



Fourth Study Commission
Public and Social Law

Meeting in Porto, 7 - 10 September 1998

Conclusions
(translated from the original in French)

THE FUNDAMENTAL STRUCTURES GOVERNING WORKING RELATIONS

Negotiations are very important in the working relations between the employees and employers.

In all the member states freedom of association is recognized by the constitution and by law.

Even if generally all forms of organization are permitted (national, regional and sectorial), it is necessary however to note that some countries have only one national trade union with recognized sections whereas in other countries there are various national trade unions with different trends.

It should be considered that multiplicity of trade unions may meet with the interests of the workers.

The trade unions dispose of all the means of action in the framework of existing laws and regulations and benefit from the protection necessary for their legal activity.

Delegates of personnel and business committees are recognized structures in some countries (France, Spain, Belgium, Luxembourg, Israel, Austria, Canada and Taiwan). There are other countries in which there is only one structure (Morocco, Netherlands, Senegal, Italy, Switzerland, Romania and Tanzania).

In Brazil representation is multiform.

These structures sometimes emanate from the internal trade unions of the enterprise, or sometimes from all the employees without distinction. They are sometimes independent from the trade unions or sometimes linked to them.

In certain countries the structures representing the employees are elected for a variable duration (2 years in Senegal and France; 4 years in Spain, Belgium, Netherlands and Austria; 5 years in Luxembourg and 6 years in Morocco). In other countries this choice is made without formalities or time limits.

Where such bodies exist, their members are the mediators between the employees and the direction of the enterprise. They may also serve as a link between the employees and the management of the trade union.

They are responsible for the protection of the material and moral interests of the employees. They may also be authorized to conclude certain work agreements. This is in conformity with the spirit of Art. 6 of the European Social Charter, which states: "In order to assure the effective exercise of the right to collective negotiation the parties commit themselves to favor equal consultation between employees and employers."

The various reports show that all the problems can be solved.

Following the negotiations (made obligatory by all national legislations) the agreements reached are binding for the parties. The other workers may benefit from them if these agreements are registered in the agreements of the establishment or in the collective agreements on condition that these are more favorable for the workers, and are not discriminative and not contrary to public policy.

This is the solution for all countries because it helps to maintain a peaceful social climate.

The agreements reached can be contested by the employers and employees belonging to the category concerned, even if this is foreseen or not in the working contract. It is essential that the clauses are more favorable, the contract being simply a minimum with regard to these clauses.

In the framework of these agreements the trade unions do not have any limitations during negotiations, except that of avoiding discriminatory clauses in any form and provisions which are contrary to public policy.

They are obliged to protect the worker and therefore they have the full responsibility for the defense of the interests of their members (wage claims, advice, training, assignment). Disputes are subject to the rules of prior negotiation, followed in case of failure by legal procedures.

This is the summary of all the reports on the effects of the agreements and on the procedures regarding disputes.

RECOMMENDATIONS

1. In order to ensure social democracy, it is recommended to organize meetings periodically at all levels between employees and employers.
2. The periodical meetings should have the scope of furthering social peace, and above all of maintaining the social achievements, avoiding any type of discrimination.
3. Each party in dispute must have the guarantee of participation in a procedure to settle the conflict.