the fact that according to Art. 23 of the Labour Code unions are not entitled to cast a veto in such cases. Mediation between the union and the employer could solve such class-action type mass-legal-disputes relatively quickly, at little cost and without putting into the forefront any individual employee. This suggestion correlates with the

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actual practice of MKDSZ as it sometimes gets requests to mediation in disputes of rights, but could not act officially given its mandate.

Labour court cases

	2001	2000	1999
Cases filed	26099	23732	11490

Source: *András Tóth - László Neumann - Erzsébet Berki (2003)*

Statistics on industrial disputes 1992-2002 [27]

Strike activity

This section overviews the development of industrial disputes in practice in the last decade. As far as strikes are concerned, strike activity has been fairly low in the context of dramatic crisis and subsequent reorganisation of the economy in the early nineties. The economic changes, by and large, were detrimental for the position of employees given the rise of unemployment and the widespread insecurity among job holders.

In the first part of the last ten years (1992-1997) strikes outnumbered the other forms of protests, like demonstrations and collecting signatures. Since then, the strike activity decreased, despite the fact that the Hungarian economy entered on a sustained growth path, and unemployment levels have been reduced to less than 6%. On the other hand, the number of other forms of protestations has increased, which process shows the existing discontent and also the weaknesses of employees. As Erzsébet Berki pointed out, according to comparative data, workers in Austria and Hungary are the most docile; they use the industrial fight weapons the most rarely in Europe.[28]

The majority of strikes, around 90%, were single-employer strikes, with limited impact on their wider environment. Strikes were mainly initiated and organised by trade unions. When trade union demands concerned a whole sector or more sectors - typically in pubic services, like education or health-service, the employees or unions mainly used the means of collecting signatures or staging demonstrations to put pressure on government or other authorities. Those groups of employees who are prohibited from striking - like soldiers, police and fire extinguisher personnel - expressed their demands via demonstrations, primarily held in front of the Parliament. In the last two years, there have been four major demonstrations, as follows:

- The demonstrations of the Democratic Union of Health Care Employees (Egészségügyi és Szociális Ágazatban Dolgozók Demokratikus Szakszervezete, EDDSZ) were held in all major cities on 30 June 2000. The rally stressed demands for higher wages and additional budget provisions for the health sector.
- The common demonstration of the six national union confederations, held in Budapest on 11 November 2000. Unions protested against the amendment of the Labour Code and the government's sidelining the national level tripartite forum. The unions also demanded higher wage increases and a rise of pensions.

[27] Data and explanations in this section are taken from the publications of Erzsébet Berki. See below the bibliography.

[28] Hungarian Workers Rarely Strike, http://freespace.virgin.net/andras.hirschler/nostrike.htm, summing up articles published on strike in the Világgazdaság, 26 November 2001.

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- The common demonstrations of five national union confederations, held in Budapest on 24 March 2001. Unions demanded the revocation of the planned amendment of the Labour Code. According to various estimations, the number of protesters was between 15,000 and 50,000.
- The collection of signatures by the Teachers' Union (Pedagógusok Szakszervezete, PSZ) in the autumn 2001. PSZ collected 216.000 signatures demanding a special session in the parliament to debate the low wage level in the sector.

Traditionally, the most strike prone industries are public utility ones, like railway, public bus transport and air-industry. The trade unions of these industries - normally organised into one major public utility company - are organisers of the major strikes in the country as far as duration, number of participant employees and lost hours are concerned.

Table 1: *Different types of industrial action (1992-2002)*

Year	Warning strike	Strike	Solidarity strike	Demonstration	Collecting signatures	Petitioning	Other industrial action	Other Action	Total	%
1992	7	4	-	3	2	-	3	-	19	6,3
1993	12	7	-	3	3	1	2	1	29	9,7
1994	6	5	1	5	6	-	1	1	25	8,3
1995	6	3	1	13	2	-	3	-	28	9,3
1996	4	4	-	6	1	2	2	-	19	6,3
1997	4	5	-	16	4	2	4	2	37	12,3
1998	9	2	-	7	2	-	2	2	24	8
1999	5	2	-	11	3	3	1	2	27	9
2000	3	4	3	12	3	2	2	4	33	11
2001	3	3	1	10	9	2	2	3	33	11
2002	3	5	0	10	3	2	0	3	26	8,7
Total	62	44	6	96	38	14	22	18	300	100
%	20,7	14,6	2	32	12,7	4,7	7,3	6	100	

Source: *Erzsébet Berki: Sztrájkok és direct akciók, Raabe, 2003.*

Table 2: *Number of strikes (1992-2002)*

	Number	**%**
Warning strike	62	55,4
Strike	44	39,3
Solidarity strike	6	5,4
Total	112	100

Source: *Publications of Erzsébet Berki.*

Duration of strikes and lockouts

In general, the duration of strikes was fairly short in the past ten years. Primarily because more than half of all strike actions were warning strikes, which may not be longer than two hours. Data based on those strikes when the duration of the action is known shows that the average strike lasted for only 32 hours. This number is, however, boosted by the unusally strike prone railway industry and the relatively long strikes at particular industries. The longest strike was the January 2000 railway workers strike, which lasted for 13 days and 17 hours, involved about 56,000 workers.

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Table 3: *Duration of strikes (1992-2002)*

Duration of strikes	Hours
Total	3281
Average	32
Minimum	1
Maximum	480
Number of cases	103

Source: *Publications of Erzsébet Berki.*

During the past ten years altogether more than 9 million hours (1.150.457 working days) were lost to strikes. As mentioned above, the railway strikes resulted in the most numerous lost working days. As for the participants of demonstrations, only those demonstrations mobilised more than ten thousand participants, which covered at least one sub-sector of the public sector and aimed to put pressure on the Government or on the Parliament. In March 1999 nearly twenty thousand health care workers, teachers, and other public employees demonstrated demanding the cancellation of wage freeze, staffing cuts and 16 % wage increase. In December 2000 the health care workers held a series of warning strikes and demonstrations over three days. These actions culminated in a demonstration held in front of the Parliament which mobilised 10,000 public employees requesting additional state-funding for wage increase.

Table 4: *Number of participants in strikes (1992-2002)*

Number of participants	Persons
Total	356816
Average	4517
Minimum	6
Maximum	200000
Number of cases	79

Source: *Publications of Erzsébet Berki.*

Table 5: *Working hours lost in strikes (1992-2002)*

Number of lost working hours	Hours
Total	9203661
Average	82175,54
Minimum	0
Maximum	3290000

Source: *Publications of Erzsébet Berki.*

Reasons for strikes and lockouts

As the table below shows, almost half of strike actions were triggered by wage demands. None the less, at the beginning of the nineties, workers frequently protested against mass reductions or privatisation in the form of strikes, while in the past few years the number of actions has increased against factory closures and reorganisations. Among 'other' reasons for industrial actions one can find actions for fringe benefits, protesting against overwork or against unfair management practices. Since 1989, the decisive majority of strikes and demonstrations were held in the public sector. Especially since the second half of the nineties, public sector unions became the major strike organisers. All major strikes and demonstrations were initiated in the public sector. The typically strike prone public sectors are railway, other transportation subsectors, health care and education, policemen, firemen. These strikes and demonstrations aimed to

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draw attention to the low income level in the public sector. Protests of farmers and agriculturer producers were also rather frequent, but their actions are not considered to be part of industrial relations in Hungary.

Table 6: *Reasons for strikes (1989-2002)*

Year	Wage	Lay offs	Privatisation	Closures Reorganisations	Other	No data	Total	%
1989	13		3	7	5		28	7,5
1990	4	2	3	1	9	1	20	5,4
1991	6	8	3	1	7		25	6,7
1992	8	3		3	5		19	4,8
1993	25	1			3		29	7,8
1994	12	5	1	1	5	1	25	6,7
1995	16	3			9		28	7,5
1996	12	1		1	5		19	5,1
1997	22		2	7	5	1	37	9,9
1998	17	1	1	2	3		24	6,5
1999	15	1	2	9	0		27	7,3
2000	16			5	12		33	8,9
2001	15		1	10	7		33	8,9
2002	12		4	3	7		26	7,0
Total	193	25	20	50	82	3	373	100
%	47,7	6,7	5,4	13,4	22,2	0,8	100	

Source: *Erzsébet Berki: Sztrájkok és direct akciók, Raabe, 2003.*

Table 7. below shows the primary addressees of industrial actions, and table 8. provides data about the success rate of industrial actions, according to the opinion of the organisers and the participants. It is important to note that the share of strikes and other protest actions which were considered successful by the organisers and the participants is very small.

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Table 7: *Addressees of actions (1989-2002)*

Year	Employer	Owner	Municipality	Government	Parliament	Other	Total	%
1989	17		3	8			28	7,5
1990	14			4	2		20	5,4
1991	19		2	4			25	6,7
1992	13	1		3	2		19	4,8
1993	19	4	2	2	2		29	7,8
1994	13	1	1	8	2		25	6,7
1995	10	1	2	11	4		28	7,5
1996	12	1	2	2	2		19	5,1
1997	19	1	6	9	2		37	9,9
1998	15	1	1	5	1		24	6,5
1999	12	1	9	5			27	7,3
2000	16	1	2	12	1	1	33	8,9
2001	8	6	3	13	2	1	33	8,9
2002	11	9		3	1	2	26	7,0
Total	198	27	33	89	21	5	373	100
%	52,9	7,3	8,9	24,0	5,6	1,3	100	

Source: *Erzsébet Berki: Sztrájkok és direct akciók, Raabe, 2003.*

Table 8: *Evaluation of success of industrial actions (1989 - 2002)*

Year	Fully successful	Partly successful	Somewhat Successful	Not successful at all	No data	Total	%
1989	6	8	2	7	5	28	7,5
1990	3	8	2	4	3	20	5,4
1991	6	10	2	5	2	25	6,7
1992	3	6	2	6	2	19	4,8
1993	3	16	1	5	4	29	7,8
1994	4	7	5	7	2	25	6,7
1995	2	13	1	8	4	28	7,5
1996	2	10	2	4	1	19	5,1
1997	5	15	4	6	7	37	9,9
1998	6	8	0	6	4	24	6,5
1999	2	7	4	11	3	27	7,3
2000	3	7	1	17	5	33	8,9
2001	1	3	6	17	6	33	8,9
2002	3	8	0	7	8	26	7,0
Total	49	126	32	110	56	373	100
%	13,2	33,6	8,6	29,5	15,1	100	

Source: *Erzsébet Berki: Sztrájkok és direct akciók, Raabe, 2003.*

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Conflict resolution mechanisms

In order to facilitate effective negotiations between the partners at workplace level, the law offers third-party dispute settlement methods for conflicts of interests: mediation and arbitration. In case of disputes of interests between the trade unions and the employer, methods of peaceful dispute settlement are available, as an alternative to industrial action in case of failure of bipartite negotiations. If a dispute of interests emerges between the works council and the employer, the works council has no right to call a strike, such a dispute have to be settled exclusively via peaceful methods of conflict resolution.

Collective agreements deal fairly extensively with developing internal regulations for handling collective industrial disputes. About half of the collective agreements contain regulations on internal conflict settlement, and 28% of company collective agreements set up a kind of conflict-management committee. The majority of multi-employer collective agreements also include some mechanism to solve workplace level collective disputes. In practice, however, these mezzo-level machineries are rarely used.

The Labour Code stipulates the rules of peaceful interest dispute settlement, covering only the basic rules of conciliation, mediation and arbitration.

Conciliation

Disputes are supposed to be settled first of all by conciliation, namely by direct negotiations between the parties concerned (between the trade union and the employer - or their federations; or between the works council and the employer). The conciliation is initiated by the submission of a written position on the subject of the dispute to the other party. The submission of the initiating position starts a 7-day suspension period during which the parties of the dispute have to refrain from any action that may jeopardize an agreement. During this period the employer have to suspend the execution of its planned but objected measures. Any agreement reached via conciliation is binding and legally enforceable.

Mediation

Mediation is a method of dispute resolution involving a neutral third party who tries to facilitate the disputing parties to reach a mutually agreeable solution. The mediator does not only bring together the disputing parties in order to help them reconcile their differences, but also may suggest terms on which the dispute might be solved. In mediation the disputing parties retain control over the outcome of the dispute. The parties should request jointly the services of the mediator. It means that the parties should agree upon the use of the mediation, and practically, on the actual person of the mediator, as well. The mediator may request data or other information from the parties. If the mediator does so, the 7-day suspension period mentioned above in relation to the conciliation is extended until the deadline determined by the mediator for the disclosure of data or other information. This period of extension, however, may not be longer than five days. The Labour Code also stipulates that at the completion of the mediation the mediator should put in writing the parties' agreement and deliver the document to them. If the mediation has not led to an agreement, the mediator puts in writing the parties' position, and delivers it to the parties. Any agreement reached via mediation, is binding and legally enforceable. Beyond the above stipulations, the Labour Code does not regulate the procedure of mediation. None the less, if the mediator is a member of the Labour Mediation and Arbitration Service, the rules of procedure of the Service will be applied, which contains some additional procedural rules. Otherwise, the parties of the conflict are free to decide over procedural rules and whether they invite a mediator of their own choosing to facilitate the peaceful solution of their dispute.

Arbitration

Arbitration is a method of dispute resolution involving one or more neutral parties who decide the dispute of interests. In arbitration the parties do not retain control over the outcome of the dispute, the arbitrator is given the power of

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determination over the debated issue. The Hungarian labour law does not allow adjudicative-claims arbitration in the field of employment and industrial relations. Consequently, there is no arbitration in disputes of rights. Arbitration is generally voluntary and normally used as a last resort, after negotiation has failed to resolve the issue. According to the general rule, the parties should request jointly the services of the arbitrator.

The award of the arbitrator is binding if the parties have, in advance, subjected themselves thereto in a written statement or, when the arbitration award is brought in a compulsory arbitration procedure.

Resolution of civil law disputes in out-of-court procedures

Regarding legal disputes, an Act on Mediation, with the aim to further the resolution of civil law disputes in out-of-court procedures was legislated in 2002.[29] The law endorses that a conflict should be solved peacefully, quickly, cheaply, and preferably by a win-win style compromise of the parties.

Labour mediation and arbitration service

To promote an effective and quick resolution of industrial disputes of interests, the state and the social partners agreed to establish the *Munkaügyi Közvetítoi és Döntobírói Szolgálat* (Labour Mediation and Arbitration Service, MKDSZ) in 1996. The role of the MKDSZ is to facilitate peaceful resolution of collective interest related industrial disputes between employer(s) and employees' representatives by providing third party mediation and arbitration. The MKDSZ, however, has been barred to provide third party participation in individual legal disputes and in collective disputes over statutory rights, namely in legal disputes.

The MKDSZ is an independent organisation. None the less, MKDSZ annually provides a report concerning the overview of its functioning to the ÉT. The arbitrators and mediators are elected every five years by the national tripartite body. The functioning of the MKDSZ is covered by the state. The office of MKDSZ is hosted at the *Foglalkoztatási és Munkaügyi Minisztérium* (Ministry of Labour and Employment, FMM) and its full-time officials are civil servants of the staff of the ministry.[30] MKDSZ has two full-time employees: a director and a secretary. The secretary performs the administrative and management activities.

It should be noted that parties involved in a dispute are not obliged to choose a mediator or arbitrator from the register of MKDSZ. In practice, however, if the parties ask for a neutral party's service, they mostly choose among the mediator and arbitrators of the MKDSZ. Mediators and arbitrators of the MKDSZ are selected by a committee set up by OÉT and, the list is endorsed by the OÉT. The Director and the secretary of MKDSZ are also elected by the OÉT.

The official journal of legislative acts, the *Magyar Közlöny* (Hungarian Journal) publishes the list of mediators and arbitrators and the Rules of Organisation, Operation and Procedure of MKDSZ.[31] As far as procedures concerned, mediators and arbitrators act upon individual request. Namely, the parties in conflict should request jointly the services of a mediator or an arbitrator. It means that the parties should agree upon the use of mediation / arbitration procedure,

[29] Act LV of 2002 on Mediation, came into force on 17. March 2003.

[30] Government Decision 1005/1996 (I. 31.).

[31] Information provided by the National Labour Council was published in Hungarian Journal No. 2000/38. It contains the Rules of Organisation, Operation and Procedure of MKDSZ applicable since 2000 as Appendix No. 1 and the list of mediators and arbitrators as Appendix No. 2.

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and on the actual person of the mediator / arbitrator, as well. These agreements may take place in advance, resulting in generally applicable rule. However, it is far more frequent that the affected parties agree upon the applicable procedure and the person of the mediator / arbitrator following the outburst of the conflict. The rules of the procedure to be followed in the course of mediation and arbitration are defined by the Rules of Procedure of MKDSZ providing sufficient flexibility for the solution of disputes of interests.

The agreement reached during the conciliation / mediation procedure and the award of the arbitrator is qualified as a collective agreement. Thus should the agreement (award) be breached, its execution might be enforced by court procedure.

Conciliation, mediation and arbitration have costs has to bear, according to the law, by the employer. However, according to the regulations of MKDSZ, the fee of the mediator is paid by MKDSZ for the first eight days of mediation.

The Rules of Procedure of MKDSZ effective since 2000 allows for the mediators to take part also in the settlement of 'collective legal disputes' namely disputes of rights between the employer and the trade union or the works council.

Until now, the number of cases referred to the MKDSZ has been fairly low. Between June 1996 and December 2001 it mediated in 40 cases and issued an arbitration award in four cases. As far as the four arbitration awards concerned, two cases were disputes between employers and trade unions, and two cases were disputes between employers and works councils.[32] Furthermore, it gave advice in a few dozen cases, mostly based on the request of the employer. Most of the cases, where arbitration or mediation took place, were medium size enterprises or public service or public administration institutions. Nonetheless, all cases handled by MKDSZ ended with the agreement of the parties in conflict. According to the annual reports of the MKDSZ, the requests concerning the third party service were initiated mainly by the Service itself, or by the trade unions. Requests from the employers are rather rare, and requests from the works councils are even more seldom. The conflict resolution activity of MKDSZ has revolved mainly around conflict situations concerned wages and staff reduction.

Table 9: *Use of arbitration, mediation and conciliation services of MKDSZ in 1999-2001*

	1999	**2000**	**2001**
No. of cases referred to arbitration*	0	2	1
No. of cases referred to mediation*	11	6	5
No. of cases referred to conciliation	n.a.	n.a.	n.a.

Source: *András Tóth - László Neumann - Erzsébet Berki (2003)*

[32] Cases of mandatory arbitration in interest disputes between trade union and employer: disputes on practising the right of providing information for trade union members and other employees [Art. 24 (1)]; disputes on the right of trade unions to use offices [Art. 24]. Cases of mandatory arbitration in interest disputes between works council and employer: disputes about the amount of costs arising from the election and operation of the works council [Art. 63]; disputes about the use and utilisation of welfare funds, institutions and real estates [Art. 65 (1)].

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Conclusion

The re-legislation process in the early nineties proved to be a contradictory development. On the one hand, the institution of collective labour dispute was restored and the right to strike became a constitutional right. On the other hand, not independently of their role played in the socialist regime, unions were barred from having an institutionalised intermediatory role in individual legal disputes between employees and employers.

As far as legal regulation is concerned, it is a widely shared view that the actual conflict resolution system of Hungary, by and large, provides a fairly satisfactory scheme for peaceful dispute resolution for collective industrial disputes. Yet, the utilization of legally established instruments is falling short of expectations in many cases. A clear sign of this phenomena is that the services of the MKDSZ were requested only in a fairly low number of cases in the last decade, which was far below the capacity of the organisation.

However, the low conflict level and the low level of litigation concerning rights do not mean that there is harmony in the world of work. Reportedly, there is widespread discontent among employees, and also widespread use of unfair and informal labour practices, a circumvention of legal regulations, which proves beneficial for employers in the short term, and will have long-term negative consequences for employees.

The relatively low number of litigations and collective industrial disputes are explained by a combination of various factors, such as:

- the weak labour market positions of employees in the 1990s in the context of a dramatic reorganisation of the economy and society;
- the cultural traditions of informal problem solving, mostly on an individual basis, and the consequent aversion from making explicit demands in a formalised conflict process;
- the gradual weakening of unions, and the steep growth of the non-union sector of the economy;
- the lack of an institutionalised role of unions or works' councils in handling individual grievances at the workplace level before labour court process.

It is evident, that more efficient campaigning to make the MKSZ known and increasing the awareness of employees of their rights would have a positive impact on the utilisation of formal conflict resolution schemes. More efficient union organising activity among employees, and more active union members, especially among the younger generations, more effective concentration of union power at sectoral level, and more efficient cooperation among unions would certainly improve the interest enforcement capacity of labour. On the other hand, better organisation of employers into more efficient employers' organisations also would be important to the development of effective social dialogue and conflict resolution at sectoral level.

Yet, from time to time the issue is surfacing of widening the scope of the activity of MKDSZ that might provide the organisation with an efficient role and would contribute to the satisfactory resolution of conflicts in the world of work. As it was mentioned above, the MKDSZ itself also suggested to expand its scope of activity towards consultation and mediation based on a unilateral request of one of the parties to the conflict. It also suggested to extend its mandate be able to mediate in individual industrial disputes during the pre-court conciliation process. It is the opinion of the authors of this article that such an extension would be important especially in cases when all or most of the employees of one employer are suffering from the same unlawful action of the employer, e.g. when the employer systematically violates the regulation on overtime, or on annual paid leave. According to our recent experience, in such cases, the employees

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are very reluctant to file the case to the court because they are not willing to risk any further retaliation upon them. The rapid and effective settlement of such conflicts is further hindered by the fact that according to Art. 23 of the Labour Code unions are not entitled to cast a veto in such cases. According to our opinion, mediation between the union and the employer could solve such class-action type mass-legal-disputes relatively quickly, at little cost and without putting into the forefront any individual employee. This suggestion correlates with the actual practice of MKDSZ as it sometimes gets requests to mediation in disputes of rights, but could not act officially given its mandate.

In order to achieve the goal, the work-group has proposed to extend the mandate of MKDSZ to offering third-party services in individual dispute resolution. It was seen that such a extension of mandate would facilitate the fair treatment of individual grievances, the development of high trust high efficient workplace model and increasing competitiveness of companies based on workers commitment and mutual trust, and would stabilised the peaceful social partnership. The most imprtant contribution of such a service would be that it would faciliate the transformation of the hidden conflicts into a transparent conflict resolution system. The participants agreed to develop jointly a proposal in 2004 in order to be able to discuss the planned strategic changes in the forthcoming period in the tripartite machinery and to have an amendment of the Labour Code until 2006 concerning the proposal.

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Annex 1: National development project

'Reinforcing individual conflict resolution mechanisms in the workplace'

On the on the tripartite seminar on conflict resolution in the CEEC organised by the European Foundation for the Improvement of Living and Working Conditions, which was held in Prague in November 2003, the representatives of the government and social partners embraced the idea of an extension of mandate of MKDSZ in order to re-enforce the conflict resolution system in Hungary. The participants of the workshop have developed a strategic project re-inforce conflict resolution system in Hungary.

The social partners have elaborated the national development plan based on six questions, as follows:

1) What to develop?
2) Why develop?
3) Who is responsible for the implementation?
4) When will this process take place?
5) Where to develop?
6) Which means/funds are available for this purpose.

The draft national development plan contains, following the above listed questions, the following project.

What to develop?

- Preparation of legislation on dispute resolution mechanism in industrial disputes, including the possibility to have third party involvement in individual dispute resolution;
- extension of mandate of MKDSZ to providing third party services (mediation or arbitration) in the area of individual right industrial disputes (grievance procedure) in order to increase the efficiency of the conflict resolution system in Hungary;
- raising awareness and capabilities of social partners for devising workplace level grievance procedure scheme.

Why develop?

The major reason is to ensure fair treatment in individual industrial disputes and in parallel facilitate the emergence of the high-trust high-commitment workplace model in Hungary through transformation of hidden conflicts and tensions into transparent and manageable conflict resolution systems. One of the expected outcomes is the strengthening of a peaceful social partnership and preparations of social partners to negotiations on long term agreements regulating terms and conditions of employment at all levels.

Who is responsible for the implementation?

National level social partners should have a major role in preparing a proposal for the tripartite national social dialogue forum concerning the amendment of Labour Code and the By-rule of MKDSZ in order to be able to offer third party services for parties of an individual right dispute. The preparation of draft legislation is the responsibility of the Government and should be discussed in the OÉT. The final decision should be taken by the Parliament concerning the amendment of the legal regulation concerning regulation of industrial disputes. The implementation of the plan is the responsibility of the social partners and the government, within the legal framework set by the Parliament.

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When will this process take place?

During 2004, social partners should prepare their joint plan concerning the National Development Plan. The preparation of the amendment, the process of social dialogue over the final proposal, and the legislative process should be finished until 2006.

Between 2007 and 2010, MKDSZ should develop its capacity in order to meet requests to provide third party services in individual right disputes. During this period, social partners should re-negotiate regulations collective agreements concerning workplace level collective agreements in order to make space for institutionalised third party involvement in handling workplace level individual right disputes.

Where to develop?

The major field of implementation will be workplace level of the changes in individual conflict resolution scheme. Social partners could extend the conflict resolution machinery to regional, sectoral or national level. Measures concerning facilitating peaceful social partnership and negotiations between social partners should be develop at all levels from national forums to workplaces.

What means/funds are available for this purpose.

Social partners are ready to offer their human resource capacity to prepare such a major reform of conflict resolution systems and, in the implementation phase they are ready to provide the necessary training to their local representatives in order to be able to use the new conflict resolution mechanism. None the less, it is the responsibility of the Government to ensure budget funding to MKDSZ to be able to take up new responsibilities.

During the build-up of capabilities, actors involved in the process should recourse to international best practices, relevant ILO recommendations, appropriate EU funds, and professional support of the European Foundation for the Improvement of Living and Working Conditions.

Annex 2: Road map for conflict resolution

The road map for Hungary was not available in time for production.

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