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Overview of industrial relations in Romania

Introduction

Industrial relations (IR) have been rather extensively investigated in many eastern European countries in the last 15 years, but there is still very limited information about Romania. This article presents an overview of the main IR institutions, concerning both the legal framework as well as their operation in practice, in Romania.¹ It examines the role of the state, employers associations, trade unions and collective bargaining from a historical perspective. In the final part, the changes that have occurred after 1989 in these selected parameters are discussed in the broader eastern European context.

The study is based on primary data collected in 2000 and 2001 which aimed to identify what has changed since 1989 regarding the IR actors (i.e. state, employers associations and trade unions) and the relations between them. Seven officials from national institutions were interviewed: a government representative involved in the establishing of the Labour Code; two officials from employers associations; two trade union officials; the secretary of the Economic and Social Council; and the representative in Romania of the International Labour Organisation (ILO). An ILO official responsible for the activities of employers associations throughout central and eastern European countries was also interviewed. In addition, 25 (one-to-one) interviews were conducted in a total of fifteen companies which were studied during the research.² Thirteen interviewees were managers or employers (three employers, three top managers, three human resource managers and four line managers), while twelve were employees (four shop stewards, seven employees and an unemployed person). Hence, data triangulation is used to ensure the reliability of the empirical evidence.

The role of the state in industrial relations

Historical overview

The Romanian state started to play an important role in IR at the beginning of the 20th century (Moarcas, 1999). Following a general strike in 1920, the Law on the Settlement of Collective Labour Disputes was adopted. This obliged the parties in a conflict to have conciliation and/or arbitration in a tripartite commission comprising representatives of workers, employers and the state before a strike could be called. Then, in 1921, the Law on Trade Unions was adopted which recognised both the right of workers to conclude collective agreements and the obligation of the employer to imple-

- 1 This article is based on empirical research conducted during PhD studies financed by London South Bank University (UK). I would like to thank my supervisor, Emeritus Professor Karl Koch, for providing expert advice and tremendous support at all stages of the project.
- 2 The sample was not intended to be representative. It included a wide range of firms in terms of ownership (five state-owned companies and ten private companies), size (six large and nine medium sized companies) and products (six from the manufacturing sector and nine from the service sector).

ment them (Moarcas, 1999: 242). The first Law on Collective Labour Contracts was adopted in 1929. It indicated that an individual employment contract must not contain provisions less favourable to employees than those included in a collective agreement. Therefore, the state has been acting as legislator and mediator, and has been setting down certain minimum standards, since the 1920s.

During the communist regime, the (party-)state was the main actor in labour relations. The first Labour Code, adopted in 1950, changed the previous legal regulation in line with the political ideology of the new regime (Burloiu, 1997: 384). A new Labour Code was adopted in 1973, but it did not bring any significant changes in practice. Employees, trade unions, top management and the (party-)state were supposed to act in full harmony to 'construct socialism' (Héthy, 1991). Hence, there was no real collective bargaining and no right to strike. The state established wages and promotion rules based on qualification and seniority (Pert and Vasile, 1995: 255). The policy of full employment and wages generally not being related to economic performance led to overstaffing and low productivity. Wages did not act as price signals in the labour market and enterprises could not motivate labour (Héthy, 1991: 136). Furthermore, job security was guaranteed while labour mobility was discouraged (Pert and Vasile, 1995: 256). Therefore, labour relations were based on the specific ideology of communism.

Transition period

In December 1989, Romania committed itself to design a pluralist regulatory framework for employment relations. It aimed to create an institutional framework to facilitate the development of social dialogue, with the emphasis on co-operation between trade unions, employers associations and the government (Miheş and Casale, 1999: 271). Initially, political obligations stipulated in the Labour Code were abrogated. In 1991, fundamental labour laws regulating collective bargaining, labour conflicts, minimum wages, wage taxation, working time, trade unions, etc. were passed. Additionally, the Constitution, adopted in 1991, granted the right of every individual to work and outlawed any discrimination on the ground of sex, nationality, race, religion, political opinion, and trade union membership or the lack of it. Hence, freedom of association, collective bargaining and the right to strike were formalised since the beginning of the 1990s.

The centre-right government, which was in power between 1996 and 2000, promoted tripartite dialogue more than had the previous left-wing government. To uphold the social dialogue, a number of tripartite institutions were formally established, such as the Economic and Social Council (CES) (Law No. 109/1997, modified by Law No. 58/2003), the Tripartite Commission of Social Dialogue (Decision No. 89/1997), the National Agency for Employment and Vocational Training (Law No. 145/1998) and the Employment Tribunal. The new tripartite institutions gave legal rights to trade unions and employers associations to be consulted on economic, social and labour policies (e.g. via CES) and also with regard to the implementation of legislation (e.g. the Employment Tribunal). Nevertheless, these newly-created tripartite institutions lacked experienced staff and their effectiveness in practice was reduced (OECD, 2000; Rusu, 2002: 31). Hence, legal support has not been sufficient to engen-

der the actual involvement of the social partners in policy-making and implementation during the transition.

An important institution established in 1991 was the minimum wage. The government determines the minimum wage after consultation with the social partners (Pert and Vasile, 1995: 262) and, after 1993, the minimum wage has been binding on both private and public companies (Law No. 68/1993). Nevertheless, the minimum wage is very low. In 1992, it only covered 68% of the requirements of a minimum living standard (as defined by the Institute of Labour and Social Protection) while by 1995 this had further decreased to 36% (Rusu, 2002: 30). Hence, the minimum wage has a more symbolic role than something which provides real social protection, but it does represent the starting point for collective bargaining for the social partners.

After 1989, unemployment has been recognised and unemployment benefits provided. The legislation entitles the registered unemployed to receive benefit for a maximum of nine months and to access a support allowance for a further eighteen months (Lavigne, 1999: 125). In addition, to facilitate the restructuring process, a system of compensation was introduced after 1991 which entitles employees from restructured state-owned companies to receive severance payments (Pert and Vasile, 1995). Nevertheless, unemployment benefits are lower than the minimum wage, which is itself far from covering the requirements of even a minimum living standard. Therefore, unemployment has been a major issue since 1989.

The weak enforcement of the legislation has been another major issue during the transition period (OECD, 2000). Legislation is not always implemented, not least because there are frequent legal changes, sometimes producing incoherence. Respondents in this study also revealed that the very high payroll tax³ has led to the development of a large informal economy in which workers have no employment contract, while employers who do pay taxes face unfair competition and have to reduce the cost of labour. To improve the implementation of employment regulations, the Law on the Labour Inspectorate was passed in 1999 (No. 130/1999). However, interviewees commented that the low wages of the inspectors and the complex legislation have frequently resulted in the 'bribing' of labour inspectors and the 'selective' enforcement of labour legislation. As a result, the informal sector, where employees have no employment contract and no social benefits, has been on the increase (OECD, 2000).

Labour legislation is still changing in Romania. In 2003, the laws on trade unions⁴ and the CES were modified and a new Labour Code introduced. The Labour Code adopted in 1973 was still in force in 2003, albeit with certain changes and amendments, the main ones of which consisted of the abrogation of the political duties of workers,⁵ the reduction of working time from 48 hours per week to 40 hours (Law No. 95/1990) and the removal of the obligation on employers to ensure employment stability (Decision No. 86/1996). A draft of a new Labour Code was elaborated in 2000, but it took more than two years to be adopted because the government sought to achieve consensus between the trade unions and the employers associations. Besides,

3 Operating at about 60% of wages (OECD, 2000).

4 The main change is that the new law allows employees from different companies to establish a local union. Before 2003, individuals could only join unions from their company.

5 For instance, the obligation of 'socialist education' was part of vocational training.

the external requirements of the European Union (EU) and the ILO appear to have played an important role in shaping the IR system in Romania. For instance, a team comprising two Romanian specialists, one specialist from the ILO and one from the EU drafted the new Labour Code in 2000. In line with the requirements of the EU, the new draft contains a provision to introduce a type of works council, but neither the employers associations nor the trade unions wanted a second channel of employee representation. Finally, in 2003, the social partners agreed that, in companies with more than twenty employees, where none of them is a union member, employees can elect representatives for a period of up to two years to monitor the implementation of employees' rights and to promote employees' interests (Labour Code 2003, Art. 224 in *Raporturi de munca* 2003: 42). The procedure for the adoption of the new Labour Code suggests that the labour legislation has been determined by the responses of the state authorities to external and internal pressures.

In summary, the Romanian state appears to play a similar role in IR to states in western Europe, but its involvement in IR is much higher. Its main roles are as legislator for employment relations, establisher of minimum labour standards and as the third party in tripartite bodies. Additionally, the state is an important employer within the public sector. However, the state continues to intervene strongly in IR, not only because it has had to establish a new legal framework but also due to the inherited legacies and its gradualist approach to the transformation process. Therefore, the new roles during the transition period, along with the communist legacies, have resulted in an interventionist state as far as IR is concerned.

Employers associations

Historical overview

Overall, there was a very weak development of employers associations until 1989. Professional associations emerged after 1866 but until the Law on Professional Associations was adopted in 1924 (Law No. 21/1924) they included both employers and employees (Burloiu, 1997: 366). The process of industrialisation was not very advanced in Romania until 1945, so there were not many private owners to organise. Besides, the Guild Law introduced in 1938, stipulated that the state recognised only one guild for each professional category, including both employers and employees (Burloiu, 1997: 369). The Guild Law was abrogated in 1940, but there was no reason to develop employers associations during the royal regime since trade unions were banned. Furthermore, after 1945 there were no employers associations as there were virtually no private owners. The top managers of the state-owned companies represented their companies in the Chamber of Commerce, but this was a trade association with no role in IR. Its main functions were to promote and support import-export activities of the companies, as companies were not allowed to have direct contracts with foreign companies. Therefore, employers associations were never well consolidated in Romania.

Transition period

The legislative framework adopted after 1989 supported the emergence of employers associations. The organisation, functioning and attributes of employers associations are stipulated by the Constitution of 1991, which warrants the freedom of employers

to form associations, and by the Law on Employers Associations No. 356/2001. According to this law, employers associations should be constituted from companies having similar economic activities. It also stipulates that at least fifteen employers (or companies) are necessary to establish an employers' association, or at least five members in branches where they produce at least 70% of the industrial output. They may be organised alongside branches, industrial sectors or other divisions, such as regions. Two or more employers associations can form a federation, while two or more federations can form a confederation. Furthermore, the Law on Employers associations indicates that employers associations should defend their members' interest *vis-à-vis* the state and trade unions, and should promote co-operation and loyal competition between members. Hence, there is strong statutory intervention in the organisation and functions of employers associations.

This is further confirmed by employers associations having to meet certain legal criteria to be entitled to negotiate collective agreements at the national level. To be representative at the national level, confederations have to include federations of employers associations from at least 21 counties and 25% of industrial sectors, and cover a minimum of 7% of the total labour force. To be representative at the sectoral level, federations should cover at least 10% of the labour force in the appropriate sector. Employers associations are generally interested in becoming representative, as this allows them to participate in the tripartite bodies and increases their legitimacy.

There were twelve representative confederations in 2003 (see Table 1):

- the General Union of Romanian Industrialists – 1903 (*Uniunea Generala a Industriasilor din România 1903*, UGIR 1903)
- the Employers Confederation of Romanian Industry (*Confederația Patronala din Industria României*, CONPIROM)
- the National Council of Romanian Employers (*Consiliul Național al Patronatului Român*, CoNPR)
- the National Council of Romanian Small and Medium-sized Enterprises (*Consiliul National al Întreprinderilor Private Mici si Mijlocii din România*, CNIPMMR)
- the General Union of Romanian Industrialists (*Uniunea Generala a Industriasilor din România*, UGIR)
- the National Union of Romanian Employers (*Uniunea Naționala a Patronatului Român*, UNPR)
- the National Confederation of Romanian Employers (*Confederația Naționala a Patronatului Român*, CNPR)
- Romanian National Employers (*Patronatul Național Român*, PNR)
- the National Union of Romanian Employers with Private Capital, recently renamed Romanian Employers (*Uniunea Naționala a Patronatelor cu Capital Privat din România – Patronatul Roman*, UNPCPR – PR⁶)
- the VITAL Confederation (*Confederația VITAL*)

6 In particular, not to be confused with *Patronatul Roman*, the ill-fated confederation referred to later in the text. As can be seen, many of the Romanian employers associations contain 'Patronatul Roman' in their name as 'patronat' translates as 'employers association'.

Table 1 – Nationally representative employers organisations, 2003

Organisation (membership of CES)	Year of establishment/recognition as representative	No. of member companies	No. of employees of member companies	Membership base	International affiliation
UGIR 1903** (CES member)	1994/1997	7 567	1 850 000	Virtually all sectors	Application for membership of IOE and UNICE
CONPIROM* (CES member)	1992/1996	2 572	1 450 000	11 sectors	–
CoNPR** (CES member)	1992/–	35 000	N/A	Various industries, agriculture and transport	–
CNIPMMR** (CES member)	1990/–	35 000	N/A	Small and medium-sized enterprises	UEAPME, WASME,
UGIR** (CES member)	1992/1998	N/A	325 000	N/A	Co-operation agreements with employers organisations in 19 countries
UNPR (CES member only until 2002)	1991/–	1 712 (affiliated organisations)	493 114	N/A	WASME
CNPR* (CES member)	1992/1997	18 171	477 468	10 sectors	Application for membership of UNICE
PNR** (CES member)	1990/1997	N/A	N/A	N/A	Co-operation with 5 similar organisations from 5 countries
UNPCPR-PR**	2001/2003	NA	N/A	Only private sector	–
Confederația VITAL	1999/1999	2 000	30 000	N/A	–
ARACO	1990/2000	1 180 (plus 140 self-employed)	394 324	15 branches (primarily in the construction industry)	FIEC
CPR	2000/–	N/A	N/A	N/A	IOE

Source: compiled from Ciutacu (2003) and Preda (2004).

* Affiliated to the newly-established Alliance of Employers Confederations of Romania (ACPR) since 2004 ** Affiliated to the newly-established Union of Romanian Employers (URP) since 2004.

IOE – the International Organisation of Employers UNICE – the Union of Industrial and Employers Confederations of Europe UEAPME – the European Association of Craft, Small and Medium-Sized Enterprises WASME – the World Association for Small and Medium Enterprises FIEC – the European Construction Industry Federation

- the Romanian Association of Building Entrepreneurs (*Asociația Română a Antreprenorilor de Construcții*, ARACO)
- the Employers Confederation of Romania (*Confederația Patronatelor din România*, CPR).

As Table 1 shows, employers associations are very fragmented. Many confederations compete for members, as they have members in similar sectors. Few of them have international affiliations. Representative confederations have the legal right to participate in the national tripartite body, CES, and to negotiate the national (trans-sectoral) collective agreement. The number of representative employers confederations increased from five in 2001 to twelve in 2003. Nevertheless, only eight of them are members of CES (see Table 1) and only seven participated in the negotiation of the collective agreement in 2003. Despite formal recognition, the representativeness of certain employers associations is contested by others.⁷ Hence, there was an increase in the fragmentation of employers associations between 2001 and 2003.

A first attempt to merge the five largest confederations was made in December 1995 with support from the International Organisation of Employers (Mihes and Casale, 1999: 277). They signed an agreement to form '*Patronatul Roman*', but confrontations between the divergent interests of private and state-owned enterprises led to a split in the National Confederation of Romanian Employers in 1996. Furthermore, in 1997 officials of *Patronatul Roman* were investigated for corruption (Mihes and Casale 1999: 277). They were not found guilty, but the legitimacy of the organisation declined. Following strong tensions between the members of *Patronatul Roman*, the confederation split up.

In March 2004, eight of the twelve nationally representative employers organisations merged into two new organisations (Preda, 2004). The Alliance of Employers Confederations of Romania (ACPR) brings together two of these organisations, while the other six have created the Union of Romanian Employers (UPR). The ACPR includes the CNPR, CONPIROM and four other organisations that were not nationally representative. Its officials claim that ACPR covers employers that account for 60% of Romanian gross domestic product (GDP) (Preda, 2004). However, the UPR, incorporating UGIR, UGIR 1903, UNPCPR-PR, PNR, CoNPR and CNIPMMR (see Table 1 for details), covering primarily small and medium-sized enterprises, claims that their members produce around two-thirds of the GDP. Their claims cannot be realistic, but it is likely that both organisations have a similar coverage, accounting for less than 50% of GDP, since not all employers associations are covered by the two newly-established organisations and there are many employers that are not organised. The two mergers indicate that employers have started to gather their forces in order to be able to provide an articulated view to government and trade unions.

The development of employers federations at industry and sub-sectoral levels is generally very weak (Ciutacu et al, 2001: 12). It appears that it had not been necessary

7 Empirical research conducted for this study.

for private owners to organise in employers associations because they had generally enough power to negotiate or impose the desired terms and conditions of employment via single employer bargaining at enterprise level.⁸ In the public sector, management often joined company trade unions to lobby the government or ministries for specific 'favours' (e.g. subsidies), being in competition with other companies. Hence, the ambiguous context of the transition hardly provided any incentives for employers to organise.

Initially, the managers of state-owned enterprises established employers associations to protect their interests *vis-à-vis* trade unions and the state. However, given that the state was the real employer, it strongly intervened in the activities of the employers associations (Miheș and Casale, 1999: 275). Furthermore, in their dialogue with trade unions they used to justify the inefficient activities of companies by blaming the incoherent policy of the government. As a result, trade unions preferred to discuss directly with the government when they had any demands (Miheș and Casale, 1999: 276). Also, the lack of employers associations during the communist era, and the very limited development before 1945, are other important factors that induced the weak development after 1989.

Research findings

Empirical evidence produced for this study revealed that Romanian employers associations have had no significant role in the development of IR since 1989. Respondents indicated that the lack of experience and the slow pace of privatisation were the main factors which led to the very weak development of employers associations. Employers considered that employers associations could be useful, but that they needed time to 'grow up'. Trade union officials indicated that they would prefer to deal with stronger employers associations which had a mandate to negotiate collective agreements at national and sectoral levels. According to employers associations officials, there have been some positive developments. Employers associations have negotiated a number of collective agreements, they are a part of the tripartite bodies and they have a lobbying function towards the government. Additionally, employers associations facilitate trade relationships between members and provide them with legal advice. Therefore, despite their weak development, employers associations have started to engage with IR issues.

At company level, respondents indicated that the relationship between employers and/or top managers and employees had not, by and large, changed much since 1989. In particular, there is still a top-down decision-making process, not only because employers and managers preferred to impose unilateral decisions but also because employees await orders and lack initiative. Thus, the findings suggest a large degree of continuity in the autocratic management style.

Evidence revealed that human resources departments have emerged in some Romanian enterprises after 1996, but that the management of human resources is frequently poor. According to respondents, the recruitment of personnel is based more

8 Empirical research conducted for this study.

on nepotism than on competence. Furthermore, top managers rarely promote middle managers, as they fear that middle managers may take their positions. Nevertheless, in multinationals and in certain national private companies, human resource management seems to be done more professionally and competent employees are rewarded with higher wages and promotion. Human resource managers revealed that it is very difficult to have a human resource strategy, in the unstable context of the transition. In state-owned enterprises, managers indicated that they did not know if the company would be privatised or closed down, and hence it was impossible to develop a long-term strategy. The findings therefore indicate a trend towards more professional human resource management only in the private sector.

Summing up, like in other central and eastern European countries, Romanian employers associations are less developed than the trade unions. The slow privatisation process and very high degree of state intervention in IR has made them among the weakest in Eastern Europe. However, at enterprise level, employers and top managers generally have a much stronger position than unions. It appears that this is a main reason why employers have not needed to associate and to develop stronger employers associations. Furthermore, the shadow economy, and the illegal practices of many employers or top managers in state-owned enterprises, has led to an unwillingness to associate (Miheș and Casale, 1999). Following legislation passed in 2001, employers associations have started to restructure in line with the new legal requirements but their transformation remains very slow.

Trade unions

Historical overview

The trade union movement started to develop in Romania at the end of the 19th century. The first legal right to form professional associations was laid down in the Constitution of 1866, but this included both employers and employees (Burloiu, 1997: 366). These associations were transformed into trade unions in 1872, when the General Association of Workers in Romania was founded (Moarcas, 1999: 201). In 1883, unions established the Social Democratic Party, which had an important role in expanding their membership.⁹ However, subsequent to a general strike in 1920, the government outlawed trade unions (Moarcas, 1999: 202). The interdiction did not last long as the Law on Trade Unions was adopted the following year (Law No. 41/1921). This provided legal recognition of the unions and the right to negotiate collective agreements. This law was abrogated in 1938 (when the royal dictatorship was established) and unions were banned until 1944 (Burloiu, 1997: 369). Hence, there was a weak development of the trade union movement until 1945 because the legislation hindered their organisation, as well as the industrial labour force being small (Nelson, 1986: 108-109).

During the communist regime, trade unions covered almost the entire industrial labour force. In 1944, the Central Commission for the Organisation of the United La-

9 It increased from around 8 470 members in 1907 to 90 000 members in 1920 (Centrul de resurse pentru sindicate, 2000).

bour Movement from Romania was created. It established that a trade union should be constituted in each organisation. Additionally, in enterprises with more than fifty employees, an enterprise committee should be established. These developments were included in the Law on Trade Unions, adopted in 1945 (No. 52/1945). The law guaranteed the freedom to join (or not) a trade union but, in practice, employees were indirectly obliged to join to get certain benefits (e.g. housing). Also, those who did not join could be considered as being against the communist regime. As a result, trade union membership increased from 30% in 1945 (519 000 members) to 89% of the industrial labour force in 1954, reaching almost 100% after 1969 (Nelson, 1986: 108). A single confederation covering all unions was created in 1966, named the General Trade Union Confederation of Romania. It represented the hierarchy through which the party exerted its control over industrial labour (Nelson, 1986).

The role of trade unions was strongly influenced by the ideological belief that there were no divergent interests between the state, management and employees (Héthy, 1991: 125; Rusu, 2002: 23). The trade union leadership was part of the party apparatus in Romania (Nelson, 1986: 108), so their main role was to strengthen the supremacy of the party and to ensure that their members obeyed the party's rules. This role of unions, as an instrument in the implementation of Communist Party policies, and having no distinct identity, authority or legitimacy deriving from their members, is often referred as the political 'transmission belt' function (Pravda and Ruble, 1986; Héthy, 1991; Rusu, 2002). In addition, the unions ensured the fulfilment of the central plan at company level and administered in-company social services and welfare institutions, providing cheap holidays, housing and running cultural and sports centres (Ockenga, 1997: 314). Trade unions also dealt with complaints and other individual issues arising in the workplace, but they did not negotiate collective agreements and they had no right to strike (Nelson, 1986: 113). However, there were few strikes during the communist regime; those which did occur were vigorously suppressed and led to more severe control by the security forces at the enterprise level.¹⁰ Therefore, Romanian workers had no autonomous voice before 1989.

Transition period

These communist legacies resulted in a low legitimacy for the unions in 1989 and a lack of experience as autonomous institutions. Unions had neither collective bargaining practice, nor knowledge in fighting for membership and organising, nor participating in democratic elections. Therefore, the post-communist trade unions had to create new identities and to learn new functions, as the central communist union lost its *raison d'être* with the collapse of the communist regime.

After 1989, the organisation, functioning and attributes of the trade unions were regulated primarily by the Constitution of 1991 (which warrants freedom of association), the Labour Code and the Law on Trade Unions (Law No. 54/1991). Based on

10 Miners strikes took place in 1977 and in 1981 in the Jiu Valley and in September 1983 in Maramureş (Nelson, 1986). Also, workers from the Red Star Tractor plant in Braşov struck for higher wages in 1987.

these legal provisions, unions should be independent, professional organisations (constituted from employees working in the same workplace or based on their profession) aiming to defend and promote the professional, social and economic interests of their members, but not their political interests. However, there have been many strikes for political purposes (e.g. miners strikes during the 1990s), arguably supported by the government in power (Croucher, 1998: 27). Therefore, the legal provisions have not necessarily been implemented in practice.

Generally, unions represent employees in collective bargaining. The Law on Collective Labour Agreements (No. 130/1996) gives representative trade unions the right to negotiate collective agreements at national, sectoral (or branch) and company levels. To be representative, trade unions need to have legal status and fulfil a minimal membership condition:

- at the national level, the total number of trade union members must be equivalent to at least five per cent of the entire labour force
- at the sectoral level, a seven per cent membership of the labour force in that particular sector
- at company level, at least one-third of employees should be members.

If there is no (representative) trade union in a company, employees have the legal right to elect (by secret ballot) representatives to negotiate a collective agreement. The right to strike, stipulated in the Law on Collective Labour Disputes, backs up collective bargaining. However, the legislation requires a complex procedure before a strike can be called, including written notice to the Ministry of Labour and Social Protection (Trif and Narosi, 2001: 20-21). Additionally, this law gives union officials the right to represent employees during collective or individual conflicts *vis-à-vis* employers and in the Court of Justice. In summary, the legislation supports trade unions, but it strongly intervenes by regulating their procedural rules and functions.

The legislation also regulates the internal structure of unions. Under the terms of the Law on Trade Unions, each union organisation has to be registered with a court in order to acquire legal status. However, the procedure is not very complex and all workers have the right to join (or not) a trade union. The law allows a minimum fifteen employees to form a union; two unions from the same industry can form a union federation if they jointly have at least sixty members; and two federations can form a confederation. Despite a certain vertical integration, this legal framework has led to a decentralised and fragmented trade union movement (Mihes and Casale, 1999: 274). Nevertheless, the pluralist structure of trade unions may also be an (exaggerated) reaction to the unique trade union structure operating during the communist regime.

At the top level, there are more than twenty national confederations (Mihes and Casale 1999: 274), but only five of them met the representativeness criteria in 2003 (see Table 2).

Table 2 – Nationally representative trade union confederations, 2003

Organisation	Year of establishment	No. of members	Membership base (the main sectors)	Political orientation	International affiliation
CNSLR-Frația	1990	800 000	Relatively balanced in all sectors	Social democrat	ETUC and ICFTU
BNS	1991	375 000	Automotive, chemical and transport industries	Social democrat	ETUC and ICFTU
CSDR	1994	345 000	Education, food industry, cement and textiles	Christian democrat	ETUC and WCL
Cartel Alfa	1990	325 000	Steel and mining industries	Christian democrat	ETUC and WCL
Meridian	1994	170 000	Mining, steel and chemical sectors	Independent	None

Sources: compiled from Preda (2003) and Rusu (2002).

ETUC – the European Trade Union Confederation ICFTU – the International Confederation of Free Trade Unions WCL – the World Confederation of Labour

- *the National Free Trade Union Confederation of Romania – Frația* (CNSLR-Frația) is the largest confederation, covering 33.7% of the total of around two million trade union members.¹¹ It was created in 1993 through a merger of the reformed official union (CNSLR) and a new union (Frația), both confederations initially established in 1990. It includes 48 federations from various industrial sectors and services (e.g. petroleum and telecoms)
- *the National Trade Union Block* (BNS) was created in 1991 and represents 20.6% of all trade union members. It includes 39 union federations representing mainly the machine-building industry, the chemical and oil industry, arts and culture, and transportation
- *the National Democratic Trade Union Confederation of Romania* (CSDR) was created in 1994 as result of a split from CNSLR-Frația and comprises 16.5% of total union membership. It includes 22 federations being mainly represented in the education, health and food sectors
- *the National Trade Union Confederation Cartel Alfa* (CNS-Cartel Alfa) was created in 1990 and represents 16.4% of trade union members. It comprises 29 federations and is represented in various sectors of industry (e.g. steel and mining), services and agriculture

11 The reliability of data may be questionable. Data is provided by the Centre for Trade Union Resources (*Centrul de resurse pentru sindicate*), based on a survey conducted by a tripartite body in 2000. Other authors, such as Croucher (1998: 26) and Rusu (2002: 25) indicate higher membership figures, but they also question the reliability of the data.

- the *Meridian* was created in 1994 and covers 8.9% of all trade union members. It includes 27 federations and is represented mainly in the steel, mining, oil and chemicals industries.

The main goal of all the confederations is to defend and promote the professional, economic and social aims of their members. Their main influence since 1989 has been in the creation of new labour legislation. Table 2 shows that Romanian trade union confederations are affiliated to the ETUC (CNSLR-Frația, BNS, CSDR and Cartel Alfa), the ICFTU (CNSLR-Frația and BNS) and the WCL (Cartel Alfa and CSDR).

Despite the legal provisions that unions should not be involved in politics, three confederations have political affiliations. CNSLR-Frația and BNS support the Social Democrat Party (in power since 2000) while CSDR supports the Christian-Democrats (Rusu, 2002: 26). Initially, BNS had a liberal ideology promoting 'shock-therapy' but it has supported the left-wing party since 2000. As a result of this political affiliation BNS representatives gained two seats in parliament, beside the three members of parliament coming from CNSLR-Frația. The leader of CSDR was appointed Prime Minister between 1996-1998, when a coalition including the Christian-Democrats was in power. Rusu (2002: 26) argues that it appears the ideological split between the Romanian confederations is based on the pragmatic interests of the confederations' leaderships and is not an expression of union members' ideology. Furthermore, these developments indicate that trade union confederations are strongly involved in politics. Trade unions are not subordinated to the political parties but there is still no clear boundary between the trade union movement and the political parties.

Apart from the legislation, the confederations have been involved in establishing minimum terms and conditions of employment via the tripartite bodies and collective bargaining at the national level (Moarcas, 1999). They also provide legal assistance to their members and support the federations in collective bargaining if they require. However, the minimum labour standards are very low and the legal framework often not implemented, so the benefits for employees at the company level are not always visible. Certain functions of the confederations are thus similar to those from developed countries, such as lobbying government or providing legal assistance to members, but they are much more involved in politics than their counterparts in western Europe, which appears to be a continuation of the pre-1989 legacies.

The trade union federations are generally not well-consolidated. Federations are constituted from company trade unions from the same industry. Just two company unions are legally required to form a federation, so they are fragmented and competing (Miheș and Casale, 1999; Rusu, 2002). Additionally, the financial resources available to union federations are very limited. For instance, in the construction sector less than 20% of membership dues goes to the federations and confederations while 80% remains with the company unions (which collect the membership fees) (European Institute for Construction Labour Research 2002: 6). Federations generally deal with industry-specific labour legislation, collective bargaining and professional training. In 1998, twelve industrial sectors were covered by collective agreements, comprising 42.6% of the total labour force.¹² Furthermore, the collective agreements concluded at

the sectoral level establish only the minimum set of terms and conditions in the respective sector, which are often similar to those concluded at the trans-sectoral level.¹³ Therefore, company unions have to negotiate the employment conditions which are effective at the enterprise level.

Company unions are constituted from employees working in the same enterprise or in the same workplace.¹⁴ One or more unions may operate in the same enterprise, but only those covering more than 30% of the labour force have the right to negotiate collective agreements. Apart from concluding and monitoring the implementation of collective agreements, company unions deal with individual issues for their members, depending on their own statutes and resources (Moarcas, 1999). Their financial resources come primarily from their membership fees, which are generally around 1% of salary.¹⁵

Research findings

The empirical findings revealed that there are many problems with the company trade unions. According to a federation official interviewed, only around one-third of company union officials really try to protect employees' interests since most officials are paid by the company. Company union officials indicated that it is very difficult to develop a professional union team at company level because the management offers managerial positions to the best unionists with very attractive conditions. If they refuse the job or continue to support employees' interests, the management finds a reason to dismiss them. Furthermore, union officials revealed that the negotiation of the company collective agreement is very difficult, because wage increases are generally agreed only in exchange for the dismissal of a number of employees. Therefore, company unions are frequently in a weak negotiating position.

In addition, there are several other factors that lead to an ineffective representation of employees' interests by trade unions. Externally, the economic recession and company restructuring (including a massive reduction in personnel) has led to a decrease in trade union power (Rusu, 2002; Clarke et al, 2003). Internally, confederations, federations and company unions have distinctive statutes so there is often a very complicated decision-making process in union hierarchies, inefficient use of financial resources and inadequate promotion of workers' interests.¹⁶ Moreover, there is a lack of trust and communication within trade union hierarchies. My interviewees and other studies (Rusu, 2002; Clarke et al, 2003) indicated that, at the company level, many union officials are still 'tools of management' while, at higher levels, trade union

12 Compiled from Stefanescu, 1999: 528-530; and Codul Muncii 1999: 127-128.

13 See the Collective Agreement 1999/2000 (in Codul Muncii 1999) and the collective agreement 2001-2005 in the chemical sector (in *Contractul colectiv de munca – Ramura chimie si petrochimie 2001-2005*, 2001).

14 Formally, company unions should be independent of the management, hence different from 'yellow unions', but, in practice, they are frequently co-opted by the management, as will be shown in the next section.

15 Empirical research conducted for this study.

16 Empirical research conducted for this study.

leaders use union (con)federations as a springboard to achieve their personal (political) interests. Certain inherited legacies of trade unions from the communist period thus seem to have continued after 1989.

The low effectiveness of trade unions, along with the structural changes, led to a massive reduction in trade union members during the 1990s. Trade union membership decreased from around 90% of the total industrial labour force in 1991 to 77% in 1995 and to 58% in 2000 (Centrul de resurse pentru sindicate, 2000). Another source indicates that trade union density in 2002 was 40-46% of the labour force (Clarke et al, 2003). It is not clear how reliable these union membership data are, but there was certainly a huge decline in membership during the decade. The reasons for the decline are partly due to the specific circumstances of the transition period, such as the emergence of private small and medium-sized enterprises (SMEs) with virtually no trade union representation, the restructuring of all sectors that had over-employment and the closure of many large enterprises. Additionally, as in developed countries, there has been a decrease in the manufacturing sector and an expansion of employment in services and sectors where unions are not well represented. Despite the decline in trade union membership during the 1990s, Romanian unions still have higher membership than in many other central and east European countries.

The findings revealed that, by and large, unions have supported the transformation process and that they have developed an important influence in promoting a pluralist mechanism for establishing terms and conditions of employment at all levels. Interviews indicated that unions generally do not hinder restructuring and privatisation, although they are often against the reduction of personnel. Nevertheless, interviews revealed that only rarely are trade unions consulted about the restructuring process. Also, in the five privatised companies investigated during the study, trade unions were not consulted with regard to the privatisation process. However, respondents mentioned that, in certain companies that have a monopolistic position in the market, such as Tractorul Braşov (which primarily produces tractors) trade unions joined management in stopping the privatisation process. Hence, the findings suggest that, in many companies, unions are not involved in the restructuring process whereas in certain large companies they have collaborated with the management to obstruct the privatisation process.

Summing up, the transition from a centrally-planned economy to a market-based economy has been a very difficult period for trade unions. They have had to protect workers' interests during the transition while supporting the change towards a more efficient economic system that would (hopefully) improve workers' conditions in the long-term. By and large, unions have not obstructed the transformation process, even though restructuring has led to a massive decline in trade union membership. Romanian trade unions, similar to those from other central and east European countries (Gabor, 2000: 13), have faced problems of survival and legitimisation since 1989, but it is true that they have focused more on the political field than on workplace representation. Unions have participated in national public policy formulation via the tripartite bodies or individual positions in the government, although their political participation has only partially resolved the problem of survival and it has not resolved

the problems of internal legitimisation. The Romanian unions have had an important influence in shaping the new labour legislation, but the poor state of the economy, high unemployment and unions' inherited legacies have resulted in a decentralised and fragmented trade union movement, with weak influence at the company level and a low protection of employees' interests in general.

Collective bargaining

Historical overview

Collective bargaining emerged at the beginning of the 20th century in Romania, but was without legal support until 1920, when the Law on Collective Labour Disputes was adopted. This law recognised the right of trade unions to conclude collective agreements and required conciliation and arbitration by state representatives if no agreement was achieved between trade unions and employers. More than two hundred collective agreements were signed every year during the 1920s but about two-thirds were concluded via the arbitration procedure (Moarcas, 1999: 242); voluntary agreements between trade unions and employers were rarely concluded.

To support voluntary collective bargaining, a Law on Collective Labour Contracts was introduced in 1929. This stipulated that the collective agreement should be settled through collective bargaining between employers and/or their representatives and trade unions. Nevertheless, collective agreements were generally concluded only after industrial action took place (Moarcas, 1999). These agreements usually regulated wages, hours of work and holidays (Moarcas 1999: 242). Additionally, they included a number of procedural rules, such as the conditions of implementation; duration and renewal procedures; recruitment; career development; and grievance and disciplinary procedures (Moarcas, 1999). However, the labour legislation adopted in 1941 largely annihilated the possibility of concluding voluntary collective agreements, because it introduced obligatory arbitration in the case of industrial conflict. Therefore, employers and trade unions had little experience of concluding voluntary collective agreements even before the communist period.

During the communist period, trade unions had the legal right to negotiate collective agreements, but no right to strike. The Labour Code of 1950 stipulated that a company collective agreement (covering all employees), should be concluded between a trade union committee and the organisation. This agreement was required to establish the responsibilities of the parties to fulfil the plan and to improve working conditions for employees. The Labour Code of 1973 introduced collective bargaining at sectoral (or branch) level in addition to that at company level. Sectoral agreements were concluded between the specialised ministry and the trade union federation from that particular sector. It covered all employees in the sector, but the main task was very similar to that which applied at the local level, namely to establish the responsibilities of the parties to fulfil the plan. According to expert commentators, it was obligatory to conclude collective agreements although the actual role of collective bargaining was insignificant until 1989 (Burloiu, 1997; Moarcas, 1999; Stefanescu, 1999). In summary, voluntary collective bargaining was never well-established in Ro-

mania and such an inherited legacy had an important influence on the development of collective bargaining after 1989.

Transition period

The pluralist legislation adopted after 1989 entitled the social partners to bargain collectively and gave unions the right to strike. The process of collective bargaining is primarily regulated by the Law on Collective Labour Contracts,¹⁷ which stipulates that collective agreements may be concluded at national, industry (or other sub-division) and at company levels. Specific to the Romanian legislation is that this law requires employers (or top managers) to initiate collective bargaining annually within any company with more than 21 employees. The legislation indicates that all employees in a bargaining unit should be covered by the appropriate collective agreement but it only allows a collective agreement to be concluded in a specific company, sector or trans-sector. It also specifies the representativeness criteria for the trade unions and employers associations at each level (as indicated previously). Thus, the legislation may support collective bargaining but there is a continuation of certain inherited communist legacies, such as a single collective agreement covering all employees.

The persistence of pre-1989 practices is also indicated by other statutory requirements. Firstly, each collective agreement has to be in a written form and registered with a state agency, which shows the perpetuation of the bureaucratic system. Secondly, the legislation specifies a minimal content for the negotiations. It stipulates that each collective agreement should cover at least the issues of wages, working conditions, working hours and holidays (Law No. 143/1997). In addition, it indicates that the provisions included in agreements at lower levels have to be similar, or more favourable, for employees than those agreed at higher levels. In practice, this makes collective agreements concluded at the national and the sectoral levels only minimal frameworks for the negotiation of collective agreements at the company level (Mihes and Casale, 1999). Consequently, collective bargaining is generally decentralised. Nevertheless, the existing legislation indicates that state intervention in collective bargaining is still very strong, primarily due to the inherited legacies.

Research findings

Empirical findings suggest that collective bargaining has become an important mechanism through which terms and conditions of employment are established. Respondents indicated that, generally, wages, social benefits, holidays and working conditions are negotiated between trade unions and employers and, sometimes, the state. Nevertheless, interviewees revealed that, in some companies, the employer imposes the employment contract unilaterally. According to the respondents, individual bargaining takes place formally in most companies, but employees generally just sign the contract established by the management. Essentially, there has been a change in the mechanism for establishing terms and conditions of employment after 1989 away from statutory

17 No.13/1991, amended by Law No. 130/1996 and Law No. 143/1997.

legislation towards collective and individual bargaining, or where terms and conditions are established by the employer.

Respondents revealed a large number of issues related to collective bargaining. Firstly, trade union officials indicated that it is very difficult to obtain genuine financial information from employers. Also, they indicated that, in companies which have financial problems, they have to re-negotiate the minimum agreed at higher levels because employers cannot afford to implement such provisions (although this is illegal). Secondly, employees indicated that many company unions are (still) subordinated to the management, while collective bargaining is just a means to give legitimacy to both parties. Additionally, respondents revealed that SME employers generally do not accept any kind of bargaining with their employees. Thirdly, employers indicated that, due to the lack of financial discipline (e.g. many companies do not pay payroll taxes), they have to minimise labour costs in order to survive. These findings suggest that the ambiguous transition context, along with the inherited legacies, has led to an ineffective collective bargaining mechanism.

Summing up, after 1989, the mechanism for establishing terms and conditions of employment changed from statutory legislation to collective bargaining. The main type of collective bargaining is single employer bargaining at the enterprise level, but there is multi-employer bargaining at national and sectoral levels. Hence, collective bargaining is decentralised, but there is a degree of co-ordination regarding the minimum terms and conditions of employment. Nevertheless, there is strong state intervention in the collective bargaining mechanism, probably because voluntary collective bargaining was never well-consolidated in Romania. Despite the establishment of a collective bargaining mechanism after 1989, its effectiveness in practice has been reduced due to inherited legacies, the economic recession and the increase in the informal sector since 1989.

Conclusion

In the years following 1989, there has been a fundamental change in IR in Romania, from a monopolist to a pluralist approach to IR. The emerging system of IR has new institutions, such as trade unions, employers associations and a collective bargaining mechanism, but the old attitudes of the actors still have an important influence on IR. The study's findings are by and large, in line with empirical studies in other central and east European countries, which suggest that the process of transformation in eastern Europe has not been straightforward and that the economic and political heritage and the enterprise-specific legacies from the communist period are important (Vickerstaff et al, 1998; Pollert, 1999; Martin, 1999; Vickerstaff et al, 2000). Both empirical findings and legislative changes indicate that IR in Romania is in the full process of change, with new and old elements operating side-by-side.

Evidence reveals that the state has a strong influence in IR as legislator and as employer, substantiating other studies elsewhere in central and eastern Europe (Martin, 1997; Vickerstaff and Thirkell, 1997; Pollert, 2000). Findings suggests that the role of the state in IR is more extensive in countries such as Romania, where the overall transition towards a market-based economy is less advanced. Nevertheless, the unstable

and unpredictable environment, with immature and inexperienced social actors, has resulted in higher state intervention in IR throughout central and eastern Europe compared to western Europe.

As regards employers associations, the findings substantiate the statement of an ILO official interviewed in 2000, who indicated that employers associations in central and east European countries are very weak, with the Romanian ones among the weakest. The heterogeneity of employers, particularly in the newly-emerged private sector which often operates somewhere between the formal and the informal sectors, makes it very difficult for employers to agree on a common bargaining position (Lecher and Optenogel, 1995: 403; Tóth, 1997: 341). Employers are generally reluctant to delegate authority to employers associations because they have sufficient power to decide the terms and conditions of employment at the company level. It appears that the slow pace of privatisation in Romania has resulted in higher state intervention in the activities of employers associations than in other central and east European countries. Nevertheless, it is very difficult to evaluate the development of employers associations across central and eastern Europe due to the very limited empirical evidence.

The key changes in the trade union role and structure concern the emergence of a pluralist, more or less independent trade union organisations with voluntary membership and a decentralised organisational structure. After 1989, trade unions had a major role in establishing the labour legislation, they developed a collective bargaining function backed up by the right to strike and have generally supported the restructuring process. Even so, Romanian trade unions have many features of the communist type, such as being co-opted by the management. Furthermore, the trade union federations are a rather loose umbrella of company unions, indicating a weaker development of union federations in central and east European countries compared to western Europe. In certain countries in central and eastern Europe, such as Romania, trade union density is higher than the average in western European countries, even though the institutional development of trade unionism is much poorer. Nevertheless, the evidence in Romania is that, of the three IR actors, trade unions are better developed and closer to those functioning in western Europe than are employers associations or the state, substantiating other studies in central and east Europe.

It appears that the lack of experience with voluntary collective bargaining, the previous unitarist culture and the ambiguous context of the transition has resulted in a very limited effectiveness of collective bargaining in most central and eastern European countries. Evidence in Romania indicates that the minimal frameworks agreed at national and sectoral levels, along with the decentralised system of collective bargaining, has rarely resulted in a positive outcome for the three IR actors. For the state, collective agreements do not ensure an increase in efficiency, as companies with poor performance (which do not implement even the minimal terms and conditions of employment) are neither forced by the state nor by trade unions to go out of business. For employers, it does not always result in a profitable business, although it is possible that it contributes to conflict resolution. For employees, collective bargaining has given them a voice in establishing terms and conditions of employment, but they have generally low wages and high job insecurity. Nevertheless, employees' situation may

be even worse without collective bargaining and trade union representation. Therefore, the empirical findings substantiate previous studies (e.g. Draus, 2002; Lado, 2002) in indicating that the effectiveness of collective bargaining in most central and east European countries is very limited compared to western Europe.

After 45 years during which the party-state determined almost all aspects of employment relations, the strategic choice in Romania, as in all central and east European countries, was to adopt a pluralist legislative framework in which the social partners were guaranteed voluntary association and the right to bargain collectively, backed up by the right to strike. However, these findings reveal that the emerging institutions have retained certain features from the pre-1989 period. In contrast to western Europe, the evidence indicates that state intervention in IR has remained very high, that employers associations are usually very weak and that trade unions have continued to be company-based, as well as strongly involved in politics at the national level. Also, within the precarious transition context of economic recession and increasing unemployment, the effectiveness of labour institutions has generally been very limited, particularly for employees. Nevertheless, it is acknowledged that there is great variety in IR institutions across and within central and east European countries. Overall, the collapse of the communist regime led to the adoption of the major IR institutions operating in western Europe (not least because this was a precondition of joining the EU) but, as the Romanian example indicates, there is a considerable degree of continuity in their structures and functions.

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