

# **MANIFESTATIONS OF CORPORATISM IN THE CZECH REPUBLIC**

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**Abstract:**

*This paper examines the (possible) existence of corporatist features of the political system of the Czech Republic. Some attributes of the Czech interest representation system may be, at least formally, regarded as corporatist: above all the existence of a tripartite body for consultations between the state and social partners (The Council of Economic and Social), which provides the main interest groups some access to the decision making process, and the hierarchical structure of trade unions and employers' organizations. The paper compares the case of the Czech Republic with two concepts of tripartism or corporatism in Central and Eastern Europe: David Ost's 'illusory corporatism' and Stephen Padgett's 'corporatism without tripartism'. The aim of the paper is to assess to what extent does the Czech Republic differ from the other Central and Eastern European Countries and to discuss to what extent can be the Czech interest intermediation system regarded as corporatist.*

Eighteen years ago the fall of the communist regimes in Central and Eastern Europe (CEE) started a process of social and economic transformation (or indeed numerous separate processes of transformation) in the region. One of the crucial tasks of the newly democratic (democratizing) states was to promote the creation of a democratic system of interest representation constituting, together with the system of political parties, an integral part of any democratic regime. Even though the CEE countries have established and in most cases even consolidated these systems, the structure of interest representation remains in some aspects rather specific compared with Western Europe. Concerning the legal and institutional frameworks of interest representation, the CEE countries have for the most part adopted existing Western models (typically they have established tripartite institutions and copied legal regulations of interest organizations' existence and operation from their Western counterparts). The actual functioning of the system does not always conform to its Western models, which has inspired several researchers to look for causes and explanations of these differences (Ost 2000, Padgett 1999).

In this paper I will focus on the Czech Republic; one of the CEE countries that, although not exactly manifesting features typical for Western corporatist countries, does to some extent differ from the other post-communist countries in the region. First, I will outline the two concepts or models of Central and Eastern European

corporatism / tripartism presented by David Ost (2000) and Stephen Padgett (1999, 2000). In the next section I will look briefly at the situation in the Czech Republic, the role and position of the Czech tripartite body and the social partners participating in the tripartite negotiations. Since the content of tripartite negotiations is (with exception of brief formal reports of the Plenary Sessions) confidential, it is very difficult to determine the real position and influence of the tripartite institution. For this reason the next section will outline the process of drafting and passing the new Labour Code in 2005 – 2007, a piece of legislation that was vital to all the social partners and a paramount subject matter of the tripartite negotiations. This case study should help to decipher the importance and effectiveness of the tripartite as a means of interest for articulation and promotion of the social partners and vice versa their role in the policy-making process. My aim is to confront the present situation in the Czech Republic with the conclusions drawn by Ost and Padgett about the Central European tripartism and corporatism.

Any debate about corporatism in the post-communist CEE countries seems to lead inevitably to discussing 'the Central European tripartism' while other aspects of interest intermediation are left aside. I believe that this focus on tripartism is to certain degree justifiable (at least in the case of the Czech Republic): Some of the CEE countries have in the early 1990's become inspired by the Austrian model of interest representation and policy concertation and have tried to build up a similar model based on a strong tripartite body - perhaps at first not fully appreciating the political culture and social democratic inclination that usually accompanies this mode of policy making. Although this attempt might have failed utterly and none of the Central European countries have established a system comparable with Austria, in the early years after the revolution some initial enthusiasm for Austrian model was certainly detectable in the Czech Republic – most notably in the statutory creation of a Chamber of Commerce and Chamber of Agriculture with obligatory membership in 1992 by the example of its Austrian neighbour<sup>1</sup>. Austria was a natural model for the Czech Republic due to the common history (including the pre-war existence of formal bodies designed to promote interest representation and consultation between the organized interests and the state) and similar organizational and administrative

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<sup>1</sup> The obligatory membership of the two chambers raised wide dissatisfaction among their actual and potential members and was abolished before the end of 1993.

culture. Irrespective of the actual outcome of the attempts to establish functional tripartite bodies, to regard this process simply as a blind adoption of a Western model and a conscious creation of a “facade of tripartism” (Ost 2000) is in my opinion an oversimplification. The reasons behind the creation of tripartite bodies were manifold, and at least in some cases was the tripartite body initially designed (even if it never fulfilled the expectations) as a genuine institution promoting the creation and functioning of a stable system of organized interests and as a way to incorporate major interest groups into the policy-making process. These bodies were intended as key institutions ensuring that major interests are taken in account and were supposed to be the cornerstones of interest representation in the country. I believe that for this reason the focus on the tripartite when researching the interest intermediation systems of the Central and Eastern Europe is justified, especially when we are concerned with corporatism.<sup>2</sup>

### **Corporatism and tripartism in Central and Eastern Europe**

One of the most elaborated studies of tripartism in Central and Eastern Europe is David Ost’s article *Illusory Corporatism in Eastern Europe: Neo-liberal Tripartism and Post-communist Class Identities* (Ost 2000) in which he focuses on five Central European countries (Hungary, The Czech Republic, Slovakia, Bulgaria and Poland) and discusses why formal inclusion of major interest groups into the decision making process through the tripartite bodies in these countries generates different outcomes than in the West. Ost comes up with the term ‘illusory corporatism’ to describe the situation in the post-communist countries.

“While the facade of tripartism is present throughout the region, with duly constituted commissions holding regular meetings bringing together formal representatives of the state, trade unions, and employers, this is in no position to bring about the politically stabilizing and economically inclusionary class compromise that was West European

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<sup>2</sup> The second possible reason for the tripartite being the centre of most studies in this area is that to focus on a single institution poses much fewer challenges to the researcher than to take into account the system of interest intermediation as a whole – especially in the CEE countries, where in some cases the systems are far from being consolidated (and therefore very heterogeneous and fluid) and data is unreliable and scarce.

neo-corporatist's great achievement. In Eastern Europe, on the contrary, neo-corporatist forms are being used to generate neo-liberal outcomes." (Ost 2000: 504) According to Ost, "tripartism is an indicator of genuine or effective neo-corporatism only if it leads to joint influence on policy making and concrete benefits for labour. Otherwise it signifies only illusory corporatism" (Ost 2000: 508). Illusory corporatism could be characterized by following key features:

- The tripartite bodies are used by the government to rubber-stamp and legitimate neo-liberal policies decided elsewhere.
- Tripartite commissions affect mostly the state sphere. Private owners are barely represented.
- Due to the experience both of communism and of the exit from communism, the labour is inapt to perform its role in an inclusive neo-corporatist arrangement (due to low legitimacy, trade union existence almost solely in state-owned and formerly state-owned enterprises, decentralized organisation of trade union), therefore they are not able to fulfil the basic requirement of corporatism, that is the existence of authoritative representatives of labour committed to representing working class interests, able to command organizational loyalty, and structurally able to pose a convincing threat to make sure they are taken seriously (Ost 2000: 525).

Another view on Central European tripartism was presented by Stephen Padgett (1999, 2000) who used Reutter's (1996) term 'tripartism without corporatism' to describe Central and Eastern European systems of interest intermediation. Drawing on the example of East Germany, Padgett suggests that the CEE countries lack the solidaristic class formation on which macro-corporatism rests. Business organizations are fragmented along the lines of corporate ownership, company size and profitability and the cleavage structure of post-communist society is not favourable to the essentially bi-polar configuration of class interests postulated by the corporatist model. This absence of social foundations is reflected in the organizational weakness of the social partners (Padgett 2000: 139). According to Padgett, following features define the style of the CEE tripartism:

- Business organizations' presence in tripartite institutions is often little more than symbolic.
- Trade unions are organisationally weak which is manifested in competition between rival union confederations, disagreements between the national headquarters and local branches and weak membership ties.
- Absence of the ideological bonds between trade unions and parties of the left.
- Economic weakness undermines the stability of tripartite arrangements.

While differing from each other especially in the emphasis laid on particular features, the two models have, quite naturally, points in common. Both Ost and Padgett call attention to the inability of the social partners to fulfill their role in the tripartite institution according to the corporatist standards due to their structural and organizational weakness and low legitimacy. Padgett claims that the employers' organization participation in the tripartite bodies is extremely low and almost symbolic. Ost too maintains that private owners are barely represented in the tripartite. Padgett further emphasizes the missing economic preconditions to functional corporatist arrangements (which is strongly connected with the weakness of the social partners) and missing ideological links of the trade unions with a social democratic (or other left-wing) party. The core of both arguments (although Ost puts it forward more explicitly) is that the tripartite bodies have no real influence and even though they are a formal part of the decision making, there is no real decision making within the bodies.

### **The Council of Economic and Social Agreement of the Czech Republic**

The Czech national tripartite institution, The Council of Economic and Social Agreement (RHSD), has been functioning since 1990, first as a national tripartite body within the Czech-Slovak Federation and since 1993 as the sole top national tripartite body. The establishment of a tripartite body was initiated by the government and strongly supported by the trade unions. The Council first focused only on collective bargaining which both trade unions and employers regarded as insufficient. During the first month of the Council's existence the social partners achieved the widening of the scope of its activity on economic, social and other issues. There have been several changes to its name, as well as in the statutes during the 1990's. They

were most often concerned with the 'representativeness criteria' (the conditions under which a socioeconomic interest organization can become a member of the tripartite council). Overall, the formal role and legal position in the political system have not changed significantly since its foundation.

RHSD is an official, though not statutory, consultative body of the Czech government. The scope of issues covered by the tripartite consultations is enumerated in its statutes and concerns not only social and economic questions directly connected to industrial relations, such as working conditions of wage levels, but also economic policy, public service, and the position of the Czech Republic within the EU.

**Table 1 – List of issues covered by the tripartite consultation**

<i>Economic policy</i>
<i>Employees' rights, collective bargaining and employment</i>
<i>Social issues</i>
<i>Wages and remunerations</i>
<i>Public services and public administrations</i>
<i>Safety at work</i>
<i>Human resource development and training</i>
<i>Position of Czech Republic in EU</i>

Source: Vláda České republiky: RHSD

As we can see, the issue areas are rather broadly-defined: Especially economic policy, social issues and position of Czech Republic in EU can cover almost anything the government chooses to consult the social partners or the social partners manage to push through as a matter that requires to consultation at the Council. Generally speaking, the RHSD has two main functions: It is an institutionalized platform for negotiating between the labour and employers and also as a platform for negotiating between the major socioeconomic groups and the government. The first function obviously concerns primarily industrial relations and its impact on the political process is limited; the second is crucial for assessing the level and mode of corporatist arrangements in the state.

As in most other European countries, the Czech tripartite has no legal power to enforce its decisions. The Council's role in the Czech Republic is strictly consultative without even being an official part of the comment procedure. Although its members

are obligatorily asked to comment on draft bills concerning their domain, the RHSD has no such privilege. RHSD's actual influence has fluctuated over the years, because it is dependent more on the current political setting than on the formal aspects of its existence. The tripartite is favoured by governments formed or led by the social democrats, whereas its role seems to diminish in the periods of conservative governments. Regardless of the incumbent government, the Council generally provides concerned interest groups important access to information, and enables them to present their position to their counterparts and the government.

The organizational structure of the RHSD is analogous to other European tripartite bodies. Its top negotiation body is the Plenary Session with eight governmental representatives, seven trade unionists and seven employers' representatives. Between the Plenary Sessions (there have been four sessions in 2006) the executive body of the Council is the Presidium consisting of four members – the Prime Minister, the Minister of Labour and Social Affairs, the president of the stronger employers' federation SP ČR and the president of larger trade union federation ČMKOS. Labour and employers are therefore represented respectively by the president of the strongest trade union / employers' federation who acts (at least formally) as a representative for labour and employers as a whole.

The Council also has a number of permanent expert bodies or working teams dealing with specific issue areas (see table 2), where most of the actual work is carried out.

***Table 2 - List of commissions and working bodies***

<i>Working Team for Tripartite and Organisational Matters</i>
<i>Working Team for Public Services and Public Administration</i>
<i>Working Team for Education and Human Resources</i>
<i>Working Team for Social Issues</i>
<i>Working Team for Work Safety</i>
<i>Working Team for the EU</i>
<i>Working Team for Economic Policy</i>
<i>Working Team for Wages, Remunerations and Related Matters</i>
<i>Working Team for Employees' Rights, Collective Bargaining and Employment</i>
<i>Working Group for Taxation and Insurance</i>
<i>Working Group for the Concept of Pension Reform</i>

*Working Group for Cultural Matters*

*Working Group for Cooperation with ELO*

*Working Group for Regional Development*

*Working Group for Healthcare*

*Working Group for Domestic Market Protection*

*Working Group for Issues of Regional Industrial Restructuring*

*Working Group for Amendment of the RHSD ČR Statute and Rules of Procedure*

*Commission for Transport*

Source: Vláda České republiky: RHSD

Conclusions of each Plenary Session, Presidency or working group meeting have to be approved by all its members; naturally there is no voting procedure due to this unanimity rule. Most materials relating to the tripartite negotiations are confidential and the only source of information about the tripartite bodies' actual operation are very brief and little informative summaries of plenary sessions available on the internet and the information the Council's members themselves choose to provide to the public. Since both sources of information are somewhat scarce and selective, it is rather tricky to determine the extent to which the government takes into account the social partners' view and requirements, especially when it is not always in the interest of the interest organizations to make all their demands or their full positions public.

### **Members**

The first statute of the tripartite Council did not set any criteria for membership of neither employers nor trade unions but it explicitly enumerated three organizations participating in the tripartite negotiations (Czech-Moravian Confederation of Trade Unions - ČMKOS, Confederation of Arts and Culture - KUK, Council of Entrepreneur Unions and Associations of the Czech Republic – KORP later renamed to Confederation of Employers' and Entrepreneurs' Associations of the Czech Republic - KZPS). It was the new statute in 1996 that set up the representativeness criteria for organizations participating on the top level tripartite negotiations. The criteria were introduced among other things to enable the SP ČR (the strongest business / employers' organization) to participate in the negotiations independently after its secession from the KZPS in 1995. So far the last change to the statutes came in

2000 and involved another change of representativeness criteria: to become a member of the Council a trade union organization has to be independent of the government and employers, have a confederation structure, nation-wide scope of activities and prove the membership of at least 150 000 organised members. The employers' organization has to have a nation-wide scope of activities, not engage in political activities within the meaning of the Act on Political Parties and Movements and prove the employment of minimum 200 000 employees in its organisations (Status of the RHSD).

Since the last change of statutes in 2000, two organisations represent the employers, and two trade union federations represent labour. Out of seven deputies representing the trade unions in the RHSD, six come from the dominant trade union federation ČMKOS, which comprises approximately 70% of all trade union members. The second federation, ASO is a splinter organization of the ČMKOS created in 1995. It replaced the previous junior trade union member of the tripartite, the Confederation of Art and Culture (KUK), after the change of RHSD statutes in 2000 when KUK was no longer able to fulfil the new minimum of 150 000 members. At present the two trade union federations in the RHSD represent approximately 1,100 000 trade unionists, out of the 1 280 000 trade union members in the Czech Republic<sup>3</sup>.

Due to the obvious dominance of ČMKOS is the relationship between the two trade union federations represented in the tripartite body rather unbalanced. ČMKOS constitutes the main partner both for the government and employers. Its influence results not only from its relatively large membership base but also from its close ideological and personal links with one of the two strongest parliamentary parties, the ČSSD. The ideological affinity of the trade union organization with the social democratic party has been manifested many times over the years: probably most notably during the preparation and passing of the new Labour Code. Personal ties are prominently manifested in the persons of the president of ČMKOS Milan Štěch, who is both a member of the ČSSD and a senator for this party. His predecessor

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<sup>3</sup> To determine the size of the membership base of trade union federations as well as employers' organizations in the Czech Republic is rather tricky, because neither of the organizations have legal duty to provide information on the size of the membership base. Especially the number provided by the trade unions should therefore be treated with caution, because it includes non-active members (retirees who remain union members but do not in any way participate in their activities). It is virtually impossible to determine what proportion of the membership base is made up of non-active members, but the number could be rather significant. The data provide here come from following sources: Hála et al. 2002, Vašková et al. 2005, ČMKOS: O ČMKOS.

Richard Falbr IS also a ČSSD member, former Social Democratic senator and at the moment Member of the European Parliament for the same party.

On the employers' side, two organizations are members of the RHSD: the Confederation of Industry and Transport CR (SP ČR), and the Confederation of Industry and Transport (KZPS). While KZPS is primarily an employers' organization, the SP ČR is a typical business organization representing its members in collective bargaining and other activities. This naturally increases its relevance and its potential to achieve its demands and SP ČR is the more influential of the two organizations. Although both organizations are formally independent, they closely collaborate and SP ČR has co-operation agreements with several member associations of KZPS. KZPS has eight member organizations which associate 76 firms. SP CR has 26 branch associations. According to Kunc and Hartoš (2005) branch associations of the SP ČR represent about 1600 firms and almost 100 other firms are direct members of the Confederation. Reliable and up-to-date data on how many employees their affiliates cover is unavailable either for the KZPS or the SP ČR, but the number could be about 600 000 employees for each federation. The Czech Statistical Office estimated employer density at 32% of employees at the end of 2004 (EUROOnline 2007).<sup>4</sup>

To conclude, the tripartite institution in the Czech Republic is functioning as consistent with its legal framework and it is likely to remain so. None of the parliamentary parties or social partners have so far expressed their intention to abolish the Council and demands to significantly restructure or considerably change the position of the Council in the political system are rather rare. The only recent comment on this matter was that of the Civic Democrat, the Prime Minister Topolánek, who claimed that the Chamber of Commerce should become part of the RHSD (Topolánek 2007). Inclusion of the Chamber of Commerce would probably have rather significant formal and actual consequences – it would mean that an organization that is not a social partner (Czech Chamber of Commerce is not an employers' organization) would become part of the tripartite, which is in the least against its current statutes. On the other hand, such move would not be without logic, since the scope of RHSD's activities is much wider than employment and working

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<sup>4</sup> [http://www.eurofound.europa.eu/eiro/country/czech%20Republic\\_3.html](http://www.eurofound.europa.eu/eiro/country/czech%20Republic_3.html)

conditions issues and Chamber of Commerce is (together with SP ČR) the most powerful business organization in the Czech Republic. Its becoming a member of the RHSD would therefore probably shift its role and position, but it would more likely to raise than reduce its importance.

## **Labour Code Act**

One of the key issues negotiated by the tripartite during the years 2005 and 2006 was the draft of a new labour code. The new Labour Code Act was proposed in order to replace the obsolete labour code dating back to the 1960's. Even though this Labour Code has been frequently amended since the early 1990's (28 amendments between the year 1989 and 2005) it was by general consensus regarded as cumbersome and unsuitable. All five parliamentary parties<sup>5</sup> shared this opinion together with the trade unions and employers' organizations, but their views on the actual version of the new law differed significantly. The draft Labour Code thus not only became one of the key issues for the tripartite negotiations, but also a part of the election campaign of the 2006 parliamentary elections. The draft had been in preparation for several years and its final version had been created by the Ministry of Labour and Social Affairs led by the social democrat and former union leader Zdeněk Škromach.

The draft was approved by the government in September 2005 despite inner opposition of the two smaller coalition partners of the dominant ČSSD, the KDU-ČSL and US-DEU. Among the most criticised sections of the draft law was the provision enabling the enterprise's strongest trade union organization to negotiate collective agreement with the employer without reference to other trade union organizations – this was criticised mainly by the smaller trade union federations (the Engine-drivers' Federation of the Czech Republic even organized a demonstration against this provision). Another widely criticised point was the right of the trade union organization for production stoppage in case of serious compromise of work safety. The disputes over the draft law were both over ideological (with KSČM, ČSSD and majority of the trade unions on one side and ODS, employers' organizations and partly the KDU-

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<sup>5</sup> Czech Social Democratic Party (ČSSD), Civic Democratic Party (ODS), Communist Party of Bohemia and Moravia (KSČM), Christian Democratic Union – Czechoslovak People's Party (KDU-ČSL), Freedom Union-Democratic Union (US-DEU).

ČSL and US-DEU on the other) and technical matters. The Civic Democrat Party claimed that the draft law included over 80 mistakes of administrative, grammatical and technical nature (Nečas 2006). The leftist bloc of the draft's supporters admitted such deficiencies but its priority was to pass the law as soon as possible even with the above mentioned shortcomings.

The draft bill was vetoed first by the Senate and then by the President, but ČSSD and KSČM managed to get over the veto both times and the law was passed by 106 votes while 101 would have been sufficient. In November 2006 Members of Parliament from ODS, the Greens and KDU-ČSL submitted a constitutional complaint claiming that the draft bill was in violation of the Constitution. Second constitutional complaint was submitted by the Chamber of Commerce of the Czech Republic (HK ČR)<sup>6</sup>.

### ***The role of the trade unions and employers***

In 2005 all tripartite members were invited by the government dominated by the ČSSD to take part in preparing the draft bill of the Labour Code. Both employers' organizations rejected this offer. Their motivation could be twofold: due to the close relation between the ČSSD and the main trade union organization ČMKOS, employers' influence on the final version of the draft bill would probably be marginal, while they would have to share responsibility for the final version of the draft. Second motivation could be the effort to postpone the finalization of the draft until after the 2006 parliamentary elections, when a new conservative government was likely to come into power.

On the other hand, both tripartite members representing the labour, the ČMKOS and ASO, participated in the preparations and the ČMKOS strongly supported the draft throughout the process of the passage of the bill. In November 2005 trade unions actually organized a demonstration in support of the draft bill - around 30,000 trade unionists came to Prague to show their support for the new legislation. ASO supported the draft with the exception of the regulation favouring the stronger trade union organization in the enterprise.

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<sup>6</sup> Until August 2007 the Constitutional Court has not issued a decision on neither of the complaints.

When the draft bill worked up by the Social Democrats and trade unions was finally made public in summer 2005, employers' organizations unsurprisingly became its strongest opponents together with the ODS. SP ČR and KZPS, the two members of the tripartite representing employers, together with the influential Association of Building Entrepreneurs of the Czech Republic issued a joint statement regarding the draft bill. According to the employers the draft bill provided excessive protection to the employees accompanied by high costs to the employers. In the employers' view the draft didn't fulfill the basic requirements of a modern and liberal text (Stanovisko zaměstnavatelských svazů k novele Zákoníku práce). At first employers proposed to postpone the preparation of a new Labour Code for at least two years until the new Civil Code is supposed to be enacted. This would mean to completely rewrite the draft in two years' time, probably by the conservative government with much higher influence of employers themselves. Neither employers' organizations nor the parties opposing the draft bill had enough influence to put their concepts through. It was clear that the leftist bloc was strong enough to vote the new Labour Code through the Parliament so the opposing political parties and organizations at least tried to postpone its validity till November 2007 instead of January 2007. Meanwhile, most technical mistakes and inaccuracies could be removed from the text. ČMKOS on the other hand strictly refused to discuss the postponement of the Labour Code validity, clearly afraid that any delay may lead to significant material changes in the text – any such change was almost sure to be disadvantageous for ČMKOS' members.

The draft law was dealt by the tripartite organization RHSD throughout the 2005, twice in 2006 in the plenary session and regularly in the Working Team for Employees' Rights, Collective Bargaining and Employment. Until September 2006 there was a clear and strong coalition between the government representatives headed by the Social Democratic Minister of Labour and Social Affairs and the ČMKOS, which effectively prevented the other trade union organization ASO and the employers' organizations to obtain any meaningful concessions. In September 2006 the new Topolánek's conservative government came into office and the Civic Democrat Petr Nečas became the new Minister of Labour and Social Affairs. One of his priorities after assuming the office was to postpone the time when the Labour Code came into force for at least several month. However, with the government

lacking clear majority in the Chamber of Deputies<sup>7</sup> this proved to be virtually impossible. While the employers' organizations agreed instantly, ČMKOS as well as other trade unions federations and organizations (somewhat surprisingly including ASO) strictly refused the idea of delaying the introduction of the legislation. The largest single trade union KOVO - a member of the ČMKOS and also one of the most active trade unions in the Czech Republic in terms of issued public statements and organized demonstrations and strikes of their members - called for demonstration for 25<sup>th</sup> November 2007 to support the Labour Code and demonstrate their refusal to defer its introduction.

Extraordinary session of the RHSD was consequently called to order by the Minister of Labour and Social Affairs Nečas who proposed a compromise solution to defer the introduction of the Labour Code by three month and meanwhile improve its technical quality. He also guaranteed there would be no material changes in the text. Trade unions turned down this offer and consequently forced the Minister to admit to the media that the new Labour Code would have to be introduced by January 1<sup>st</sup> 2007 (Kadečková 2006). The left-wing parliamentary parties supporting the new Labour Code would have agreed to put off the legislation's introduction only if the government managed to negotiate such move with the trade unions.

The new Labour Code was enacted by January 1<sup>st</sup> 2007 and continues to be highly controversial. In June 2007, bilateral negotiations between ČMKOS and SP ČR led to an agreement listing most striking technical mistakes that should be removed from the Labour Code by the new amendment proposed by the Ministry of Labour and Social Affairs. This first ever agreement between the two most powerful tripartite members was negotiated outside the RHSD, without participation of either government or the smaller Council members ASO and KZPS (Svaz průmyslu a dopravy 2007). Although such an agreement is unprecedented, it should not be overrated as it represents only minimal consensus on technical matters and does not stop either organization from further pursuing their antagonistic goals: While ČMKOS still strongly supports the current version of the Labour Code, the SP ČR demands a brand new piece of legislation and even criticises minister Nečas for proposing only technical amendments to the Labour Code (the Ministry claims to be waiting with any

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<sup>7</sup>The government depended on two ex-social democratic deputies, who agreed to support the government but were not prepared to back up the notion to postpone the enforcement of the Labour Code.

significant material amendments until the Constitutional Court issues a decision over the constitutionality of the now valid Labour Code).

### **The Czech Republic: ‘Tripartism without Corporatism’ Or ‘Illusory Corporatism’?**

Both Padgett (2000) and Ost (2000) have admitted that the Czech Republic is in some respects different from the other CEE countries due to its somewhat better economic conditions during the 1990’s and consequential existence of more stable tripartism. On the other hand, neither of them thought this difference sufficiently significant to exclude the country from other CEE countries. According to these scholars the ‘tripartism without corporatism’ or ‘illusory corporatism’ should be found in the Czech Republic as well. We will now therefore take a closer look on the key features of these two models and try to assess to what extent does the case of the Czech Republic comport with these interpretations of the CEE models.

The first point concerns the actors; the social partners: Both Padgett and Ost acknowledge higher level of centralization of the Czech trade unions compared with other CEE countries. In fact, the major trade union federation, the ČMKOS, affiliates about 70% of all trade union members in the country. It is the best known and most powerful of all trade union federations and its influence is somewhat disproportionate even to the relative number of its members – for example out of the seven representatives of labour in the RHSD, six are delegates of the ČMKOS – that is almost 86% of seats held by a federation representing 70% of trade union members. The ČMKOS has also managed to build the position of the main partner of the government whenever labour issues are at stake - this fact further strengthens it over the other federations. Its inner organization is rather centralized with strong national headquarters and prominent position of the president, who has always been a well known and influential public figure. Although ČMKOS is far from being the only trade union federation in the country, it is certainly the dominant one. Some competition between the federations exists, but is not very significant: The smaller federations rarely (if ever) manage to promote their interests over ČMKOS’ or even to weaken its position by their opposition. This was very clear during the adoption of the new Labour Code which favours the largest trade union organization in the company

(which is usually a ČMKOS affiliate) over the smaller ones. Even though ASO participated in the drafting of the legislation it did not manage to eliminate this – from its point of view – highly unfavourable provision of the law.

In the case of the Czech Republic, structural or organizational weakness is not the main problem of trade unions. The trade unions are active and frequently appear in the nation-wide media. They have managed to gain several important and highly publicized victories on the company level (e.g. in the media highly promoted successful strike of employees of the car company Škoda Holding a.s. in the spring of 2007), which has raised the public awareness (though not necessarily sympathy) about the trade unions' function and influence. The federations, especially ČMKOS, have also good ability to mobilize their members and are able to organize strikes or demonstrations with participation of tens of thousands trade unionists. On the other hand, just as in the case of all the other CEE countries, the legitimacy of trade unions is rather low, its membership base is declining and the support of the public is low<sup>8</sup>. Whereas the declining membership is a Europe-wide problem present even in 'traditional' corporatist countries, low legitimacy is typical for post-communist countries and in this respect the Czech Republic does not differ from other countries in the region.

Employers' organizations have emerged shortly after 1989 and KZPS has been from the start active member of the RHSD, even if it was not as enthusiastic as its trade unionist counterparts. In the early 1990's employers together with the trade unions successfully put pressure on the government to widen the scope of the RHSD's activities. At the moment the employer density is not very high (around 30 %) but the two organizations participating in the tripartite negotiations, and especially SP ČR, represent almost all large employers in the country. Therefore we can talk neither about employers' presence in the tripartite body being only symbolic, nor about the absence of representatives of the private sector as Ost and Padgett suggest. The social partners in the Czech Republic therefore differ from the notion of a typical CEE organization and seem to be more apt to play a role of a partner to the government in a corporatist arrangement. The greatest hindrance on the part of the social partners is their low public legitimacy, which they share with other economic organizations in the CEE region.

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<sup>8</sup> The level of public confidence in the trade unions oscillates between 30-40%. For more precise information see Vašková et al. 2005.

Another point made by Padgett concerns the missing ideological bonds between the CEE trade unions and left-wing parties. This is certainly not the case of the Czech Republic, since especially the largest trade union federation ČMKOS is a close ally of the ČSSD. Apart from the ideological affinity manifested frequently in the last fifteen years (especially in connection to new legislation on social and economic issues) there is also a strong personal connection between the two organizations.

The last of Padgett's claims, the economic weakness undermining the stability of tripartite arrangements, is very hard to verify in the Czech Republic. The tripartite negotiations are confidential and it is therefore virtually impossible to judge whether economic conditions undermine the tripartite institutions' stability by making it impossible (as Padgett suggests) for the government to carry out the trade-offs concluded during the negotiations: We simply do not know what these trade-offs are. On the other hand Padgett himself as well as Ost points out that due to its better economic conditions the Czech Republic is the only Central European country with stable tripartism. In fact, Padgett himself excludes the Czech Republic from the other CEE countries on this point.

From what we have so far seen, the Czech Republic does not fit the models of 'illusory corporatism' and 'tripartism without corporatism'. With the exception of only one point, the low legitimacy of trade unions and employers' organizations, it is not the typical CEE country as described by Ost and Padgett. Despite the low legitimacy, the trade unions manage to play their role in the tripartite negotiations and play it relatively well – they are by no means insignificant partners of the government and – as we have seen in the case of the Labour Code – are very well able to influence the decision making in the domains directly concerning the labour. The fundamental structural preconditions (organizations and operability of the social partners, legal framework of the tripartite negotiations, relative economic stability) in the Czech Republic seem to be rather favourable to corporatist arrangements. Despite this, the process of adoption of the new Labour Code clearly shows that the influence of the social partners channelled through the formal structures, mainly the tripartite institution, is considered insufficient by the interest groups.

Even though the draft of the Labour Code was presented and negotiated in the tripartite body and its members were invited to participate in the preparation of the draft, both trade unions and employers have employed number of other strategies (apart from the tripartite negotiations) to promote their interests. The employers have

turned down the offer to participate in the drafting process in the RHSD clearly fearing that it would not provide them sufficient influence on the final version of the draft. Both employers' groups have therefore preferred lobbying, cooperation with the ideologically more affined (compared with the governmental Social Democrats) opposition parties and appealing to the public through the media. After the parliamentary elections in 2006 employers showed much more willingness to negotiate in the tripartite body because the appointment of a new conservative government increased its chances to achieve its goals against the trade unions. The trade unions, especially the ČMKOS, on the other hand took the opportunity to be a part of the drafting process and clearly succeeded to promote their views - the final version of the text is very much to their satisfaction. They have, however, employed other strategies apart from participating in the tripartite (or in some stages bipartite) negotiations with the government and employers. Even during the period of the Social Democratic Ministry of Labour and Social Affairs the trade unions tried to promote the interest of their members by other ways, including a 30,000 strong demonstration in support of the draft bill. It is therefore clear that both social partners treat the tripartite body only as one of many ways to promote their interests.

From the government's point of view, at least in the domains directly connected to labour law and other employment issues, the RHSD is an institution that has to be taken into account. Even though it is not an official part of the comment procedures, legislation connected to employment issues, social policy and to a large extent also economic policy is negotiated in the tripartite. As the case of the Labour Act and especially the negotiations about the postponement of its introduction in 2006 clearly shows, the RHSD is not, as Ost puts it, used by the government to rubber-stamp and legitimize policies decided elsewhere<sup>9</sup>. In September 2006 would only consensus reached in the tripartite Council enable the new Minister of Labour and Social Affairs to defer the introduction of the Labour Code.

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<sup>9</sup> Ost actually claims that the government uses the tripartite bodies to rubber-stamp *neo-liberal* policies: we can hardly speak about neo-liberal policies in the Czech Republic after 1998, when the CSSD won the election and even before 1998 is such assertion debatable due to the remaining relatively high level of redistribution, state-financed education and health service. Therefore we can focus on the core of the argument, that is the existence of the 'facade of tripartism', functioning of a tripartite institution with no real influence or decision making power.

## Conclusion

At first glance, the formal arrangements and even the functioning of the tripartism in the Czech Republic is a standard corporatist arrangement exceptional in the CEE region. Although Czech tripartism clearly differs from the ones in other post-communist countries, when we take a closer look at the functioning of the system, we realize that there is also a crucial difference between the apparent corporatist arrangements of the Czech Republic and Western European corporatist ones. While in the traditional corporatist countries such as Norway or Austria the structural corporatist arrangements accompanied by corresponding political culture regarding social compromise and policy concertation reached through the tripartite negotiations as a democratic value such political culture seems to be lacking in the Czech Republic. The government has to take the RHSD into account not to enhance the legitimacy of the decision and policy making process, but because its members, the social partners, are sufficiently influential to not be overlooked. The social partners negotiating with the government and each other in the tripartite body are seldom able to reach a compromise unless the circumstances force them (as was the case of the agreement between the SP ČR and ČMKOS in spring 2007 when the technical deficiencies of the new Labour Code became too cumbersome to be ignored). They use the tripartite body to gain information, present their positions and manifest their influence, build up and maintained elsewhere. Czech governments on the other hand use the RHSD as a platform to negotiate with the trade unions and the employers to mitigate their opposition to controversial legislation, sound their positions and obtain technical or expert information. The main goal of all the actors of the negotiations is not to reach a compromise, but to do their best to promote their members' interests on this platform. If they are not successful they move to other - more demanding, less desirable or less popular - strategies to achieve their goals.

I believe that Czech Republic does not fit either 'illusory tripartism' or 'tripartism without corporatism' model presented in the first part of this paper. From the structural view, there are some manifestations of corporatism present in the Czech system, including the structural preconditions of corporatism that lack in most other CEE post-communist countries; namely the existence of sufficiently representative social partners able to meaningfully participate in policy concertation process. However, the prevalent political culture and the attitudes of the system's key players

seem to be more or less incompatible with corporatism as seen in Western Europe. While in this respect, the Czech Republic fits between the other CEE countries but it still shows higher level of stability and significance of tripartism than can be found in most political systems in the region. Whether the emphasis on political compromise and policy concentration will increase in time and the Czech system of interest intermediation will shift further towards corporatism remains at this moment an open question.

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