Editorial

The right to industrial action affects the balance of power between labour and capital in a given society. However, in the new EU Member States of Estonia, Latvia and Lithuania, the right to strike is a neglected aspect of legislative reform. In their paper, Daiva Petrylaite and Charles Woolfson suggest a tension, on the one hand, between the endorsement of free collective bargaining as integral to post-communist democratic transformation, and on the other hand, domestic exigencies, as perceived by business and political elites, for social peace and the disempowerment of labour as an independent actor. They highlight the paradox that the European Community lacks legislative competences, despite the declared endorsement of the fundamental right to withdraw labour.

Another central aspect of collective labour law in an economy of ever increasing importance is discussed by Anna Tsui and Anne Carver. They report on case studies in the electronics and telecommunications industry of the Shenzhen Economic Zone in China, examining the characteristics of collective consultation and contracts, and industrial relations in this emerging labour market. Mostly confined to large state-sector and some large foreign enterprises, collective consultation reflects a consensual approach with the presumption of equal status between the parties. While the role of trade unions remains ambiguous in the state sector and larger foreign companies, smaller foreign and private enterprises are hostile to trade unions and collective agreements. Workplace industrial relations are neither pluralistic nor tripartite. The authors argue that the hybrid blending of capitalist and socialist institutions is associated with continued government control and the integration of official trade unions into management, effectively preventing collective consultation or bargaining from regulating industrial relations.

The balance of power between government and corporate organisations is also discussed by Tymen J. van der Ploeg, with reference to the Dutch economy and society. He argues that legal mechanisms regulating the powers of government and non-governmental organisations in the statutory organisation of industry, generally referred to in Dutch as PBO-boards, can provide an adequate balance of power without detriment to the legitimacy of representative government.

Material rights, however, are of little value if not accompanied by procedural rights. This is why Ramapriya Gopalakrishnan and Lisa Tortell examine a provision of the Indian Industrial Dispute Act 1947, by

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which individual workers and their trade unions need a government decision to refer a particular grievance to adjudication before they are entitled to have the matter heard by a court or tribunal. Providing a description of the legislative, judicial and international context, and an assessment of the justifications for the existence of the requirement, they argue for an amendment of the Act, to ensure that workers and trade unions enjoy the same rights to justice as other individuals in India.

Matters of health and safety are the focus of the next two contributions: Stephen Hardy considers the question of whether the harmonisation of working time in an enlarged EU is a case of failed 'humanisation'. He examines the implementation of the Working Time Directive in the various EU Member States' labour markets. Based on an examination of pre-existing provisions and practices, he suggests that due to the extremely low working time standards set by the Directive, its declared aim of pursuing 'humanising factors' in EU social policy by combating the negative effects on health and safety of excessively long working hours has failed.

Pietro Ichino outlines the main changes in the nature of the employer's legal responsibility for health and safety at work in the transition from industrial to the post-industrial systems, with an extension of the area of application of health and safety protection beyond the boundaries of salaried employment. He argues that in post-industrial systems the productivity gap between one employee and another can be far greater than in industrial systems. As a result, the psychological aspects of the employment relationship take on more and more importance, with work-related depressive disorders and harassment in the workplace becoming increasingly significant issues, giving rise to the need to examine the employer's responsibility for preventive measures.

The next paper is on the protection of women employees before and after childbirth in Turkish employment law. Kadriye Bakirci provides a critical analysis of the Turkish Employment Act No. 4857/2003, implementing EU Directives and ILO conventions, showing that many female employees are not covered by the Act and are subject of outdated legislation not complying with EU and ILO standards, leading her to propose possible solutions.

Finally, Michele Tiraboschi examines recent developments in work training contracts in the Italian system.

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