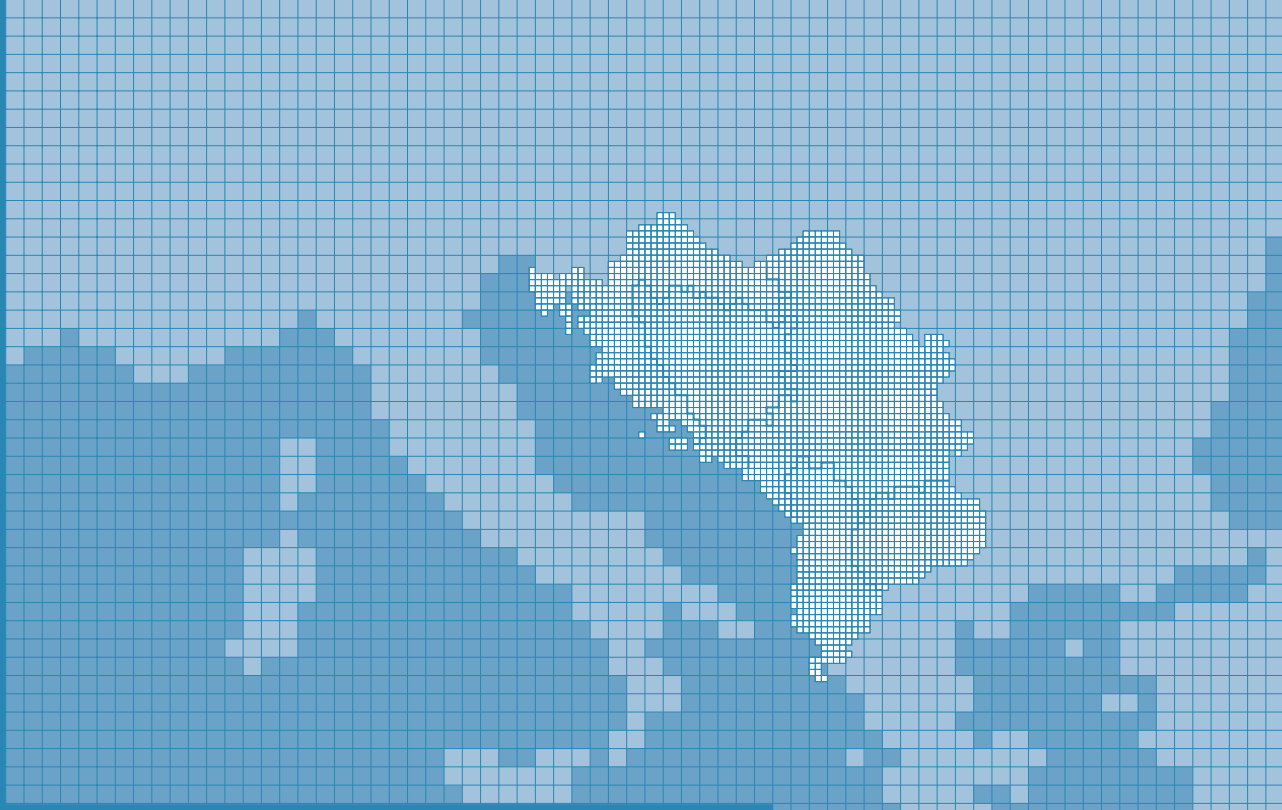

SOCIAL DIALOGUE IN SOUTH-EASTERN EUROPEAN COUNTRIES: POSSIBILITIES, LIMITATIONS, PERSPECTIVES

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SOCIAL DIALOGUE IN SOUTH-EASTERN EUROPEAN COUNTRIES: POSSIBILITIES, LIMITATIONS, PERSPECTIVES

Darko Marinkovic
Belgrade, July 2002

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FOREWORD

When in January 2000, during the conference held in Thessaloniki (Greece) the representatives of the Royaumont Process (which has now been incorporated into the Stability Pact for south-eastern Europe) and the European Union's Economic and Social Committee, ETF was requested to establish a project for the western Balkans with a view to buttressing concepts and national and regional structures in the field of social partnership, we considered this as a challenge for our organisation.

This initiative was designed to develop or reinforce the bargaining abilities of the social partners in order to thrash out problems related to the skill needs of employers, job security and recommendations for taking strike action (a democratic right) only as a last resort. For this is an area in which many of the structures, working methods and attitudes that have governed social partnership were influenced by the conditions and political systems in place before the 1990s. In fact, some of the issues at stake pose real challenges for some of the participating countries and territories.

The project had at its core the aim of providing training in a range of areas relating to social partnership, such as negotiation skills (transfer of the best practice of the EU countries) to a targeted group of representatives from organisations (trade unions and employers' organisations, ministries of labour and other civil organisations) involved in social partnership functions in each country and at regional level.

An average of 40 social partners from all nine countries involved, took part in the following:

Study visit to Rome, September 2001.

1. Study visit to Brussels, February 2002.
2. Seminar in Bucharest, June 2002.
3. Conference in Thessaloniki, September 2002.
4. Training session, in Zagreb, March 2003.

In addition, in each country, a national report was prepared on the state of the social dialogue and findings disseminated through specific seminars.

These nine reports are the basis of the present comparative analysis, which was discussed during the Conference in Thessaloniki. The presentation of this final report, is also a good occasion for making an analysis of the contribution made by the project and the hard task that is still to be tackled.

The project has contributed to:

- Creating or reinforcing relations and understanding at the national, regional and European level.
- Increasing capacity through good practices presented during the study visits and training carried out in Brussels, Bucharest and Zagreb.
- Better understanding of the need for social dialogue through reviewing it at country level and dissemination seminars.
- Indirect contribution to the peace and stability of the region through increased confidence among project participants.
- Developed capacity of analysis of needs by the participant organisations.

- Developed understanding of the need to create a new cross-border cooperation.
- Broad understanding of the need to establish or consolidate cooperation with social partners in Europe and their organisations.

But there is still much to be done; the following challenges remain:

- The weakness of social partners needs to be addressed through massive training initiatives.
- The regional dimension should be maintained by reinforcing existing networks or establishing new ones, which should meet regularly.
- All social partners in the region should meet together at least once a year inviting other relevant social partners' organisations from the rest of Europe.
- Help for national governments and social partners in developing a regulatory framework to facilitate the development of a social dialogue.
- Support for new social partners in those countries where such a process is still in its embryonic stage.
- Help to the civil society in supporting the above process.

I would like to thank all the authorities (European Commission, Economic and Social Committee, Stability Pact), the Italian CNEL, the Greek OKE, ETUC, UNICE and all the participant organisations that made it possible to accomplish this good result. I would also like to thank Francesco Panzica, who has coordinated the project on behalf of ETF.

Peter de Rooij, Director of ETF

ETUC RECOMMENDATIONS
FOR BETTER USE OF THE REPORT

The comparative report has put together a considerable amount of information on the emerging systems of labour relations in the region of South-East Europe including numerous and extensive references to legal texts, regulations and other arrangements. It points to the complexity of the problems faced in the building of social dimension of the stabilisation and association process and attempts to outline certain possible comparisons with the European standards and practices. In this sense the report provides descriptions of the set up of industrial relations in particular situations, certain more analytical insights in the issues and incentives for further development of social dialogue in the region through the identification of "good practices".

Following the main orientation of the project, the report is an attempt to build potential in the local social dialogue actors for strategy formulation and implementation of jointly agreed policies in complex reform realities. To that end the insights and conclusions can serve as tools in the process of change in searching for the most adequate solutions in each society in the region. Using the report for such a more instrumental approach necessitates to bear in mind a few important considerations:

1. In the theoretical and the practical parts of the text the interpretations and analysis have not achieved sufficient level of clear differentiation between "social" and "civil" dialogue and the respective actors and arrangements involved. Naturally both processes are linked and can reinforce each other as elements of the development of representative democracy, yet they are not interchangeable and can not indiscriminately interfere in the respective arrangements. As presented in the report, in the case of the Balkans the picture has been further complicated by naming pure tripartite bodies at national level "Economic and Social Councils". In the tradition of the EU and even in CEE such wording would designate multipartite structures with different objectives and patterns of activity than tripartism. In that line the only case where a clear distinction between the two has been attempted - in Bulgaria, obviously deserved more attention to paid and monitor what opportunities it can create for more efficient social dialogue process.
2. Following these problems there are not many "good practices" clearly

identified and analysed as to assess the possibility of their application in other conditions as well as their relevance to the challenges of the reform process on one side and to the European standards and practices on the other.

3. In order to strengthen the implementation effects of the report the user will profit more if the reading is complemented with particular documents and analytical materials on social dialogue of the European Commission and the social partners at European level and CEE countries.

There are enough definitions and interpretations, related to the social dialogue in the EU and the so called European Social Model (or models) operating in reality on broadly similar assumptions and principles. These would provide a wider choice of answers to the problems raised in the report and strengthen the inspirations for designing local solutions while providing dynamics in the development of policies in the social sphere of "European" nature.

Grigor Gradev,
ETUC Coordinator for
Stability pact for SEE

INTRODUCTION

The countries of south-eastern Europe are currently facing one of the greatest challenges in their history. For almost a decade and a half they have been experiencing an extremely complex and contradictory social process, more precisely a whole range of interrelated processes, which scientists, analysts and politicians term with a common denominator – transition.

This general term, the semantics of which indicates movement, development, or evolution from one form, stage or style to another – in other words, change – implies a substantial change in these societies, the dismantling of the old and the emergence of a new social structure – the creation of new social values, a new political and economic organisation of society, that is to say, a new way of life.

Since the very beginning only the basic characteristics of the new social order were familiar: i.e. private property, a market economy, multiparty parliamentary democracy, civil institutions, human freedom and rights. This is significant, but insufficient.

Social practice has definitely refuted scientists' and experts' unrealistically optimistic expectations of the duration and social consequences of the transition process. It turned out to be a much longer, more complex and contradictory social process with very painful consequences.

The issues of the progress towards transition, the contradictions and obstacles in its path, the social cost of transition and how it could be covered are still open and will remain permanently on the agenda. Theoverriding issue is that of the human and moral meaning of the transition process and socially bearable cost of this process, particularly for the wage-earning social strata.

The socially acceptable cost of the transition process is the subject of very profound and radical social conflicts, which more or less shake all societies undergoing transition. The results of empirical research and the course of political and economic processes in the previous decade unquestionably confirm that citizens and employees are aware of the need for changes, of the fact that changes are already taking place daily and are willing to accept these changes.

The fact that in the elections of September 2000, and during the events of the following October, citizens opted for social changes (they confirmed this in December 2000 in the elections for the Republic Assembly) may perhaps conceal a more important fact – that they have different expectations from these changes, that is, that they relate them to different social goals. Experience in the research of public opinion, positions and values, as well as observation of citizens' behaviour at public gatherings lead to the conclusion that there are four basic and relatively general goals:

1. Establishment of democratic political order (expressed also as an idea dealing with the exercising of civil rights, democratic society).
2. Transformation of the system of ownership (privatisation) and the establishment of a market-based economy.
3. Solution to social problems and raising of the general standard (conditionally, the idea of social justice).

4. A satisfactory solution of the national issue (once dominant, but for many citizens still important goal).

For most citizens these goals are not mutually exclusive, but are rather complementary. However, everyone can define his/her own order of priorities. Therefore, we asked respondents to rank these four goals according to their own assessment of their relevance.

Priority social goals: Percentage of respondents who attribute a certain rank to each goal[1]

Social goals	Ranks				Derived rank
	1	2	3	4	5
Establishment of democratic political order	34%	12%	7%	45%	4
Establishment of market economy, privatisation	24%	34%	14%		2
Satisfactory solution to the national issue	25%	32%	22%		1
Solution of social problems and raising of standards	14%	20%	53%		3

1 Mirjana Vasovic and Bora Kuzmanovic:, 'Vrednosni prioriteti zaposlenih [Employees' Value Priorities]', results of the public opinion poll conducted in December 2000, *Sindikati Srbije od sukoba ka saradnji* [Trade Unions in Serbia: From Conflict to Cooperation], Belgrade, Friedrich Ebert Stiftung /Centre for Social and Democratic Studies 2001.

1. THE SOCIAL AND ECONOMIC ENVIRONMENT FOR THE ESTABLISHMENT OF SOCIAL DIALOGUE

1

It should be noted that changes as such and the necessity for them are not the subject of social conflicts, but their social cost and consequences. Common sense suggests that people will only accept and support changes that bring them positive results, such as job safety, decent earnings, safety at work, a sound living and working environment, in other words – a better quality of life.

On the other hand, without attempting a critical evaluation of the economic policy measures undertaken in south-eastern European countries or investigating the possibilities of implementing other alternative measures, it is obvious that these measures are not economically and socially acceptable to a large part of the wage-earning population. This is corroborated by statistical data on the status of national economies and the population's material and social position. They show that a high percentage of the population in these countries live under the poverty threshold – below the minimum standard of a decent life and work. For these people, transition is synonymous with unemployment, low wages, poverty, humiliation, uncertainty, etc.

Key data about the state of national economies have been analysed: industrial output, inflation, wages, unemployment, vital foreign-trade statistics (exports, imports, export coverage of imports, foreign-trade balance). However, although this indicator is not shown, we should have in view that none of the observed countries has yet achieved theGDP level recorded in 1989, which is considered the initial year of transition.

The data most explicitly, with the power of facts, speak about the difficult economic situation in these countries and the unfavourable material position of most of the population. In other words, these countries only differ in their level of poverty. These data are shown in Table 1.

Table 1. Economic indicators of south-eastern European countries, 2001

	Albania	B&H	Bulgaria	Croatia	FYROM	Romania	FRY (total)	Kosovo	Montenegro
Area (km)	28,750	51,130	110,910	56,540	25,710	238,390	91,296	–	–
Population (000s)	3,401	3,750	8,150	4,500	2,030	22,443	8,380	2,034	662,5
GDP ($ mill.)	3,811	4,140	11,989	19,023	3,291	36,719	10,000	1,698	–
GDP per capita ($)	1,120	1,104	1,471	4,227	1,621	1,636	1,193	880	–
Unemployment (registered in 000)	215	415	683	379	262	1,007	812	–	81,8
Unemployment rate (%)	16.8	38.9/40.2*	17.9	22.3	32.2	10.5	26.8	–	28.7
Inflation (%)	0	1.2/13.6*	10.3	6.2	10.6	45.7	30.6	–	13.1
Budget deficit (%GDP)	-11	-7.2	0.7	-3.9	–3.5	–3.6	–6.1	–3.2	–
Foreign trade balance (%GDP)	-21.4	-52.1	-14	-12.5	–23.3	–7.3	–19.9	–76.2	–

** The first figure refers to the Federation of Bosnia and Herzegovina, the second to the Republika Srpska.*

The first indicator to attract attention is the low level of wages. Indeed, wage levels differ from one country to another. Wages are by far the lowest in Romania (€100) and FRY (€134), followed by FYROM (€179.3). The highest wage level in the observed group of countries is in Croatia (€484), which is nearly four times the level in FRY and Romania. However, wages are generally far below those in developed market economies and in any case are insufficient to secure a decent standard of living appropriate to the achieved level of civilisation. Besides representing a real source of discontent and other industrial problems, low wages and the consequent poor purchasing power of the population are obstacles to faster and more stable economic development.

Most of the observed countries suffer also from high inflation. It is the highest in Romania at 34.5% per annum, followed by FRY at 19.7% and Bulgaria at 10.3%.These data on inflation deserve no special comment except as a reminder that economists correctly identify inflation as one of the biggest obstacles to economic and technological development, and improvement in living standards.

In any case, a positive indicator is rising industrial output in all these countries, with the exception of FYROM,. This increase differs from country to country and is the highest in the Federation of Bosnia and Herzegovina (11.4%) and the lowest in Romania (3.7%).

This indicator must be related to the fact that throughout the observed period Romania had the highest inflation rate. However, when comparing the data on the development of industrial output we should bear in mind the limitations of methodology. Without disputing the validity of the data on the growth of industrial output, these should be interpreted taking into account the level of industrial output in the base period. If the base level is very low, and this is more or less true of all the observed countries, the projected growth rates must be relativised. At the same time, data on the declining industrial output in FYROM (–5.3%) should be viewed with serious economic and social alarm.

High unemployment is an inevitable companion of economic crisis, that is, of economic, technological and social restructuring of national economies in south-eastern European countries. In the Federation of Bosnia and Herzegovina it amounts to a disastrous 40%, but is also very high in Bulgaria, FRY and Croatia. Poor national economies are unable to start economic development rolling and thereby creating new jobs. It should also be borne in mind that such high unemployment is inevitably accompanied by a massive shadow economy and black market, which have always been closely connected with organised crime. This further aggravates the already difficult situation.

The analysed data on the economic situation in the observed countries urge analysts, researchers, as well as politicians and trade unions to seek out the causes of such contradictions and obstacles to economic and social development, that is, to answer the question of why these countries are less successful in this regard. By their very nature, trade unions are most concerned with this, because the consequences of such a situation affect workers most.

The causes of such a situation are numerous, very complex and can be found in all spheres of social life. This study should contribute to arriving at part of the answer to the question of whether the unsatisfactory level of the development of social dialogue contributes to this situation. In this context it is indisputable that the described economic situation is by no means favourable for the development of social dialogue. A specific form of social dialogue – conflicting social dialogue – develops as the result of such an unfavourable social environment.

Difficult economic and social situations are additionally aggravated by the very unfavourable economic legacy of the previous system, that is, by the fact that all these societies embarked upon transition from a very low base, which can barely meet the requirements of radical changes in the economic, social and political structure of society. All this when

accompanied by ignorance, lack of experience and tradition in the development and functioning of democratic institutions in society, raises numerous doubts about the way the problems in society can be resolved.

Owing to the above-mentioned reasons, all societies in south-eastern Europe are in a dominantly conflicting situation. In actual fact, these conflicts manifest themselves at different intensity and in different ways from one country to another, because of specifics in the historical heritage and the past course of transition. However, a high degree of conflict is the dominant feature of these societies. This additionally hampers the already difficult economic and social situation in these societies, because conflicts, particularly of such great intensity, actually hamper reform processes, make them costliereconomically and hang as a Sword Damocles over all south-eastern European countries, facing them with numerous social and political risks, warning that social conflicts may cross the critical line and turn into something much more dangerous.

In other words, it could be said that the countries of south-eastern Europe are at the crossroads between industrial (i.e. social) conflict and social peace, which is built and exercised through the mechanism of social dialogue. The experience so far unquestionably confirms that the best results in the transition process have been achieved by the countries that managed to achieve a minimum national social consensus on the ways and social cost of transition and on this basis have developed mechanisms of social dialogue and social peace. This means that the countries of this region have to focus on the development and functioning of the mechanisms of social dialogue and social peace as one of the vital issues of their future.

Whether to choose conflict or social dialogue is no dilemma in fact. The right question would be how to go from conflict to dialogue, that is, how to make dialogue dominant in relation to conflict in the long run.

2. THE HISTORICAL COURSE AND INITIAL STEPS TOWARDS SOCIAL DIALOGUE

2

Under the pressure of mounting social contradictions and the need for their permanent and systematic solution, south-eastern European countries started to make the first steps towards the establishment and development of mechanisms of social dialogue. In doing this, they had in view many decades of experience of developed, democratic free-market countries which have a tradition of social dialogue, positive attitudes by all social partners and have proved that social dialogue is one of the cornerstones of a democratic social order and efficient mechanism for the harmonisation of positions and differing interests of social actors.

However, as in other similar situations, it turned out that experiences of developed, democratic countries, above all the EU member states, which have established a highly developed and efficient model of social dialogue, are necessary as one of the initial elements, but they are not sufficient. First of all, uncritical, mechanical copying is not possible or, more precisely, it is unreasonable. Certain mechanisms can be very efficient in certain social circumstances, but in other circumstances, in a different social environment, their effect can be very limited, that is, they can be an empty form not relevant to the social dialogue that has been established. This has been unquestionably confirmed by the first experiences of transition where models and the course of introduction of social dialogue have their specific characteristics in each of these countries.

Therefore, what we are discussing here is a social environment that makes possible the establishment and functioning of social dialogue in its essential meaning. For instance, historical experience of both industrialised democratic European countries and transition countries, including south-eastern Europe, has clearly confirmed that the establishment and real functioning of social dialogue is possible

only at a certain level of political, economic and social development of society.

Many of these conditions (degrees of technological and economic development, standards, functioning of institutions of multi-party parliamentary democracy, civic institutions, human rights) are not yet in place in south-eastern European countries and form one of the biggest obstacles to the establishment and development of social dialogue.

In fact, establishment of the new social environment, that is, the fundamental characteristics of the new society, is the subject of social dialogue and current social conflicts. This process has another important aspect – social partners through current conflicts and dialogue, besides reconciling current different interests, strive for securing as good a starting position as possible in the time to come. This means that social dialogue, *inter alia*, is based on a relative balance of social power between social partners. However, this social power is never ideally distributed and even a small advantage of one of the social partners makes it possible for it to play a dominant role in social dialogue. Experience to date has confirmed that objectively the weakest partner in these relations is the trade unions, while government is the most powerful one. This fact makes the government – the political power – the most responsible, particularly in the first stages of the establishment of institutions and mechanisms of social dialogue. It is the so-called objective responsibility, because the government holds in its hands all the levers of authority whereby it is possible to dominate, positively or negatively, the establishment of social dialogue.

Establishment and development of social dialogue in certain south-eastern European countries has run a very specific course, caused by an extremely hostile social environment in which the transition process took place. We are discussing Serbia and Croatia. On their way towards social changes both countries faced nationalism, armed conflict and the joining of all pro-reform forces in order to establish a democratic order as the first condition for the introduction of social dialogue. This urged the trade unions and relevant political forces to conclude specific social compacts on the joint struggle for social changes, as well as on the principles and goals they strive towards in the new social circumstances. That was actually a specific form of social dialogue about the first steps towards social change.

The national report of Croatia describes that situation in the following way:

In order to understand the present state of the tripartite social dialogue it would be necessary to return to the recent past. Namely, in November 1999 the strongest trade union centre, the Confederation of Autonomous Trade Unions of Croatia (SSSH), concluded ‘The Compact for a Just Croatia’ with six then leading opposition political parties. Some of the key elements of that Compact referred to: the creation of the programme of development and restructuring of the Croatian economy; revision of transformation and privatisation; reform of the employment system; reform of the pension system; changes of the Labour Law, etc. The conclusion of this Compact resulted in the support of the SSSH to these parties in the January 2000 elections.

According to the analysis of the fulfilment of the provisions of the Compact for a Just Croatia, compiled by the SSSH in October 2001, most of the provisions have been carried out or their execution is under way.

Favourable climate of social partnership in the latter half of 2001 enabled the drafting and conclusion of the agreement Partnership for Development, which defined 17 common goals. The agreement was signed on 22 December 2001 by the representatives of the Government, employers and four trade union centres (SSSH, Matica, HUS and URSH), while NHS never signed the agreement.

The preamble of this document stresses the following: ‘Aware of the seriousness of economic and social circumstances, which require from all social and political forces to assume full responsibility in order to help, by setting an example, in the mobilisation

of all social groups and human potential in the Republic of Croatia, we advocate the promotion of the principle of tripartism and the achievement of consensus at the national level about the main economic and social issues.

Social partners are aware that the entire society is undergoing serious structural changes, the process of strengthening market mechanisms and exercising of the rule of law. In the forthcoming period this will call for the implementation of reforms that will require considerable sacrifice of social partners and citizens in the first stage, with protection of the socially and materially most vulnerable categories of the population (workers with the lowest wages, unemployed, families with many children, pensioners with the lowest pensions and other socially deprived citizens)'.[2]

In Serbia, then opposition parties (now parties in power) concluded in May 2000 with TUC 'Nezavisnost' the Compact for a Democratic and Socially Just Serbia, by which all the parties undertook, if they come to power, to take care of the interests of employees and trade unions in conducting their policies.

The preamble to this document reads:

Socially just and democratic Serbia, is not only a strategic commitment of TUC Nezavisnost and all democratic forces, which will render possible permanent and comprehensive protection of the interests of the world of labour, but the only feasible answer to the long-standing political, economic and social crisis and degradation of civil society in Serbia.

Unanimous in the opinion that in almost all aspects of social life, as well as in personal fates, the society is in the situation that a vast majority of social institutions and economic resources are completely destroyed, or exist in extremely deformed forms, so that they have to be built anew;

Committed to the development of democratic, socially just Serbia, based on the values of developed Europe and the world, as the necessary prerequisite for our reintegration into international community, which requires maximum motivation and full engagement of all available material and creative potentials;

Convinced that our county has ample resources which offer the possibility for overcoming the profound social crisis in a relatively short time, and that the most important among them is the creative power of the world of labour, whose interests and rights are represented and protected by independent trade unions;

TUC Nezavisnost and political parties conclude

THE COMPACT
FOR A DEMOCRATIC, SOCIALLY JUST SERBIA

Unfortunately, this Compact produced far less effect than the quoted Compact in Croatia, because the parties that came to power have never accepted any serious substantiated debate on the fulfilment of their obligations under this document.

The present economic situation, material and social position of the vast majority of the population act very restrictively on the establishment and functioning of the social dialogue mechanism in south-eastern European countries.

Except for unfavourable material and social circumstances, underdevelopment and the generally limited social power of different participatory mechanisms and the influence of employees and trade unions in decision-making in enterprises and society restrict the establishment and development of social dialogue. Historical experience and practice in developed democratic European countries have shown that social dialogue cannot function successfully unless employees take part and are able to influence decision-making.

The analysis of the historical course of development indicates that the first strategically important step was the unionisation of labour, an increase in trade union membership, raising awareness

2 *National Report of Croatia,* p. 33.

about their own labour and trade union rights and a gradual strengthening of the social power of trade unions. This has forced employers and political authorities to gradually abandon repressive measures and to try, in the mutual interest, to solve disputable issues in a peaceful manner.

This has opened up the way towards the establishment of mechanisms of collective bargaining and collective agreements (which are actually a non-economic mechanism for regulating relations in the labour market), employees' right to be informed and consulted in the process of decision-making on relevant issues in the enterprise, works councils and other forms of employee participation. This was preceded, as a necessary prerequisite, by the workers' right to free unions, increase of membership and strengthening of the social power of trade unions; namely, all forms of employees' participation in the decision-making process and functioning of the mechanism of social dialogue are based on the establishment of a relative balance of power between workers and employers, such as workers' and employers' organisations.

In a historical perspective, the establishment of various forms of workers' participation has a long track record. It represents a slow and painstaking winning of certain labour and civil rights, which now constitute the unquestionable achievements of civilisation. Every step towards winning and establishing a certain form of industrial democracy has created theconditions as well as a realistic need for the establishment of new, broader forms which provided for greater participation and influence of employees in decision-making concerning their material and social position and the company's business policy. At the same time, this motivated employees to achieve better results at work and reinforced social harmony once it was established. This gradually led to the greater social power of employees and trade unions.

This historical, developmental process also created conditions for the participation and influence of employees, as one of the largest and most vital social groups in every society, to gradually extend beyond the workplace to the process of political decision-making. At the same time, the practice of political organisation and civil life have increasingly and obviously confirmed that multiparty parliamentary democracy, albeit one of the cornerstones of democracy, is not wide enough to enable, in changed circumstances, an adequate level of citizens' participation and influence in the political decision-making process.

In such an analytical study of the course of this historical process – development of industrial and political democracy – we should seek the answers to the question of the emergence, character, contents and objective reach of social dialogue. In other words, the roots of social dialogue should be sought in the development of different forms of employee participation and industrial democracy as a whole, the establishment of the relative balance of powers and social harmony between the world of labour and the world of capital and the actual limitations of multiparty parliamentary democracy. In other words, social dialogue is the product of the progress of civil society during the twentieth century, a bridge conceived and constructed over a long period, which connects political, multiparty parliamentary democracy and industrial democracy, and which comes together into a new whole, providing essentially new qualities to the political life of society. Building and developing social dialogue institutions enable the integration of the split personality of a member of the world of labour and a free citizen, because both these sides have the same source – free citizens as the foundation of a free civil society. Such an approach leads to the discovery of relevant, substantiated answers to numerous dilemmas, theoretical and practical controversies and doubts about the relationship between social dialogue, collective bargaining and workers' participation. What can be accepted as indisputable is that social dialogue, collective bargaining and workers' participation constitute a set of achievements of modern civilisation, which have been won progressively, and which are interrelated and in interactive; only as

a whole can they fulfil their human and historical meaning.

The human and historical meaning of social dialogue is particularly apparent and expressed in specific way in south-eastern European countries. This is the consequence of the course of this process in both the EU and the countries of south-eastern Europe. This means that the process of construction of democratic political institutions, workers' participation and social dialogue in the EU countries continued much longer and followed, we may say conditionally, its natural course, though it does not necessarily mean that this process was without contradictions and conflicts. Clearly, it is unrealistic to expect that this process can proceed at the same pace, follow the same forms and continue for the same time in south-eastern European countries. After all, history has on numerous occasions refuted the possibility of such copying of social processes and relations. What is noticeable is that this process is taking place in a generally unfavourable social environment and that it is very dynamic, though it does not appear as such at first glance. In other words, the intensity of processes leading to the establishment of social dialogue mechanisms is exceptionally strong and that by itself creates new risks and challenges. In the process of establishing and developing social dialogue we may even notice an apparent pattern – that the passage of time is also a necessary factor for the establishment of new institutions and relations, including unquestionably social dialogue. Human factors, motivation, efforts to build new institutions and make them function realistically may contribute to the dynamics of the process, but this contribution has its major limitations.

Confirmation for this can be found in the comparison of form as well as content – real social functions and powers of social dialogue. A comparative analysis of the forms through which social dialogue is carried out in the EU and the SEE countries indicates that similar forms conceal different contents. In this sense, the fact that countries in both above-mentioned groups often have very similar forms through which they conduct social dialogue (composition of the social dialogue bodies, manner of their election, internal organisation) cannot automatically serve as an indicator that the situation of social dialogue in them is similar. First of all, the contents of social dialogue in these two groups of countries differ. This is caused by differences in the degree of economic, technological and social development of these countries. Of course, this does not mean that developed EU countries are free ofrom conflict and confrontation of opposing interests. But it is the differences in the level of economic and technological development, in the quality of life of members of the labour-force and the population in general that make the greatest difference. Relative social harmony was established in the EU countries decades ago and peace predominates in the mechanisms and functioning of social dialogue, while in the south-eastern European countries social harmony is only just being established, while conflicts predominate in the mechanisms and practice of social dialogue.

When comparing social dialogue mechanisms in the EU and south-eastern European countries, we should not fail to observe that even the most ideally designed social dialogue mechanism is an empty lifeless form unless supported by its original principles – voluntariness, autonomy of will and mutual confidence of the actors in social dialogue. This implies that all three social partners (employers, trade unions and government, with the latter having quite a specific role in social dialogue) must have a strongly developed consciousness about the benefit each of the parties gains from participation in social dialogue.

Comparative data on the manner of forming and operating social and economic councils show that these bodies are founded in two ways – through the agreement between social partners or by law. The practice has confirmed that each of these ways has its advantages and its shortcomings, and that each of the observed countries of south-eastern Europe has chosen the one or the other

way proceeding from the assessment of its own specific needs. However, the differences in the way councils are founded, which are essentially conceptual, pose a question about the relationship between legislative and autonomous regulations, accepted by a consensus of social partners and concerning the definition of the scope, composition and working methods of social and economic councils, as well as the level at which they are organised. Both approaches contain valid arguments: namely, if social dialogue is based on voluntariness and the principle of goodwill between actors, it is logical that relations in social dialogue are regulated by autonomous regulations, that is, by an agreement of partners through social dialogue. However, practice has also confirmed the need to protect minimum standards and rules of conduct in social dialogue by the power of the law. In other words, it is necessary to find an optimum relationship between the legislative and autonomous regulation of actors in social dialogue. This raises a new legal and political question – the definition of the legal power of this autonomous regulation.

The establishment and development of social dialogue mechanisms in south-eastern European countries is a process under way. For the time being, the process is carried out at the national level. This is of indisputable strategic importance, but is insufficient. Very intensive integrating processes currently unfolding within the EU and Europe as a whole, as well as ongoing political, economic and other processes in south-eastern Europe, are facing social dialogue with new challenges. Although the processes of economic, technological and political cooperation between south-eastern European countries is developing very slowly due to a range of limiting factors and the negative legacy of the past, this cooperation will inevitably, by the force of economic and technological laws, proceed increasingly faster and with greater intensity. This is presenting trade unions and other social partners with new questions and challenges relating to the strategy of regional development, the position of the world of labour and realistic consequences of integrating processes on the changes in the structure and manner of the functioning of the labour market. EU countries and their trade unions have already travelled a long stretch of road in these processes, which south-eastern European countries can use as a guidepost. One of these experiences unquestionably confirms that the road to European and international integration goes via regional cooperation. This process will largely determine the contents of social dialogue at the national and regional level. But social theory and practice are already facing the question whether and to what extent can social dialogue mechanisms influence the shaping of these processes in the region. This comparative analysis forms part of the efforts in that direction.

3. THE IMPACT OF INTERNATIONAL INSTITUTIONS ON THE DEVELOPMENT OF SOCIAL DIALOGUE IN SOUTH-EASTERN EUROPEAN COUNTRIES

3

In addition to internal political, economic and social circumstances, power, experiences and interests of social partners, the establishment and development of social dialogue in south-eastern European countries are also under the influence of international institutions. That influence was exercised within the overall influence of developed European and non-European countries and international institutions on the course of development of the transition process in south-eastern European countries.

Particularly significant in this regard was the influence of:

- the European Union;
- international trade union organisations;
- the International Labour Organisation;
- international financial institutions.

The European Union provided a strong impetus to the process of establishing and developing social dialogue in south-eastern European countries. It did so through the power of its own experience and the whole range of economic and political measures by which it influenced the political authorities, trade unions and employers in SEE countries to build lasting and stable social harmony and to resolve current social and industrial conflicts peacefully.

There is no doubt that social dialogue is one of the cornerstones of the European Union. When we say this, we must have in view that the main foothold of social dialogue in the European Union is the development and power of social dialogue in certain EU member countries.

Historically speaking, we may say that the process of establishment and development of social dialogue proceeded in parallel with the development of the European Union, that is, it was an integral part of that process.

The beginning of this process was the Treaty of Rome, by which the European Commission was obliged to consult social partners on issues of common policy and the implementation of fundamental rights.

The European Social Charter, adopted in 1961 and later amended, has strategic importance for the development of social dialogue in the European Union.

Amendments to the Treaty on the European Union provided a new incentive to the development of social dialogue in the 1980–90 period. According to these amendments, the European Commission is obliged to encourage social dialogue between employers and trade unions. In this regard, the Treaty of Maastricht (1991) introduced the right of trade unions to prior consultations and 'framework negotiations'. Framework agreements regulate a larger number of important economic and social rights of employees at the EU level.

Sectoral social dialogue develops intensively in certain sectors and branches of industry and in other activities. The actors in this process are, respectively, trade union federations and employers' associations. The results of these sectoral dialogues are sectoral collective agreements, which are implemented automatically in relevant sectors at the national level.

The variety of forms as well as the real power and objective reach of social dialogue in the European Union has been enriched by the European Works Councils. The competent bodies of the European Union enacted a directive in this regard in 1994 and that process proceeds with ever greater intensity. This process unfolds in the so-called European companies which have at least 1,000 employees and at least two branches in other countries with at least 150 employees. Through these councils the employees exercise the right to information and consultation.

The Economic and Social Committee (ECOSOC) is strategically important and has a role in the development of social dialogue within the framework of the European Union. This body was founded in 1957 on the tripartite principle and is composed of representatives of government, employers and trade unions. The Economic and Social Committee has seven sections within its field: (a) economic, financial and monetary issues; (b) foreign relations; (c) trade and development; (d) social, family, educational and cultural issues; (e)protection of health, environment and consumers' interests, (f) agriculture and fisheries; and (g) regional development, industry, crafts, services, transport and communications, energy, nuclear issues and research.

As far as the influence of the EU on the development of social dialogue in SEE countries is concerned, it has to be taken into account that transition in these countries carried and still carries very high social costs. The situation is further aggravated by the fact that all these countries had to devote more attention to the issues of macro-economic stability and structural reform and had to push social issues to the background. This was under the particular influence of the so-called 'shock therapy' theory, which was strongly adhered to in the first years of transition.

In the later phases of transition, under the pressure of mounting social contradictions and conflicts, growing attention was devoted to the social dimensions of the transition process.

Particularly important in this regard is the Treaty on Stabilisation and Association between the EU and SEE countries, which encompasses a number of social issues, having in view that EU enlargement will necessarily have certain social consequences.

In 1995 the European Commission adopted the so-called 'White Book' for the preparation of central and eastern European countries for integration into the internal market of the European Union. This strategic document contains a separate section on social policy, pointing

out primarily to governments but also to other social partners that social and democratic standards, including social dialogue mechanisms, are an integral part of the package of conditions for joining the European Union. This was very encouraging in the sense that greater attention is being paid to the social aspects of transition and development of social dialogue in central and eastern European countries.

The key step in the establishment and development of social dialogue, as an integral part of a democratic and humane transition, was made with the adoption of the Stability Pact for South-eastern Europe.

Where the participation and contribution of international trade union organisations to the establishment and development of social dialogue in SEE countries are concerned, we should particularly emphasise the active role and contribution of the ETUC. It was carried out through assistance and support to democratic trade unions, their capacity building in the struggle for employees' economic, social and trade-union rights, promotion of European democratic and humanistic values, advantages of social harmony compared with social conflict, and realistic programmes with the aim of establishing and developing social dialogue in the countries of south-eastern Europe.

The ICFTU influenced social dialogue in SEE countries primarily through its characteristic strategy for the development of a strong, democratic trade union movement, respect of trade union freedoms and rights as an indisputable accomplishment of civilisation, and strengthening the social power of trade unions.

The International Labour Organisation also has a strong influence on the development of social dialogue in south-eastern European countries. The tripartite organisational structure of the ILO was of enormous importance for the success of this task, which gave this organisation the possibility of encouraging simultaneously all three social partners – government, employers and trade unions – to develop social dialogue and to harmonise their contradictory interests through social dialogue.

International financial organisations, above all the IMF and the World Bank, exercised considerable influence on the course, content and objective reach of social dialogue in south-eastern European countries. They were in fact the fourth, invisible partner in social dialogue, setting before the governments of these countries demands referring to macro-economic and financial stability, which necessarily produced certain social results.

However, the governments of these countries often blamed international financial institutions for economic difficulties experienced by transition countries, thus attempting to hide their own failures.

The theoretical and methodological framework of the project

The essence of this project is the concept and practice of the establishment and development of social dialogue in the countries covered by the Stability Pact. Theoretical and empirical knowledge so far confirm that it is an exceptionally complex issue, which encompasses a whole range of differing aspectswhich are connected and interrelated to practically all key areas of civil life. Indisputable and readily apparent is the interaction between social dialogue, the political system and civil life, economic policy and the economic system, living standards, such as the quality of life of the population. In other words, social dialogue can only theoretically be separated from the complex of political and economic processes in society, with the aim of a systematic, comprehensive study of this phenomenon.

That is why the first step in the study is to define the notion of social dialogue, that is, what the term 'social dialogue' will imply in this project. This is the first and necessary condition for focusing research efforts on the essence of the researched subject.

Before starting to define the notion of social dialogue it is necessary to make one

methodological/theoretical reservation, common to this type of research and analytical projects. It is necessary to realise that definitions in general are not final and unchangeable truths about certain phenomena and relations, but auxiliary, working scientific tools intended to systematise and generalise knowledge about certain phenomena and relations and to set them clearly apart from neighbouring, mutually related and interconnected phenomena. Therefore, the term 'working definition' or 'operational definition' is often used in research, in the theoretical and methodological approach in social sciences and/or in social processes which are the subject of the research. That is particularly pronounced in the research of complex social phenomena and relations, where social dialogue also falls. These shortcomings will also be present in the definition of social dialogue in this study. It is therefore the first, initial step for substantiated critical analysis and debate.

At first it appears easy to define the notion of social dialogue. Numerous definitions of social dialogue appear in social theory, research, as well as in practical life. These differences are caused by different theoretical, political and ideological approaches, as well as by different approaches and practice in the process of building social dialogue in certain countries. However, these differences only confirm theoretical and practical difficulties encountered by anyone trying to define the notion of social dialogue.

As in the definition of other complex social phenomena and processes, in the definition of the notion of social dialogue it is easy to slip into one of the two extremes. The first extreme is too broad a definition, where general characteristics of social dialogue are absolutised, thereby losing *diferentia specifica* in relation to social and political processes in society as a whole. The second extreme is too narrow a definition of the notion of social dialogue, when social dialogue is most frequently equated with formal-legal mechanisms through which it is carried out. Each of these extremes ultimately obstructs ways of getting to the heart of the meaning of social dialogue.

Owing to all the above-mentioned, the initial position in the definition of the notion of social dialogue must be dynamic and developmental, rather than static. This means that social dialogue is not a static system or mechanism; it is not a condition, but a social process. Only by embarking upon social dialogue as a social process is it possible to grasp its historical and developmental character, dynamic motive factors of that process in present social events, as well as interaction with other social processes. If social dialogue is defined as a historical and developmental social process, then we should add to this an essentially new characteristic of this social process. Social dialogue represents a radically new stage in the development of the political organisation of society, an important historical step in a process that commenced with bourgeois revolutions, first in France and then in other countries of Europe and the world, placing the free citizen at the centre of political and social events, which changes the major characteristics of political life, introduces new actors and changes relations of social power between them.

This general characteristic should be supplemented with a narrower, more specific one – that social dialogue is a specific social process, emerging at a certain level of political and economic development of society, in which political and economic democracy through various mechanisms organically links to a new whole, while employees' participation in the decision-making process turns into a universal value. Social dialogue in this context represents the answer to the growing role and influence of government in the economic life of society, or a creative response to the risk of the emergence of a new Leviathan.

This wider theoretical approach represents the starting point for the definition of social dialogue in the narrower, operational sense. Of course, it is necessary to have in view the interrelationship and interaction between the theoretical and operational definition of social dialogue, namely, the breadth of the theoretical definition, degree of its comprehensiveness, as well as different theoretical standpoints about the

notion of social dialogue and its contents determine the contents of operational definitions of social dialogue. Too wide a theoretical definition inevitably brings confusion into operational definitions of social dialogue, which also, following a certain theoretical model, become too wide and imprecise. On the other hand, too narrow theoretical definitions of social dialogue result in unnecessary or, to be more precise, false dilemmas about all important elements that constitute social dialogue in the operational sense.

If social dialogue is defined on a broader theoretical plan as a social, historical process, in which essentially new elements of democratic order and political life of society are created, then social dialogue in the narrower operational sense may be defined as a system of mechanisms and relations established by relevant social partners in the aim of their organised, systematic participation and influence on political processes and relations in society, that is, definition and carrying outthe strategy of socio-economic and political development of society, harmonisation of their different interests and the peaceful solution of possible industrial and social conflict.

However, the above-mentioned position is only a starting point for the operational definition of social dialogue, because operational definition in an empirical and theoretical study of a phenomenon may fulfil its purpose only if it is sufficiently solid and precise. In this sense, in order to arrive at sufficiently solid and precise operational definition of social dialogue we will use the analytical method of separation of certain elements of this operational definition, that is, observation and study of certain elements of the structure of social dialogue.

The following elements of the social dialogue structure are important for its operational definition:

- International standards defined in the documents of the UN, ILO and other international organisations and international legal norms.
- A legal basis of social dialogue defined in national constitutions and laws, as well as in autonomous legal-political regulations of social partners.
- Mechanisms through which social dialogue is carried out – organs engaging in social dialogue, manner of their election, internal organisation, working bodies, participation of experts, sources and process of financing, decision-makingmethods, execution of positions and decisions, etc.
- Contents of social dialogue – issues discussed by organs and bodies within which social dialogue is carried out, possibilities for classification of these issues.
- Actors of social dialogue (social partners) – government, trade unions, employers and others who participate in social dialogue.
- Criteria for the evaluation of the objective reach of social dialogue and the social power of the organs within which social dialogue is carried out.
- Social dialogue and other areas of social life bordering on social dialogue.
- The social environment in which social dialogue takes place.

Of course, each of the elements of this operational definition of social dialogue should be separately analysed. However, the intention of this study – a comparative analysis of different models and practice of social dialogue in countries of south-eastern Europe – does not leave much room for broader theoretical deliberations of the individual elements mentioned above. This analysis will therefore be made as a practical analysis of solid models and their functioning, specific features and common denominators of these models. In other words, the emphasis in the study will be on practical, actual functioning of the mechanisms of social dialogue, on real political and social processes unfolding in this plan. This is primarily dictated by the very character of these processes, which are live, dynamic and changeable. Of course, in doing so we should be aware that the analysis in this case, too, will be faced by the limitations encountered, above all, in empirical research in the

social sciences. To put it another way, the study of the essence of certain social processes, in this case social dialogue, always returns to the formal aspects of these processes, which are readily visible and relatively measurable.

Only at a first glance does it appear that there are no substantial differences in the definition of the notion of social dialogue on a wider theoretical and operational plan. However, apparent similarities are often only an optical illusion. A more profound theoretical effort reveals that a range of considerably different definitions of social dialogue appear both in theory and practice. It is certain that one of the major sources of these differences can be found in the author's general theoretical and ideological preferences. These differences are particularly apparent in the evaluation of the real social power of social dialogue, that is to say, in the role it can play in social relations as a whole. At the same time, these differences have their basis primarily in the real life of different societies. It is clear that social dialogue does not have the same content in developed and economically underdeveloped societies, in societies with very different degrees of development of democratic institutions. Key actors of social dialogue are formally the same in all countries: government, trade unions and employers, that is, their relevant organisations. However, it is clear that the position of employers' organisations or trade unions, for example, in Albania, Poland or Italy, is not the same, that the position and role of the state in social dialogue in different countries of south-eastern Europe is not the same. In addition, certain countries introduced a wider sphere of social actors in social dialogue mechanisms, alongside government, employers and trade unions, so that we can no longer speak of a tripartite but rather a polypartite structure of social dialogue.

Finally, differences in the definition of the notion of social dialogue arise from different practical experiences – numerous dilemmas and open issues in the definition of the notion of social dialogue are the consequence of the fact that social dialogue in south-eastern European countries is only at the embryonic stage.

Facing the existence of considerable differences in the definition of social dialogue the following should be taken into consideration. The starting point of polemic and different approaches to social dialogue are different definitions, because they lead to different theoretical positions and different practical approaches.

There are a large number of doubts and open issues in theoretical models of social dialogue. In order to achieve the goals of this project, the following issues deserve to be separately analysed.

The first of the theoretical controversies refers to the scope of social dialogue, that is, what elements are considered to belong to social dialogue. Some authors include under social dialogue only tripartite bodies (government, employers, trade unions), which are usually called social and economic councils, at the national, regional and local level. They strictly distance social dialogue and its mechanisms from the mechanisms of industrial democracy, which also include collective bargaining. The second group of authors treat collective bargaining, particularly at the branch and national level, as one of the forms of social dialogue. This second opinion has its historical material foundation in the course of development of collective bargaining and social dialogue. Finally, it is difficult to imagine successful and efficient functioning of social dialogue in contemporary society without a developed collective bargaining mechanism. This is supported by the continuous expansion of the subject of collective bargaining to issues that are by their nature strategically political.

The next group of theoretical dissension refers to the role of the state in social dialogue. This issue is also present in other areas of social life. It has an even greater specific weight in transition countries due to the exceptional concentration of power and the dominant role and influence of the state in the first phase of transition. In this case, too, there are two extremes. One of them totally negates the role of state as a

social partner in social dialogue, stressing that it is in contradiction with the principal role and functions of the government in social processes. The other group of authors overemphasise the role of the state in social dialogue and/or fail to notice *diferentia specifica* of the government in social dialogue in relation to other social partners. Such views have their roots in the contradictory position of the state in social dialogue. Plainly stated, the government enters social dialogue having in its hands all the levers of power. The development of social dialogue in fact deprives the government of some of its powers, transferring them to social dialogue mechanisms, and hence changing their nature.

The next issue over which theoretical and practical differences appear refers to the delimitation between individual and joint functions of social partners in social dialogue. That is to say, every social partner engages in social dialogue for its own specific reasons, with the main aim of protecting its own interests through social dialogue. It follows that every social partner, that is, their representatives in the bodies where social dialogue takes place, play their own individual role and functions. It is clear that the role of the employer in social dialogue, for example, differs considerably from the role of the trade union and government. At the same time, all participants in social dialogue, which is in its essence an interactive process, also carry out some common functions, which are the necessary condition for the successful functioning of social dialogue. As a result, social theory and practice are faced with the issue of distinguishing between the individual and common functions that social partners exercise through the mechanism and process of social dialogue. This relationship is important, because it enables the researcher to identify disintegrating and integrating, conflicting and peaceful, aspects of social dialogue.

A major theoretical as well as practical issue is the definition of the criteria for the evaluation of efficiency and success of social dialogue. First of all, efficiency and success of social dialogue have their numerous and varied aspects – legal, political, economic and human. Which criteria are the most relevant and the most reliable? Are these criteria measurable and to what extent? The formal existence of social dialogue does not automatically mean that it can function successfully and efficiently. On the contrary, very often it is only an empty form. A valid answer to this question requires that the social and human essence of social dialogue – democratisation of society and humanisation of human life – be taken as a starting point. After all, this is a search for the answer to whether there is a connection between the establishment and development of the mechanisms of social dialogue and quality of life of ordinary people, and how this connection is manifested.

Finally, in theoretical deliberations it is necessary to develop a heuristic aspect of the theory of social question. It can be set through the question of perspectives, the future of social dialogue. More precisely, the question of the mutual relationship between the social dialogue mechanisms and the political organisation of society is becoming increasingly topical. This question may also be phrased in the following way: Can social dialogue, as a substantially new form of relations, replace certain standard models of political organisation and civil life ?

In the methodological sense, in the elaboration of the project, analysis, classification and presentation of documents we have used the comparative method, which falls in the category of complex method in social sciences. This method enables certain social phenomena and/or processes be reviewed in their totality, as a distinct whole; it enables specific characteristics of the establishment and development of social dialogue in each of the observed countries of south-eastern Europe to be identified, as well as common elements of social dialogue in these countries to be identified, separated and analysed. Of course, we will primarily compare the visible and measurable aspects, hence the system of social dialogue mechanisms. The comparative method implies concurrent implementation

of the analytical/synthetic method. It will be reflected in the analysis of specific characteristics of social dialogue in individual countries, then in the synthesis of such data and knowledge towards identification of common tendencies. We will also use the method of content analysis of texts in documents dealing with social dialogue in these countries. Each of these models and practices of social dialogue in individual countries of the region can be treated as a specific case of social dialogue. In this sense, we may speak about the use of the case-study method. Of course, the statistical method will be used as well for the analysis of data on economic and social development and numerical indicators on social dialogue. Interviews with a number of competent collocutors in different countries will be used as a specific form of empirical research, in accordance with the defined sample and on the basis of a questionnaire. Interviews based on this comparative study were conducted after the Thessaloniki Conference (1–4 September 2002). This means that these interviews are a kind of additional verification of the results of work on the project.

The sum of knowledge and results achieved in the elaboration of the Action Plan to Promote the Culture and Practice of Social Dialogue, national reports on social dialogue in individual countries, as well as statistical data on economic and social development will serve as sources of material for the comparative study.

The comparative study will encompass social dialogue in the following countries: Albania, Bulgaria, Serbia, Montenegro, Kosovo, Croatia, Bosnia and Herzegovina, Republika Srpska, Romania and FYROM.

The time frame of the research is the present, that is, the current situation and problems of social dialogue. References to the past will only be made to the extent necessary to understand current processes.

A comparative analysis of key aspects of social dialogue

Comparative analysis as a methodological procedure has been chosen on the basis of methodological-research characteristics, as well as on the basis of experiences from other research on similar problems, which confirm that this method is the most appropriate for a comprehensive, systematic study of similarities and differences, that is, common denominators of social dialogue in the countries of south-eastern Europe.

In doing this, we encountered a methodological and empirical obstacle, namely, that national reports on the state of social dialogue have not been made using the same methodology. This required an additional effort to make data, positions and evaluations comparable but, in doing this, it reduced the authenticity of data and facts that have been the subject of analysis.

In the aim of being as systematic, analytical and realistic as possible, a prior division has been made by area, that is, by key aspects of social dialogue. In this regard, the comparative analysis will encompass the following sections:

a) legal framework of social dialogue; levels of social dialogue;
b) participants in social dialogue;
c) organisational structure of bodies and organs (i.e. mechanisms through which social dialogue is carried out);
d) powers of social dialogue bodies, contents of work (issues discussed by social dialogue bodies);
e) collective bargaining as a specific form of social dialogue;
f) specific, additional forms of social dialogue; and
g) material resources necessary for the work of organs and bodies engaging in social dialogue.

4. THE LEGAL FRAMEWORK FOR THE ESTABLISHMENT AND DEVELOPMENT OF SOCIAL DIALOGUE

4

It is well known that within the transition process the countries of south-eastern Europe undertook the reform of their legal systems with the aim of harmonising them with European and international standards, as well as to encourage economic and democratic political development and integrate their respective countries into Europe and the world. On this occasion, we will restrict ourselves to the elements of the legal systems vital for the establishment and development of social dialogue.

Fundamentally important in this regard is the fact that all these countries are members of the United Nations, which means that they are bound by strategic documents of this organisation on civil, human and trade union freedoms and rights. Particularly important for the subject of our research are the Covenant on Civil and Political Rights and the Covenant on Economic and Social Rights, which *inter alia* protect the freedom of organisation and work of employees' and employers' organisations, which is one of the preconditions for the establishment of social dialogue.

The next important step towards the establishment of a legal framework for social dialogue is to be found in the fact that all observed countries are ILO members, and that they have ratified Conventions 87 and 98 of this organisation, which regulate the freedom of organisation and action of workers' and employers' organisations, the freedom of collective bargaining (Convention 87) and oblige political authorities to conduct that in no way restricts the freedom of employees' and employers' organisations.

In addition, most countries in the region have adopted ILO Convention 144 on workers' right to consultation, and Convention 154 on the right to collective bargaining, as well as a document of the European Social Charter – Council of Europe.

In accordance with the above-mentioned international legal documents, constitutions of all observed countries in south-eastern Europe protect the organisational freedom of employees and employers.

With the aim of having a real insight into the constitutional protection of the freedom of organisation of trade unions and employers' organisation, we present a review of solutions in the constitutions of the countries under study.

CROATIA

The legal cornerstone for freedom of organisation is provided in the Constitution of the Republic of Croatia (Article 59), which sets forth that 'all employees have the right to organise trade unions and to join and withdraw from them freely'. The Constitution of the Republic of Serbia sets forth:

Article 35

Anyone shall be entitled to work.

Freedom of work, free choice of occupation and employment and participation in the management shall be guaranteed. Job and public office shall be equally available to anyone, under the same conditions.

An employee may be dismissed from his work against his will, under the conditions and in a way determined by law and collective agreement.

Forced labour shall be prohibited.

Article 36

Employees shall be entitled to adequate remuneration.

The right to material protection during the period of temporary unemployment shall be guaranteed under the terms determined by law.

Article 44

Freedom of political, trade-union and other organisation and action shall be guaranteed without authorisation, provided the organisation is registered with the competent organ.

Action aimed at forceful change of the order determined by the Constitution, violation of territorial integrity and independence of the Republic of Serbia, breach of human and liberties and rights guaranteed by the Constitution, provocation and instigation of ethnic, racial and religious animosity and hatred shall be prohibited.

BOSNIA AND HERZEGOVINA

According to the provisions of Article III, Section 3 of the Constitution of Bosnia and Herzegovina, entities are in charge of autonomously regulating the area of work and employment, within which the issues of social dialogue and the position of social partners in social dialogue are largely regulated. Furthermore, the Constitution of Bosnia and Herzegovina obliges entities to implement international regulations and standards referring to social dialogue regardless of whether they have incorporated them in entity legislation and to what extent, because Bosnia and Herzegovina as an ILO member has ratified many conventions, including those referring to social dialogue.

REPUBLIKA SRPSKA

The Constitution of the Republika Srpska (1992) in the provisions dedicated to the labour-based rights of citizens sets forth that certain issues referring to labour, in addition to law, can be regulated by collective agreements, acts concluded by partners in social dialogue through direct negotiations. This has created the possibility and groundwork for social dialogue, because collective bargaining is one of the forms of social dialogue between partners.

KOSOVO

Kosovo is in a specific situation after the war in 1999, being under the UN protectorate pursuant to the UN SC Resolution 1244. The way social dialogue will be conducted is defined according to this resolution, which is the basis for all legal regulations. Here is what Regulation No. 2001/19 sets forth on this issue:

The Ministry of Labour and Social Welfare shall promote social dialogue and participation of social partners [Article 8] and shall convene a tripartite advisory council of Provisional Institutions of Self-Government and employers' and employees' organisations for consultations on labour, social welfare and related economic policies and represent the Provisional Institutions of Self-Government in this council [Article 10].

On the basis of ratified international legal documents and constitutions, possibilities and conditions for participation and functioning of social dialogue in the analysed countries of south-eastern Europe are regulated in more detail by national legislation, primarily by labour laws. This is evidenced by the following examples.

The first, specific, example is Kosovo, as a territory under international administration. In October 2001, the relevant bodies of international administration issued Regulation No. 2001/27, which operates as labour legislation, regulates the rights and obligations of parties in labour relations and provides the legal basis for the establishment and development of the mechanisms of social dialogue.

It is worth pointing out to the specific situation of Montenegro, where the Assembly has not yet adopted the Labour Law, so that the only regulation in this area is the legislation of the Federal Republic of Yugoslavia: The Law on Elements of Labour Relations, the Law on Enterprises, the Law on Strikes. However, since the authorities of Montenegro do not recognise the federal state or its legislation, it would be more accurate to say that there exists actual legal void.

In the **Republika Sprska**, the Labour Law (*Official Gazette of the Republika Srpska* Nos. 38/00 and 40/00), as well as the former Law on Labour Relations (1993) created possibilities and a basis for the implementation of the system of collective bargaining and conclusion of collective agreements, as a form of dialogue between partners. Unlike the Law on Labour Relations, which regulated only this issue, the Labour Law, as a modern systematic regulation in the area of labour and employment, consistent with the new social and economic relations resulting from ownership transformation, regulates social dialogue in more detail and breadth. Besides creating conditions for conducting social dialogue on a tripartite basis through complete guarantee of interest of organisations of workers and employers, and exercising the process of collective bargaining, the Labour Law also obliges partners in social dialogue to set up tripartite bodies through which social dialogue can be conducted and to seek the most adequate common solutions in the area of economic and social policy.

In the Republic of Croatia, the Labour Law emphasises legal protection of the freedom of organisation and action of workers' and employers' organisations, as a prerequisite for the establishment and development of social dialogue. In this regard, the Labour Law of Croatia regulates the following issues:

- the right to organisation (Article 159);
- voluntary membership in the organisation (Article 160);
- prohibition of the temporary or permanent ban of the work of an organisation by the executive authorities (Article 161);
- possibilities for the establishment of organisations at higher levels (Article 162);
- founding and registration of organisations (Articles 165–174);
- action within organisations: prohibition of supervision over founding and work of trade unions by the employers; prohibition of discrimination of employees on the basis of their membership in the trade union; election and protection of trade union representatives (Articles 177–182a).

The Labour Law defines conditions for the founding of voluntary workers' organisations, by stipulating that ten individuals can found a trade union. Organisations and those at a higher level acting in the territory of a single county shall be registered with the county office in charge of labour, while organisations whose activity encompasses more than one country shall be registered with the Ministry of Labour and Welfare.

The Labour Law of the Republic of Serbia does makes no definite reference to social dialogue, but only in Article 130 does it mention freedom of organisation as follows:

> **Article 130**
>
> Employees shall be guaranteed the freedom of association in trade unions and trade union activity.
>
> Trade unions shall be established for the purpose of protecting the rights and promoting the professional and economic interests of their members.
>
> A trade union shall be established without authorisation, based on entry into the register of trade unions kept by the ministry in charge of labour.

In Bulgaria the Labour Code introduced a new system of tripartism, i.e. social dialogue. According to the Labour Code, social dialogue in Bulgaria is based on the following three principles:

The first principle is legal independence and autonomy of participants in social dialogue. It implies rights and freedoms of employees' and employers' organisations to organise and act without restrictions, as provided by Articles 4 and 5 of the Labour Code.

The second is the principle that requires political authorities to treat employers' and workers' organisations equally, meaning that the government cannot for the sake of its own interests place the employers' or workers' organisations in a better position or take any discriminating action against them.

The third principle refers to the definition and stressing of the specific role and responsibilities of political authorities in social dialogue mechanisms.

Romania is characterised by a highly extensive system of labour legislation, unified into a coordinated whole – the Labour Code. Its new, modified and expanded version is due to appear towards the end of 2002. Since such an approach to the whole of labour legislation considerably affects the concept of the legal framework for social dialogue, to acquire a comprehensive insight we present a list of these laws, as systematised in the national report:

Legislation on the organisation and functioning of tripartite institutions:

- Law 109/1997 on the organisation and functioning of the Economic and Social Council
- The organisation and functioning of the National House for Health Insurance is established by Law 145/1997
- Law 145/1998 on the organisation and functioning of the National Employment Agency
- Law 132/1999 on the organisation and functioning of the National Council for Adults' Professional Training
- Government Decision 779/1999 on the organisation and functioning of the Council for Certification and Occupational Standards
- The organisation and functioning of the National House for Pensions and Other Rights is established by Law 19/2000
- Government Decision 39/2000 on passing a vote of confidence in the Government establishes the legal frame for setting-up new directions for trade unions and employers, headed by state secretaries within the ministries
- Government Decision 314/2001 on the organisation and functioning of the Commissions for Social Dialogue within the ministries and prefectures
- The setting up and functioning of the National Commission for Employment Promotion under Law 76/2002 concerning unemployment benefits and employment incentives
- Government Decision 276/2002 on the organisation and functioning of the Tripartite National Maritime Committee.[3]

3 *The Social Dialogue in Romania* – Country review.

Generally speaking, the constitutional and legal regulations in the analysed countries of south-eastern Europe in principle protect the freedom of organisation and action of workers' and employers' organisations and the right to collective bargaining, which constitute the legal groundwork for social dialogue. Although we have analysed here only one narrow segment of labour legislation, it is evident that national legislations in this area differ in the range of issues they cover. This can be either the expression of differences of opinion about the importance and role of social dialogue in new social circumstances or a question of whether this matter should be the subject of legal regulation at all and if so to what extent.

International legal documents, constitutions and laws represent the basis for legal regulation of the basic principles and mechanisms of social dialogue in south-eastern European countries. The analysis of the above-mentioned constitutional and legislative provisions gives ground for the conclusion that satisfactory results have been achieved in this first, generalised plan. This is the first crucial step, because subsequent steps towards the development of the legal framework and practice of social dialogue would not be possible without it.

Of course, this statement calls for the analysis of these subsequent steps – analysis of the legal framework of social dialogue in the narrower sense of the word.

There are three legal grounds for the regulation of social dialogue. These include: (a) legal regulation of the founding, content and method of operation of social and economic councils, (b) agreements on founding – autonomous legal and political regulation of social partners; and (c) government decision, that is, by law. All three models are present in the south-eastern European countries under observation, as shown in Table 2.

The data given in Table 1 point to two groups of important factors. The first refers to the time of founding of the bodies within which social dialogue is conducted (these bodies, as a rule, are named social and economic councils). It is obvious that the vast majority of these bodies were founded very recently – in 2001 and 2002. Bulgaria has the oldest tripartite body, founded as a direct response to the then crisis, including aggravated social and industrial conflict. An excerpt from the report entitled *State of the Social Dialogue in Bulgaria* describes this as follows:

The tripartite cooperation in Bulgaria emerged to fill out an existing niche. In the conditions of centralised planned economy and a totalitarian state there was no room for social dialogue and partnership for regulating the industrial relations.

The immediate reason to seek some tools for tripartite cooperation in Bulgarian context was the first wave of protests that

Table 2. Legal basis for the founding of bodies in which social dialogue is conducted

Country	Legal basis for the founding of Social and Economic Council				Year founded
	Agreement of social partners	Law	Government ruling	Something else	
Albania		×			
Bosnia and Herzegovina	×				2002
Bulgaria	×				1990
Croatia	×	x			2001
Kosovo				×	2001
FYROM	×				1996
Montenegro				×	2001
Republika Srpska	×				2002
Romania		×			1997

swept over the country in 1998-90. On March 6th, 1990, the first tripartite negotiations were held by the Government, the Confederation of Independent Trade Unions of Bulgaria (CITUB) and the National Association of Managers. On March 15th, 1990, the same parties signed a General Agreement on the basis of which the National Tripartite Council for Reconciliation of Interests was set up, joined by the Podkrepa Confederation of Trade Unions (Podkrepa CTU) on 3 May 1990.

On 25 March 1990 the parties in the General Agreement adopted the Regulations on the National Council, an act that marks the beginning of the institutionalisation of the tripartite cooperation in the country.[4]

The fact that bodies within which social dialogue is taking place at the national level were largely established as late as 2000 or 2001 – a full decade after the beginning of transition, when certain important processes in these countries had already taken place, or were at an advanced stage – in a most specific way confirm the statement about the interaction of social environment and the establishment and development of social dialogue mechanisms. In other words, minimum political, economic, social and other conditions in the social environment are necessary for even the first steps towards the establishment of social dialogue. The most drastic example, which corroborates this statement is the example of Serbia, where it was impossible even to initiate any reasonable discussion about social dialogue during the autocratic rule of Slobodan Milosevic and his nationalistic belligerent policy.

The second group of factors refers to the legal ground for the establishment of bodies wherein social dialogue is conducted. The data shown inTable 1 indicate that most countries (Serbia, Bulgaria, FYROM, Croatia, Republika Srpska, Bosnia and Herzegovina) opted to set up these bodies by autonomous legal political regulations, more precisely by the agreements on the founding of social and economic councils.

Only two countries (Romania and Albania) founded the social and economic council on a legal basis.

In Kosovo, because of the specific situation, the social and economic council was founded following a decision by competent international administration bodies and in Montenegro, where the labour law that should regulate this issue has not yet been enacted – by a decision of the Speaker of the Parliament.

Solutions implemented in Kosovo and Montenegro are specific and obviously imposed by specific social circumstances. In this sense they are probably temporary, until they can be replaced by different, long-term solutions, like those implemented in other countries of the region.

However, analysing the other two approaches, we can notice that only two countries – Romania and Albania – opted to found the economic and social council by law. Founding of social and economic councils through the agreement of parties is an absolutely important solution.

The choice of one of the studied alternatives is determined by the real social and economic conditions prevalent in the country at the time when the social and economic council was founded. The experience of Bulgaria presented in this section, as well as the experiences of other countries confirm that the founding of social and economic councils, in addition to strategic, long-term need, has always been the response and reaction to the specific situation and relations between social partners. On the other hand, this has to do with different concepts and different views of the role of social partners.

Both approaches have their pros and cons. It is certain that founding social and economic councils through the agreement of social partners, that is to say, according to autonomous, political legal regulations, adopted through the agreement of partners, reflects to a great extent the authentic principles of social dialogue – voluntariness, autonomy of will and confidence between social partners.

4 *National Report of Bulgaria,* p. 4.

On the other hand, the force of law, if well proportioned and targeted, can successfully protect the fundamental principles of social dialogue, which is exceptionally important in the initial stage.

The solution of both dilemmas can be found in a comprehensive approach to the study of autonomous regulations of social partners and legislative regulation as parts of an integral whole of labour legislation. The justification of such a conclusion is borne out by the legal regulation of the elements of the collective bargaining system.

In national reports, collective bargaining is treated as one of the forms of social dialogue. In certain countries it is in fact the most developed form of relations between political authorities, trade unions and employers. If collective bargaining is one of the forms of social dialogue, then to discuss this problem we have to take into consideration that in all south-eastern European countries the elements of the collective bargaining system are regulated by law. Without elaborating at this point on the scope and content of this legislative regulation, we need to draw a conclusion. If collective bargaining is a form of social dialogue, and the elements of the system are regulated by law, it means that this regulation is also the legislative regulation of social dialogue. It follows that social dialogue in the widest sense has mixed legal grounds – legislation and autonomous legal political regulations of social partners.

For a comprehensive insight into the legal framework of social dialogue it is necessary to analyse the structure and contents of agreements whereby social partners set up social and economic councils.

A comparative analysis reveals considerable differences in the scope and contents of these agreements, which reflect different positions concerning the goals of such documents, as well as different levels of knowledge and experience of the functions of such documents. In spite of this, in these agreements we have to note certain common denominators. This is, above all, the scope of issues regulated by the agreements. Albeit in different measure, they encompass the following:

- participants in the work of the social and economic council;
- goals, tasks and contents of work;
- composition and method of election of council members;
- method of work and decision-making of the council;
- material conditions for the work of the council.

In addition, common to all these documents is the way that they stress the importance and role of social and economic councils. This is an important common political position and expectation of social partners, as confirmed by Article 1 of the Protocol on the Establishment of the Social and Economic Council in the Federation of Bosnia and Herzegovina:

> **Article 1**
>
> With this Protocol the Confederation of Autonomous Trade Unions of Bosnia and Herzegovina and the Government of the Federation of Bosnia and Herzegovina state their agreement that the Economic and Social Council be established in the territory of the Federation of Bosnia and Herzegovina, as the highest institutional form for conducting social dialogue, with the aim of promoting and protecting economic and social rights based on social partnership and that pursuant to the common interest of the Trade Union, employers and the Government they should agree upon the optimum modalities for conducting harmonious economic, social and development policies.

An even more complete and specific document in this regard is the Initiative of the Council of the Confederation of Trade Unions of FYROM for the founding of the Social and Economic Council. This document, *inter alia*, sets forth:

Pursuant to international conventions and practice of tripartiitism aimed at establishing permanent social dialogue between trade unions, the Government and the Chamber of Commerce and Industry, the Confederation of Trade Unions of

FYROM is launching an initiative for the establishment of the Social and Economic Council.

Modern society, built on market and democratic relations, is based on social balance and consensus of the holders of social power – trade unions, employers and the government. This statement is based on the knowledge and practice of market economy in which new technologies cannot be introduced without the participation of labour, and political democracy without economic and social democracy. This implies the creation of space for social dialogue between trade unions, employers and the government.

The essence of introduction of a tripartite body is to articulate and reconcile different interests of the principal social groups. This enables the authorities, in the phase of operationalisation of policies, to have insight into the entirety of issues in certain areas and to have in view the opinion and interests of social partners. This is an important prerequisite for the enactment of legislation or introduction of measures that will, observing the existing realities in society, secure greater efficiency in the implementation. This is a way to avoid one-sided solutions that may have harmful effects and frequently lead to social conflicts.

In contemporary practice, experiences of the social and economic councils are different, and they are established either as parliament houses or as tripartite bodies at the national level. The Confederation of Trade Unions of FYROM is of the opinion, on the basis of European democratic tradition and practice, that in the Republic of FYROM, particularly having in view its single-house parliament, it would be exceptionally useful to set up a separate parliamentary body or a parliament house. Through this body or Parliament house it would be possible to include other different social actors – trade unions, professional associations, NGOs, independent scientific and cultural workers, renowned personalities – in the decision-making about global social projects, particularly in the area of employees' economic and social rights.[5]

Besides the agreements on the founding, as the principal documents, social and economic councils, as a rule, enact their own internal regulations, such as procedural rules, whereby they regulate specific issues of their internal organisation and method of work.

The analysed data on elements of the legal framework for social dialogue point to the following.

The process of putting the legal framework for social dialogue in place is under way in all the observed countries, confirming the opinion of actors of this process that a legal framework is the necessary condition for the establishment of social dialogue.

This process proceeds with varying intensity from one country to another, as the result of specific circumstances, that is, the social environment in which this legal framework is being created. In this context, it is necessary to be aware that the legal framework for social dialogue is only a segment of the national legal system and that it cannot develop outside that legal system. In other words, in no country can legal protection of social dialogue institutions be efficient, without having at the same time legally protected human liberties and rights, legal equality of citizens, etc. The intensity of activities towards the establishment of the legal framework for social dialogue depends on the actors' opinion of the importance of the legal framework for the establishment and development of social dialogue. By the nature of their position, trade unions are most insistent on this point, but minimum agreement between social partners about the pace of this work is often lacking.

This claim is confirmed by the differences in the degree of development, that is, the scope of the legal framework of social dialogue. First of all, it can be noted in most countries that the legal framework of the system of social dialogue is diffuse, consisting of a number of segments of legal regulation. Due to this, certain national reports correctly emphasise the need for modification of this segment as well as the whole labour legislation.

5 National report of Macedonia on social dialogue.

Differing degrees of legal regulation of social dialogue (the scope and character of issues in this area, which should be regulated by legal provision) shows, above all, the need of the weakest partner in social dialogue – trade unions – to protect by legal provisions the basic principles of social dialogue and its own position in this process. However, it is obviously necessary to undertake a more profound analysis and assess the optimal ratio between legal norms and autonomous legal political regulation of social partners, that is, to seek answers to the question of where the borderline is at which legal norms protect without jeopardising the autonomy of social dialogue.

5. LEVELS OF SOCIAL DIALOGUE

5

Social power, that is, the place and role of social dialogue in the process of making relevant political, economic and social decisions in society depends, among other things, on the level at which social dialogue mechanisms are established and developed. In other words, all observed south-eastern European countries realised from the beginning the need to establish and develop social dialogue mechanisms at different levels of political and social life, namely, at different levels of decision-making. This is primarily the consequence of development and the polycentric nature of the decision-making process in contemporary societies. It can be noted that parallel development of multiparty parliamentary democracy, industrial democracy and forms of organised influence of civil organisations in developed democratic countries of Europe and the world has resulted in the decentralisation of the decision-making process, particularly where major, strategic decisions are concerned, at all levels of social life and organisation. This shifts the decision-making process from the institutions of political authority to a wider circle of civil bodies and organisations. This is achieved either by direct transfer of the decision-making powers to these organisations and bodies, or by the organised, systematic and increasingly strong influence of these organisations and bodies of civil society on the bodies of political authority, which are formal decision-makers. In this regard, the decision-making process concerning strategic political issues at different levels of society is becoming increasingly complex, involving ever more actors.

South-eastern European countries, which are the subject of this report have actually embarked on the development of the same democratic values as the industrialised countries of Europe and the world. To be factual, this process is proceeding with varying intensity from one country to another and with differing degrees of success. The first step in this direction is certainly the development of a network of democratic institutions. In this regard, within the comprehensive changes in the political system, countries of south-eastern Europe have faced the need to establish

and develop social dialogue at different levels of social and economic organisation and life.

The course and results of this process in south-eastern European countries, *inter alia*, are determined by the degree of decentralisation of the political system. This arises from the fact that the role and functions of social and economic councils at different levels depend on the power that organs of the local self-government possess. that is, what issues are within their decision-making competence. Of course, if political system is more centralised: if all decision-making power is concentrated in the central bodies of political authority, such countries have less leeway for real social dialogue at the local level. On the other hand, to the extent that a political system is decentralised, it becomes more and more necessary to establish and develop social dialogue mechanisms at the local level. In other words, with the decentralisation of the process of political decision-making through transfer of decision-making rights on certain issues to the organs of local communities, the potential contents of social dialogue is expanding. This process is unfolding in various ways and forms in all south-eastern European countries. This process has two main motive forces. First, the experience of all democratic countries unquestionably bears out that democratisation of society and the political decision-making process is not possible without the development of local self-government. Secondly, regional development, autonomy of regions and independence of local communities fall among the indisputable democratic standards that must be fulfilled as a precondition for the accession and integration of south-eastern European countries into the European Union.

Since these two processes (development of local self-government and social dialogue mechanisms) proceed simultaneously, and since social dialogue, wherever it was introduced, proved to be a reliable democratic instrument, the establishment and development of social dialogue may obviously act as an incentive for the development of local self-government and for the new democratic concept of local communities in south-eastern European countries.

The starting point for the analysis of the degree of development of social dialogue at different levels of political and administrative organisation of society is the definition of social dialogue which gives an answer to the question what elements can be considered to belong to social dialogue.

Namely, in most national reports collective bargaining is treated as a form of social dialogue. Accordingly, the collective bargaining system and collective agreements are presented in these reports in separate chapters, with these chapters usually being the most voluminous part of the national report on the state of social dialogue. This confirms at least two things. First, that exceptional importance in all South-eastern European countries is devoted to the development of collective bargaining. Secondly, that collective bargaining is very often the most developed compared with other forms of collective bargaining.

The example that confirms this is the following position from the national report of Romania:

The strengthening of bipartite social dialogue is a twofold process, which has known a revitalising course since 2001. In legal terms, the strengthening of the bipartite social dialogue is achieved by the adoption of new laws on the organisation and functioning of the trade union and employers' organisations. The Employers Law was adopted in June 2001 and the new Trade Union Law will not be adopted until late 2002. The ILO Project for Romania entitled 'Promotion of the Fundamental Principles and Employees' Rights and the Strengthening of the Trade Union Oganisations in Romania' will uphold the strengthening of the trade union organisations. The Ministry of Labour and Social Solidarity is going to support the development of the employers' movement in Romania.

The Economic and Social Council has assumed an important role in the

strengthening of the bipartite social dialogue. In this line, the project: 'Integration of the social partnership from the Bread-making Sector into the European Context', financed by the European Union, has been an important contribution to the strengthening of the bipartite social dialogue between the trade unions and the employers in the mill and bread-making branch.

As provided under Chapter XIII – Social Policy and Employment – of the complementary Position Paper, the Government of Romania is going to examine the real methods and possibilities to assign the social partners specific competencies in the implementation of some community directives through the collective agreement, pursuant to article 137 of the European Union Treaties.

Following the privatisation process and the development of the capacity of the social partners (trade unions and employers) to jointly provide assistance to their members (employees and economic operators), the bipartite dialogue will extend its benefiting effects upon the Romanian society.[6]

The position about collective bargaining is expressed very explicitly, but in specific way in the national report of Bulgaria:

As an element of the social dialogue, collective bargaining develops within the established system of industrial relations.

Legislative institutionalisation of the collective bargaining in Bulgaria

1. The political and economic changes created favourable premises for re-establishing the collective bargaining that has a history of its own in the years preceding the nationalisation in 1948 in our country. There are several major premises in that respect:
   - the attitudes of the different governments to the social dialogue at the national level;
   - the overall conditions of the economic environment;
   - the direction and contents of the developing market relations, and in particular the development of the labour market;
   - legitimising the social partners and institutionalising their structures;
   - legislation drafting and liberalising the labour law.

   The development of bargaining in Bulgaria enabled better social protection of employed labour in the conditions of transition to market economy and the prevention of a number of conflicts that would have generated social tension.

2. The amendments to the Labour Code (LC) in 1992 (enacted on 1 January 1993) provided the necessary legal safeguards for turning collective bargaining into a basic mechanism for regulating labour relations:
   - collective agreements became a source of norms for regulating industrial relations for the first time;
   - it opened a wide field for concluding agreements at the expense of severe cuts in the imperative stipulations of the Labour Code from 1986, which left no space for collective bargaining;
   - it created a new model for the legal regulation of labour relations. The law preserves its role of a regulator but contains minimum norms for labour protection and determines minimum level of employees' rights and work conditions leaving space for bargaining for more favourable conditions through collective agreements.

3. The next important step was made with the next amendment to the LC on 31 March 2001.

The changes incorporated in it result from the experience accumulated for more than 10 years of collective bargaining in Bulgaria, as well as from the need to harmonise Bulgarian labour law with the European one in the period of negotiations for EC accession.

6 *National Report of Romania*, p. 36.

Major changes concerning collective bargaining and collective agreements can be broadly summarised in the following way:

In terms of the levels of collective bargaining – Article 51 (1) stipulates that collective agreements (CA) shall be concluded at enterprises, branches, industries and municipalities. The provision from the 1992 Labour Code for entering into CA at professional level was dropped out, and the administrative-territorial level is now signified by 'municipality'.[7]

Proceeding from the position stated in the national reports, according to which collective bargaining is one of the forms of social dialogue, which has a foothold in the historical development and contemporary practice of social dialogue, we may conclude that in all observed countries social dialogue exists at national, branch, local and enterprise levels. Collective bargaining and collective agreements, as a form of social dialogue, will be discussed in a separate section of this text.

However, when social and economic councils as tripartite bodies are taken as the only subject of analysis, the situation is much less favourable. In all observed countries social and economic councils have been set up at the national level. This is a logical first step, because social and economic councils at the national level are considered as cornerstones for the development of the whole system of social dialogue and for the establishment of social and economic councils at other levels.

Most of the observed countries have not yet progressed any further beyond that first step. This comes as no surprise, because the vast majority of the social and economic councils at the national level have been founded only in the past two years, which means that objectively there has not been enough time to establish social and economic councils at the local level. Moreover, since all these countries are burdened with numerous contradictions and problems, which slow down the establishment of a social dialogue mechanism. Likewise, in many cases two social dialogue actors – employers and trade unions – do not have a sufficiently developed local organisational, technical and personnel structure necessary for the establishment and functioning of social dialogue at the local level. The same limitation, only to a slightly lesser degree, refers also to the government. In other words, the establishment and development of social dialogue mechanisms at the regional and local level actually require enormous human and material resources, and the shortage of these resources is one of the main reasons why this process is proceeding very slowly.

Despite all the above-mentioned, three experiences referring to the establishment and development of social dialogue at the local level deserve to be highlighted and separately analysed, as they can be useful guidelines for this process in other countries of the region. These are the experiences of Romania, Serbia and Croatia.

Here is an example of how the specifics of that model, which is elaborated in minute detail through the relevant legislation, are described in the national report of Romania:

The tripartite institutional system for social dialogue at the territorial and sectoral level functions on the basis of the Government Decision 314/2001 concerning the organisation and functioning of the Commissions for Social Dialogue within the ministries and Prefectures, decision that created the specific organisational structures for sectoral tripartite social dialogue. Since 2000, specialised structures for the relation with the trade unions and employers' organisations, headed by coordinating state secretaries, have been created within 20 ministries.

The trade union and employers' organisations were given the necessary abilities to assume the responsibilities concerning the work and life conditions of the citizens, by creating the institutions where the social partners are involved

7 *National Report of Bulgaria*, pp. 21–2.

either to advise or to decide the designing and/or implementing of the different social policies. Therefore, the social partners are involved in the occupation of the labour force, social insurance, health insurance and professional training areas.[8]

For the aim of encouraging social dialogue, commissions for social dialogue have been established in Romania at the level of prefectures (units of territorial administration). Their tasks are as follows:

To facilitate the partipation and the consultation of the social partners on local problems in an institutionalised framework for dialogue, the comissions for social dialogue were created at the Prefecture level.

These institutionalised structures debate the issues identified at the local level, especially by the social partners, and search for solutions to solve them by partnership and cooperation. A deficiency of these structures is the large number of participants, that affects the decision making process and also the debates, giving a low efficiency at the results level.[9]

A year after the founding of the Social and Economic Council at the national level, in Serbia dynamic activity started towards setting up of social and economic councils at the local level. This can be regarded as a part of an ongoing process of decentralisation of the political system, which was absolutely centralised at the time of Slobodan Milosevic's rule. This is at the same time the answer to increasingly strong requests for the definition of the concept of regional communities. Organisation of social and economic councils in 26 regional centres, which are also large industrial centres, is planned in the first stage. So far these councils have been founded in more than ten large cities in Serbia. The national report of Serbia describes this situation as follows:

The best way to pacify social tensions, which accompany and are unavoidable product in creating efficient market economy, is the introduction of social dialogue at the local level.

Social and Economic Councils have been established at following locations: Uzice, Pirot, Leskovac, Sombor, Valjevo and Smederevo.

Founding of the network of local Social and Economic Councils is in the process, before all, in the biggest industrial cities such as: Belgrade, Novi Sad, Nis and Kragujevac. Beside that, starting from the need of solving potential social conflicts, Social and Economic Councils in Gornji Milanovac, Smederevska Palanka, Bor, Loznica, Cacak, Kraljevo, Krusevac, Arandjelovac, Pancevo, Zajecar and Lazarevac are in the process of establishing.

Since there are no funds to support functioning of the Social and Economic Councils, the agreement had been reached with the local authorities in the above-mentioned cities to provide logistic support to the local Social and Economic Councils (office space, minimum equipment, etc.).

A network of local Social and Economic councils will be introduced on the same principles as the Social and Economic Council at the national level.

Councils will work together with representatives of local authorities, local trade unions and employers on the parity base.

Social and Economic Councils at the local level would form working groups for the protection of labour and social rights in the privatisation process, and working group for labour legislation. Later on, they would form other groups as well, for example on issues of occupational safety and health, environment and working site protection, social policy in the process of transition.[10]

8 *National Report of Romania*, p. 22.

9 Ibid., p. 28.

10 *NationalReport of Serbia*, p. 31.

In the case of Croatia too, by the agreement between the government, representative trade unions and employers' organisations with the aim of establishing social dialogue at different levels, the establishment of social and economic councils at the local levels is set forth as a non-compulsory option. In other words, the social and economic councils at the local level are founded in accordance with the Annex of Agreemant on Establishing Social Economic Council, signed by the government, five trade union confederations and employers' associations, as described in the national report of Croatia:

According to the mentioned Agreement, with the aim of establishing and developing tripartite dialogue at other levels of government system, possibility is provided for the founding of economic and social councils in the units of local administration and self-government. Such councils are founded by the leadership of these units, trade union centres whose representation has been established by the law at the national level and the competent body of the employers' association at the higher level. These bodies, among other powers, monitor, study and evaluate the impact of the local/regional community, fiscal, social and economic policies on the population's economic and social security, development and living standard at the respective level.

Until 1 May 2002, social and economic councils have been founded in 11 (out of 21) counties.[11]

Observing in general the levels at which social dialogue is established in south-eastern European countries, we can note a logical sequence; namely, it is logical that mechanisms of social dialogue have been first established at the level where the greatest social power – the key controls of authority and decision-making – are concentrated.

This can be used as an advantage, as a firm foothold in the process of establishing social dialogue mechanisms at other levels. It is indisputable, which the experience of these countries already confirms, that social and economic councils at the national level can play an important role in encouraging and coordinating the development of social dialogue at the local level. However, care should be taken to avoid the centralisation of social dialogue, that is, to prevent social and economic councils at the national level from becoming an umbrella over social and economic councils at the local level.

The development of social dialogue at the local level, as it has been demonstrated, depends on the development of the subject of their work, that is, on the degree of real power and authority of governmental institutions at the local level. This implies that the very development of a social dialogue mechanism must be treated as part of the strategy of the development of local communities. This is also the condition ensuring that the network of institutions of social dialogue at different levels is established in a systematic way that will make it possible for creative potential to be manifested in different areas of life and levels of political organisation of society and that free citisens can create the conditions of their life.

11 *National Report of Croatia,* p. 30.

6. PARTICIPANTS IN SOCIAL DIALOGUE

6

The nature of social dialogue actually determines its participants. These include the government, employers (employers' organisations) and trade unions, which are the main actors in industrial relations as a whole.

This seems so pure and simple, but only at first glance. It is in the area of definition of participants in social dialogue that we encounter many disagreements, conflicts, doubts, etc. This is one of the pronounced problems and major obstacles in the process of establishing and developing social dialogue mechanisms, since a clear definition of the participants is the first step and condition for the establishment of social dialogue. This follows from the fact that the development and objective reach of this process largely depends on its participants and the concentration of power between them. Participants in social dialogue are in a contradictory position. They share minimum common interests for which they enter into social dialogue. These common interests are also the groundwork of the principles underlying social dialogue – voluntariness, autonomy of will and good faith, that is, mutual confidence between the participants. At the same time, social dialogue actors have their own particular interests, often opposing and representing a source of conflict between them. Of course, each of the actors attempts to promote and achieve its interests to the maximum extent. In this regard, each of the participants is interested in exerting as much influence as possible on the other participants, even on the choice of participants in social dialogue.

The starting point for a clear and comprehensive definition of legal and legitimate actors in social dialogue is the constitutional legal and actual protection of freedom of organisation and action of workers' and employers' organisations. It is obvious that where this freedom is not formally, legally and actually protected, there can be no partnership or social dialogue. In this regard it can be stated that in all observed countries of south-eastern Europe this formal legal condition is fulfilled, since all of them have ratified ILO Conventions 87 and 98 and incorporated

provisions on freedom of organisation and action of temployers' and trade union organisations in their constitutions and laws. Nevertheless, violation of these rights, particularly of trade union rights, is present in practice in all these countries to a greater or lesser extent. This automatically places trade unions, as participants in social dialogue, in an inferior position in relation to the other two participants in this process. Of course, any action that threatens or restricts the freedom of organisation and action of workers' and employers' organisations directly threatens the establishment of social dialogue, introducing anelement of mistrust into their mutual relations. Having taken note of this, all the analysed countries have stipulated that social and economic councils, *inter alia*, should review any cases of violation of the freedom of organisation and undertake measures within their competence or propose relevant measures to governmental bodies and social partners.

According to the views presented in the national reports, the state is a specific participant in social dialogue. In the establishment and development of this important segment of democratic social order it plays a double role. On the one hand, the state creates the constitutional and legal basis and the entire social environment for the establishment and development of social dialogue.

At the same time, the state (i.e. its representative – the government) together with the other two actors – employers and employees – participates as an equal partner in the discussion of issues that fall within the scope of work of the social and economic council.

The state is objectively the most powerful actor in social dialogue, because it holds all the controls of political power. The contradiction of its position and role in social dialogue is actually reflected in the fact that through the development of social dialogue and other democratic mechanisms it should transfer some of its powers to civil society. In this respect, the state has the power to influence the process of the establishment and development of social dialogue in a positive or negative way and commensurately with its formal power it bears a share of responsibility for the state of social dialogue.

Positions presented in national reports also give rise to the conclusion that the state is objectively the most influential actor in social dialogue. In the initial phases, particularly if the other two actors – trade unions and employers – are very weak, this can turn into an advantage, of course, provided the government demonstrates real political will to establish and develop social dialogue. But if such a situation remains permanent, it would be disastrous for the essence of social dialogue.

Political power, that is, authority possessed by the government, as its input variable in the process of developing social dialogue implies that the course and results of the process largely depend on which political forces are in power. This is, among other things, confirmed by the experience of Bulgaria, where the influence of political programme orientation and concentration of power on the political scene on the development of social dialogue was obvious. The following is what the national report of Bulgaria says on this issue:

In the recent decade there has been a particular trend in practice, which has had few exceptions. Governments that could rely on a more or less stable parliamentary support preferred the 'power monologue', while governments that were elected by a fluctuating majority, or that were transitional or provisional showed as a rule a greater tendency to conduct social dialogue. In it they sought (and in most cases found) a factor that enhanced their political stability, a relatively calm public environment and a specific 'warranty' for the changes they implemented in the economic and social spheres. Thus, for example, the behavior of the governments of the Union of Democratic Forces (UDF) in 1991/92 and the Democratic Left in 1995/97 included attempts to significantly restrict the contents and the mechanisms for social partnership (including actions for financial destabilisation of the largest trade union) and to nationalise the social

partners again. Conversely, the interim coalition government in 1990/91, appointed in practice with parliamentary consent, as well as the provisional governments appointed in 1994 and 1997, had no stable political support, but (or, maybe because of that) were much more focused on and open to having a social dialogue.

Simultaneously, changes in the positions of this or that government, in the support they got from the Parliament (as well as from the economic structures) led to changes in their behavior to the social partners. Thus, for example, the 1992/94 government, appointed by a 'dynamic' parliamentary majority, demonstrated at first openness to social dialogue, to even collaborate on its full institutionalisation. However, in the second year of its mandate, when the supporting majority seemed more stable than in the beginning, it changed its attitude to social partnership with a tendency to restrict it.

The attitude of the 1997–2000 United Democratic Forces (UDF) government, appointed by a stable majority, towards partners and above all towards trade unions was complex and contradictory. There was, on the one hand, tendency to collaborate, determined by the hard circumstances in the country in 1997 and by the clear intention of that government to start at long last radical reforms that required solid public support. For these reasons, the position of the government alternated between a clearly expressed democratic will for dialogue and a striving to pacify the trade unions by making certain concessions. On the other hand, there were also tendencies to formalise and depreciate the social dialogue, attempts to circumvent or even neglect trade unions' opinions at times. This was primarily manifested by underestimating the role of the National Council for Tripartite Cooperation, by underrating partnership in industries and branches, as well as by ignoring some of the special tripartite structures at the national level – for example, the National Council for Protection in Cases of Unemployment and Promotion of Employment among others.

Besides that, we can generalise (with the relativity inherent to every generalisation) that the development of the social dialogue under each government takes the shape of a peculiar sinusoid. It goes from quickly reached maximum values (usually in the beginning of the mandate) to a decline (with a more stable parliamentary majority supporting the government that it has appointed), again (eventually) to an increase in the intensity of the dialogue in cases of lower parliamentary support, emergence of social tensions, or in need of support for unpopular economic and social measures.[12]

A special case that deserves to be mentioned is the experience of Kosovo, that is, the role of political authorities and organs of international community in the process of establishing social dialogue. That is particularly important because of the problems faced by these bodies, such as child labour or fight against discrimination, which must be continuously on the agenda of social dialogue. The national report of Kosovo highlights this matter:

The state's role to determine 'fair play rules' for labour market is significant. National and international trade unions, as well as employers through their organisation – Chamber of Commerce exercised continuos pressure over the UNMIK to adopt the Labour Law convenient for the circumstances in Kosovo. What the applicable law offered in 1984 is far away from what is needed now because of the political and economic climate completely different from the one at the time of adoption.

Enactment of the legislation on labour is necessary to define the relations, employees' rights, child labour, anti-discriminatory practices, etc.

UNMIK's Department of Labour and Employment in cooperation with local experts drafted the Fundamental Labour Law establishing basic labour and employment rules in Kosovo. In this way it is possible to clarify many issues such as minimum age to work, the right to collective

12 *National Report of Bulgaria*, pp. 6-7.

bargaining, labour relations, labour contracts, minimum wage, etc.

Areas that are not covered by labour law shall be covered by collective agreements.[13]

This example is highly important, because it points to the significance that the bodies of international community attach to democratic changes and development of social dialogue as important instruments for the solution of the crisis in this area.

The national report of Romania stresses the following functions of the state in social dialogue, and particularly its specific role in relation to the employees in sectors financed from the budget:

With regard to the present evolution of the industrial relations in Romania, the state plays three parts:

a) to promote the legal acts regulating the social dialogue, the functioning and organisation of the trade unions, employers, tripartite institutions and bipartite cooperation. For this purpose, Government Decision 314/2001 on the establishment, organisation and functioning of the social dialogue commissions within some ministries and prefectures, Government Decision 356/3001, the Employers' Law and other similar legal acts have been adopted;
b) To consult the social partners on the economic and social problems raised at the different levels of the economy: at local, branch and national level;
c) to try to find out solutions for the implementation of the social and economic policies objectives, together with the social partners;

In 2002 the Government still has the prerogatives of an employer as a great deal of the employees are employed in the budgetary system as well as in *the régies autonomes* or majority state-owned enterprises. This reality is mirrored in the necessity of an active involvement of the Government in the relationship with the trade unions by assuming to a great extent the employers' role.

The support granted by the Government, through the Ministry for Labour and Social Solidarity, to the promotion and development of the social dialogue will have to become a current performance and an essential objective beside the other objectives related to Romania's economic and social evolution in the following years.[14]

The national report of FYROM stresses the dominant role of the state in all current social processes, including social dialogue. Particularly emphasised are the ministries where the dominant decision-making power over these issues is concentrated, including those that are the subject of social dialogue:

The state has dominant role in FYROM. Decision-making process is concentrated in a small nucleus of ministries that govern the reform formulation and implementation.

The Ministry of Finance is responsible for the implementation of the fiscal policy, including the budget preparation. In cooperation with the National Bank it monitors international financial activities of the country. The Ministry is responsible for the creation and implementation of macro-economic and development policy of the Government and for deciding upon the priorities in the area of public investments.

The Ministry of Economy is responsible for the regulation and intervention of the domain of economic activities, including the policy of support to small and medium-sized enterprises. The Ministry also monitors the economic, structural and technological situation in the economy.

The Ministry of Labour and Social Affairs performs activities relating to the employment; pension and disability insurance, safety at work; material support for temporarily unemployed; salaries and living standard; social policy and human population policy in order to achieve harmonic economic-social development.

13 *National Report of Kosovo*, p. 9.

14 *National Report of Romania*, p. 20.

The Ministry of Education and Science performs activities that refer to education on all levels and types; organisation, financing, development and improvement of education and science; verification of the vocations and profiles in education; technology development, information technology and technical culture; and international-technical cooperation.[15]

Finally, the experience of Montenegro is also characteristic, because the national report highlights the limitations faced by the state, that is, political authorities in exercising its role in social dialogue.

The Government of Montenegro is seriously committed to the implementation of numerous reforms necessary to conform the country to the standard of other European countries. This is particularly true of the reform of the labour market, social insurance, etc.:

In the area of social dialogue the Government of Montenegro is facing numerous difficulties:

1. The stability of the Government and its policy is directly dependent on the coalition of parties, which does not leave enough room for truly independent action. As the result, political dialogue very often substitutes the social dialogue;
2. In any case, real social dialogue is determined by the fact that the other two traditional partners, trade union and the employers' association, are very weak by European standards;
3. Since most enterprises are still in public ownership, sometimes these two roles (of the entrepreneur and the third party) overlap;
4. The government budget is very rigid and cannot provide necessary resources for the change of society. Due to this, teachers on strike for four months now have very slim chances of achieving the salary increase;
5. Difficult economic situation imposes the unpopular option – reduction of severance pay to redundant workers from 24 to 6 monthly wages, as proposed by the IMF.[16]
6. When the role of state in social dialogue is concerned, a very characteristic experience is that of Albania, where the Ministry of Labour and Social Affairs was founded in 1992, and its functions and tasks defined in the following way: The Ministry of Labour and Social Affairs (MLSA) was created in 1992 and later, in 1993, the Department of Labour Relations was created within this ministry, which came out as a necessity for managing labour (industrial) relations in the new labour market. Its main mission is the promotion of politics in labour relations, the enhancement and development of social dialogue in the framework of partnership and the promotion of international labour standards.

The objective of this Department is the development of labour legislation through:

- the improvement of necessary legal framework;
- the development of new work relations among the state, employers and trade unions, on the basis of legislation in force and the ratified international labour conventions;
- the development and consolidation of partnership institutions for the purpose of preserving social equilibrium via harmonising the parties' interests, etc.[17]

As for the participation of trade unions in social dialogue, differences are visible primarily in the number of trade unions participating in this process, that is, whether one or more trade unions are involved in social dialogue. This is shown in Table 3.

15 *National Report of Macedonia*, p. 3.

16 *National Report of Montenegro*, p. 13.

17 *National Report of Albania*, pp. 8–9.

Table 3. Number of trade unions participating in social dialogue at the national level

Country	Number of trade unions participating in social dialogue
Albania	4
Bosnia and Herzegovina	1
Bulgaria	2
Croatia	5
Kosovo	1
FYROM	2
Montenegro	1
Republika Srpska	1
Romania	5
Serbia	3

In half of the observed countries there is only one trade union participating in social dialogue, while Romania and Croatia have the highest number of trade unions involved – five each.

Of course, the number of trade unions participating in social dialogue depends on the specific course of development of the trade-union movement and in this context – trade-union pluralism in certain countries. It is also necessary to be aware that the number of trade unions in all the analysed countries is higher, but only the number of trade unions mentioned above take part in social dialogue. Therefore, the situation in this regard may change in the future.

All the countries where more than one trade union takes part in social dialogue apply the principle of trade union representation, which is, as a rule, defined by law. However, this process is not complete in all the countries of the region. For example, the Labour Law of the Republic of Serbia introduced the principle of trade unions' representation and set forth the conditions that a trade union must fulfil at a certain level to be considered representative. However, the actual process of determining the representation of trade unions has not yet been completed. This process takes place sporadically in certain enterprises and branches, at the initiative of the trade union, but not at the national level.

The next problem faced by trade unions as social dialogue actors refers to division, fragmentation on the trade-union scene, rivalries and conflicts. This can be jointly termed as unnecessary and unfair competition between trade unions. Of course, this weakens the overall position of the trade union in social dialogue and generally produces an adverse effect on the establishment and development of social dialogue.

The complexity and far-reaching consequences of this process are described in the very specific, comprehensive report on Croatia:

Relations between [some] trade union centres are marked by strong rivalry. According to the assessment of one of the trade union leaders, such relations arise from the fact that 'all four trade union centres aim at the same target groups – workers in the economy'. However, due to the declining employment, the number of trade union members in the economy is decreasing.

The struggle for trade union membership (in the conditions of stagnation and shrinking of the target market) results in the emergence of different forms of unfair trade union competition:

- *'Trade union dumping'*. This is the practice of certain trade unions which base their 'competitive advantage' on the (low) 'price of trade union service'. In other words, membership is attracted by offering lower union dues.
- '*Trade union demagogy'*. In this case, the practice is to leave the bulk of the collected union dues to the trade union local in the enterprise. According to available information, trade union locals in enterprises usually retain between 40% and 90% of the collected union dues at their disposal. From these resources they finance purchase of goods (mainly food) for satisfying the basic needs and thus, in fact, purchase social peace. The demagogic dimension of this practice follows from the fact that this is non-purposeful expenditure of resources. This serves to mitigate the consequences, but does not eliminate the causes which generate low level of workers' labour and social rights.

- '*Takeover*' of trade union organisations. Takeover of trade union organisations is carried out in two ways. In the first case, shop stewards decide on behalf of the membership to transfer into another trade union or to a trade union association at higher level (often failing to inform the membership of this decision). There is no need to point out how this practice is in discrepancy with the ILO Convention 87 about trade union freedoms and the protection of trade union rights. In the second case, the decision on transfer is made by the membership. Pointing to the examples of such behaviour, one trade union leader described situations in which trade union members make the decision to transfer into another trade union literally because of a 'case of wine, a Christmas turkey or an Easter ham'!

Other sources of conflict between trade unions are:

- unsettled issue of division of trade union property. It has already been mentioned that the Confederation of Autonomous Trade Unions of Croatia (SSSH), as the legal successor, has taken over most of the property of the 'old' trade union, while a part is in other trade union centres or independent trade unions. The SSSH does not object to the division of property (an inter-union agreement to this effect has been signed two years ago, at the initiative of the SSSH), but the problem is the definition of criteria for division. However, for the full information on this problem it is necessary to say that by the Law on Associations (1997) and by the new Law on Associations (1 January 2002), trade union property was transferred to the state – hence, it was nationalised. Reacting to this, back in 1998 the SSSH filed a complaint with the ILO, pointing to the violation of Article 3 of the Convention 87 (see the Report of the 89th Conference of the International Labour Organisation, Geneva, 5 June 2001). A meeting with the representatives of all trade union centres was held on 5 December 2001 in the Government of the Republic of Croatia, where it was agreed that the same inter-union agreement of 1999 should be updated or a revised version drawn up according to which the Government will by its ruling return the property to trade unions. This process is under way.
- personal ambitions of top officials in trade union associations. Assuming top position in a trade union, particularly in view of profound economic crisis, became attractive. Tendency towards accomplishing personal ambitions represents one of the major motive forces for initiating the creation of new trade unions and fragmentation of trade union scene in Croatia.[18]

Successful and efficient participation of trade unions in social dialogue requires that they achieve minimum mutual agreement on the development strategy, goals to be achieved in social dialogue and the manner in which these goals are to be achieved. The prior condition for this is minimum trade-union solidarity and joint action in the defence of the minimum joint interests of all employees.

When employers' organisations as social dialogue actors are concerned, the situation is even more complex than it is in case of trade unions. Apparent here is the crossroads of the old and the new. This is reflected in the fact that in some countries chambers of commerce and industry appear as participants in social dialogue. This is the legacy of the socialist, single-party system, since these organisations cannot be treated as employers' organisations based on voluntary membership. Table 4 illustrates this and other relevant indicators on this issue.

18 *National Report of Croatia*, pp. 19, 22, 23.

Table 4. Type and number of participants in social dialogue on the part of employers

Country	Participating organisation	Number of participants
Albania	Employers' organisation	2
Bosnia and Herzegovina	Employers' organisation	1
Bulgaria	Employers' organisation	4
Croatia	Employers' organisation	1
Kosovo	Chamber of commerce and industry	1
FYROM	Chamber of commerce and industry	1
Montenegro	Chamber of commerce and industry	1
Republika Srpska	Chamber of commerce and industry	1
Romania	Employers' organisation	8
Serbia	Employers' organisation	1

In four of the ten observed countries, chambers of commerce and industry participate in the social dialogue on behalf of employers, which represents one of the elements of the legacy from the former period. Interrelationship, that is, the influence of the social environment on such a situation is shown by the fact that these are the countries where the transition process is proceeding at the slowest pace. The same refers to privatisation, as one of the key elements of this process. It is true that the content and method of their work changed to some extent under the impact of the entire course of changes. However, chambers of commerce and industry obviously cannot be authentic employers' representatives in a market economy. These countries are yet to face the challenge of the establishment of autonomous employers' organisations, which is of crucial importance for social dialogue. The example of Bulgaria shows that this is possible. In that country the Chamber of Commerce and Industry was transformed into anemployers' organisation based on new groundwork, as described in the national report of Bulgaria:

According to the same criteria, four employers' organisations were acknowledged as representative:

- The Bulgarian Chamber of Commerce and Industry (BCCI). It was first established about 120 years ago (in 1884) and after 1992 defines itself as a voluntary, public organisation for assisting, promoting, representing and protecting the economic interests of its clients of the public and the private sector.
- The Bulgarian Industrial Association (BIA), founded in 1980, is a voluntary, non-govermment organisation of the Bulgarian business and industry. It is the successor of the Bulgarian Industrial Chamber established in 1880.
  BIA is a non-profit organisation, incorporating legal entities and physical persons conducting business activity in the field of the private, public, co-operative and municipal sectors of economy.
  BIA protects and co-ordinates the interests of the employers on the national, industrial, regional, sector and subsector levels trough the branch (sector) and regional organisations of the employers – BIA members.
- Association for Grassroots Enterprises (renamed in 2001 the Civil Association for Enterprises). It was set up in 1989 as the first organisation of private entrepreneurs for protecting the freedoms of enterprises and private employers.
- The Vazrajdane Bulgarian Association of Private Entrepreneurs established in 1989.[19]

In this connection it is worth pointing out that positive processes in the area of the establishment and development of independent employers' associations are under way, with certain NGOs assuming

19 *National Report of Bulgaria,* pp. 5–6.

the role of initiators. There are two such organisations in Montenegro:

Entrepreneurship, Management, Business (PMB)

Founded as a foundation in 1999 after the failed attempt to register it as an independent chamber of commerce and industry. In addition to legal problems, financial aspect was involved too, because membership in the official Chamber of Commerce and Industry is compulsory, entailing the payment of membership fee. Consequently, enterprises wishing to join the alternative chamber would have to pay twice.

The foundation was founded with the idea to create favourable institutional framework for enterprises, lobbying in the interest of membership, organisation of training and seminars, such as the one about shadow economy in Montenegro, with the participation of many ministers.

With about 100 enterprises which employ about 2,000 workers, at the end of 2001 the foundation was a truly representative organisation of Montenegrin business.

The Employers' Association of Montenegro (UPCG)

This is an umbrella organisation founded in September 2001 and registered as a non-governmental organisation. It has 30 members, encompassing 10 sector business associations, individual businesses, foreign investors and international companies.

It has an 11-member Management Board and is organised in six working commissions:

1. Education and research
2. Membership
3. Publishing policy
4. Communications
5. International relations
6. Finances.

One of the first activities of the association was organisation of a visit to Kosovo in April 2002, with the participation of some 30 businessman from Montenegro. The main aim of this meeting entitled 'Business for business' was to provide a unique opportunity to the participants to meet with enterprises in the same line of activity and to investigate the possibilities of the Kosovo market.

The association also operates the Centre for Business and Economic Development, which is the first consultative centre in Montenegro which supports businesses and economic development.

The main services offered by this Centre are:

1. Research, economic surveys and development of a database on SMEs;
2. Policy analysis and recommendations;
3. Business consulting services;
4. Preparation of business plans for entrepreneurs;
5. Primary and advanced training for newly-founded and existing firms;
6. Support to women–entrepreneurs; and
7. Publishing activity.[20]

As in the process of transition in general, the state may play a positive and encouraging role in the establishment of independent employers' organisations, as an irreplaceable factor of market economy and social dialogue. That is very concretely confirmed by the experience of Albania, where the Ministry of Labour in 1995 launched the following initiative:

In Albania, the first initiative was taken in 1993, when a group of new, private entrepreneurs founded the Union of Democratic Businessmen. This association, having no experience and/or foreign assistance, could not be properly structured and take attributes of a really representative organisation.

The second initiative originated from the Ministry of Labour in the early 1995, obviously more under the pressure and assistance of the ILO for completing the scheme of social partners, rather than as a true initiative from business community. However, the result of this initiative –

20 *National Report of Montenegro*, pp. 11–12.

CONBIZ – entered into the partnership scheme and benefited from the ILO assistance together with the state and trade union partners. Under such circumstances, in June 1995, the first self-initiative was taken by the most modest community, the small and medium-sized businesses, which brought into existence the foundation of the Confederation of Small and Medium-Sized Enterprises (CONFINCOM).[21]

In FYROM there is an organised Employer's Organisation, which functions as a particular form of voluntary organisation of employers, for organised presentation of the interests of employers and especially in the social partnership with the institutions of the system, workers' organisations and other institutions and oprganisations in the country and abroad.

At the start of the establishment of the principals of a market economy this organising of employers began through the council board of employers at the Chamber of Commerce level, with special committees on branch organisations. This council was established in 1991.

Starting with the needs of finding an appropriate form of organising employers, through which all their enquiries and interests would be realised, the Council of Employers made a decision on 3 March 1994 to transform itself into an employers' organisation in the form of a voluntary organisation with an executive board and a president.

The results of the comparative analysis in this segment point out that the process of constitution of the actors oin social dialogue is still under way. This primarily refers to trade unions and employers' organisations and involves the settlement of relations on both the trade union and employers' scene. It is obvious that each of the two actors ointhe social dialogue is often confronted within its own group, that trade unions and employers' organisations greatly differ by the size, organisational structure and logistic facilities.

Adequate changes in this area must focus on a clear definition and strengthening of the social power of each of the actors, because a relative balance of power between them is a prerequisite for the functioning of social dialogue.

21 *National Report of Albania*, p. 7.

7. THE ORGANISATIONAL STRUCTURE OF SOCIAL DIALOGUE

The establishment and development of social dialogue in south-eastern European countries besides its political and social aspect, has,an organisational aspect. In other words, organs and bodies within which social dialogue takes place may be regarded as an organisational system. Like any other social and political activity, the success of social dialogue depends on organisational structure.

Organisational structure should enable the exercising of the main functions of social dialogue, reconciliation of social partners' different interests, prevention of industrial and social conflicts, and if they nevertheless break out – their peaceful resolution, as well as permanent, systematic influence of unionised labour and civil institutions on the creation of a strategy of social, economic and political development of society.

An organisational model should also be based on the fundamental principles of social dialogue – voluntariness, the autonomous will of the parties and mutual confidence.

Likewise, the organisational structure directly and openly expresses the attitude of the key actors in social dialogue towards this important social process. Of course, organisational structure is more developed in those countries where more attention is paid to social dialogue and where social dialogue has become an important element of social decision-making. This simply arises from the fact that the development of social dialogue imposes the need for the introduction of new, and the upgrading of old, organisational forms. Organisational structure of social dialogue also reflects the distribution of power among its actors, because each actor could attempt to impose the organisational concept that would enable it to have the greatest influence on the organs and bodies where social dialogue is conducted. In this regard, we may say that the very organisation of these organs and bodies represents the subject of social dialogue between social partners.

The basis for such a claim is provided by the fact that the organisational structure of the organs wherein social dialogue is

conducted is determined by the agreement of social partners and that it is in fact their first agreement, which represents a test of their real readiness to earnestly establish and develop social dialogue. Also, the mentioned agreements set forth that the organisational structure and method of work of the social and economic councils may be changed pursuant to the agreement of all participants, whereby each of them individually may launch such an initiative. This approach is very important, because if they fail to agree upon the method of organisation and work in their mutual relations within the social and economic councils, it cannot be realistically expected that the actors in social dialogue would agree upon the other issues on which they should build their common stands.

In addition to all the above-mentioned, the organisational structure of the social and economic councils should ensure their efficient working, monitoring the execution of their positions and decisions, as well as the cost-effectiveness of their work in the expenditure of financial and material resources.

The situation is different in the countries where the establishment, scope of work, organisation and working methods of the social and economic councils are legally regulated. In this regard, the founding of the social and economic councils by the agreement of social partners has certain advantages. In that case, all three social partners are in a relatively equal position, because the organisational structure cannot be defined or the work of the council started without the agreement of all social partners. This is even more pronounced than in the subsequent process of decision-making at the sessions of the social and economic councils, wheredecisions in most cases are made by majority vote.

In situations where the founding, organisation and working methods of the council are legally defined, the state, as the legislator, enjoys a considerable initial advantage. Of course, it is implied that the legislation governing the organisation and work of the social and economic councils is enacted in a democratic way, with active participation and agreement of the other two social partners. This arises from the principle of voluntariness, meaning that no one can force anyone else to participate in social dialogue. Actually, they can, but then it would not be social dialogue.

The internal organisation and working method of the organs and bodies wherein social dialogue is conducted are largely complementary with the legal framework. Due to this, the analysis of the organisational structure, its positive sides and shortcomings should also always include the elements of the legal groundwork underlying that organisational structure.

The tripartite structure actually determines the composition of the social and economic councils. They are composed of the representatives of government, employers and trade unions.

However, besides the above-mentioned principal actors in social dialogue, there are other actors involved in the work of the councils. A characteristic example in this regard is offered by Montenegro, where the work of the council at the national level includes 21 representatives of employers, trade unions and government (seven from each organisation) and as many as 17 representatives of civil society – NGOs, farmers, universities, emigrants.

The idea and initiative to formally include NGOs and representatives of civil society in the work of social and economic councils has also been contemplated in other countries. However, practical solutions have not yet been found. Two types of obstacles are emphasised in this connection in the national reports – limited resources and real power to influence social reforms, as well as large number of NGOs and, owing to this, difficulties about the choice of those to represent the NGO sector in the social and economic councils. The first problem is discussed in the national report of Montenegro.

In June 1994 the Assembly of Montenegro adopted the Law on Non-Government Organisations, which enables

non-government associations or foundations to acquire the status of legal entities on the basis of registration.

Foreign non-government organisations may operate on the territory of Montenegro if registered with the Ministry of Justice.

This law does not refer to political organisations, religious communities, trade unions, sports organisations, employers' associations, associations or foundations founded by the government or those founded according to special laws.

About 100 organisations are registered as NGOs, but most of them have limited scope, structure and resources. Their influence on the reforms of Montenegrin society is accordingly restricted.

The minister of labour assesses that only about 20 NGOs may play that role.

An example that can be mentioned is the Women's Action. This is a non-government organisation registered in 1999 with the following goals:

- equal rights and obligations of men and women;
- promotion of women's position in society;
- strengthening of women's position in politics;
- legal protection of women;
- upgrading of social services necessary to a family.

The Women's Action is affiliated with the Women's Network, which gathers similar organisations from Bosnia and Herzegovina, Croatia and Slovenia.

This non-government organisation is also an active member of the working group for gender issues within the Stability Pact.[22]

The other aspect of the problem is discussed in the national report of Serbia, which stresses:

There are 19,129 registered NGOs in Serbia. Most of these organisations were founded before 1990, and some 3,000 were founded during the Milosevic regime. A great number of NGOs – 2,800 were founded after democratic changes took place in Serbia. Most of them, according to their structure, adeal with issues such as: development of civil society (23%), social services (14%), environmental protection (12%), youth (5%), culture (5%), students' issues (4%), education (3.5%), health (3.5%), multi-ethnic tolerance and multi-ethnic society development (3%), protection of cultural heritage and tradition (3%), fostering of entrepreneurship (2.4%), local community development (2%), peace-building (1.5%) and maintaining cooperation with other countries, especially with the European Union (1.4%).

NGOs may be divided into four basic groups depending on a manner in which they provide assistance: access to the rights and legal help; material and medical help; education and training; and psychological support and counselling.[23]

In any case, the number of NGOs may produce positive effect on the development of democratic initiatives and expression of the creative powers and initiatives of individuals and social groups. However, the above-mentioned problem objectively exists. This problem is handled much more easily at the local level, because there are fewer NGOs and it is easier to recognise their specific role and real capacity.

The number of members of the social and economic councils at the national level differs from one country to another and is determined by the specific features of the social dialogue establishment process, the number of representative participants in social dialogue, as well as certain conceptual differences on the issue of which organisations may participate equally in the work of social and economic councils. The number of members of the council also expresses the organisational approach of the actors in social dialogue to the provision of an optimal number of members that would enable efficient work. However, this can be a two-edged sword.

22 *National report of Montenegro*, pp. 13–14.

23 *National Report of Serbia*, p. 13.

Of course, too great a number of council members could be counter-productive for efficient operation and rapid convening, and may increase operating costs. However, a reduction of the number of council members below a certain limit for the sake of efficiency and economy could cause irreparable damage by excluding potentially relevant participants from the work of the councils and put at risk the main goals of their existence. To provide a comprehensive review of this problem, the data in Table 5 indicate the number of members of social and economic councils at the national level in the studied countries.

Table 5. Number of members of social and economic councils at the national level

Country	Number of members
Albania	
Bosnia and Herzegovina	6
Bulgaria	
Croatia	15
Kosovo	15
FYROM	11
Montenegro	38
Republika Srpska	6
Romania	27
Serbia	9

The data in Table 5 provide grounds to the claims presented above. We should keep in mind that the number of members of the council depends upon the size of the country, on the number and relations between the social dialogue actors, efforts of each of them to be adequately represented in these bodies. It may seem that the number of members of the social and economic council is a minor technical issue, but it is quite certain that the number of members has a strong impact on the work and functioning of these bodies. For example, the exceptionally small number of members of the social and economic councils in some of the countries is a potential risk that these bodies may turn into consultative working and meetings of officials from the top governmental, trade union and employers' organisations, which is not the purpose of social dialogue.

With the aim of securing an unimpeded holding of meetings and efficient work, all the observed countries have introduced the institution of deputy member of the social and economic council, who can deputise for members of the council in their absence with full powers.

Organisational structure in all the countries covered in this analysis includes certain number of representatives of employers, trade unions and political authorities. This solution reflects the principle of equality of social partners. However, this solution faces trade unions and employers' organisations with a new challenge in those countries where there are more trade unions and/or more employers' organisations participating in the work of the social and economic councils. Since the government has a fixed number of representatives on the social and economic council, which it does not share with anyone, its starting position is more favourable compared with that of the other two social partners.

This urges trade unions and employers' organisations to reach a consensus on the minimum common interests and strategy in the work of the council, which is not possible if they do not have aprior minimum agreement about their mutual relations and common strategy. First of all, agreement must be reached about the choice of council members from the trade union ranks. Absence of this minimum agreement and cooperation between trade unions and employers' organisations not only weakens their position in relation to the government, but represents a direct obstacle to the development of social dialogue. In other words, the principle whereby trade unions and employers provide an equal number of members on the social and economic councils in conditions of pluralism in the most direct way raises the question of the state and relations with the trade unions, that is, the employers' scene.

It states in the national reports that all participants, in accordance with the

documents thatregulate this issue, are fully free to choose members of the council from their ranks and to make the choice according to their own rules. This is in accordance with the principles of voluntariness and autonomy of will of the participants in the social dialogue.

An important factor for the organisational structure and method of work of the social and economic councils is that the founding act may provide for the possibility of participation of experts, political officials and prominent public personalities at the sessions of the council, depending on the items on the agenda. In this regard, FYROM has implemented a specific solution, because two experts elected by the social partners are fully fledged members of the council. This approach ensures a greater degree of competence when discussing issues within the social and economic council's field of work as well as the insight of a wider circle of competent persons into the content and method of their work.

Another characteristic solution is encountered in the Agreement on the Founding of the Social and Economic Council of the Republika Srpska, which stipulates that scientists and experts attending council sessions shall enjoy the same rights as council members, which implicitly implies a voting right.

Working bodies occupy an important place in the organisational structure and working method of the social and economic councils. National reports emphasise the significance and the role of these working bodies for the comprehensive, professional treatment of issues within the field of the council's work, for the involvement of a wider circle of experts in the creation of positions and decisions of the council. The importance of these working bodies is recognised by the fact that in most of the observed countries their number and field of work are regulated by the documents on the founding of the social and economic councils.

The number and field of work of these working bodies differs from country to country and depends on the specifics of the course of development of the social dialogue, as well as on the topicality and significance of issues dealt with by the social and economic councils in certain countrie , field of work of the councils and the level of development of social dialogue in general. In order to provide a more comprehensive insight into this matter, we present below a review of working bodies of the social and economic councils in some of the studied countries.

REPUBLIC OF SERBIA

The Social and Economic Council has working groups for the following issues:

- protection of labour and social rights in the privatisation process,
- labour legislation,
- social policy in the process of transition,
- protection of the living and working environment,
- occupational health and safety,
- collective bargaining.

MONTENEGRO

The Social and Economic Council has seven commissions for:

- agriculture,
- industry and privatisation,
- labour and social policy,
- the environment,
- economy and finances,
- transition of society,
- international relations.

CROATIA

The Council may set up commissions for certain issues within the scope of its work. The permanent commissions of the Council are:

- Commission for Wage Policy and Fiscal System,
- Commission for Employment and Social Policy,
- Commission for Collective Bargaining,
- Commission for Privatisation,
- Commission for Legislation, Implementation of Regulations and Protection of Rights,

- Commission for Public Services,
- Commission for International Relations,
- Commission for the Budget.[24]

ROMANIA

The Economic and Social Council structure includes permanent or temporary specialised sections. The permanent sections are:

- Section for Economic Development and Restructuring,
- Section for Privatisation,
- Section for Labour Relations and Conflicts Mediation,
- Section for Wage Policy,
- Section for Social Protection and Medical Care,
- Section for Education and Research,
- Section for the Relationship with Non-Governmental and International Organisations,
- Section for Small and Medium-Sised Enterprises,
- Section for Equal Opportunities,
- Section for Fiscal Policies.

The permanent or temporary sections of the Economic and Social Council have a tripartite structure. The sections have nine members, with an equal representation of the social partners.

The sections analyse the specific issues corresponding to their activities. They forward to the ESC Executive Bureau, and to the Plenary Session, the following documents:

- opinion proposals to regulatory norms issued by bodies having initiated them,
- proposals of suitable settlement measures,
- any other relevant proposals following the analyses.

Social and economic councils exercise their role and functions through individual engagement of their members, engagement of experts, scientific and professional institutions, by informing the public about their positions and activities and vial council sessions.

Documents which regulate the method of work of the social and economic councils very often regulate certain formal procedures referring to relations, forms and dynamic of work of the social partners in the aim of securing greater efficiency in their work. Characteristic in this regard is the example of Albania, where social partners agreed on the following forms of cooperation:

Social partners have articulated their requirements for dialogue with the government and concrete realisation of tripartite principle with clear demands such as:

- When the government wishes to propose laws or take decisions in social-economic areas, it has to call upon partners for consultation.
- The institutionalisation of the National Labour Conference (once a year) where the most important social and economic decisions shall be taken. The Conference is headed by the prime minister.
- Periodic meetings: premier – social partners.
- Periodic meetings on specific issues: ministers – social partners. The ministers maintain constant contacts with social partners on social and economic problems within their competences.

The development of social dialogue among partners at all levels should be continuous regarding problems of their specific interests, hence concluding agreements and collective bargaining.[25]

Also interesting is the experience of Romania, where relevant documents stipulate two levels of the work of the social and economic council, as described in the national report of this country:

The social dialogue in the ESC has two levels: a technical one, within the Specialised Sections, between trade unions', employers' and government experts and independent experts permanently hired at the Technical Secretarial of the ESC, and the other one

24 *Agreement on the Founding of the Social and Economic Council of Croatia*, pp. 3–4.

25 *National Report of Albania*, p. 11.

at the decision-making level – in Plenum, and in the Executive Bureau of the ESC.[26]

It is evident from the national reports that the method of work of the social and economic councils, and particularly the role and influence of the representatives of employers' and trade union organisations, are affected by the government's practice of rushing through laws and making decisions that require prior opinion of the council under the so-called emergency procedure, justifying this with a variety of reasons. This prevents the trade union and employers' organisations, which do not have the necessary material and human resources, to prepare their positions on certain issues, with prior consultation of their membership.

Documents on the work of the social and economic councils and national reports reveal the practice of setting up the secretariat of the council, as an operational and executive body, composed of one or two representatives of each of the social partners. The task of the secretariat is to prepare sessions of the council and take care of the execution of its positions and decisions. Such an executive body can contribute to the efficient work of the council. However, it is important to make sure that key information and decision-making powers do not shift to this secretariat.

Positions and decisions of the social and economic councils are made in one of the following ways:

- by consensus,
- by majority vote,
- by a combination of consensus and majority vote, where the majority vote is used as a reserve alternative in case a decision cannot be reached by consensus.

Decision-making by consensus is the most suitable for the nature of the social and economic councils, their role and functions. However, since it is often not possible in the present conditions due to generally unfavourable social circumstances and thecontradictory interests of the social partners, decisions are made by majority vote.

It is important to stress that documents regulating these issues stipulate very strict procedures and high requirements from the point of participation of the representatives of all social partners in the decision-making process at the sessions of the social and economic council.

The Agreement on the Founding of the Social and Economic Council of FYROM sets forth that the session must be attended by two-thirds of the council members, with at least two members from each of the social partners.

The Agreement on the Founding of the Social and Economic Council of Serbia regulates:

Article 7

As a rule, the Council shall adopt its positions and decisions by consensus.

In case the Council cannot adopt certain position or decision by consensus, the position i.e. decision shall be adopted by a two-thirds majority out of the total number of the Council members.

The rules on the work of the Social and Economic Council of the Republika Srpska also stipulate alternative decision-making by consensus or majority vote:

Article 20

The Council shall adopt acts within its competence in the form of decisions, conclusions, recommendations, proposals and opinions.

On the matters within its competence the Council shall decide, as a rule, by full concordance of will of all the present members of the Council (consensus). Notwithstanding the provisions of paragraph 2 hereof, on minor issues as well as on issues where consensus cannot be reached the Council may decide by majority vote, provided that the affirmative vote is cast by all three members appointed by two of the partners in social dialogue and at least one member appointed by the third partner.

The proposal of decisions and other acts of the Council shall be formulated by the Council president.

A member of the Council attending a session cannot abstain from voting.

26 *National Report of Romania*, p. 23.

It is worth noting that the provision stipulating that a council member cannot abstain from voting is not in accordance with basic human and political freedoms and rights.

In Croatia, the Economic and Social Council decides by majority vote, provided the session is attended by at least three members (out of five) of each of the three social partners.

The term of office of the members of the Social and Economic Council is four years. The term of office of the president of the Social and Economic Council, as a rule, lasts one year and is rotated between social partners, meaning that the president of the Social and Economic Council in every subsequent term is provided by a different social partner.

In certain countries (e.g. Romania) the president of the Social and Economic Council is appointed by the Parliament at the proposal of the council. This solution has its advantages, because it provides parliamentary control and influence on the work of the Social and Economic Council.

An important issue of the organisation and functioning of social dialogue mechanisms and institutions is financing. We should bear in mind here that we are discussing considerable material and financial requirements, because they refer not only to the covering of the operating costs of the social and economic councils at the national level, but about the establishment and extension of the network at the local level, education, promotion of the social dialogue in the public, etc.

According to the national reports, countries mainly opt for one of the following two solutions:

1. All costs of the work of the social and economic councils are covered by the budget.
2. All costs are split and covered jointly by the social partners pursuant to their mutual agreement.

Preference is given to the latter model, because it is considered that cost sharing is important for the equitable position of social partners in social dialogue.

However, when assessing these alternatives, we should not overlook the fact that where the work of the social and economic councils is covered by the budget, which comes from taxes paid by citizens and the corporate sector, this means that the employers and trade unions have already contributed to these resources.

This issue is particularly important because lack of financial resources is among the serious obstacles for the faster building and better functioning of social dialogue mechanisms.

8. THE WORK OF THE SOCIAL AND ECONOMIC COUNCILS

The content of work, that is, issues constituting the subject of work of the social and economic councils represent the central issue of the concept, social role, functions and real social power of these bodies. Without underestimating the importance of other issues, such as the legal framework, participants, levels of negotiations, internal organisation and working methods, we cannot deny that the work content has a decisive impact on the solution of all the other above-mentioned issues.

The content of work of the social and economic councils reflects the real power of social partners and their expectations from social dialogue, conceptual similarities and differences concerning the role and functions of the social and economic councils and the constellation of social power of the actors in social dialogue. From the national reports and analysed documents that regulate this issue it is obvious that the definition of the content of work of the social and economic councils was one of the key segments of the process of constituting social and economic councils and that this issue is regulated in detail in all documents on the founding and operation of these bodies.

In this context, the definition of the work content of the social and economic councils can be treated as the first step in the establishment of social dialogue and the first real test of the actors insocial dialogue and their willingness to build their relations on new principles. Plainly stated, every participant in social dialogue, proceeding from its own position and interests, strives to include in the council's content of work the issues that are most important to that partner, and to exclude from social dialogue certain important issues referring to the social and economic development of society. In other words, the definition of the content of social dialogue would be the first subject of confrontation and conflict between the actors in social dialogue.

The analysis of the content of the social dialogue raises numerous theoretical and practical questions referring to the relationship between social dialogue and workers' participation, collective bargaining and political decision-making. This follows from the fact that many issues that are the subject of social dialogue are at the same time the subject of different forms of workers' participation, such as works councils, collective bargaining and decision-making on the legislative and executive bodies of political authorities. Of course, this raises in a novel way the issue of the relationship between social dialogue and various forms of industrial relations, such as collective bargaining and the relationship between social dialogue and political decision-making.

The inspection of the work content of the social and economic councils at the national level in the analysed countries shows that these bodies deal with almost all relevant political, economic and social aspects of the transition process. Some of these issues (e.g. restructuring and development of the national economy) are so widely and generally defined that practically all political, economic and social issues of the transition process may fit into this definition. Of course, such broadly defined issues dealt with by the social and economic councils in any case reflect the doubts of those who defined the content of work of the social and economic councils, unavoidable in the first steps of their establishment and development.

This claim is borne out by the review of issues within the scope of the social and economic councils in different countries, as defined by the founding document (agreement or law).

ROMANIA

The Economic and Social Council analyses the economic and social situation of the country and makes relevant proposals subject to legal provisions regarding:

- the restructuring and development of the national economy;
- the privatisation of the enterprises;
- the labour relations;
- the wages policy;
- the social protection and medical care;
- the education and research;
- the small and medium sized enterprises development.

In the implementation of its advisory function, the Economic and Social Council is competent in:

- the issuance of opinions on governmental draft decisions and orders, and bills to be forwarded to the Parliament;
- the briefing of the Government on the emergence of economic and social events that call for new regulations;
- the analysis of the causes of conflicts and the proposal for their settlement;
- the observance of duties following from the ILO Convention 144/1976 on Tripartite Consultations, intended to promote the enforcement of international labour standards.

SERBIA

The content of the Council's work encompasses all issues relevant for the exercising of human freedoms and rights, material and social position of employees and employers, their living and working conditions, and in particular:

- labour legislation,
- development and functioning of the collective bargaining system,
- protection of the freedom of organisation of workers' and employers' organisations,
- privatisation and its social and economic consequences,
- employment, labour and social rights, retraining and reemployment of the unemployed;
- conditions for education and professional training of employees,
- fiscal and price policies and their impact on the economic and social position of employees and the employers,
  - social policy with particular emphasis on the securing of minimum social and economic safety of employees and citizens,
  - health protection and health insurance system,

- pension and disability insurance system,
- occupational safety and health, working conditions of the employees and the employers, protection of the living and working environment,
- protection of women, children, disabled workers and other issues.

REPUBLIKA SRPSKA

In accordance with the scope of work of the Council stipulated by the Labour Law, the members of the Council shall be entitled and obliged:

- to attend the sessions of the Council and discuss and decide equitably on the issues within the competence of the Council,
- to encourage and promote the work of the Council, present their views and proposals on certain issues to the partners in the social dialogue, government and other bodies,
- to foster collective bargaining and conclusion of collective agreements, to present opinions and proposals concerning the contents of collective agreements and to directly participate in the public debate in the process of bargaining towards conclusion of collective agreements,
- to monitor, discuss and analyse economic policy measures in the Republika Srpska,
- to monitor the situation in the implementation of the social policy in the Republika Srpska and to propose measures for the upgrading of the social security system,
- to propose methods for the reconciliation of the interests of the employees and the employers with the goals and measures of the social and economic policies,
- to monitor the implementation of the Program for the Maintenance of Social Stability and to present opinions to the Government of the Republika Srpska with a view to improving the situation in that area,
- to monitor, discuss and give opinions about the regulations in the area of labour, employment and social protection and to propose upgrading and amendments to these regulations,
- to monitor the situation, discuss and propose measures and activities in other areas of the economic and social policies of interest for the partners in social dialogue.

In addition to the tasks in paragraph 1 hereof, the members of the Council discharge certain tasks that are, in accordance with the Labour Law, regulated by collective agreements.

The members of the Council are entitled to the remuneration for their work, in accordance with the special agreement between the partners in social dialogue.[27]

CROATIA

Article 6

In the aim of achieving the objectives referred to in Article 1 hereof, the Council shall:

- monitor, study and evaluate the impact of the economic policy and economic policy measures on the social stability and development;
- monitor, study and evaluate the impact of the social policy and social policy measures on the social stability and development;
- study and evaluate the impact of the changes in prices and wages on the economic stability and development;
- provide elabouration to the minister of labour on all problems referring to the conclusion and implementation of collective agreements;
- propose to the Government, employers and trade unions, i.e. their associations and higher-level organisations the implementation of balanced price and wage policies;
- monitor the situation in the area of employment, pension and health insurance;
- determine the list of conciliators i.e. members of the conciliation council;
- determine the list of arbiters i.e. arbitration;
- adopt the regulation on the manner of the election of the members of the conciliation council and procedure before the conciliation council;

27 *National Report*, pp. 2–3.

- give opinions on the draft laws in the area of labour, social security and public services;
- give opinion on the proposed government budget;
- promote the idea of the tripartite cooperation between the Government, trade union organisations and employers' organisations in the solution of economic and social issues and problems;
- encourage peaceful solution of collective labour disputes;
- give opinions and proposals to the minister of labour in connection with other issues regulated by the Labour Law;
- monitor the implementation of the laws in the area of labour and social security;
- monitor the exercising of the protection of labour rights and social security rights and propose measures for the upgrading of that protection;
- adopt the rules of procedure for its work.[28]

MONTENEGRO

The Social and Economic Council shall in particular, in accordance with the Draft Labour Law:

1. Supervise, analyse and evaluate the impact of economic policy and economic policy measures on the social stability and development;
2. Supervise, analyse and evaluate the impact of the social policy and social policy measures on the economic stability and development;
3. Analyse and evaluate the impact of changes in prices and wage levels on the economic stability and development;
4. Give opinions on the issues referring to the conclusion and implementation of the general and branch collective agreements;
5. Give opinions about the draft laws in the area of labour and social security.[29]

KOSOVO

Instruction No. 2001/17 on the Structure and Functioning of the Tripartite Consultative Council provides that the Council is responsible of:

- Advising the provisional institutions of self-government in the formulation of the labour, social welfare and economic policies;
- Encouraging collective contracts and agreements at the branch level, but especially at the Kosovo level;
- Dealing with other activities in the filed of labour and social welfare if there is approval of members of the Council. [30]

ALBANIA

- Revision and salary indexing and economic support,
- Analysis related to informal labour market,
- Pension level and ways to increase it,
- Treatment of ILO Conventions related to salaries,
- Maternity protection,
- Improvement of labour legislation,
- Subsistence minimum.

BOSNIA AND HERZEGOVINA

The Council's area of competence, on an equal footing:

- to encourage improvements in the Council's work, put forward their attitudes and proposals concerning certain issues to their partners in the social dialogue, state and other bodies,
- to encourage collective bargaining and concluding of collective agreements, present their own opinions and proposals regarding the substance of collective agreements and directly participate in public debates and the procedure of concluding collective agreements,
- to monitor, consider and analyse measures of the economic policy in the RS,

28 *National Report of Croatia*, p. 15.

29 *National Report of Montenegro,* p. 15.

30 *National Report of Kosovo*, p. 4.

- to monitor the situation as regards the implementation of the social policy in the RS and suggest measures with the aim of improving the social system,
- to propose the manner of harmonisation of the interests of workers and employers with the goals and measures of the social and economic policy,
- to monitor the implementation of the Program of Maintaining the Social Stability and present their opinions to the Government of the RS with the aim of improving the situation in that area,
- to monitor, consider and give their opinions about regulations in the filed of labour, employment and social and propose their completion and improvement,
- to monitor the situation, consider and propose measures and activities in other areas of the economic and social policy which are of interest to the partners in the social dialogue. [31]

All the mentioned issues dealt with by the social and economic councils at the national level may be classified into the following groups:

- strategy of the social and economic development, privatisation and economic policy measures and their influence on social stability;
- social policy,
- wages, including minimum wages, price and wage adjustments;
- development of the collective bargaining system;
- employment, labour market, including black labour market;
- ratification and implementation of the ILO Conventions and other international and legal documents;
- pension, disability and health insurance,
- protection of the living and working environment;
- education, science, including vocational training.

In addition to the above-mentioned groups of issues, the social and economic councils in Bulgaria, Romania and Croatia devote particular attention to systematic engagement on the issues relating to the programme of accession of these countries to the European Union. The national report of Romania highlights this as follows:

Romania's Accession needs a strong involvement of the social partners and other components of the civil society, representatives and defenders of the different social rights and interests. In this area, The Cross-ministerial Committee for European Integration has a very important role. The Cross-ministerial Committee for European Integration is an operative body that coordinates, analyses and debates the documents elabourated by the institutions that have responsibilities concerning the Process of Adherence to the EU and discusses any other issues connected with the progress of the Process to prepare the Integration.

The social partners are invited, along with other interest groups representatives, to the works of the Cross-ministerial Committee for European Integration, whose meeting take place in Plenum or in work sections. In the same time, the social partners are consulted in the Commission for Social Dialogue within the Minister for European Integration. There are some improvements in the process of consulting the social partners that have to be implemented in the future in the same time with some actions that can improve the knowledge and understanding of the social partners concerning the process for European integration. [32]

Social partners have obviously found a common ground on this issue, aware that it is of strategic developmental interest to the whole society, hence to every social partner individually. This is a good example, particularly since it can contribute to the approximation of the social partners' positions in other areas, too.

It is also obvious from the national reports that a very large part of the activity of the social and economic councils refers to their participation and influence on the enactment of legal regulations, primarily in the area of economic and social policy and labour legislation. This is logical, since the

31 *National Report of Bosnia and Herzegovina*, pp. 10–11.

32 *National Report of Romania*, pp. 31–2.

legislation regulates fundamental relations in these areas and in fact defines the position of social partners. Without disputing the importance of this activity, it is necessary to highlight certain points which put trade unions and employers in a less favourable and often marginal position in these processes.

First of all, bills are as a rule drafted by the government. This situation gives it a head start compared with the other two social partners. Secondly, trade unions and employers' organisations in south-eastern European countries as a rule have poorly developed financial, technical and human potentials, which is a limiting factor for their participation in, and influence on, legislative activity. In addition, there are other adverse circumstances, such as frequent pressure on the government to pass laws under so-called 'emergency procedures', manipulation of the requests of international financial institutions, etc. All this generates a real risk that trade unions and employers' organisations may become marginalised in legislative activity, with their role reduced to giving consent to certain legislative projects. There is also the question of the strategy of trade unions and employers' organisations and their real ability to successfully discharge their role and functions.

An important element of the content of work of the social and economic councils is promotion of social dialogue, its main goals, values and encouragement of various social actors to participate in social dialogue.

In the same way, social and economic councils in certain countries have substantial power in the area of collective bargaining, settlement of collective labour disputes, and the determination of composition of conciliation and arbitration councils.

The presented content of work, that is, the review of issues dealt with by the social and economic councils is actually a range of theoretical and practical issues referring to the place, role and objective reach in social and political processes and in political decision-making. There are two conspicuous differences in width of the spectrum of issues dealt with by the social and economic councils in different countries. In this regard, the following pattern is apparent. In countries that are taking their first steps in the process of the establishment of social dialogue mechanisms, the content of work of the social and economic councils focuses on a narrower range of issues, primarily collective bargaining, wages and social policy. On the other hand, in those countries where significant progress has already been achieved in the development and functioning of social dialogue, the content of work of the social and economic councils is extended to a larger circle of issues, including some strategically political issues.

In any case, it is obvious that the social and economic councils engage in a wide range of political, economic and social issues and hence inevitably enter into the sphere of political life and political decision-making. In addition, it is obvious from the national reports that there exists a tendency towards continuous expansion of issues addressed by the social and economic councils. This can be treated as a positive tendency, as an indicator that participants in social dialogue regard the social and economic council as a forum where different interests can be successfully reconciled and positions on important political, economic and social problems developed. All this is favourable for the prospects of social dialogue.

However, this tendency poses a number of questions. The first one is the ability of the participants in social dialogue completely, in an organised and systematic fashion, to deal with these issues. It should be borne in mind that all three social partners (government, trade unions, employers) must have at least approximately the same ability to address the issues that are the subject of social dialogue in order that social dialogue can be based on its authentic principles. Does that, in perspective, lead to the establishment of parallel teams of experts for these areas with all three social partners?

In other words, continuous expansion of the range of issues dealt with by the social and economic councils, without other adequate changes in their organisation and method of working, entails the potential risk that they may turn into futile discussion clubs and even become scapegoats for the problems that may emerge in the areas in which they work.

The second question concerns the issues that should be the subject of social dialogue. Is there any dividing line at all between the issues that should and those that should not be included in social dialogue, and what are the criteria for drawing that line? The question can be phrased in another way: Is there any important political, economic or social issue for which we can expressly say that it does *not* have to be the subject of social dialogue and support this claim with good, acceptable arguments?

Finally, the above questions and dilemmas lead to the essential question of the strategy of development and objective reach of social dialogue in the time to come. Will social dialogue remain only one of the forms of democratic participation of citizens and employees in the process of decision-making on relevant social issues, or will the strengthening of the importance and influence and continuous expansion of the range of issues included in the social dialogue turn this process into an alternative form of political decision-making, actually into a new stage in the political organisation of society, which will also place the traditional institutions of multiparty parliamentary democracy in a new position?

9. COLLECTIVE BARGAINING

Since the first steps in the transition process in the countries of south-eastern Europe, trade unions have devoted exceptional attention to the establishment and development of a system of collective bargaining and collective agreements, as one of the cornerstones of trade union strategy and a strategically important factor of the new social structure. Both trade unions and employers' organisations dealt with collective bargaining and collective agreements, but the principal promoter and the party bearing the greatest responsibility for this process in all the observed countries was the trade unions simply because absence or insufficient development of the collective bargaining system affected labour the most.

Placing collective bargaining at the centre of attention of the trade unions and other social partners was the result of two categories of reasoning. First, it is the experience of developed, democratic market-economy countries, where collective bargaining and collective agreements have operated successfully for decades as a meaningful and efficient mechanism for regulating the relationships between the world of labour and the world of capital. Secondly, demolition of the mechanism of workers' protection from the time of the socialist, centrally planned economy and single-party system urged primarily trade unions, but other social partners as well, to build new mechanisms of industrial relations and protection of employees' rights. That need is particularly strong in the conditions of restructuring national economies, the consequences of which have most severely affected employees.

In any case, the fact that social partners attach exceptional importance to the development of acollective bargaining system must be assessed as very positive. Regardless of the differences expressed in the development of a collective bargaining system and in the creal collective bargaining processes, we may say that the first, most important phase in the process of the introduction of collective bargaining has largely been overcome – minimum agreement has been reached between social partners that collective bargaining is the cornerstone of their future relations, or at least that without collective bargaining

there will be no stable economic and political development and integration into Europe.

The relationship between the social dialogue and collective bargaining is very often the subject of theoretical and professional debate. Considerable differences are manifested in theory and in social practice concerning bipartite and tripartite relations and whether collective bargaining can be treated as a form of social dialogue or not. History as a teacher of life can be of great help here. Historically and chronologically, collective bargainingwas established first, at the enterprise level, and then at other levels. The first forms of social dialogue emerged decades later, after collective bargaining had travelled along a good part of its developmental path. The history of the development of collective bargaining and social dialogue gives rise to the conclusion that social dialogue could not develop without the prior existence of collective bargaining. In this sense, we may say that collective bargaining and collective agreements are the foothold of social dialogue.

This is corroborated by numerous definitions of collective bargaining. Common to most of them is that collective bargaining is a permanent, systematic mechanism for regulating relations between employers and employees, with specific participation of government, as a form of prevention of collective industrial conflicts. However, it is necessary to add to this that collective bargaining and collective agreements constitute a specific mechanism – a partly non-market mechanism for regulating relations in the labour market. In this context, we should bear in mind that in the conditions of a market economy the labour market behaves basically in the same way as the other two elements of the market economy, the commodity market and the capital market. All three markets are subject to the operation of the laws of supply and demand. This means that when demand for goods, capital and/or labour increases, their prices increase as well. Conversely, when demand for goods, capital and/or labour declines, their prices also fall.

Theoretically, the price of goods and capital may fall to zero, because the owners will try to sell the goods and/or invest capital even under the least favourable conditions. The labour market is specific in this regard: the price of labour, under the influence of market, cannot fall to zero, but only to the level that provides a subsistence minimum (i.e. reproduction of the labour of the worker and his family). In modern, developed, democratic societies, such as the EU countries, for many decades this has not been the subsistence minimum, but an amount enough toprovide the quality of life and human dignity appropriate to the achieved level of present-day civilisation. This is the dividing line that opened up the way for the expansion of the circle of issues encompassed by collective bargaining and collective agreements at different levels. In fact, collective agreements in this way entered the sphere which before that time was solely the sphere of political decision-making. This is the authentic connection between collective bargaining and social dialogue. In this sense it can be accepted that collective bargaining is a form of social dialogue, with social dialogue being a higher phase in the development of industrial and political democracy. Finally, in contemporary societies this is caused by the interrelationship between economic and political processes and the fact that it is not possible to establish permanent, stable social harmony at the enterprise level, without having the same conditions at the level of socity as a whole.

Collective bargaining is an autonomous process based on actors' voluntariness, and collective agreements in this regard are treated as a specific source of labour legislation. This raises the issue of relations between collective bargaining and the legal framework in a specific way. The experiences of developed, democratic countries are in this regard very different. There are countries where the legal framework is almost nonexistent or very restricted, while collective bargaining is well developed and has largely assumed the functions of labour legislation. On the other hand, there are countries where the legal regulation of collective bargaining is very well developed, specific and detailed.

The specific course of the establishment and development of collective bargaining, that is, generally unfavourable social circumstances in which the system of collective bargaining has been built and took place, resulted in the very significant, sometimes overemphasised, role of legislation.

In this regard, the national reports point out that the right to collective bargaining and its main principles and mechanisms are protected by constitutions and laws.

The national report of Albania describes this as follows:

All the procedures and mechanisms for fulfilling collective bargaining are based upon:

- The Constitution of the Republic of Albania,
- The Labour Code.

In Chapters 14 and 15 of the Labour Code a number of articles are devoted to the contents of collective bargaining. These comprise provisions on employment conditions, employment relations and contents and signing of individual labour contracts, professional training and relations between the bargaining parties.

Several elements that affect the outcome of social conflicts are:

- Non-acknowledgement at the desired level of the labour legislation on the part of social partners, employers and employees,
- Non-functioning all over the territory of the reconciliation and arbitration offices due to the lack of appropriate personnel. In cases when the reconciliation office functions, the quality of services offered is not up to the required level due to the lack of staff training.
- Non-application of legislation by employers and employees regarding social conflicts.[33]

The law adopted in Romania in 1996 defines the following principles and functions of collective bargaining:

The negotiation, conclusion, execution and termination of the collective agreements are regulated by Law 130/1996. The collective agreement is a convention concluded between the employer and the employers' organisation on the one hand and the employees represented by the trade unions or by any other legal capacity, on the other, establishing clauses on working conditions, wages and other rights and duties resulting from the labour relations. The conclusion of collective agreements is intended to promote fair labour relations able to ensure the employees' social protection, the prevention or limitation of collective labour disputes or industrial actions (strikes). The agreements between the signatory parties of the collective agreements, which settle collective labour disputes, are also part of the collective agreements. The collective bargaining at the enterprise level is compulsory, except in the case when the enterprise has less than 21 employees. The collective bargaining takes place every year and the duration of the collective bargaining cannot exceed 60 days.[34]

The level of formal legal protection of the right and basic principles of collective bargaining has been the subject of fierce conflict, and even the reason for a general strike and public protest organised in October 2001 by the two largest trade unions in Serbia – the Confederation of Trade Unions of Serbia (SSS) and TUC Nezavisnost. The conflict broke out over the formulation of Article 1 of the Labour Law, which reads:

Article 1

The rights, obligations and responsibilities arising from employment shall be regulated by law and special laws in accordance with ratified international conventions.

The rights, obligations and responsibilities referred to in paragraph 1 of this Article, shall be regulated by the collective agreement or rules of work (hereinafter: internal regulations) and contract of employment.

33 *National Report of Albania*, p. 16.

34 *National Report of Romania*, p. 33.

In the opinion of trade unions, this provision has very much relativised the role of collective agreements, as an optional form of the regulation of labour relations, thus leaving them only to the goodwill of the employers.

The tendency to regulate all the details of collective bargaining by law is apparent in the countries where collective bargaining, due to the particular social circumstances, is least developed. They obviously needed specific regulation of certain issues pertaining to labour relations and to provide maximum efficient protection of the collective bargaining mechanism.

This situation is described in the national report of Bosnia and Herzegovina:

With the beginning of the process of the ownership transformation and capital privatisation in state-owned companies in the RS and FB&H, changes were necessary in the legislation as well, particularly in the field of labour and employment, for this process had created new socio-economic relations in the RS and FB&H requiring adequate labour legislation based on international labour standards.

Collective agreements as documents by means of which its participants regulate certain relations in the labour system are mentioned in about 50 provisions of the Labour Law. This fact suffices for one to conclude how important collective agreements are as instruments of the labour legislation in the RS and FB&H. The Labour Law kept many earlier provisions as regards the system of a graded ordering and ranking of collective agreements or made certain adjustments in accordance with modern options concerning the level of organisation of participants in concluding collective agreements.[35]

The national report of Bulgaria points out that changes in the Labour Code created the fundamental prerequisites for the development of collective bargaining into a basic mechanism for the regulation of relations between labour and capital in the following sense:

The amendments to the Labour Code (LC) in 1992 (enacted on 1 January 1993) provided the necessary legal safeguards for turning collective bargaining into a basic mechanism for regulating labour relations:

- collective agreements became a source of norms for regulating industrial relations for the first time;
- it opened a wide field for concluding agreements at the expense of severe cuts in the imperative stipulations of the Labour Code from 1986, which left no room for collective bargaining;
- it created a new model for the legal regulation of labour relations. The law preserves its role of a regulator but contains minimum norms for labour protection and determines minimum level of employees' rights and working conditions, leaving room for bargaining for more favourable conditions through collective agreements.[36]

The attempt of the government to exclude certain strategically important activities, financed from the budget, from collective bargaining, in other words to regulate employees' labour rights in these sectors by the law, is apparent from the analysis of the legal framework for collective bargaining. Thus, unionised workers in these sectors are directly deprived of one of their fundamental rights – the right to collective bargaining, while the meaning of unionisation is disputed as well, because one of the key trade union functions – conclusion of collective agreements is denied to these trade unions. In doing this, the government is resorting to the tried and tested carrot-and-stick method, offering various benefits to the employees in these activities, trying to convince them that they are in a privileged position in relation to employees in other sectors and at the same time subjecting them to various forms of pressure.

Characteristic in this regard is the experience of Croatia described in its national report:

After 2000 the General Collective Agreement for the employees in public services has not been extended. Instead,

35 *National Report of Bosnia and Herzegovina*, p. 6.

36 *National Report of Bulgaria*, p. 21.

labour and social rights of employees in public services have been regulated by the Law and the Ruling on Salaries. By these mechanisms, considerable change in the composition of salaries in this sector has been made. The key characteristic of this change was abandonment of the system of salary classes and the principle of pay according to seniority and the introduction of the payment system according to the complexity of the job. According to the available information, the idea underlying the change in the composition of salaries was to increase the salaries of employees with a university degree (as one of the measures to foster the efficiency of the government administration). However, in the conditions of tight budget restrictions (and reduction of the salary fund), the change in the composition of salaries resulted in drastic drop of salaries of employees with secondary education.[37]

The tendency towards creating a strong legal framework for the collective bargaining system is a logical consequence of the underdevelopment of this system and the inferior social power of trade unions. In the first phase this may be of great importance for the protection and creation of the conditions for the operation of the fundamental principles and mechanisms of collective bargaining. However, retaining the predominant function of legal norms backed by government compulsion in relation to an autonomous system of collective bargaining breeds the potential risk of retaining it permanently in place under the mask of formal legal equality, the realistically inequitable relations between social partners and the system of quasi-collective bargaining in which collective agreements serve as a mask for issues already regulated by law.

Collective bargaining and collective agreements in south-eastern European countries have been, or are in the process of being, established at different levels of the economic, territorial and political organisation of society. Compared with the developed democratic countries in Europe and the world where collective bargaining has been a tradition for many decades, the introduction of collective bargaining proceeded in different sequences. In other words, collective bargaining and collective agreements in industrialised market-economy countries were first established at the enterprise level. Only after collective agreements at the enterprise level reached a certain level of development and power, did they serve as a basis for the establishment of acollective bargaining system at other levels. The present levels of collective bargaining, which constitute more or less complementary wholes, have been established as a result of a process that developed over decades.

In the countries of south-eastern Europe, the establishment of different levels of collective bargaining proceeded from top downwards – from collective agreements at the national level to collective agreements at the enterprise level. This process has largely had the characteristic of being imposed from above, without adequate foothold. In any case, it had a limiting effect on this process.

The national reports point out that the collective bargaining system has been established at different levels, as shown by the data in Table 6.

37 *National Report* of *Croatia*, p. 39.

Table 6. Levels of collective bargaining in south-eastern European countries

Country	Level of collective bargaining			
	National	Branch	Enterprise	Local
Albania		×	×	
Bosnia and Herzegovina	×	×	×	
Bulgaria		×	×	×
Croatia		×	×	×
Kosovo				
FYROM	×	×	×	
Montenegro	×	×	×	
Republika Srpska	×	×	×	
Romania	×	×	×	
Serbia	×	×	×	

Collective bargaining at the branch and enterprise level exists in all countries. In the history of collective bargaining, these are indisputable, traditional levels of collective bargaining.

Collective bargaining at the local level (at the level of territorial-political units) is the least developed, as the reflection of the overall social circumstances, including the development of local self-government. This is obviously the task that social partners will seriously face in the future.

Three of the observed countries (Bulgaria, Albania, Croatia) do not have collective agreements at the national level (so-called General Collective Agreements). The experience of developed market-economy countries shows that they have no collective agreements at the national level either. Instead, a minimum level of employees' rights is protected by law. Dilemmas and disputes over the same issues are present in the countries of south-eastern Europe. In this regard, we can accept as justified the opinions of theoreticians and experts from these countries that the so-called general collective agreements at the national level are remnants of the past, that is, the former practice when the government regulated all key economic, social and political processes in society, including the area of wages, other employees' rights and mutual relations, rights and obligations of employees and employers, which would normally be the subject of collective bargaining. Owing to all the above-mentioned, the argument maintaining that it is more reasonable to protect the basic relations and minimum level of employees' rights by law than by a general collective agreement at the national level appears acceptable.

This position is corroborated by the fact that all the observed countries respect the basic principle of relations between collective agreements and the law, so-called *in favorem laborem*, according to which the law determines minimum employees' rights, and collective agreements define only a higher level of rights than those stipulated by law.

Consistent with this is the principle of relations between collective agreements at different levels according to which a collective agreement at a lower level cannot stipulate lesser rights for employees than those determined by the collective agreement at a higher level, whereby the alternative more favourable for the employee is always implemented.

The analysis of the contents shows that collective agreements, particularly at higher levels, encompass an exceptionally broad array of issues, with some of them having a predominantly political character. Also, there is a tendency to expand the subject of collective agreements, that is, to include continuously new issues into the collective bargaining process. The same tendency has been noted in the content of work – issues within the sphere of social and economic councils at the national level.

A comparative analysis shows that collective agreements at the national level, and social and economic councils often cover identical issues. This in fact creates a new aspect of relations between social dialogue and collective bargaining, which will be the subject of future analyses and research.

Very often the list of issues that are the subject of collective bargaining is similar to the list of problems faced by south-eastern European countries in the course of transition.

This is confirmed by many examples, including Romania, where a very broad array of issues constitutes the subject of collective bargaining:

- Labour relations under specific conditions,
- specific working conditions, rights and duties,
- discipline at work,
- methods of filling vacancies (examinations, interviews),
- probation,
- circumstances when the criteria adopted in case of layoff are applied,
- employees' rights in case of cease of the pension contract,
- specific rights for specific working conditions,
- circumstances when free medical consultation is granted to employees working under specific conditions,
- specific rights for a special protection at work for women and young workers under eighteen,
- extra assistance granted to the workers subject to industry injuries or to occupational diseases other than that stipulated in the collective agreement at branch level,
- payment systems,
- conditions and criteria for bonus granting,
- other criteria for the income raise (foreign language proficiency, etc.),
- implementation of the layoff provisions,
- payment dates,
- working hours in institutions with special working time,
- employees who benefit from 'breaks' or reduced hours of work,
- payment or compensation in time off for the extra working hours,
- other special situations which may occur with institutions not complying with the eight-hour working time,
- holiday bonus, other than annual holiday indemnities,
- extra leaves,
- time off in lieu,
- extra unpaid leave,
- particular aspects of the vocational training (identification of the jobs which require qualification, ways of achieving qualification, period of time when the employee is obliged to work in the institution following some qualification training, etc.),
- special working conditions for the employees such as the ban on disclosure of confidential information and on alienation of the institution's assets, the duty to make rational use of the materials, supplies, fuel and energy, the liability to observe confidentiality, etc.
- working time for the union leaders,
- union activities requiring the institution's equipment,
- material or financial compensations for social activities.[38]
- The course of the process of transition and enterprise privatisation causes issues such as the conditions under which the enterprise will be privatised, protection of employees' rights in the new circumstances and/or settlement of the redundancy problem to appear as the subject of collective bargaining. In these negotiations, alongside the representative(s) of the trade union and the representative(s) of the employer at the enterprise level, the representatives of the competent ministries and future owners of the enterprise also take part. This is a logical attempt to secure through the bargaining process as good position as possible for the employees in the upcoming processes of the economic, technological and organisational restructuring of the enterprise. This is in fact a kind of bridge and creation of a maximum

38 *National Report of Romania*, pp. 35–6.

favourable starting position in the upcoming relations with the new owner, i.e. employer. A very characteristic positive example in this regard is quoted in the national report of Croatia:

Analysis of the collective agreement on the calculation and payment of wages and other employees' material benefits in the glassmaking company Vetropack Staza

The Straza glass factory was bought in 1996 by the multinational company Vetropack. Since the first negotiations about takeover, the new owner introduced new rules of the game. One of them referred to keeping trade union representatives informed about the situation in the organisation and plans for the future. As did numerous other organisations in 1996, Straza also suffered from redundant labour. Therefore, the new owner announced a plan for a manpower cut from 1,500 to 600. Over the next five years this plan was fully implemented, either through separation of certain organisational units or through dismissal, with adequate severance pay. According to the words of the trade union representative, this process, so painful for every organisation, was completed in a way that left no one disappointed.

In addition to the operational restructuring, which included considerable investments into production modernisation, Vetropack Staza managed to achieve the change in organisational culture and organisational climate. The management style of the new owner, primarily because he represented the epitome of values such as respect and confidence (for example, every time he visited the factory he asked to meet the shop steward) started the process of changes. Encouraged for the first time by visible manifestations of respect, the trade union local returned with a goodwill gesture to the new owner, proposing to organise voluntary work of all employees in order to solve the current business problem. This established a spiral of ever better relations between the trade union and the new owners in the Vetropack Straza factory. The owner's style of running the factory induced changes in the attitude of the company management. Relations of cooperation replaced former conflicting industrial relations.

According to the words of the trade union representative, the factory management consistently implements the concept of 'open book management'. This means that all the information about the operating results, production, human resources, logistics, etc. are at any time available to the shop steward.[39]

An important issue and the subject of conflict in the collective bargaining process is the question of the validity of collective agreements. Do collective agreements apply to all employees or only to the employers who are the members of the certain employers' organisation? There are three basic models encountered in international practice:

- the collective agreement applies to all employees (so-called extended effect of collective agreements),
- the collective agreement applies only to the employers who are members of the employers' organisations that concluded the collective agreement,
- the collective agreement applies only to trade union members.

Having in view the generally unfavourable social circumstances in which collective bargaining takes place in south-eastern European countries, as well as a poorly developed collective bargaining system, it is logical that trade unions in these countries strive to ensure the application of collective agreements to all employees. In this way they implement the principle of workers' solidarity and motivate the employees to join the trade union that secured them certain benefits through the collective agreement.

The political authorities and the employers' organisations often take the opposite stand, stressing the neo-liberal view that collective agreements and their conclusion are solely the matter of the goodwill of the two parties – trade unions and employers. Thus they neglect, consciously or not, that collective bargaining is the accomplishment

39 *National Report of Croatia*, pp. 43-44.

of present-day civilisation and the cornerstone of social harmony. Such an attitude places the generally weaker partner in the process of collective bargaining – the trade union – in a very unfavourable position. This is reflected in the further erosion of thealready weak social power of trade unions and a decline in the number of trade union members.

This is emphasised in the national report of Albania as one of the major problems in the process of collective bargaining.

Several difficulties have been observed with collective bargaining in Albania, and they include:

- Lack of experience,
- The question of trade union representation and trade union disputes,
- Lack of democratic culture and of social dialogue,
- Misunderstanding of the trade union's role as important institution for the establishment of a democratic state.
- Pressure and anti-trade union measures on the part of state employer,
- Objections from state and private employers to carrying out collective bargaining,
- Lack of qualified negotiators,
- Employers' lack of knowledge on application of legal requirements.[40]

A much better situation in this regard prevails in Romania, as described in the national report for this country:

The provisions of the collective agreement produce effect to all the employees in an enterprise, irrespective of their employment date or their affiliation to an enterprise trade union organisations. The collective agreements can be concluded at the enterprise, group of trade companies, *régies autonomes*, branch and national level. The clauses of the collective agreements can produce effect to all the employees in the enterprise in case of collective agreements concluded at this level; to all the employees belonging to the enterprise for which the collective agreement was concluded at this level; for all the employees employed at that specific branch for which the collective agreement was concluded; to all the employees employed in enterprises all over the country in case of collective agreements at the national level. At each level, one single collective agreement is concluded. Collective agreements can also be concluded for the employees of budgetary undertakings excepting the clauses referring to rights established under legal provisions.[41]

In Croatia the collective agreement obliges only the employers who are the members of the employers' association which concluded the collective agreement at a certain level. This practically means that very small percentage of workers are protected by collective agreements. This is how this situation is described in the national report of Croatia:

Subjective validity

According to legal provisions, the collective agreement is binding on all persons which concluded it for all persons who at the time of the conclusion of the collective agreement were or subsequently became members of the organisation which concluded the collective agreement.

Exceptions from this rule apply in the following cases:

- Transfer of the employment contract to another employer in the case of status changes (the collective agreement that was binding on the former employer shall be binding on the new employer as well);
- Accession to the already concluded collective agreement;
- Extension of the application of the concluded collective agreement pursuant to the decision of the minister of labour and social welfare to the persons who did not participate in its conclusion nor subsequently acceded to it.[42]

40 *National Report of Albania*, p. 17.

41 *National Report of Romania*, p. 33.

42 *National Report of Croatia*, p. 39.

Montenegro applies the principle of extended validity of collective agreements, meaning that collective agreement applies to all employees.

In FYROM the law also stipulates that the General Collective Agreement concluded at the national level refers to all employees.

This issue is not regulated by the Labour Law in Serbia, which implies that the collective agreement refers only to the employers who concluded it. Since this is only a matter of employers' goodwill and interest, it can be expected that only a small number of employees will be protected by collective agreements.

With this situation in mind, it is necessary to add that the readiness of employers and their associations to participate in collective bargaining will largely depend on the real social power of the trade unions.

In addition, it is certain that underdevelopment of the collective bargaining system and non-applicability of collective agreements on a large number of employees will be a permanent subject of industrial conflict and source of instability and will thus ultimately harm all the actors in collective bargaining. This should be a sufficient reason for the participants of the collective bargaining to seek jointly better alternatives in this area.

10. SPECIFIC FORMS OF SOCIAL DIALOGUE

During the course of their development, social and economic councils proved to be the most rational form and the focal point of social dialogue. The relationship between social and economic councils, on the one hand, and other forms of social dialogue and employees' and citizens' participation, and influence in the decision-making process, on the other, largely resemble the relationship between centrifugal and centripetal forces in nature. While one kind of force moves towards the centre, the other moves to the periphery, but the relationship between the forces must be balanced, for if any one of them prevails, it will cause the collapse of the system.

Having this in mind, social actors have devoted considerable attention to the establishment, development and affirmation of the role and influence of the social and economic councils. They have done this primarily at the national level, through activity towards the establishment of social and economic councils at the local level started in some of the countries. In all of past experience this would be the first step towards the establishment of social dialogue as a radically new form of employees' and citizens' participation and influence in the process of making relevant political and social decisions.

However, in this case, too, it has proved true that the first step in any area of social life and work raises questions and opens up the way to the next steps. Development of social and economic councils, acquiring the first experiences, pinpointing the advantages and shortcomings of specific models have faced the actors in social dialogue with one of the basic limitations – the inability to cover through social and economic councils all the variety in the content of form of contemporary society and authentic law and the need of citizens and employees to exercise their influence in these different areas of human life and work. This is after all only one of the aspects of a general limitation faced for decades and increasingly obviously by multiparty parliamentary democracy. In this regard, we should remind that social dialogue and social and economic councils as a form through which social dialogue is carried out, among other things, were the

response to that noticed limitation of multiparty parliamentary democracy.

The answer to this question imposed by social practice has been sought in new initiatives of social partners, i.e. in the introduction of new, specific forms of social dialogue. In this sense started and is under way the intensive process of the establishment of tripartite bodies. Unlike the social and economic councils, which deal in a wide array of issues, these bodies focus their activity solely to certain specific issues of interest for the social partners, as well as for the economic and political development of society as a whole.

However, observing this process through its quantitative aspect – establishment of new bodies within which social dialogue on certain issues is conducted – would be too simplified. The course of events in this area so far gives rise to the conclusion that this is a new phase, a new quality step which would considerably affect the content, course and other aspects of the social dialogue. This is the process that would result in the creation of a whole network of bodies within which social partners reconcile their views and interests on certain issues, such as privatisation, employment, health protection, pension and disability insurance, etc. This fact faces the theory and practice of the social dialogue with numerous open questions and dilemmas.

The first of these questions is whether the establishment and functioning of these bodies contribute to the upgrading of the social dialogue, and the main criterion for this is the strengthening of the social power of the social and economic councils and these specific bodies in the decision-making process. This should be regarded as a process of the emergence of a new segment of the political and social structure, a qualitatively new centre of social power, whose strength is not based on government oppression, but on democratically agreed will of the participants.

The fact that social and economic councils and the specialised bodies constitute a whole is corroborated by the fact that the specialised bodies are established and operate basically in the same way as the social and economic councils.

It follows from the national reports that these bodies in which social dialogue on specific issues is conducted are very unevenly developed and widespread. This is the consequence of the specific course of the entire transition process and in this scope – of the establishment and development of the social dialogue mechanisms. The number and structure of these specific bodies points to two issues.

First, the number of these bodies is higher in the countries where social dialogue is more developed or, to put in other words, the number and structure of these bodies can be taken as a reliable indicator of the degree of development of the social dialogue. This is confirmed by the thesis that the development of the social and economic councils and exceptionally wide array of issues they deal with in practice imposed the need that certain specific issues, which constitute relatively independent problem wholes, be delegated to other bodies that would address only these issues. For example, in several countries of south-eastern Europe no such body has been founded so far.

Secondly, the areas for which these bodies have been founded are the indicator of the major problems faced by these countries and social partners in the economic and social life of society. That is to say, it is logical that the social partners first founded these specific social dialogue bodies to deal with what they considered to be the most complex and the most pressing problems in society that can be the source of the greatest social conflicts. It is important to stress that these bodies are mainly founded on the basis of law and that institutionally a place for trade union representatives is provided in them. This certainly ensures a satisfactory starting position for trade unions in these bodies. This statement is borne out by the findings presented in the national reports of some of south-eastern European countries.

In some of the observed countries trade unions have advocated the introduction of the institution of the ‘vacant seat’ in parliament, as a form of keeping trade unions informed and making it possible for them to influence the decisions made in parliament, above all those that indirectly or directly affect employees’ material and

social position. Such a practice has been introduced in Croatia and is described in its national report as follows:

Parliamentary Committees

The amendments to the Rules of Procedure of the Parliament created the possibility for the representatives of the social partners to participate in the work of the Parliamentary Committees for labour, health and social policy; for the economy, development and reconstruction; for state budget and finances; for legislation.

According to the opinion of a trade union leader, trade union representatives participating in the work of the Parliamentary Committees represent well the positions and interests of their organisations. However, he also stresses that the trade union does not systematically address the topics on the agenda of the Parliamentary Committee. In addition, there is no established procedure for the consultation between trade union representatives and the leadership of trade union organisations, nor the obligation to report to the trade union bodies about the work of the committees. An additional difficulty arises from the manner of work of the committees. Namely, materials for many committee sessions arrive literally in the last moment, so that the time for possible consultations is very short.

Absence of systematic communication between the representatives of the trade union and the bodies of organisations they represent results, according to the opinion of one of the interviewed officials, in the fact that they act in these bodies as 'free shooters'. Due to this, it appears that social partners actually do not have their representatives in these committees.[43]

In addition, representatives of social partners in Croatia participate in the work of the following bodies:

- Governing Board of the Croatian Employment Office
- Governing Board of the Croatian Health Insurance Office
- Governing Board of the Croatian Pension Insurance Office
- Governing Board of the Croatian Occupational Safety Office.

Romania has an exceptionally developed network of bodies in which social dialogue on specific economic and social issues is conduced. They include:

1. The Joint Consultative Committee EU – Romania.

2. The Consultative Commissions for Social Dialogue within the Ministries.

3. The National Employment Agency.

4. The Consultative Councils of the Departmental Employment Agencies.

5. The National House for Pensions and Other Social Rights.

6. The National House for Health Insurance.

7. National Council for Adults' Vocational Training.

8. The Council for Certification and Occupational Standards.

9. The Consultative Commissions for Social Dialogue within the Prefectures.

10. The National Commission for Promoting Employment.

As this list shows, there are ten bodies that cover all key areas affecting the economic and social position of employees plus a specific one – the Joint Consultative Committee EU – Romania, which is the direct expression of the common commitment and an organisational form of the joint action of the social partners towards approximation of Romania to the EU. In order to acquire a comprehensive picture about the content and the method of work of all these bodies, we will give an excerpt from the national report about the establishment and the work of the National Commission for Promoting Employment:

The Law 76/2002 concerning the unemployment benefits and the stimulation of employment established the framework

43 Ibid., pp. 29, 34–5.

to create the national Commission for Promoting the Employment as a tripartite institution, formed by the public administration representatives and the presidents of the trade unions and employers organisations, representative at the national level. The commission submits to the government attention strategies and policies to increase the level and quality of employment according to the programs of economic and social development, establishes the directions for the development of the human resources at the national level, in the different branches and areas, ensures the harmonisation of the programs for the development of human resources, makes suggestions for the elaboration of laws concerning the employment based on the social and economic development tendencies and on the evolutions on the labour force market, makes suggestions for the initiating pro-active actions to fight unemployment by fiscal policies, structural adjustments, professional reconversion.

In the mining area there were a lot of tripartite structures created along the time to solve the economic and social issues in these underprivileged regions. The Government Decision 167/1997 set up the Central Tripartite Commission Government – Trade Unions – Employers in the Mining Geology Branch, to elabourate and monitor the restructuring and modernising programs for the branch. The central commission elaborated programmes to restructure and modernise the mining and geological industry, specific to the mining areas. The GD 69/1998 set up the National Agency for Developing and Implementing Reconstruction Programmes for the Mining Area, with attributions in applying the strategy and the policy for reconstruction of the mining areas that have to be restructured. There was a Board that functioned as a consultative body for the president, which was formed from three representatives of ministries, trade unions and employers.[44]

Besides the Social and Economic Council, the following bodies have been set up in Albania to conduct social dialogue on individual issues:

- Business Advisory Council (BAC)
- The Social Insurance Institute (ISSH)
- State Inspectorate of Labour
- National Employment Service (NES).

Very characteristic is the concept of the State Inspectorate of Labour, which is defined by law as a tripartite body. More about this in the national report:

The State Inspectorate of Labour is also a tripartite body and performs activities in compliance with the Law No. 798 of 13.09.1995. The Inspectorate is a state institution, which aims to ensure the implementation of labour legislation. To increase the Inspectorate's effectiveness, the Ministry of Labour and Social Affairs endorsed the creation of a Consultative Council with 14 members. This Council represents these areas: Inspectorate of Hygiene (working conditions); Inspectorate for Technical Security of Equipment and Electrical Installations; Institute for Social Insurance; Committee of Environmental Protection; Construction Police and two delegates from the most representative employers' and employees' organisations.

The Consultative Council during the period of its existence has displayed lack of clear and transparent endeavors from its members and the respective institutions to carry out the improvement of legal dispositions in force. This has led to the situation where the Council de facto acts on the basis of special agreements/acts with each of the component institutions, thanks to the mutual understanding, as with the Institute of Public Health, Construction Police, or the Directorate of Tax and Taxation, etc. On the other hand, the functioning of this Agreement/Act has led time and again to a superficial performance, and the latter finally has ever been weakening the legitimate role of the Council, up to its physical non-existence.[45]

44 *National Report of Romania*, p. 29.

45 *National report of Albania,* p. 14.

An intensive process of the establishment and development of special tripartite institutions for certain areas of activity is also under way in Bulgaria. One of these bodies is the National Council for Work Conditions.

The multiyear development of the social dialogue in Bulgaria has naturally enriched and lent variety to the architecture of the institutions within which it has been held. The recognised need to hold independent special dialogues on separate but comprehensive and multifaceted issues led to the transformation (in 1997) of the special council for working conditions at the National Council for Tripartite Cooperation (NCTC) into an autonomous parallel national institution for social dialogue about specific issues of working conditions – National Council for Working Conditions (NCWC). Its membership is a mirror reflection of its predecessor (i.e. the classical participants in the social dialogue – the state, employers and trade unions – are represented in it). The principles of action at the National Council for Working Conditions are synchronised with the rules and traditions of the social dialogue established in the process of its development.

An objective testimonial of the dialogue's level and quality within the National Council for Working Conditions is the drafting of up-to-date legislation in this field, namely the Safe and Healthy Working Conditions Act drafted with the help of the social partners. The practice to have special dialogues on relatively independent and important areas of industrial relations was accepted and officially adopted with this same Act. Moreover, the functions of the National Council for Working Conditions expanded and multiplied. Under the law, NCWC is already a standing body for coordination, consultation and cooperation in developing and implementing the national policy for providing healthy and safe work conditions.[46]

Montenegro is also at the beginning of the establishment of special tripartite bodies, as seen from its national report:

The new Employment Law, enacted on 15 February 2002, establishes the Employment Office, with the Governing Board consisting of 9 members:

- chairman and three members appointed by the Government,
- two members representing the trade union;
- two members from the employers' organisations;
- one representative of the employees at the Employment Office.

The same law (Article 38 and further) defines the Workers' Fund for the needs of the unemployed, whose jobs become closed due to technical, economic or organisational changes. The founders are the Government, the Employers' Association and the authorised trade union organisation.

Establishment of tripartite structures that would govern the pension scheme and the health fund is envisaged as well.

In addition, representatives of the trade union and the Chamber of Commerce and Industry are included in special commissions whose task is to make the lists of employees declared redundant in newly-privatised enterprises.

For the time being, the social partners do not participate in the decision-making concerning vocational education and training. This is an important factor for any reform of this sector in order to ensure consistent connection between the training and economic development and labour market.[47]

The process of emergence and development of specialised tripartite bodies, presented in these excerpts from national reports, confirms the fundamental values and authentic meaning of social dialogue. The sequence of evolution – trade unions – collective bargaining – social dialogue through social and economic councils – inevitably suggests the tripartite character of these special bodies. It is unquestionable that these

46 *National Report of Bulgaria,* pp. 14–15.

47 *National Report of Montenegro*, p. 15.

bodies have been founded by the government on a legal basis. In this regard they differ from the social and economic councils that have in an overwhelming majority of cases been founded on the basis of agreement between social partners. Changed social circumstances and the growing power of trade unions and advantages already noted in practice have urged governments to include the representatives of trade unions and employers in all these bodies. This is just a step away from tripartism. Two forms of social dialogue – social and economic councils and special tripartite bodies, emerged from two sources: agreement of social partners and the law – become complementary elements of a single process.

The democratic character of this process is reflected in the fact that a much wider circle of people are included in the process of decision-making on important political, economic and social issues. This does not refer only to members of these special tripartite bodies, but to the representatives of the legislative and executive political power, organs at different levels, members and activists of workers' and employers' organisations, a wide circle of people who are in different ways and to a different degree involved in this process. The social and economic councils and special tripartite bodies are mechanisms through which essentially new relations are established between these social groups.

The analysis of the content of work of the social and economic councils and special tripartite bodies indicates that their content often overlaps: that these bodies address the same issues. This imposes the need to analyse the relationship between these two groups of bodies from that viewpoint as well. The easiest, but also the riskiest, would be to regard this phenomenon in a simplified fashion, as unnecessary duplication of the same job. This process is only taking its first steps in the countries of south-eastern Europe. As always in similar situations, it is necessary to wait for social practice to confirm certain solutions and to provide answers to disputable questions. In this regard, practice so far points to some open issues and problems that special tripartite bodies and social and economic councils will face in the forthcoming period.

The first among them is the question of the mutual relationship between social and economic councils and special tripartite bodies. Since these two kinds of bodies often discuss and take stands on the same issues, there is a risk of establishing a relationship of subordination and superiority between them. This would call into question the very meaning of these special tripartite bodies. The answer to this question can be found in the comprehensive approach, in the treatment of the social and economic councils and special tripartite bodies as complementary elements of the same social process and on this basis – the strategy of their networking.

This approach could at the same time erect a successful barrier against two other potential risks – that of excessive institutionalisation, whose inevitable effect is that organisational forms could smother the essence of a social process and relationship, and that of fragmentation, which could jeopardise the very essence of social dialogue as an essentially new quality in political and social relations.

11. THE SETTLEMENT OF INDUSTRIAL CONFLICTS

Industrial and social conflicts represent an extremely complex and contradictory area in social relations that mirror all other aspects of the transition process. Industrial and social conflicts are a direct obstacle to economic, political and social reforms. In other words, one of the reliable indicators of the success of the transition process is the volume and intensity of industrial and social conflicts. This is always indicative of the high or critical level of social contradictions and unsuccessful reforms, that is, their too steep price which the wage-earning population, as a rule, is unable to pay. On the other hand, low level of social and industrial conflicts is a regular indicator of the success of the transition process and its positive effects on the wage-earning population in society as a whole.

In the theory and practice of transition, there is no doubt that one of the key elements of the strategy of all societies undergoing transition is the prevention of industrial and social conflict. That strategy must encompass the analysis of the causes of social and industrial conflict, identification of problem areas where industrial and social conflicts break out most frequently and with the greatest intensity, promotion of social dialogue, development of the mechanisms and encouragement of social actors to resolve collective industrial and social conflicts peacefully, and in the case of outbreak of open conflicts – the most efficient means of settling them. A strategy for preventing social and industrial conflicts is of vital importance in the countries of south-eastern Europe bearing in mind that these are predominantly conflict-ridden societies.

The relationship between social dialogue and social and industrial conflict can be symbolically and actually expressed in a single sentence: social dialogue, i.e. social harmony versus social and industrial conflict. The entire process of the establishment and development of social dialogue mechanisms could be regarded as preventing industrial and social conflict. Conflict and dialogue, two facets of the same industrial process, are profoundly interrelated and interconnected. This is,

among other things, the consequence of the interrelationship and interaction between industrial and social conflicts. This means that in every real industrial conflict, wider social causes can be detected in addition to the most direct ones. At the same time, wider social conflict represents, *inter alia,* the result of specifice, individual industrial conflicts.

It is certain that south-eastern European countries will continue to be highly conflict-ridden societies for a long time to come. This is caused by objective economic, political and social circumstances in which these societies develop.Because of this, the endeavours of social actors should focus on eliminating or mitigating the causes, and/or reducing the intensity,of social and industrial conflicts. The main aim and the measure of the success of this activity is preventing industrial and social conflicts from reaching a critical point where stability is at stake along with the survival of the entire social order. This means that all three social partners – government, employers and trade unions – are faced with a new challenge: the need for crisis management, that is, management of industrial and social conflict. That challenge will be ever increasing in the forthcoming period. The specifics of this problem are reflected in the fact, confirmed by the experience of the EU and successful transition countries, that successful management of social and industrial conflict is possible if undertaken simultaneously and jointly by all three social partners.

It may sound contradictory, but in all the observed countries the means of resolving industrial and social conflicts is the subject of social dialogue. This confirms the strength and essential meaning of social dialogue. Agreement between social partners about the way possible mutual conflicts are settled is certainly the foundation for a peaceful resolution of conflicts.

That need and conviction of social partners is expressed in the establishment of numerous institutions for the peaceful resolution of industrial and social conflicts. Institutions for the peaceful settlement of industrial conflicts are established in two main areas:

1. In the collective bargaining process.
2. As a separate form of organisation and activity of the social and economic councils.

From the analysis of documents that regulate these issues it is possible to make a conditional division of labour in this area. Bodies dealing with conflict resolution within the system of collective bargaining focus on industrial collective labour disputes and their actual resolution. The social and economic councils also deal with the settlement of collective industrial conflicts, but their emphasis is on systematic issues, on the development of strategies for resolving collective industrial labour disputes. At the same time, the social and economic councils at the national level also address the causes and means of settling broader social conflicts. Of course, it is necessary to bear in mind the organic connection between specific industrial conflicts and wider social conflicts, which is not always visible, but without that connection it is not possible to understand the nature and character of industrial and wider social conflicts, as a precondition for their efficient settlement.

A common denominator for all the observed countries in south-eastern Europe is that all social and economic councils at the national level devote exceptional attention to the resolution of industrial and social conflicts.

It seems logical that the greatest attention in the documents and practice is devoted to the establishment and functioning of mechanisms for the resolution of those collective industrial disputes that are most frequent in practice and which carry the greatest degree of social risk. They include conflict of interests and legal disputes in the collective bargaining process and implementation of collective agreements, prevention of strikes, as the most radical form of industrial conflict, and relations between social partners during a strike. The common denominator of all these mechanisms is voluntary undertaking of peaceful conflict resolution by the social

actors. The national report of Bulgaria highlights this in the following way:

Collective labour disputes are an inevitable phase in the development of industrial relations both in society and in a particular enterprise. It is a manifestation of the clash of interests of the parties in the labour relations.

The major tool for resolving them is the Collective Dispute Resolution Act (CDRA). Passed in the very first days of transition (March 6th, 1990) it put the beginning of Bulgarian collective labour law. This Act determined the parties in the collective disputes and clarified a number of new legal issues. It is the fist document to regulate the various ways and the respective procedures for resolving collective disputes – immediate negotiations, arbitration, strike.

The CDRA points to the voluntary settlement of collective disputes as the basic method for their resolution. That is why immediate negotiations between employees and employers, or between their representatives, according to a procedure determined freely by them, are proposed as the most acceptable form.

This was also the regulation of the labour arbitration – in its voluntary and mandatory form. Unfortunately, this significant opportunity has been used extremely rarely. On the one hand, this is probably due to the lack of tradition and, on the other, the insufficiently well-regulated procedures and legal safeguards for settling the disputes in this way.[48]

In the analysis of the organisation and work of the special bodies and the role of social and economic councils in the settlement of collective industrial conflicts we should be aware that separate bodies within which collective labour disputes are settled peacefully, as well as the social and economic councils, are only a part of this system. An important role in the settlement of collective industrial conflicts is played by courts, as indicated by the following excerpt from the national report of Romania:

The conflicts of rights are conflicts related to closure, execution, modification, suspension and cease of the individual work contracts. Specialised courts of law solve the conflicts of rights. The Emergency Ordinance 20/2002 for modification and completion of the Law 92/1992 for organising the judging courts of law regulates the framework of disputes settlement. As according to this normative act, court of law formed by two judges assisted by two consulting magistrates judge in the first instance with celerity the processes on work conflicts. The consulting magistrates participate at deliberations with consultative vote. Their separate opinions or a separate opinion are specified in the court's decision. The minister of justice appoints the consulting magistrates on a four-year period at the Economic and Social Council's proposal. The Ministry of Justice and the Economic and Social Council propose and establish the terms and the procedures for the Economic and Social Council's candidates' selection and proposal for them being nominated by the minister of justice. The claims for disputes settlement are judged in emergency regime, the judging deadlines could not be longer than ten days.[49]

The national report of Bulgaria points out that the settlement of collective industrial conflicts through legal action is the costliest alternative from all aspects. This forced the social partners to do their best to establish and develop peaceful methods for conflict resolution.

In recent years, the employers and the trade unions have realised that the court procedure for collective dispute resolution is, on the one side, a considerably expensive method and, on the other, it puts the fate of the dispute in the hands of the court that often has no sufficiently objective information about the prime causes of the dispute. That is why significant efforts have been made by the major representative employers' and employees' organisations to establish the rules and procedures for voluntary arbitration. In relation with that, in 1999 the National Bipartite Agreement was signed and was officially supported by the Ministry of Labour and Social Policy by

48 *National Report* of *Bulgaria*, pp. 26–7.

49 *National Report of Romania*, p. 43.

providing the necessary facilities and technical assistance. Again, however, we must note that this attempt to apply arbitration was not successful.[50]

The intensity of the use of mechanisms for the resolution of collective industrial conflicts is also an indicator of a number of aspects of the mutual relationship between social conflict and dialogue. On the one hand, the intensity of the use of these mechanisms speaks about the conflicting character of society and industrial relations, but also about the confidence in these mechanisms and thereal readiness of the social partners to solve conflicting issues in a peaceful way. The national report of Croatia illustrates this with the data on the number of cases of collective industrial disputes that have been peacefully resolved before the competent bodies.

There are no official statistics on the number of conciliation procedures carried out. On the basis of the data procured from trade unions and the Ministry of Labour and Social Welfare, it can be concluded that since 1 January 1996, hence since the beginning of the implementation of the Labour Law in the Republic of Croatia, about 240 conciliation procedures have been instituted, or about 40 per year on the average. Out of this number, 80 conciliation procedures have been initiated in 2001. This increase can be attributed to the amendment of the Labour Law introduced that year, which defined the right to strike due to unpaid wages (90% of the conciliation procedures were instituted for that reason).

Out of the mentioned number, about 60% of cases have been resolved by the agreement of the parties in dispute. Trade unions resorted to strike as a means of pressure only in very few of the remaining cases, where the conciliation procedure failed to result in the reconciliation of the conflicting requests.[51]

The other side of the analysis of the mechanisms for peaceful resolution of collective industrial conflicts is the intensity and dynamics of these conflicts. According to plain reason, the efficiency of these mechanisms is measured by the number and intensity of the conflicts. Thus, the number of industrial and social conflicts should decrease with the growing efficiency of these mechanisms.

However, it turns out in practice that this proposition is not always correct. Although the positive tendency of establishing and expanding the network of institutions dealing with peaceful resolution of collective labour disputes is obvious from the national reports, the analysed south-eastern European societies continue to be highly conflict-ridden. The number and intensity of industrial and social conflicts in some of these countries remain at very high levels, while in others they are even on the increase.

Yet, we should not jump to the conclusion that the mechanisms of peaceful resolution of collective industrial disputes are inefficient. The reason can be found in the fact that contradictions and problems faced by countries of south-eastern Europe are too complex, resulting in exceptionally difficult social and economic consequences, which generate continuously high levels of social and political discontent and conflict. In other words, social conflicts cannot be eliminated just by the development of mechanisms for peaceful resolution of collective industrial and social conflicts, but require the permanent elimination of the causes that produce these conflicts. The practice confirms that this goal is best achieved through social dialogue, which provides a new dimension to social dialogue in the political and social processes as a whole.

50 *National Report of Bulgaria*, p. 27.

51 *National Report of Croatia*, p. 56.

12. FINAL CONSIDERATIONS

Europe is entering a new phase of its political, economic and social development. One of the unquestionable characteristics of this new phase is social dialogue, upon which social peace, economic and political stability of these countries already rest. But social peace is also a strategically important goal to which all social partners aspire – political authorities, trade unions and employers. As human history has confirmed, there is never too much peace, so contemporary history and ongoing processes in both the EU and in south-eastern Europe confirm that there is never enough social peace. The experience of the EU countries, where social dialogue has achieved a high level, shows that it is a long-lasting, dynamic social process and that the achieved level of social peace and social dialogue opens up the way for new steps, for new phases in the development of social harmony and new forms of social dialogue. This process largely similar to a modern computer game, where the player goes from simple to more and more complex problems and where he first has to open one door to get at another.

South-eastern European countries are an integral, inevitable part of this process, the new phase in the development of the European Union. This arises from the content of contemporary economic and political processes in Europe and worldwide, where the integrative component is increasingly more apparent. In other words, rational political and theoretical thought cannot, at least not in a rational and substantiated way, imagine the Europe of the future as a continent where only the EU is based on economic and social prosperity, social peace, stability and social dialogue, and other parts of Europe on predominant contradictions, obstacles, industrial conflicts. On the contrary, Europe as a whole can have steady and stable development only if it is based on the same principles as the EU is today. The current situation and the present differences in the developmental level of all aspects of the political, economic and social development between the EU countries and south-eastern Europe in this context can be treated only so that in the present circumstances the more successful and stronger actors of this unique process – the

EU countries – pave the way and help the weaker partners including, among others, the countries of south-eastern Europe, to proceed faster, more efficiently and safely towards these common goals. Because of these reasons, establishment and development of social dialogue mechanisms is a common goal and one of the common denominators of the political and social processes in the EU and south-eastern European countries. In this regard, social dialogue will certainly increasingly assume the role of a bridge, of an integrating factor in linking the EU and the countries of south-eastern Europe. It can reasonably be expected that social dialogue will be an efficient vehicle in defining the elements of a common strategy and a way towards a joint, integrated Europe and in this framework of the gradual reduction of differences in all aspects of political, social and economic development.

In order that the social dialogue can exercise its main social role and functions of an integrating and developmental factor, it is necessary to define common denominators of social dialogue in EU countries and the countries of south-eastern Europe. These common denominators, this connective tissue and its universal character are fundamental values and the true meaning of social dialogue:

- A new approach to democracy, human liberties and rights, an essentially new approach to the process of political decision-making and the possibility for real participation and influence of the widest circle of employees and citizens in this process.
- Tapping the creative energy, knowledge and initiatives of a much wider circle of people and organisations.
- The principal measure of the value and efficiency of the social dialogue is reflected in the extent to which it contributes to the upgrading of the people's quality of life.

For many decades now social dialogue in the EU countries has proved in practice its power, meaning and advantages compared with other mechanisms for making relevant political and other decisions in society. The very fact that social partners, particularly trade unions in south-eastern European countries, treat the establishment and development of social dialogue as a strategically important issue speaks volumes about the values of social dialogue. The national reports point out that social partners have high expectations from the introduction and functioning of social dialogue mechanisms. These expectations are often much greater than the real social power and influence of the social and economic councils in the resolution of economic and social problems and contradictions. In other words, in all the analysed countries of south-eastern Europe social and economic councils are conceived as consultative and advisory bodies, whose power and influence are based not on the force of political power, but on the reputation and authority of these bodies and their members individually.

This essence of social dialogue makes the process of the establishment and functioning of its mechanisms exceptionally complex and contradictory. Obviously, it is much harder to achieve consensus among the social partners, establish their common interest at least at the minimum level, then make an important decision, which ultimately affects everyone, by outvoting. Social partners tend to achieve consensus aware of the fact that no social partner can achieve its individual interests alone, without the cooperation and harmonisation of these individual interests with the individual interests of the other two social partners. That is the motive force that drives social partners to accept the main principles of social dialogue – voluntariness, autonomy of will, mutual confidence and tolerance.

In principle, social dialogue is based on the relatively balanced power of social partners. Disproportionate prevalence of one of the social partners breeds the real risk that one social partner may abandon the principles of social dialogue, or abide by them only formally, while in reality it may impose its social interests using other means. Therein lies one of the main restrictions of social dialogue in the countries of south-eastern Europe where

the actors in social dialogue – primarily trade unions and employers' organisations – have not yet been fully defined and where unevenness of the power of the social partners is quite pronounced. From this fact doubts about the role of the government in social dialogue largely arise. National reports often stress the predominant role of the state insocial dialogue mechanisms. The source of that predominance lies in the generally overemphasised role of the state in transitional changes. The development of the the social dialogue mechanism can contribute towards gradually reducing this overemphasised role of the state, though the role of the state in creating the legal framework and the entire social environment for social dialogue is irreplaceable. This is confirmed by the fact that an exceptionally large segment of social dialogue in the analysed countries of south-eastern Europe focuses on issues of legal regulation, that is, on the creation of a legal framework for the new social environment.

Connected with this is the tendency to legally regulate and protect by force of law as much of the social dialogue and its mechanisms as possible. This is in fact *contradictio in adjecto*, because it is in contradiction with the principle of voluntariness and autonomy of will of the actors in social dialogue. However, it also reflects the real imbalance of power between social partners and a tendency to replace social dialogue by the force of law. That, of course, does not call into question the need for the establishment of a legal framework for social dialogue, but in doing this it is necessary to determine precisely the dividing line beyond which legal protection loses its principal meaning.

In this regard it is necessary to analyse the opinions presented in some of the national reports, that the legal framework of social dialogue is not an obstacle; it is sufficient, but is not respected in practice. Of course, legal provisions in areas like social dialogue always have a pronounced heuristic tone. In other words, legal norms encompass not only the actual situation, but also anticipations of a future desired situation. This should be an incentive and a guideline for the actors in social dialogue to aspire to in carrying out such a normative model in practice. But, if the difference between the real and the normative is too big, the legal norm loses its meaning and turns into an obstacle, for it introduces confusion, discourages the participants in social dialogue and fails to accomplish its main function – to provide effective legal protection for the foundations of social dialogue.

One of the biggest, objective obstacles to the establishment and development of social dialogue in south-eastern European countries is the slow pace and insufficient efficacy of economic reforms and the unexpectedly high social cost of transition. This high social cost primarily and most profoundly effects very many of the wage-earning population. On the one hand, the high social cost of transition is a standing, real source of discontent and social conflict. On the other, generally unfavourable economic opportunities and the exceptionally high cost of transition restrict the possibility of agreement among the partners in social dialogue. In other words, tolerance underlying social dialogue implies a greater or lesser softening of the social requests compared with the initial requests. But this also implies a realistic material basis for the concessions, which is often missing, particularly on the part of the workers, where every drop in wages most directly affects their vital interests.

Great variety in the degree of development of certain forms and levels of social dialogue is a significant obstacle for the development and exercising of the role and functions of social dialogue. In making this statement, we have in mind that social dialogue is a complex process, which consists of many forms and mechanisms through which it is carried out. All these forms of social dialogue must be coordinated and united into a single wholethat is to say,. the network of institutions of social dialogue must be built at the national level. A prerequisite for this is a relatively uniform degree of development of the institutions and forms through which social dialogue is carried out.

Development of the network of institutions, strengthening of the role and social power of social dialogue at the national level is at the same time the first condition for the establishment of social dialogue in the region. Of course, the establishment and development of social dialogue depends on the overall development of the economic and political relations between the countries of the region, because that cooperation, as well as the anticipated processes of economic and technological integration provide the substance to social dialogue. However, on the other hand, the establishment of certain permanent, systematic forms of social dialogue may act as an incentive for accelerated development of the economic, technological and political ties in the region. The first steps in this direction have been made through the Action Plan to Promote the Culture and Practice of Social Dialogue in the South-eastern European Region. The actors in social dialogue – representatives of the political authorities, trade unions and employers, with the assistance and cooperation of experts from EU institutions, presentation and analysis of the experiences of the EU countries, got a closer insight into the course of the establishment and development of social dialogue in these countries, exchanged experiences and launched the first joint initiatives. Indisputable is the need to continue the systematic, organised work on this project, towards the achievement of the next, more complex stage of development, that is, setting the groundwork for the regional network of social dialogue. Social dialogue as a dynamic, living social process requires the full-time, systematic engagement of all social actors in their upgrading. Such a position was supported by all participants of the seminar held within the framework of this project in Bucharest in June 2002. In the final document they proposed a range of forms for regional cooperation in the building and development of social dialogue at national and regional levels.

SOCIAL DIALOGUE IN SEE
SEMINAR OF BUCHAREST
17–18 JUNE 2002
Summary of the conclusions from the three working groups

1. ENTREPRENEURIAL ASSOCIATIONS

For the realisation of a successful social dialogue, social partners need to:

- Develop a network of social partners in order to share and disseminate information on the current state of the play and on the mechanisms used in SEE countries. The first step would be to identify the already existing regional networks such as the SEEEF (SEE Employers Forum) and to become members of it.
- Creation of a e-discussion forum linking via e-mail the Entrepreneurial Associations participant to this project.
- Exchange of experience of good practices in the social dialogue.
- Identify the additional needs of the Entrepreneurial Associations coming out from the comparisons with the above-mentioned best practices.
- Technical assistance for improving the competence and possibilities of the social partners.
- Training of social partners on the mechanisms for social dialogue, collective bargaining techniques and negotiation skills.
- Training on Life Long Learning issues.
- Entrepreneurial Associations should play a more proactive role in developing the Poverty Reduction Strategy Paper (PRSP).

2. TRADE UNIONS

The working group recommends to:

- Analyse in depth the differences between d\bi- and tri-partism.
- Comparative analysis of the legal framework for social dialogue in Europe.
- Debate on the issue of the representativity of the TU and Entrepreneurial Associations.
- Improve cooperation between participant organisations.
- Transfer theory into reality.
- Organisation in each country of the national seminars managed by local expert teams to be built up.

Among these initiatives and proposals for the development of social dialogue at the national and regional plan education has exceptional, strategic importance. In fact, the entire past course of the establishment and development of the social dialogue in the countries of South-eastern Europe can be treated as a specific form of education about social dialogue, because all social partners were making their first steps in this area.

However, this does not refer only to the education of those who are directly involved in social dialogue – members of the social and economic councils, etc. Social dialogue, as a new form of democracy, should be accepted by the broader public. This means that it is necessary to promote new political culture of tolerance, mutual confidence, consensus that is reached through social dialogue.

Finally, when analysing the state of social dialogue in Europe as a whole and in south-eastern European countries we can make the following symbolic comparison. The state of social dialogue resembles a train. The first carriages of that train (EU countries) are modern, safe, fast andcomfortable. The last carriages (SEE countries) are slow, shaky, break down often and slow down the entire train. The problem is that the whole train (social dialogue) must come to the railway station with all the carriages at the same time.

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