

ROLE AND PLACE OF THE BRANCH SOCIAL DIALOGUE IN THE INDUSTRIAL RELATIONS OF MOLDOVA

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Abstract: *Social dialogue as a very convenient tool for reconciling interests of key production factors – labour and capital – has been mentioned many times and on several other occasions. The present article reiterates this message, with social dialogue at sector level as a key subject under analysis. The interest lying at the basis of researches carried out on this matter was conditioned on one hand by the European Union requirements imposed on social dialogue at this level (the maturity of social partners at the level of industrial sectors impose a high rigor during the accession process of a country). On the other hand we are also keen to assess the respective maturity level in the case of the Republic of Moldova, its aspiration for the European integration being clear and indubitable.*

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1. Introduction

Social dialogue at the sector level emerged and evolved in the context of amplifying a democratic regime inherent in the transition to market economy. Thus, the intrinsic feature of any democracy is the admissibility of large society to its administration, attraction of citizens in solving strategic issues, congestion and functioning of social entities and mechanisms at all levels, starting with group, enterprise, locality, territory, administrative, and government levels (Dorneanu, V., 2006, p. 7).

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Democracy, in its essence, envisions consultation with and involvement of citizens and social groups in the decisions making process with the aim to harmonize their opinions and interests. The involvement of social partners was considered relevant not only from the perspective of promoting social peace in an economic context proliferated by novel processes of privatisation, liberalization of prices and of legal framework, private sector development, which, taken together, contributed to the generation of new and diverse industrial relations, but also as a consequence of the country's adherence to a number of notorious international standards¹ that conditioned the institutionalisation and boosting of social dialogue in both *tripartite* formula (trade unions - employers - government) and under *bipartite* aspect at sector level as a relation between the employers and trade unions, in which context the government acts as an arbiter, *tacit partner*, through fixing the parameters of interaction between the other two parties (Codreanu, G., 2007, p. 37).

The legal way, the branch social dialogue functions in Moldova, is overarched by the Labour Code (Law No. 154-XV/2003), article 18, letter b, and the Law No. 245-XVI/2006 on Organization and Functioning of the National Commission for Consultancy and Collective Bargaining (NCCCB) and Branch and Territorial Commissions for Consultancy and Collective Bargaining. This subject is provided complementary coverage in a number of other laws and normative acts on matters, such as salaries, occupational safety and health, working conditions, social protection, and employment. Below we will briefly refer to the level of coherence within the legal framework on branch social dialogue, but will also try to depict a range of social dialogue's typologies conditioned by various processes and phenomena.

2. The impact of economic restructuring

The growing interdependence between the dynamics of social dialogue and the social-economic environment can be easily traced along the transition period. Economic decline, restructuring, and privatisation affected all the industrial sectors in a particular way, even though the latter were reformed more or less at various stages. The development of social

¹ ILO Convention No. 98 on Right to Organize and Collective Bargaining, Convention No. 144 on Tripartite Consultations; ILO Convention No.154 on Collective Bargaining.

partnership structures and the bargaining power of partners have progressed unevenly, under the influence of a number of phenomena. One of these phenomena would be privatisation and private sector launching, which, in case of employers organizations, led to emergence of a new social group (still in process of consolidation), while in case of trade unions generated structural and organizational changes through dismantling the federations (the latter sometimes disappearing, and not only being divided), and emergence of other organizations, oftentimes smaller and less consolidated. This intensified the internal fighting in trade union movement, which is still persisting to date, increasing its vulnerability as a reliable social actor.

Enterprise restructuring and their size have also influenced this process. In 2007, small enterprises (with up to 9 employees) made up to about 73.8% of the total number of enterprises in the country.¹ Employers are oftentimes the least enthusiastic about the idea to associate and bargain at branch level, considering that they have sufficient power to negotiate or impose the desired labour related standards and conditions at each enterprise level. Neither do they encourage the presence of trade unions in their companies, as the survey commissioned by UNDP shows that 32% of small enterprise owners (respondents covered by the survey) reported the lack of a trade union in their units (Bârcă, A., Gamanji, A., 2008, p. 28). Enterprises with up to 250 employees, where trade unions are usually more consolidated, amount to 97.6% of the total number of enterprises, of which 41% are operating in the wholesale trade, 12.7% - in processing industry, and 7.2% - in transports and communications. The number of public enterprises that used to feed the trade union movement in the country also reduced, currently constituting 618 of the total number of 24,883 enterprises registered in the country.

The process of restructuring through mass redundancies also contributed to reduction of the number of trade union members, substantially affecting the union density, as well as the capacity to protect their members through collective bargaining. Thus, from 1990 until now, the syndication rate has decreased from 90% to 40% (Topor, T., 2009, p. 32), varying in different sectors, and showing a prevalent presence in the public sector. Economic restructuring caused a bargaining polarization through diversification of technologies and its impact on productivity in the last instance. Cutting edge technologies, particularly in the private sector,

¹ National Burro of Statistics, Results of structural survey on enterprises, 2008.

coexist with outdated and inefficient equipment, which fact clearly reflects on pay issues in the bargaining process. Branches, such as constructions, transports, light industry, and chemical industry usually establish higher levels of minimum and medium wages (at branch level) than those established at national level, and put emphasis on “active” social protection, such as labour security, and employee training. Other branches, in their turn, give predilection to “passive” protection measures, such as increasing wages through compensation for labour conditions (textile industry, health care system, etc).

The limited capacities of employers to organize themselves in certain branches have impacted the presence and quality of collective labour agreements (CLA) in respective sectors. A research recently carried out upon request of the International Labor Organization (Vaculovschi, D., 2009)¹ is eloquent in this regard. Interviews with union leaders highlight their concerns regarding the bargaining incapacity due to the lack of a partner. This is the case of the trade union from trade, public catering, services, restaurants, and hotels of the Republic of Moldova - „SindLUCAS”, the trade union from the energy sector, and the trade union of air transport.

The restructuring of public institutions also conditioned delays in bargaining at branch level, thus reducing the number of CLA. For instance, due to the fact that some additional mandates were undertaken by the Ministry of Economy, and as a consequence of a too lasting internal reorganization, the negotiation of some branch CLA has been delayed, which fact was reported by the federative union of workers from the energy sector “SindEnerg” and by the union of workers from the car and agricultural machines manufacturing industry.

3. Quality of Collective Conventions

As long as the social dialogue targets no constructive determination (or collective labour agreements might be counted as an expected tangible result) to resolve amicably, through negotiations, a number of difficult problems related to social and economic life hindering the economic progress and undermining the welfare of citizens, the latter will remain an

¹ Within the ILO project „Strengthening the Legal and Institutional Base of Social Dialogue in the Western Balkan Countries and Moldova”, 2009.

empty frame, a form without content, inefficient, and useless. The Collective Labour Agreement is defined as a *fundamental institution within the industrial relations system*¹ and the quality of their provisions reveals the skills of the parties within the bargaining exercise in establishing and promoting the rights and obligations in terms of employment, wages, social protection, etc.

Table 1
Contents of national and branch collective labour agreements

Chapter	CLA, national level	CLA, branch level		
		Constructions	Transports	Agriculture
Ordinary Issues				
Wages and other remuneration related rights	x	x	x	x
Work and rest time				
Individual employment contract	x	x	x	x
Vocational training				
General provisions				
Final provisions	x	x	x	x
Specific Issues				
Child labour		x	x	x
Social partnership		x	x	x
Human resources		x	x	x
Healthcare and security	x	x		
Vocational training		x	x	x
Social protection of youth and women		x		x
Union freedom		x	x	x

For a better evaluation of the content of branch collective agreement in the Republic of Moldova, we would highlight the fact that sector level is an intermediary level in the social dialogue system, being folded between the national and enterprise levels. The general framework of labour relations is negotiated at the national level, establishing standards for labour and social-economic relations, usually through minimal protection norms which, consequently are being brought in line with the particulars of each branch,

¹ ILO Recommendation No. 91/1951

generating some clauses that can in no way be lower than those negotiated at national level. Pursuant to Labour Code (article 53, item 2) the latter relate to labour remuneration, working conditions, and labour protection; working hours and leisure time; social partnership development, along with other issues determined by the parties. In their turn, the clauses negotiated at the branch level are minimal with respect to the enterprise becoming mandatory for use at the economic entity level. An assessment of issues negotiated at national and branch level reveals both similarities and differences among them (Table 1). Thus, we will discover that the number of subjects negotiated and stored in agreements at branch level is much broader. The content is relatively similar in terms of wages and other remuneration related rights (although in certain branches the minimum and medium levels exceed the national level), work and rest time, and individual employment contract.

Sector bargaining introduces differences and diversifies the subjects negotiated through those related to trade union freedoms and rights, social protection for certain categories of employees (youth, women, etc.), healthcare and OSH issues. They are designed to thematically exceed the clauses negotiated at national level and address the sector activity related items in a broader manner (for example women protection in textile sector). At the same time, we can report cases of bargaining failure in sensitive areas of a branch, such as the attempt to set up the Social House of Construction Workers in the sector, which, due to the seasonal character of construction works, would focus on social protection of employees during unfavourable weather periods. Oftentimes, branch agreement includes clauses on rights and obligations of signing parties for separate situations. Thus, the discontinuation of membership in employer and trade union organizations, for instance, doesn't relieve the signing parties of the CLA from the obligation to fulfil the clauses throughout validity term of the agreement.¹ It is also worth mentioning the fact that not all industrial sectors have signed extended collective agreement in terms of approach, moreover the number of the latter is relatively reduced, while CLA in the public sector usually depend on financial limitations of the national and local budgets, which fact influences their quality. Moreover, none of the branches has addressed phenomena, such as migration, illegal work, and social protection in the informal sector within collective bargaining until currently. Even the subject

¹ Collective Convention in Agriculture for 2007-2008, successively extended in 2009

of labour force training, which is vital for the alleged productivity and competitiveness in a market economy, and particularly sensitive for our country¹, is not given special priority in the process. As an exception, the constructions branch highlighted in the CLA negotiated in 2009 the “need for on-going training of flexible and skilled labour force with the aim to develop a competitive spirit on the labour market, eliminate the deficit of skilled labour, attract young specialists in the branch, and contribute to halting the exodus of labour force”. Thus, employers are obligated to create necessary conditions and favour vocational and technical training of employees. Moreover, within each unit, the employer, jointly with the trade union must develop and approve annual vocational training plans. The most real activity, as the experience of many European countries shows, would be certainly to establish a Training Fund at branch level. However, the creation of a tripartite Sector Committee in Constructions for vocational training of employees (supported financially by the signing parties to the CLA) is also a plausible step at this stage. The Committee is to materialize the relevant legal framework and forecast the necessary qualifications in the branch for a better harmonization of labour demand and offer. Hopefully this body will operate efficiently and not remain just an initiative put on paper.

4. Specifics of “tripartite” social dialogue at branch level in Moldova

We would like to confirm with certainty that the three components of the social dialogue’s subjective part – employees, employer, and public authority representatives – do not play and shouldn’t be perceived as simple social actors, because, in reality, the role attributed to them by participation in the broad social dialogue process is that of *social partners*, charged with a mission manifested beyond the unilateral representation of specific interests, as it involves responsibility for public welfare and social peace. We insisted on this statement because the delimitation of mandates of the parties to social dialogue is yet confusing, particularly at branch level. This is first of all due to the state „omnipresence” in the bargaining process, even outside the public sector that the latter represents. Paradoxically, the Labour Code does not stipulate expressly the right or obligation of the government to negotiate and

¹ On-the-job-training, for example, has been limited; according to the Country Survey of the European Training Fund as of 2009, less than 10% of the total number of employees has participated in such training courses over the last years

sign collective conventions at branch level (in the real sector of economy), which is absolutely obvious for the tripartite negotiations at national level. On the contrary, article 35 stipulates that collective convention shall be a legal act establishing the general principles for regulating labour relations and social-economic relations concluded by *empowered representatives of employees and employers* at national, territorial, and branch level, within the limit of their competence. Yet, you will not find any branch convention to which one ministry or another would not be present as negotiating and signing party. At the same time, pursuant to the law, tripartite commissions at branch level are designed for consultations and *collective bargaining*, or being tripartite through definition, they attribute a negotiator role to the government even where the latter should be present as a *tacit moderator* of the bipartite process, to which we have already referred above. However, even in the role of passive moderator the government is obligated to share its point of view and analyse the issues constituting the subject of negotiations. European experience provides very conclusive examples of tripartite social dialogue at sector level, which limit to information and consultations, usually within some ministerial social dialogue commissions, such kind of presence being recorded in Moldova as well. Such bodies are important first of all for facilitating pertinent discussions on very sector specific issues. Secondly, they set up environments where viable solutions can be found to problems by taking into account several aspects, such as resources available, capacities, productivity of the sector, etc. Such tripartite social dialogue at sector level is benefic for all the parties. The Government is permanently aware of economic changes and social environment, while the requests of social partners, their answers, and sometimes even the pressure exercised by them can serve as the most efficient way for verifying the effects of a policy, reviewing and adjusting programs at sector level, and, subsequently - at national level too. In the same context, employers can adjust their policies, initiatives, and development plans of their companies to the sector government strategies. Trade unions can also initiate and promote active policies for social protection of their members, along with warning about eventual inequalities, discrepancies in terms of rights and government initiatives for social reforms. We cannot but underline once again that such commissions are *consultative*. As a matter of fact, there operates six such commissions in Moldova to date, the latter having an informative rather than a consultative character.

Government interference in the bipartite bargaining of real economy sector is nothing but an expression of distrust towards the social partners, and their professional skills to influence progress at sector level and increase their competitiveness; it is certainly a habit of “absolute presence” inherited from a totalitarian command system. This aspect can deeply affect the image of our country in the process of accession to European Union just because of the fact that the member states of this community show supported trust in their social partners, delegating specific competences to them for implementing some EU directives through collective employment agreements (pursuant to article 137 of the EU Treaty). This very aspect should be taken into consideration in our country as well. The completion of privatisation process should encourage gradual government retreat from collective sector bargaining, the social partners being thus provided the opportunity to negotiate independently in a free industrial relations context. However, along with this, it is absolutely imminent that the social partners perceive the responsibility attributed to them so that professional performance in economic and social issues is one of the most current issues included in their work agenda.

5. Efficiency of social dialogue at sector level in Moldova

5.1. Positive aspects

The analysis of sector dialogue functioning in Moldova indicates a number of positive aspects, including a trend towards improving its quality. Although the process is very slow, certain evolutions are worth being mentioned:

- there is a will for putting stress on long term effects rather than on temporary effects in the negotiation process, such as the trend towards adjusting wage increases to the effort made and productivity instead of a contingent nominal growth or improving the quality of work place instead of increasing the compensatory payments;
- negotiations are improved through anchoring the dialogue in a specific and viable social-economic context, giving up blackmail and obtrusion. Acceptance of compromise and availability to give

- in, particularly on behalf of the trade unions in crisis situations has been valid, although with minor exceptions and only a few times;
- the trend is obvious for increasing the professionalism of social partners through training with both internal support and foreign assistance provided by European and international organizations, including on bargaining, employment, healthcare and security, working standards, etc.

5.2. Negative aspects

At the same time, social dialogue at branch level leaves much to be desired regarding certain aspects we would like to refer to below.

Collective negotiations are superficial in many cases, while the signed collective agreements oftentimes fail to address sector specific problems related to wages, working conditions, insurance, social assistance, under-employment, informal segments, etc. Very many conventions just transpose the clauses of national CLA at branch level without making effort to broaden and amplify them.

The persistence of vertical segmentation in social dialogue through lack of mutual information between sectors and their social dialogue institutions undermine the capacities of the latter, along with the lack of cooperation between respective bodies from enterprises and those at branch and/or national level.

Collective agreements fail to sufficiently stimulate initiative and skilled labour. Tariff systems continue being preferred to non-tariff ones, as the first provide secure incomes, although reduced in value, while the non-tariff systems, though provided by law, are unpopular yet, even if they are considered more competitive and based on performance and individual contribution.

The lack of software and information networks that would facilitate communication between the partners lead to an information vacuum in terms of collective agreements negotiated, the number of union members employed, other statistic data. The lack of web pages also reduces the CLA coverage capacity, as information is a crucial element in the preparation and unfolding of negotiations, particularly the information provided by employers is fundamental for the reason that the application of contract clauses supposes financial support, financial expenses, and even reduction of profit. Registration of branch CLA with the Ministry of Labour and

avoiding their publication limits the access to them, thus reducing their usefulness.

The limited organizational capacities of employers, lack of “entrepreneur culture”, the limited capacities for providing services to current members have a negative impact on the quality of social dialogue in some branches, and reduces the number of CLA.

The action of CLA constitutes an element that should be regulated. Pursuant to Labor Code, collective bargaining is a voluntary action, and both employees and employers empowering their representatives to participate in collective bargaining, develop and sign the collective agreement on their behalf, as well as employees and employers joining the agreement after its conclusion fall under its incidence. This requirement is in compliance with international principles and standards. At the same time, the CLA from the construction industry provides for the contrary, i.e. its clauses are obligatory for all employees and employers from the branch of any legal form and ownership type, whether these have empowered the parties to sign it or not. On the one hand, this approach seems to be justified by the trend towards establishing common rules for a loyal competition within the sector, while, on the other hand, such approach contradicts the principle of voluntary CLA bargaining and endorsement. This aspect certainly requires reviewing the legislation in a tripartite format.

The process of monitoring the application of negotiated conventions needs to be also strengthened for ensuring a better sequence of actions, and observance of the provisions of the agreements.

6. Conclusions

The European Social Model that Moldova will certainly have to adopt (if the decision on integration is irreversible) implies building up a modern and functional system of industrial relations. One of the conditions in this sense is the availability of a social dialogue at national level, as well as in all possible areas of activity. The branch level remains a favoured one in this regard for the reason that it is the most beneficial to a sustainable social and economic functioning and for a better protection of employees through its access and direct influence at the enterprise’s level. In this context, social dialogue boosting remains essential for its transformation into an important economic and social cohesion tool. Therefore, the perspective of

government retreat from sector bargaining must be a measurable and real one. The government should cultivate its trust in the social partners' capacities and let them find compromises on their own at branch level and at local level as well. To justify such trust, the social partners, in their turn, should prove a supported effort for institutional and professional consolidation. Here, the government could be a reliable partner. The role of the Ministry of Labour is incontestable in this context. Supporting the partners through trainings, methodologies, and sharing European experience in social dialogue would be the most relevant proof of the political will of the government in this respect.

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