



**HAL**  
open science

## On fundamental social rights in the euro-mediterranean area

Philippe Auvergnon

► **To cite this version:**

Philippe Auvergnon. On fundamental social rights in the euro-mediterranean area. Diane Ryland. An era of human rights : international legal essays in honour of Jo Carby-Hall, Barmarick, pp.27-64, 2006, 9781853853579. halshs-00125678

**HAL Id: halshs-00125678**

**<https://shs.hal.science/halshs-00125678>**

Submitted on 16 Oct 2017

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

## **ON FUNDAMENTAL SOCIAL RIGHTS IN THE EURO-MEDITERRANEAN AREA**

by Philippe Auvergnon<sup>1</sup>

At a time when some people, no doubt convinced they are on a divine mission, want to lead us into a "war between civilisations" and openly support the use of terrorism and lies in the fight of Good against Evil, in blatant mockery of international rights, it may seem bizarre, misplaced, or even outdated to investigate fundamental social rights in the Euro - Mediterranean area.

This is, however, a necessity for jurists, who are sometimes also peacemakers. Like Professor Jo Carby-Hall, they try to learn more about social rights, make them better known, compare them, and contribute to improving them, particularly when history, economics, and sometimes even legal provisions are intertwined.<sup>2</sup>

Far from being strictly academic or humanist, the issue of fundamental social rights in the Euro – Mediterranean area is very rapidly revealing of socioeconomic and political stakes. There is no need to emphasize the extent to which disparities between the social systems of the countries on either side of the Mediterranean constitute a considerable obstacle to the prospect of integration of their respective economies and markets. They also highlight the constant risk of moving towards a "lowest-common-denominator" of labour law and social protection. Even if some of the Mediterranean Partner Countries (PPM) studied<sup>3</sup> have recently joined the European Union or have applied to do so, beyond their differences, they share a level of economic development that enables them to set up competition among their various social systems, mainly aimed at attracting investments and competing with European products.

In view of the real social, economic and political risks, it seems relevant to investigate the existence of the minimum threshold of protection provided by fundamental social rights. The initial aim was: (I) to measure to what extent the Mediterranean Partner Countries considered had adopted these fundamental social rights, then (II) to analyse more particularly the implementation of the fundamental rights listed in the ILO Declaration of 1998.

---

<sup>1</sup> Director of the Centre for comparative labour and social security law (COMPTRASEC) UMR CNRS / Montesquieu – Bordeaux IV University. This contribution is the result of an international cooperation coordinated by the Mediterranean Institute in Rome in the context of a European research programme entitled: "Social dialogue and social systems".

<sup>2</sup> It is no secret that although Professor Jo Carby-Hall is a British citizen, he was born far from the damp, lingering mists of that country. While he continues to travel worldwide, since his childhood he has always shown a preference for the Mediterranean area, which he knows intimately in all its lights and shadows, as well as speaking its languages. This contribution, certainly too normative for a person who is both a perfect subject of Her Majesty and a Citizen of the World, is intended as a small sign of my great esteem for his intellectual and human qualities.

<sup>3</sup> Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Palestine, Tunisia, and Turkey,

## **I. The extent of adherence to fundamental human rights**

The level of juridical adherence by the Mediterranean Partner Countries (MPC) surveyed in the present document to social principles and fundamental rights may be assessed by providing a picture of the ratification of a certain number of international instruments (A) as well as by illustrating the extent to which, and in what ways, fundamental social rights are acknowledged in the national legislations of the countries in question (B).

### **A - The ratification of international instruments and related restrictions**

We recall the conventions on Human Rights (1), those of the International Labour Organisation (2), and various conventions relative to the fundamental rights of workers to which the reference countries have adhered (3).

#### **1- Human rights conventions**

First, we must note the extremely high level of adherence to the **general agreements** of the UN, be it to the **International Covenant on Economic, Social and Cultural rights**, adopted in 1966 (Cyprus 1969, Tunisia 1969, Libya 1972, Jordan 1975, Morocco 1979, Egypt 1982, Algeria 1989, Malta 1990 and Israel 1991) or to the **International Covenant on Civil and Political rights**, adopted in 1966 (Cyprus 1969, Tunisia 1969, Libya 1972, Jordan 1975, Morocco 1979, Egypt 1982, Algeria 1989, Malta 1990, and Israel 1991). Turkey itself subscribed to these two international instruments and has proceeded to ratify them very recently<sup>4</sup>. Some countries, however, desired to **make some restrictions upon the ratification** of the UN general agreements<sup>5</sup>. Finally, it should be noted that Palestine, given that it is not a full member of the UN or of its specialised agencies, was unable to ratify several international instruments but it does refer to them.<sup>6</sup>

The MPC countries that were surveyed adhere to numerous **international conventions on social affairs**. We will limit ourselves to recalling those that directly concern the status of workers. Hence, with respect to combating discrimination, **the International Convention on the Elimination of All Forms of Racial Discrimination**, adopted in 1966, was ratified by Algeria (1966), Cyprus (1967), Tunisia (1967), Morocco (1970), Malta (1971), Lebanon (1971), Jordan (1974), Israel (1979), Egypt (1981), and Turkey (2002). In the field of slavery, servitude and forced labour, the **Slavery Convention** was adopted in 1926, and subscribed to by Morocco (1959), Algeria (1963), and Tunisia (1966). The **Convention on the Abolition of Slavery, the Slave**

---

<sup>4</sup> Ratified on 23 September 2003, entry into force on 23 December 2003 ([www.un.org](http://www.un.org)).

<sup>5</sup> Algeria accordingly made some interpretative declarations on ratifying the International Covenant on Economic, Social and Cultural Rights in respect of Articles 1, 8, 13 and 23 of this instrument; and on ratifying the International Covenant on Civil and Political Rights in respect of Articles 1, 22 and 23. For its part, Morocco, whether it made formal restrictions or not, and in respect of both the Covenants and all the other Human Rights Conventions, refuses to accept international bodies as being competent for the purposes of inquiring into a violation of the obligations of said instruments, nor will it contemplate international jurisdictions charged with harmonizing discrepancies between two or more states that are parties to the conventions. There have also been instances where a ratification has given rise to a declaration of the ratifying State – a declaration that in the view of another State was equivalent to a restriction and thus gave rise to an objection. This was the case of the declaration made by the Government of the Turkish Republic on 23 September 2003, in which it specified that it would only apply the provisions of the International Covenant on Civil and Political Rights with respect to countries it recognised as being Equal and with which Turkey had diplomatic relations. In the view of the Government of the Republic of Cyprus; this was equivalent to a restriction leading to Cyprus's objection on the grounds that the declaration created uncertainty as to whether Turkey would respect the Covenant.

<sup>6</sup> According to the National Palestinian report, this is especially true of the UN Covenant on Economic, Social and Cultural Rights as well as that on Civil and Political Rights, and of international conventions on the political rights of women, women's rights, the elimination of all forms of discrimination against women...and various international ILO labour conventions including those considered to be fundamental.

**Trade, and Institutions and Practices Similar to Slavery** was adopted in 1956, and ratified by Jordan (1957), Morocco (1959), and Algeria (1963). These three countries also ratified the **Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others**, adopted in 1949 (respectively Algeria 1963, Morocco 1973 and Jordan 1976). Finally, in the field of the protection of workers, Morocco (1991) and Turkey (1999) were signatories to the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, adopted in 1990, while both Egypt and Morocco acceded to the Convention in 1993.

In respect of **bilateral agreements** on matters both directly and indirectly linked to fundamental social rights, only some of the MPC countries surveyed referred to them, and provided some indications on them. Perhaps this was in view of the high number of such instruments. Accordingly in Cyprus, bilateral agreements have been concluded on social security benefits with the following countries: Australia, Austria, Canada, Egypt, Slovakia, Switzerland and the UK. Meanwhile in Turkey, as the number of Turkish workers moving abroad has increased, there has been a corresponding rise in the conclusion of two types of agreement or bilateral treaties with various countries, relative to employment (Germany 1961, Austria 1964, Belgium 1964, Holland 1964, France 1965, Sweden 1967, Australia 1967, Libya 1975, Jordan 1983, Qatar 1986, Northern Cyprus 1987), and social security (UK 1959, Germany 1964, Holland 1966, Belgium 1966, Austria 1999, Switzerland 1969, France 1972, Libya 1984, Denmark 1976, Sweden 1978, Norway 1978, Northern Cyprus 1987, Macedonia 1998, Azerbaijan 1998)<sup>7</sup>. Moreover, regarding bipartite agreements, some countries mentioned the existence of partnership agreements. For example in 1997 Jordan entered into an association agreement on social and cultural affairs with the European Union, and in 2000 it signed a free trade economic agreement with the United States. Both agreements testify to the countries' commitment to the respect of human rights.

The MPC countries surveyed adhere to a substantial extent to some international conventions on the rights of women, and in particular to the **Convention on the Elimination of All Forms of Discrimination against Women** adopted in 1979, (Egypt 1981, Cyprus 1985, Tunisia 1985, Turkey 1985, Israel 1991, Malta 1991, Jordan 1992, Morocco 1993, Algeria 1996, Lebanon 1997). Some restrictions were made upon ratification of this Convention, notably with regard to: the provisions of Article 2 on commitments to eliminate forms of discrimination against women (Algeria, Morocco); Article 9.2 on the right of women to transmit their nationality to children (Algeria, Jordan, Morocco); Article 15.4 on the equal right to free movement of men and women, and on the equal freedom of men and women to choose their place of residence and of domicile (Algeria, Jordan, Morocco); on Article 16 which asserted the equality of rights and of responsibility for the duration of a marriage and its dissolution (Algeria, Jordan, Morocco); and Article 29 on the various ways of governing differences between States with regard to the Convention's application (Algeria, Morocco).

Regarding the rights of the child, the principal instrument to have been ratified is the **Convention on the Rights of the Child**, adopted in 1990, by Egypt (1990), Malta (1990), Cyprus (1991), Israel (1991), Jordan (1991), Lebanon (1991), Algeria (1992), Morocco (1993), and Turkey (1995). Both Algeria and Morocco made some restrictions on ratification, notably with respect to Article 14 which recognised the freedom of religious affiliation of the child.

## 2-The ILO Conventions

The ILO Declaration on the Fundamental Social Rights of Workers, adopted by the International Labour Conference on the occasion of its 86th session on 18 June 1998, confirmed that even those members of the ILO who had not ratified the conventions in question, are obliged,

---

<sup>7</sup> Moreover, agreements with eleven other countries have been signed but not yet implemented by Turkey.

by sole virtue of their membership of the Organisation, to respect, promote and realise, in good faith and in accordance with the Constitution, the principles of fundamental rights which are contained in the abovementioned conventions, namely: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, the elimination of discrimination in respect of employment and occupation.

The following conventions are therefore considered to be fundamental in respect of the freedom of association and the right to collective bargaining: Convention N° 87 on the Freedom of Association and Protection of the Right to organise (1948) and Convention N° 98 on the Right to Organise and Collective Bargaining (1949). Regarding the abolition of forced labour: Conventions N° 29 on Forced Labour (1930) and N° 105 on the Abolition of Forced Labour (1957); on the abolition of child labour Convention N° 138 on Minimum Age (1973) and N° 182 on the Worst Forms of Child Labour (1999). Finally, with respect to the elimination of discrimination in employment and occupation, Convention N° 100 on Equal Remuneration (1951) and N° 111 on Discrimination (Employment and Occupation) (1958).

A comparative appraisal of the state of ratification of these fundamental conventions of the International Labour Organisation reveals the systematic adherence of the Mediterranean Partner Countries surveyed, with the exception of Convention N° 87 on the Freedom of Association and Protection of the Right to Organise and N° 182 on the Worst Forms of Child Labour.

Accordingly **Convention N° 87 on the Freedom of Association and Protection of the Right to Organise** was ratified by Egypt (1957), Israel (1957), Tunisia (1957), Algeria (1962), Malta (1965), Cyprus (1966) and Turkey (1993) ; it was not ratified by Jordan, the Lebanon and Morocco<sup>8</sup>. **Convention N° 98 on the Right to Organise and Collective Bargaining** was ratified by Turkey (1952), Egypt (1954), Morocco (1957), Tunisia (1957), Israel (1957), Algeria (1962), Malta (1965), Cyprus (1966), Jordan (1968), and the Lebanon (1977).

**Convention N° 29 on Forced Labour** was ratified by Egypt (1955), Israel (1955), Morocco (1957), Cyprus (1960), Algeria (1962), Tunisia (1962), Malta (1965), Jordan (1966), the Lebanon (1977) and Turkey (1998). **Convention N° 105 on the Abolition of Forced Labour** was ratified by Egypt (1958), Israel (1958), Jordan (1958), Tunisia (1959), Cyprus (1960), Turkey (1961), Malta (1965), Morocco (1966), Algeria (1969), and by the Lebanon (1977).

**Convention N° 138 on Minimum Age (admission to employment)** was ratified by Israel (1979), Algeria (1984), Malta (1988), Tunisia (1995), Cyprus (1997), Jordan (1998), Turkey (1998), Egypt (1999), Morocco (2000) and the Lebanon (2003). **Convention N° 182 on the Worst Forms of Child Labour** was ratified by Cyprus (2000), Jordan (2000), Tunisia (2000), Algeria (2001), the Lebanon (2001), Malta (2001), Morocco (2001), Turkey (2001), and Egypt (2002); it was not ratified by Israel.

**Convention N° 100 on Equal Remuneration** was ratified by Egypt (1960), Algeria (1962), Israel (1965), Jordan (1966), Turkey (1967), Tunisia (1968), the Lebanon (1977), Morocco (1979), Cyprus (1987), and Malta (1988). Finally, **Convention N° 111 on Discrimination (employment and occupation)** was ratified by Israel (1959), Tunisia (1959), Egypt (1960), Jordan (1963), Morocco (1963), Turkey (1967), Cyprus (1968), Malta (1968), Algeria (1969), and by the Lebanon (1977).

---

<sup>8</sup> Despite the fact that Morocco, since its declaration of independence, opted for a pluralist union system. One reason advanced as to the non-ratification is the resistance of some to the extension of the right of association to certain categories of State workers, and especially to magistrates.

Aside from the high level of ratification of the so-called fundamental conventions of the ILO, it should be highlighted that in general, there exists a quite high level of adherence to the ILO instruments which can be seen most clearly in the number of ratifications made by Algeria (54), Cyprus (55), Egypt (63), Israel (45), Jordan (22), the Lebanon (45), Malta (62), Morocco (49), Tunisia (58), and Turkey (40)<sup>9</sup>.

### 3-Conventions on the fundamental rights of workers concluded outside of the UN and ILO

Despite the lack of information available in some national reports, as regards adherence levels to instruments concluded outside of the UN and ILO on fundamental workers' rights, we can make some distinctions especially among EU candidate countries or countries in the process of becoming European Union members and other countries who belong or do not belong to a different legal sphere of influence. Accordingly, we note the ratification by some countries of the **European Convention on Human Rights and Fundamental Freedoms adopted in 1950** by (Turkey 1954, Cyprus 1962, Malta 1967) as well as of the **European Social Charter** in the version adopted in 1961 (Cyprus 1968, Malta 1988, Turkey 1989) and indeed the revised version adopted in 1996 (Cyprus 2000).

Other countries note their ratification of the **Convention on Social Security of the Arab Maghreb Union Countries** (Tunisia 1991) or of several **Conventions of the Arab Labour Organization**<sup>10</sup> as listed in the table below:

Title of the Convention	Country and date of ratification
Convention N° 1 on Working Standards adopted in 1966	Syria (1967), Morocco (1969), Jordan (1970), Palestine (1976), Egypt (1979), Lebanon (2000)
Convention N° 2 on Migrant Workers, adopted in 1967	Egypt (1969), Syria (1969), Jordan (1970) Palestine (1976), Morocco (1995)
Convention N° 3 on Minimum Social Security Standards, adopted in 1971	Syria (1973), Palestine (1976), Egypt (1976)
Convention N° 4 (Amended) on Migrant Workers, adopted in 1975	Jordan (1975) Egypt (1976) Palestine (1976), Syria (2001)
Convention N° 5 on Female Workers, adopted in 1976	Palestine (1976)
Convention N° 6 (Amended) on Working Standards, adopted in 1976	Palestine (1976), Egypt (1977), Syria (1982),
Convention N° 7 on Safety and Hygiene, adopted in 1977	Palestine (1977), Syria (1979), Tunisia (1987)
Convention N° 8 on Freedom of Association and Protection of the Right to Organise, adopted in 1977	Palestine (1977)
Convention N° 9 on Training and Professional Guidance, adopted in 1977	Palestine (1977), Syria(1978), Jordan (1980), Egypt (1990), Lebanon (2000)
Convention N° 10 on Training with Pay Convention, adopted in 1979	Egypt (1991)
Convention N°11 on Collective Bargaining, adopted in 1979	Jordan (1980), Morocco (1992)

<sup>9</sup> Source : <http://www.ilo.org>. It may seem somewhat impertinent to recall, by way of comparative example, that to this day the United States of America has ratified 14 of the ILO conventions.

<sup>10</sup> The first congress of the Arab Employment Ministers held in Baghdad on 12 January 1965, adopted the Arab employment pact and the draft constitution of the Arab Labour Organisation (ALO). Following the completion of the formalities, and ratification, the ALO was established in Cairo at the 5th meeting of the Arab Employment Ministers on 8 January 1970. The ALO members : Algeria, Saudi Arabia, Bahrain, Djibouti, Egypt, United Arab Emirates, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Mauritania, Qatar, Palestine, Somalia, Sudan, Oman, Syria, Tunisia, and Yemen. Palestine, by virtue of its part-membership of the ILO was able to ratify some of the 19 Conventions of this international organisation..

Convention N° 12 on Workers (Agriculture), adopted in 1980	Egypt (1991)
Convention N° 13 on the Workplace, adopted in 1981	Palestine (1981), Egypt (1991), Lebanon (2000), Syria (2001)
Convention N° 14 on Rights to Social Security for Migrant Arab Workers, adopted in 1981	Palestine (1981), Morocco (1992), Egypt (1996)
Convention N° 15 on Wage Fixing and Protection, adopted in 1983	Palestine (1983), Lebanon (2000)
Convention N° 16 on Social Services for Workers, adopted in 1983	Palestine (1983), Egypt (1991)
Convention N° 17 on Training and Employment of the Disabled, adopted in 1993	Jordan (1993), Palestine (1993), Egypt (1994), Syria (2001), Lebanon (2000)
Convention N° 18 on Child Labour, adopted in 1996	Lebanon (2000)
Convention N° 19 on Labour Inspection, adopted in 1998	Egypt (2001)

## **B - Fundamental social rights within national law**

Does a constitutional proclamation of fundamental rights exist under the national legislations of each of the MPC countries surveyed (1)? Which competent national institutions safeguard and promote the fundamental rights of workers (2)?

### **1-The constitutional proclamation of fundamental rights**

First, one should note that in some instances, for reasons to do with a country's legal tradition (Israel) or political situation (Palestine) of the country in question, there is no "Formal Constitution"; instead there may exist one of the so-called "fundamental" laws which differ from common laws most notably by virtue of the fact that a majority is required for their adoption. The latter may uphold certain freedoms or fundamental rights without strictly referring to a "constitutional proclamation". In general, one may in any case point to the existence of declarations having a "constitutional" or "fundamental" value both as regards civil, civic, political and cultural rights on the one hand, and economic and social rights on the other. Finally, it is possible to survey the scope and limits of such proclamations of fundamental rights.

In respect of **civil, civic, political and cultural rights**, the principle of the freedom of political parties (Morocco Art. 9, Tunisia Art. 8) or that of the multiparty system (e.g. Egypt Art. 5) are proclaimed in some Constitutions, and occasionally the modalities and operational spirit underlining the principles that political parties must respect are also defined (Egypt, Tunisia). The principle of equality of political rights among citizens (Morocco Art. 8) and of equality before the law (Algeria Art. 29, Egypt Art. 40, Lebanon Art.7 and Palestine Art. 9) is also occasionally asserted; as is, in some instances, the equal enjoyment of rights by men and women (Morocco Art. 8) as well as the right of each citizen to vote and to be elected (Algeria Art. 50, Cyprus Art. 31), to take part in political activities, and to exercise the right to found and adhere to political parties (Algeria Art. 42, Jordan Art. 16-6 and Turkey, Art 66-74). There are, however, cases of exclusion of a section of the electorate or of ineligibility of certain categories of persons in virtue of their type of employment, offices held, the compulsory liquidation of their business or due to their relatively recent naturalization (Morocco).

**Other principles** may be asserted in constitutions or judicial texts having an equivalent value. So it is with the principle of the respect of privacy (Algeria Art. 39, Cyprus Art. 15 and 16, Egypt Art. 45, Morocco Art. 10, Turkey Art. 20) or of the confidentiality of correspondence (Algeria Art.. 39, Cyprus Art. 17, Morocco Art. 11, Tunisia Art. 9) or the inviolability of the home (Algeria Art. 40, Egypt Art. 44, Jordan Art. 10-6, Lebanon Art. 14, Palestine Art. 17, Malta Art. 38, Morocco Art. 10, Tunisia Art. 9, Turkey Art. 21), and of the freedom and security of persons (Egypt

Art. 41 and 42, Jordan Art. 6-7, Lebanon Art. 8, Palestine Art. 10, Turkey Art. 19). Equally, some national Constitutions uphold the principles of: freedom of access for all citizens to public employment and offices (Algeria Art. 51, Lebanon Art. 12, Morocco Art. 12 and Turkey Art. 74); the non-retroactivity of the law (Algeria Art. 46, Morocco Art. 4); *nullum crimen, nulla poena sine lege* (Algeria Art. 47, Morocco Art. 10, Turkey, Art. 38); the principle of recourse to justice and the right to a reasoned verdict (Cyprus Art. 29 and 30, Turkey Art. 37); a trial that “ respects the conventions envisaged by the procedural codes” (Morocco Art. 10); the presumption of innocence (Algeria Art. 45, Palestine Art. 14); the right to protection under the law (Malta Art. 39); and finally detention only in the circumstances prescribed by law (Jordan Art. 8-6). Some Constitutions go as far as prohibiting the expulsion of persons from national territory (Cyprus Art. 14, Jordan Art. 1-9-6, Tunisia Art. 11) and the extradition of political refugees (Tunisia Art. 17). At times the principle of non-discrimination is asserted explicitly (Algeria Art. 29, Cyprus Art. 6, Jordan Art. 1-5, Palestine Art. 9, Malta Art. 14) or may be inferred from other constitutional measures related especially to the equality of citizens before the law (Cyprus Art. 28, Lebanon Art. 7, Morocco Art. 5).

While in some countries, exceptional mention is made of the freedom of intellectual, artistic and scientific creation, (Algeria Art. 38, Palestine Art. 24), of scientific research (Egypt Art. 49, Palestine Art. 24), of journalism and of publishing (Jordan Art. 2-15-16) ; in general numerous fundamental freedoms are acknowledged. For example: the freedom of movement and of establishment (Cyprus, Art. 13, Egypt Art. 50 and 52, Malta Art. 44, Morocco Art. 9, Palestine Art. 20, Turkey Art. 23); of choice of residence (Algeria Art. 44, Jordan Art. 2-9-6); the right to enter and leave the national territory freely (Algeria Art. 44); the freedom of opinion and conscience (Algeria Art. 36, Cyprus Art. 18, Egypt Art. 47, Morocco Art. 9, Turkey Art. 25); of faith and the practice of a religious cult (Egypt Art. 46, Palestine Art. 18); and finally of religion and of conscience (Jordan Art. 14-6, Malta Art. 40, Turkey Art. 24). More generally countries assert: the freedom of expression (Algeria Art. 41, Cyprus Art. 19, Jordan Art. 1-15-6, Lebanon Art. 13, Malta Art. 41, Morocco Art. 9, Palestine Art. 19, Turkey Art. 26,); of assembly (Algeria Art. 41, Cyprus Art. 21, Egypt Art. 54, Jordan Art. 16-6, Malta Art. 42, Morocco Art. 9, Turkey Art. 34); and of association (Algeria Art. 41, Cyprus Art. 21, Egypt Art. 55, Malta art 42, Morocco Art. 9, Tunisia Art. 8, Turkey Art. 33). In some instances, the acknowledgment of these fundamental rights is accompanied by indications on the possible limits posed to their exercise by law (e.g. Morocco Art. 9) or in the event of a state of emergency having been declared (Cyprus Art. 33).

Numerous constitutional proclamations pertaining to **economic and social rights** can be reported. Although the right to accommodation is rarely asserted (Palestine Art. 23, Turkey Art. 57), the right to receive instruction (Algeria Art. 53) or education (Cyprus Art. 20, Jordan Art. 2-6, Malta Art. 12, Morocco Art. 15, Palestine Art. 24, Turkey Art. 42) is more commonly proclaimed. The latter is occasionally indicated as being “free so long as it not prejudicial to public order or individual beliefs” (Lebanon Art. 10). The right to employment is also asserted (Algeria Art. 55, Jordan Art. 2-6, Malta Chap. 2, Morocco Art. 15, Palestine Art. 25), and is sometimes associated with the obligation to work (Turkey Art. 49) or the right to conclude a contract (Cyprus Art. 26, Turkey Art. 48), the right to form a trade union or to associate (Algeria Art. 56, Cyprus Art. 21, Egypt Art. 56, Jordan Art. 1-16, Malta Art. 42, Morocco Art. 15, Palestine Art. 25 , Turkey Art. 51), the right to strike (Algeria Art. 57, Cyprus Art. 27, Morocco Art. 15, Palestine Art. 25), the right to take collective action and engage in collective bargaining (Turkey Art. 51 to 54).

Some Constitutions establish: the right to health protection and to safety and hygiene in the workplace (Algeria Art. 54 et 55); to rest (Algeria Art. 55, Jordan Art. 6, Turkey Art. 50); and, albeit rarely, the right to “fair employment conditions” (Turkey Art. 50) or again to “a fair wage” (Jordan Art. 23, Turkey Art. 55). As well as the right to social security and to social aid (Turkey Art. 60 and 62, Palestine Art. 22) and to medical care (Turkey Art. 56), some countries acknowledged the right to a decent standard of living and to social security (Cyprus Art. 9) in addition to the right to decent standards of living for citizens who cannot or can no longer work



(Algeria Art. 59). Finally, and more typically, we must recall the fundamental value of the right to own property (Algeria Art. 52, Cyprus Art.23, Egypt Art. 32, Jordan Art. 11-6, Lebanon Art. 15, Palestine Art. 21, Malta Art. 38, Morocco Art. 15, Tunisia Art. 14, Turkey Art. 35), of the freedom of commerce and of industry (Algeria Art. 37), and the freedom to conduct a business or exercise a profession (Cyprus Art. 25, Lebanon constitutional law 1990, Morocco Art. 15, Turkey Art. 48 and 49).

**What is the scope and limits of these declarations?** First, it should be noted that the declarations of fundamental rights of workers would seem to have a broad scope when Constitutions, in particular, like those of Tunisia (Art.32) or Algeria (Art. 132), assert the pre-eminence of international conventions and treaties ratified by countries over national laws. Yet this is not always the case. It may be, i.e. in Morocco, that the Constitutional text refers to principles, rights and obligations arising out of the constitutions or charters of international bodies, taking the opportunity to reconfirm its “commitment to universally recognised human rights”. The limits of the declaration of fundamental rights may derive from the Constitution itself. This may be the case where part of the Constitution does not bear any executive legal powers (e.g. the declaration of the principles of Chapter 2 of the Maltese Constitution). A law that make provision for any fundamental principle can also identify the limits of these principles. Moreover, the Constitution can sometimes indicate that restrictions to acknowledged rights and liberties can be the subject of national law (e.g. Moroccan Constitution Art. 9). Or it may contain in itself certain limits to the principle it affirms; accordingly, the right to collective bargaining may be recognised for workers in the private sector while state employees are subject to certain limits – the right to strike for the latter, unlike the former, may sometimes not be acknowledged (Turkey Art. 54 of the Constitution). Elsewhere, the Constitution can, while nonetheless confirming that fundamental freedoms and liberties may not be curtailed in any way, envisage restrictions when a state of emergency has been declared (Cyprus Art. 33). Also, a very relative or limited supervision of the specific constitutionality of laws can induce a very weak influence of the constitution over the principle; accordingly where constitutional control is envisaged only over organic laws and “common” laws, the exercise of certain freedoms may be limited, and the scope of the constitutional declaration of certain fundamental workers rights will be especially narrow. This is also true when constitutional control is not possible subsequent to the promulgation of a law or when courts are prohibited from judging the constitutionality of a given law (Morocco Civil Procedure Code Art. 25)

## **2- Institutional bodies for the protection and promotion of fundamental rights of workers**

The executive, legislative and judicial powers, along with other institutions, play very different roles in each of the MPC countries as regards the safeguarding and promotion of fundamental rights of workers. The structure of the **executive power** itself varies from one country to another. A central role with respect to social matters and more generally to fundamental rights may at times be played by one person (e.g. the President of the Tunisian Republic) especially when national laws can be the initiative of both the President of the Republic and of the Chamber of Deputies. Aside from having general responsibility for respecting and promoting freedoms and fundamental rights, the executive power may, at times, be divided into various offices – management, divisions, secretariat, ministries – which are assigned specific responsibility for these issues (e.g. Jordan,...). This structure can then be charged with examining the conformity of national laws with the various fundamental principles ; it can also carry out analyses of the gaps registered between international and national standards but also between standards and practice. Moreover, it can carry out a promotional or educational activity, or be involved in the negotiation process of for example bilateral or multilateral agreements on human rights. It can make known its views on the adherence to international conventions, and ensure follow-up ... (e.g. Morocco, Ministerial Department for Human Rights, since 1993). It may also be that the executive power is an entirely determining factor, including for the “ non promotion ” of social rights. In this sense, in Palestine, the executive authorities have for two years now omitted to sign and thereby proceed to the application of social laws (law on public offices, law on employment) which had been duly

adopted by the Palestinian legislative Council. Moreover, it may be that despite official mention of the principle of the separation of powers, certain legal rights are suppressed by Ministerial decree on retirement or on receipt of severance pay (Decree of 16 February 2002).

In other cases, while emphasising the importance of the role of the executive power, especially in the process of ratification of conventions such as those concluded within the ILO, it is essential to remember that in the last analysis, it is the **legislative power** that must approve the proposed ratification (Cyprus, Israel, Turkey, Lebanon), and that more generally, it is the legislator that plays a central and indispensable role (Jordan, Malta). Besides the adoption of laws, legislative powers may also act by setting up a committee to inquire into eventual blatant violations of these fundamental rights or alternatively by recalling them via oral or written questions posed in the course of government parliamentary sessions (e.g. Art. 134 of the Algerian Constitution and Art. 56 of the Moroccan Constitution). In general, it is the extent of the scope for intervention of the legislative power that determines whether or not it is a central actor in the safeguarding and promotion of fundamental rights, especially when the latter fall explicitly within its spheres of competence (e.g. Art. 122 of the Algerian Constitution) or when charged with the promulgation of laws on the organization of the court system, procedures and the statute of magistrates – all questions liable to impinge on the sphere of fundamental rights.

**Judicial authorities** can also play a key role in the defence and promotion of fundamental social rights. In some cases, the special role played by a country's constitutional Court charged specifically with monitoring the constitutionality of laws and regulations through issuing decisions or opinions (Algeria) is emphasised; in other instances, one can point to the importance of the country's supreme Court, which oversees the conformity of legal texts with respect to fundamental laws, or again acknowledges a gap in existing legislation (Israel). In most cases it is the courts that must confirm or consolidate legislation (e.g. Malta) with respect to the emergence or even recognition of fundamental rights of workers through their decisions (Turkey, Lebanon) including courts that are specialised in either professional litigation or disputes (i.e. *Tribunal de Prud'hommes* in Tunisia) or courts that are especially competent on issues of remuneration (Jordan). The role of the judiciary in overseeing the respect of fundamental right can be especially crucial in the absence of internal laws affirming the pre-eminence of international treaties over national law and when significant contradictions arise between these two sources of law. The extent to which this role can be the subject of specific competencies (Algeria, Morocco) and indeed total independence (Palestine) - which at times is formally affirmed (Arts. 147 and 148 of the Algerian Constitution) – should, however, also be emphasised. In some of the MPC countries surveyed, alongside the judicial judge, the administrative judge can also play an important role in respect of the protection of freedoms and fundamental rights. This is especially true when administrative courts are called on to annul decisions by authorities that constitute abuses of power, when they can rule on the lawfulness of administrative acts or again when they are competent for the settling of electoral disputes (Morocco and Tunisia).

**Other institutions** can intervene to **protect and promote the fundamental rights of workers**. Some of these stress the role played by trade union organisations - – from the moment that these are powerful and representative – in denouncing any eventual instances of the non-respect of fundamental rights (Cyprus, Jordan, Malta). Other countries state that unions and employers' organizations together play a significant role in the promotion and defence of fundamental rights by encouraging broad-based social dialogue. In the same way, the social partners occupy an important place in the promotion of awareness of these aforementioned rights through publications, training courses or symposiums (Turkey). But more specialised institutions can also intervene, like in Israel for example where there is a " State Inspector ". The latter, elected by the parliament (Knesset), is not answerable to the Government. Although it is charged with receiving all sorts of complaints, or facilitating the lodging of complaints against the State or public bodies, the "State Inspector" is not merely a " State Mediator " nor is it an " ombudsman ". Rather, it has at its disposition a very broad range of supervisory powers. It carries out audits and draws up reports, most notably on the

legality, consistency and integrity of powers and of public enterprises. Other institutions may have a consultative role and carry out studies or issue opinions, possibly in a supportive capacity *vis à vis* the political authorities, as in the case of the Consultative Council on Human Rights in Morocco, or the Economic and Social Council in Malta. Finally, non-governmental organisations (NGOs) sometimes have a part to play. Their activities (in the case of the Lebanon for example), aim to protect “the fundamental rights of employers, women, and children” in accordance with international standards and with laws in force. Elsewhere, especially in the particular case of Palestine, but also of Jordan, unions, NGOs, and associations that are closely affiliated to political parties or to the powers that be, appear to play a role at least in terms of denouncing violations of fundamental social rights of workers or of specific categories such as women and disabled persons.

## **II - The implementation of the fundamental rights referred to in the ILO declaration of 1998**

Having regard to the four axes of the ILO Declaration of 1998, we will now focus on the freedom of association of workers and of employers (A), the elimination of all forms of forced or compulsory labour (B), the effective abolition of child labour (C) and the elimination of discrimination in respect of employment and occupation. (D).

### **A - Freedom of association of workers and employers**

We shall turn our attention to: the freedom to form workers’ and employers’ organisations (1); the freedom to run workers’ and employers’ organisations (2); the freedom to join workers’ and employers’ organisations (3); the freedom of workers’ and employers’ organisations to institute proceedings (4); the dissolution of workers’ and employers’ organisations (5); the right of representation of their members (6); briefly, the right to take collective action and to engage in collective bargaining (7); and finally the right to protection of workers’ representatives (8).

#### **1- The freedom to create workers’ and employers’ organisations**

In Israel in particular, there is no legal acknowledgement of the **freedom to form workers’ and employers’ organisations**. Instead, we can refer to the provisions of the international conventions the country has ratified. It is here, and here only, that the freedom of association and organisation is asserted. Convention N° 87 and Convention N° 98 are the direct sources of legal interpretation of Israeli courts. The Universal Declaration of Human Rights of 1948 equally constitutes a point of reference especially via the confirmation that “Everyone has the right to form and to join trade unions for the protection of his interests” (Art. 23). In the same way, Israeli courts also refer to the provisions of the International Covenant on Civil and Political Rights (Art. 22) and to the International Covenant on Economic, Social and Cultural Rights (Art. 8.1). Another country that for very specific motives does not have any legal provision for the acknowledgement of the freedom to form workers or employers’ organisations is Palestine.<sup>11</sup>

In the other MPC countries that were surveyed, the freedom to form workers’ and employers’ organisations is explicitly acknowledged; in most cases this is based on a constitutional provision, at times it is developed under a national law (e.g. Article 42 of the Maltese Constitution and the law on professional relations). It may also be that the Constitution confers the freedom of association and right to organise but the framework legislation that declares it only covers “trade unions” (e.g. Art. 55 and 56 of the Egyptian Constitution and law 35/1976). In most cases the law guarantees the right to organise both in respect of workers and of employers (e.g. Jordan, employment law, Chap. 11). Alongside the freedom to form an association or a trade union, both workers and employers are occasionally granted the right to join an organisation of their choice (e.g. Art. A. 56 of the

---

<sup>11</sup> While the principle itself would not appear to pose any problems, at end December 2003, one can still only refer to abrogated laws, some old regulations or to Article 5 of a draft law on employment.

Algerian Constitution and the law of 1990 on exercising the right to form trade unions, Cyprus, Art. 21 of the Constitution and law on trade unions of 1965). In Algeria, since 1990, there is a law that refers to the freedom to join associations, “freely and voluntarily”, in order to ban discrimination in employment and wages both among workers who engage in trade union activities and those who do not. In Turkey, we can note that the freedom of association of workers as of employers must in any event be carried out in the framework of 28 different economic spheres that are legally defined, to which workers are attached by virtue of the principle activities of their place of work.

Conditions of content and form are fulfilled by the **legal status of workers’ and employers’ organisations**. In the countries surveyed, this status may be identified either in a legal framework specific to trade union organisations (e.g. Algeria, law of 1990), or in several legal frameworks essentially relative to workers’ unions or associations (e.g.: Egypt, law of 1976 on workers’ unions and law of 2002 on associations; Morocco, *Dahirs* of 1957 on workers’ unions and of 1958 on associations; and Tunisia, Law of 1966 on “unions or professional associations”). At times the different definitions of legal frameworks for workers’ organisations can lag behind socio-economic trends. For example in Egypt the law introduced in 1976 covered only “workers’ unions”. Therefore the transition to a market economy, privatisations and the emergence of a private sector led the “new bosses” to organise themselves in the framework of the right of association. The situations vary from country to country. In Cyprus, the totality of workers’ organisations and a substantial part of employers’ organizations were created under the law of 1965 on unions, while some employers’ organisations were governed by corporate law. In Israel, the majority of workers’ unions are grouped within the *Histadrut* and have their legal basis in the pre-existing Ottoman law on associations dating from 1909, which in turn is based on the French law of 1901 on non-profit-making organisations. Other independent unions in the *Histadrut* rely to a similar extent on the legal framework for associations (medical associations, journalists’ associations, researchers and teachers’ unions...). In Turkey, the term “unions” covers both employers’ and workers’ organisations; the law defines them as “professional organisations set up by workers or employers with the objective of defending economic and social rights and interests” (Union Act N° 2482 Art. 1). In practice, we speak of “workers’ unions” and “bosses’ unions”. The formation of these two types of organisation falls within the scope of the freedom of association and are assigned the legal status of a company. The situation is basically similar to that in Malta where the distinction between union or association would not appear to be a determining factor, the important point being the denomination and the respect of a minimum number of rules (Law of 2002 on professional relations, Art. 49). In the Lebanon, the law distinguishes between workers’ and employers’ associations. The former have a legal personality when they have been formed in accordance with the provisions of the code of employment and following the publication of a “permit” issued by the Ministry of Employment (contrary to the provisions of Article 2 of the ILO Convention N° 87). On the other hand, Lebanese employers’ organisations take various legal forms : the chambers of commerce, industry and of agriculture are public utility establishments; the professional categories (lawyers, doctors, engineers,...) are governed by specific laws; and finally professional associations of business persons and industrialists fall within the scope of the right to form associations.

Aside from respecting the legally defined purpose, the founding members or workers’ or employers’ unions must also fulfil **conditions of form and content**. The organisation or trade-association is most commonly defined as a group that has as its sole object the study and defence of the “economic and social interests” or even “moral interests” of its members (Algeria, Lebanon, Morocco, Tunisia). The legal definition can at times reflect the earlier incorporation of the question of unions in a political and economic project, so that the aim is certainly to “defend the legitimate rights of workers, and to maintain and improve working conditions” but also “to participate in the drawing up and carrying out of economic and social plans” (Egypt, law of 1976, Art. 8). While in some countries the law may reveal itself to be very liberal in asking simply that the object or aims of the organisation are lawful (Malta), it can also recall that any association having an unlawful purpose is invalid, contrary to the laws of the country and to accepted standards of good behaviour,

as is any association that aims to undermine the integrity of the national territory, and all military, paramilitary, political or profit-making activities (Egypt, Law of 2002, Art. 11). In most cases, legal specifications or requirements are indicated. Accordingly, the exercise of a profession traditionally constitutes the basis for creating or joining a trade-association. In some countries, this must involve one activity only or activities that are analogous or interconnected (Algeria, Egypt, Morocco, Tunisia). Other countries point out that these organisations may not group together persons from different professions (Lebanon) or different sectors (Turkey). In certain cases, when the sectors or activities are similar to each other, there is an obligation to have a minimum number of members (e.g. Jordanian law on employment: 50 workers minimum – Art. 98 – or 30 employers – Art. 108). At times national legislation specifies that married female professionals or workers can join trade-associations and participate in their administration and their management (Morocco, law on trade-associations 1958, Art. 5). On the other hand, it may be that certain professions are banned from forming or joining a union. This is especially the case of : officials “ charged with ensuring national security” (Morocco, Tunisia); persons occupying an office or carrying out any form of mandate in the service of the State; public administrations, municipalities, establishments or bodies providing a public service and to whose members the right to carry a firearm in the course of exercising their duties is conferred ” (Morocco); military personnel (Morocco, Tunisia); magistrates and prison staff (Morocco); and finally police and customs officials (Tunisia). In some cases national legislation specifies that professional associations are prohibited from engaging in political activities (Turkey, the Lebanon). On the other hand, some legal systems specify that the statutes of the organisation cannot restrict or impede the exercise of fundamental freedoms in any way, and therefore, may not for example prevent any person from joining a political party (Algeria). In Israel, in the event of recourse to the juridical form of an association, there is an undertaking not to derive benefits therein. But this of itself is not enough to prevent new associations of workers outside of the Histadrut and independent associations in existence before the law of 1980 from being legally recognised as having a juridical status of workers’ organisation under the law of collective conventions and more generally in the framework of collective professional relations. These new associations, especially in order to engage in collective bargaining, must respond to a fixed set of criteria. They must be a permanent organisation that has been established for a certain length of time, founded on individual or voluntary membership, totally independent from employers, and making explicit allowance for the defence of workers’ interests in its democratic statutes. In Algeria and in Turkey, trade unionism is based on a voluntary, professional and pluralist concept. Every individual therefore, has the freedom to join trade union associations or to not join them. Individuals must, however, join an organization that is related to the main activity of the business in question (employers) or related to the business or sector in which one is engaged (workers). Membership of more than one organisation is not permitted.

It can happen that both unions and organisations need only make a simple declaration as to their existence (Egypt, Israel, Morocco and Turkey) or merely advertise same, enabling information to be passed to third parties and legal supervision (Israel, Tunisia). More often than not, in order to be accorded a legal status, the founding members must file the statutes of the future union or association with the competent authority as well as notify the list of officials in charge and the whereabouts of the registered offices (Cyprus, Egypt, Israel, Malta, Morocco, Palestine, Tunisia and Turkey). In some cases, the organisation’s founding members must comply with specific requisites such as a nationality requirement and the absence of any criminal record (e.g. Algeria, Turkey). The obligation to file the statutes is sometimes accompanied by other mandatory registration procedural requirements (Cyprus, Israel, Jordan, Malta, Palestine) of a more or less binding nature. This is why an association cannot carry out its activities until it has completed the registration process or may not operate before 60 days after the filing of its statutes (Egypt), or that a union must first be registered with the Ministry of Employment before it is legally recognized (Jordan), or is legally constituted only once a certificate testifying to same is obtained from the Ministry of Employment or from the local administrative authority (Algeria). In other cases the union must wait for the publication of an official journal containing a decision of the Ministry of Employment before it can

be said to exist (Lebanon) or finally, wait for a response from the competent authority even when no set time-limit exists for the granting of same (Palestine).

## **2-The freedom to run workers' and employers' organisations**

We shall now turn to the freedom to run workers' and employers' having regard to the right to own property, to the freedom to carry out non-profit-making activities and to oversee the management of associations and unions.

In some countries, the choice of legal status (association or union) has different consequences depending on whether it is a workers' or employers' organization. The recognition of the **right** of unions **to possess and administer a property** would appear to be broader in scope than that accorded to associations (e.g. Morocco, Lebanon). In most cases, it would seem to be possible, irrespective of whether the organisation in question is a union or association, to acquire tangible or intangible assets, either free of charge or subject to payment (e.g. Jordan). An exception to this rule exists where the sale of the unions' assets is subject to the agreement of the national unions' confederation (Egypt). The general rule is that the legal capacity of these organisations is determined by their statutes, especially by their set purpose, provided these are in accordance with legal restrictions, or, the particular case of chambers of commerce, industry and agriculture (Lebanon). At times, as regards trade-associations some legal systems expressly envisage that any real estate or goods necessary to their proper functioning may not be seized. (Morocco, Tunisia).

As a general rule the principal financial resource of both workers' and employers' organisations derives from members' subscription fees and revenues that may be generated as a result of their **activities** or via **donations** and **subsidies**. At times, the law specifies which forms of income are permissible and identifies external grants or donations that are inadmissible (Turkey, Union Act Art. 51). In other instances, while allowing for the possibility of state subsidies, the law makes donations and bequests subject to the authorization of a public authority - so long as the donations in question are made by foreign private individuals or entities - while grants from political parties are prohibited (Algeria, Law of 1990, Art. 5 and Art. 26). Related restrictions may exist for donations and benefits bequeathed in the will of a foreign person. These must be submitted to the National Confederation of Unions for approval and to the Ministry of Employment for authorization (Egypt, Law of 1976, Art. 50). Elsewhere, there is total freedom as regards the management of both workers' and employers' organizations (e.g. Malta), provided that these have been formally registered and have developed activities in accordance with national law and with their statutes. This ample liberty in the running of organizations can extend as far the permission to raise funds to support the activities of a political party (e.g. Cyprus). This broad-ranging freedom can, however, be reserved to organizations having a particular legal basis, and which are subject to a very limited level of State supervision (e.g. Israel, organisations founded under the Ottoman Law of 1909).

Non-profit-making organisations, by their very nature, are **banned from carrying out profit-making activities**. The fact that the association is non-profit-making does not, however, prevent it from procuring resources by means of activities organised by it, as occurs in Morocco for example. Accordingly, the fact that these organisations are banned from pursuing profit does not exclude them from carrying out salaried activities. Only the distribution of profits generated as a result is non permitted. Nonetheless in Israel the fact that in most cases organisations were set up as non-profit-making entities seems clearly limiting given that this legal status bans organisations from carrying out certain activities or acquiring assets beyond those strictly necessary for realising the statutes' set objectives. Workers' and employers' organizations get around this by developing various economic activities having a different legal status such as companies or cooperatives.

As for unions, while some legal systems permit profit-making activities (e.g. Jordan), others expressly prohibit organisations from carrying out commercial, industrial or financial activities (Egypt). While this kind of limitation is of quite a general kind, unions are in any event accorded quite a broad scope for the range of permitted activities, especially when this includes the right to register brands and labels (Morocco). In some countries, the law enables workers' and employers' unions to develop profit-making activities so long as these fall within the scope of their set objectives. A union can also produce and market objects and publications, rent a part of their properties or even organise paying training course (Algeria, Palestine). A whole range of services for members - constituting substantial resources- may also sometimes be developed, especially where the principle of freedom of profit-making activities is asserted (Cyprus, Malta) in respect of which the law may at most demand transparency in the distribution of benefits. It may happen, however, that a profit-making activity may constitute only a limited part of the total revenues of the workers' or employers' organisation (Turkey, 40%), or that professional associations are banned from carrying out such activities while chambers of commerce, industry and agriculture may do so (the Lebanon).

The margins of freedom in respect of the **exercise of a non-profit-making activity** are in all cases very broad. Depending on the country, workers' associations and unions as well as employers' organisations carry out varied and quite numerous activities of this kind. Moreover, it can happen that professional associations must specifically carry out only non-profit-making activities (e.g. Israel) and that unions, whose role it is to protect the sole interests of the professions in question, are not permitted to carry out non-profit-making activities in the form of a charitable organization (e.g. the Lebanon). In most cases, however, employers' organisations and unions are free to carry out any kind of activity so long as it is non-profit-making and lawful (Malta). At times, they may also form, administer or subsidise projects or services of a social or professional nature (Algeria, Morocco, Palestine, Tunisia and Turkey); healthcare services (Cyprus); medical funds (Palestine); financial aid to members with health problems (Jordan); and finally legal assistance and training activities (Turkey). At times they may also be permitted to subsidise or manage cooperatives (Algeria, Morocco, Palestine, Tunisia, and Turkey) or to conclude contracts with other unions, companies or businesses (Morocco, Tunisia).

What level of **supervision** of the **management of associations or unions** is envisaged? While associations fall within the scope of common law, certain legislative provisions are specifically concerned with monitoring union activities. The persons entrusted with supervising the activities and the degree of supervision varies from one country to another. Distinctions emerge when it comes to the supervisory role or lack of therein played by State authorities. This is how the management of union activities is sometimes subject to dual supervision - on the one hand by the federation of the union confederation, and on the other hand by the State (Egypt). At times, local administrative authorities make a request to unions for a detailed statement of properties owned or the State may carry out administrative or financial checks on a regular (Morocco, the Lebanon), hypothetical (Jordan), or virtual basis i.e. hardly at all (Palestine). Elsewhere, the competent authority for the registration of associations or unions can request an annual activity report and the organization's financial statements (Malta), or the Ministry of Employment may designate an authority to oversee the running of the organisation from the point of view of its compliance with the law and with its statutory objectives (Cyprus). In other cases, the law merely states that as regards the issue of the supervision of finances and assets the statutes must make provisions for a supervisory body that is external to management. As a result, in practice the supervision can be carried out by a specially appointed internal body or a body outside of the organisation, such as an auditor. (Algeria, Turkey). Elsewhere the principle of freedom to determine management modalities also implies providing for supervisory modalities. Without entirely excluding an eventual external verification, especially a judicial one, the monitoring of management depends on the possible forms

of surveillance envisaged by the internal regulations of the members of the organisation (Israel) or by an *ad hoc* committee elected for this purpose (Tunisia).

### **3- Freedom to join workers' and employers' organizations**

In very exceptional cases, national legislation does not grant the freedom to join organisations but goes as far as imposing the automatic affiliation to “trade-union branches” of a certain professional federation. In these cases the law also sets a limit on the number of federations which may be affiliated in their own right to the General Workers Confederation (e.g. Egypt).

Elsewhere membership of a union or federation of unions or association, for a fixed or indeterminate length of time, is implicitly permitted (Cyprus, Palestine) or again with reference to the freedom of decision of members of a union or association (Israel). At other times, this may be explicitly provided for under law (Jordan, Morocco, Malta) ; the latter sometimes lays down certain procedures such as compulsory registration (Malta), minimum conditions for constituting a quorum for approving or cancelling membership and finally the banning of members from joining more than one union or confederation (Turkey). At times the law makes a distinction between unions and so-called representative or non-representative federations (Algeria). In one case, the law goes as far as making the constitution of a union or national federation of unions – or indeed of professional associations – conditional upon their obtaining prior authorization from the Ministry of Employment or the approval of the Ministry of the Interior (Lebanon).

When the freedom to join unions or federations is recognised under national law, it is equally upheld at an international level (Jordan, Malta) even where the law is silent on this point (Cyprus, Morocco, Palestine, Tunisia). This is equally true in reference to the international commitments of countries (Israel, Lebanon). Having said this, membership of an international organisation may also be provided for under a national law which can recall that it is forbidden to enter into conflict the founding principles of the State - democratic, social, indivisible, ...- In this sense the law can also set out the conditions whereby a union or employers' organization that violates such principles by virtue of an international affiliation shall be liquidated (Turkey).

### **4-The freedom of workers' and employers' organisations to initiate legal proceedings**

In some instances, unions are granted the express right to appear before several jurisdictions – civil, penal and administrative – to defend their specific material interests (Algeria, Egypt, Jordan, Lebanon, Morocco, Palestine, Tunisia). At times it is specified that the right to legal recourse is granted with respect to both the material and moral interests of the trade-union organization and the individual and collective interests of members (Algeria). In other cases, national legislation affirms the right of unions to legal recourse in the event of a direct or indirect prejudice to the “general interest of the profession” which the association in question defends (Egypt, Turkey, Morocco, Tunisia) or, more specifically, in the event of the failure of an employer or worker to respect an agreement to which the union is a signatory (Palestine). Unions and associations may accordingly undertake an independent court action for damages in the penal court system citing material or moral harm to their interests (Algeria, Morocco). In some cases, unions can only defend the interests they represent by virtue of their legal personality and not in virtue of the plurality of specific interests they represent (Lebanon).

Barring one exception (the Lebanon), associations are also accorded the right to have recourse to justice (e.g. Egypt, Morocco, Turkey). In some countries the law makes no distinction in this respect and accords the same right to bring court action to associations and unions provided that these are legally recognized or registered (Cyprus, Malta). The law may, however, insist that lawyers are engaged in order to defend the interests of employers' or workers' organisations or of some of their members (Cyprus). Moreover, some employment laws envisage the possibility of



granting workers' organisations, that are judged to be representative (even if they are not formally associations), the right to bring a court case on certain issues regarding minimum pay, equal access to employment, equal pay for men and women, working and rest hours, and collective conventions (Israel).

The legal scenarios are particularly varied in this sense. This explains why the law that is applicable to professional associations, can, in some cases, remain silent on the right of recourse to justice (e.g. the Lebanon) and, in other cases, go as far as saying that the union or professional organisation can appear directly before a given jurisdiction and represent one of its members, so long as it obtains a written mandate to undertake this action from the concerned party (e.g. Turkey).

## **5-Dissolution of workers' and employers' associations**

Both unions and professional associations can be subject to a legal order for their dissolution. In most cases legal systems make provision for the different hypotheses of dissolution which vary from country to country, mirroring different concerns. Dissolution is possible following a request by a public Authority, typically in the case of illegal activities or contravention of the laws in force (Algeria, Cyprus, Egypt, Israel, Lebanon, Morocco, Palestine); by virtue of activities that are in conflict with the aims of the associations' statutes (e.g. Algeria, Morocco, Israel); or following a divergence from "a corporative or professional role" (Tunisia). Dissolution may also occur when it proves impossible to pay creditors (Israel) and when workers are incited to abandon the workplace illegally or when there is recourse to threats, violence or unlawful practices (Jordan). Some legal systems also cite activities contrary to accepted standards of good behaviour or to the Muslim religion (Morocco); posing a potential threat to the integrity of the national territory (Morocco); constituting an offence against national security (Egypt) or to the Monarchy (Morocco), or having an objective that threatens the existence of a State (Israel). It may also be that the law on unions is entirely silent on this issue (e.g. Turkey) and it is here that common law becomes applicable. In practice, a temporary suspension or legally ordered liquidation can be envisaged especially in the event of failure of the bodies of the organization to hold meetings; of the absence of financial resources or in the event of it undertaking unlawful activities or activities that are contrary to the founding principles of the State.

In many countries there is no procedure for the **suspension or dissolution of associations** (Algeria, Cyprus, Egypt, Jordan, Morocco, Tunisia and Turkey). Such a measure may, however, sometimes follow a request made by the Ministry of Employment (Palestine) or after having consulted the competent authority where associations were registered (Malta). At times, while one cannot speak of dissolution in the strictest sense of the term, there may be an administrative procedure known as "cancellation" where an association has, in fact, ceased to operate (Israel). Finally, administrative dissolution can be expressly envisaged and depend upon different ministerial authorities by virtue of the legal status of a union or professional organisation (e.g. Lebanon).

The **dissolution** of the union or association may be obligatory **in virtue of statutory provisions** (e.g. Cyprus) or following a voluntary decision of members who have been convened to a general assembly, again within the scope of the statutory provisions (e.g. Algeria, Palestine, Turkey); or even irrespective of whether this is envisaged or not by the association's statutes (e.g. Morocco). In most cases, the law provides for the possibility of voluntary dissolution by associating special conditions for obtaining a majority vote in respect of the decision to terminate activities (Israel, Jordan, Lebanon, Tunisia, Turkey). In exceptional circumstances, voluntary dissolution can be accompanied by the possibility of dissolution following a request of a "national union body", i.e. a federation or confederation (Egypt).

## **6-The right of members to representation**

Several legal systems, while asserting the right of workers' and employers' organizations to designate representatives, according to the voting modalities envisaged (e.g. Malta), also recall the exclusive nature of the association's stated aims. Some national systems go as far as inferring from the acknowledgment of the right to represent professional interests the total prohibition of all activities having political aims. (Morocco, Tunisia).

In general, there is the belief that all persons or groups who are potentially employers may join an employers' union and be called on, in this context, to carry out representative functions. The same is true of members of workers' trade-union organisations who are designated or elected by their fellow workers to represent them at various levels (e.g. Egypt, Jordan, Palestine, and Turkey). In some countries, workers' associations fulfil a general role of collective representation of the entire body of workers - irrespective of whether they are members or not of an organisation- who fall within the scope of a collective convention, rather than representing this or that worker on an individual basis (e.g. Israel). Some national legal systems reserve a formal monopoly on representation to unions only, both in respect of collective conventions and in institutions where representation is envisaged (Morocco). In practice, this does not prevent certain sectors from operating as an association, especially employers' associations.

In some cases, when the legally constituted union theoretically has the authority to represent workers, in law this role is primarily assigned to the so-called representative unions ; the latter may be accorded (for themselves only) the right to put forward candidates in the first round of professional elections or the right to negotiate and to conclude collective agreements. There may be a relative level of competition between representation by a union (pay claims) and equal representation of an "enterprise consultative committee" (e.g. Turkey), having an advisory role on economic and social matters. Where possible, the representation of personnel in a company can depend on the effective conditions of the latter (e.g. Egypt, Tunisia). It can also be that the law makes express provision in those companies who have a high number of staff, for the "exemption" of union delegates from work (Egypt). Finally, some national systems are at pains to specify that persons who have formerly been found guilty of fraud or dishonest practices, may in no circumstances play a representative role (e.g. Cyprus).

## **7-The right to defend workers' interests and to engage in collective bargaining**

The legal situation in respect of the right to take action and to engage in collective bargaining is especially varied among the MPC countries surveyed. Far from being cursorily mentioned, the right to take action and to engage in collective negotiation is, in certain countries, asserted as being the cornerstone in professional relations. While social partners are acknowledged the right to strike and to engage in collective bargaining, the law certainly prohibits and penalises any recourse to violence, however, State intervention in this sense is limited to conciliation or the putting in place of preventive measures or the resolution of certain kinds of conflicts (Cyprus, Malta). On the other hand, some legal systems appear to accord (albeit with some restrictions) social partners autonomy and the right to take action and to engage in collective bargaining. The recognition of the right to take collective action, and especially of the right to strike, may not be explicit (Egypt, the Lebanon). At times the unions, in a general way, are accorded the right to protect, defend or promote their professional interests. It may also be that the right to strike is formally acknowledged by the Constitution but that the law in question – since 1962 ! – has not yet been implemented in full (Morocco).

In most cases national legislations both acknowledge and incorporate the right to take collective action and the right to engage in collective bargaining (Algeria, Cyprus, Israel, Jordan, Malta, Palestine, Tunisia and Turkey). Certainly, in some political contexts relatively sophisticated legal provisions may appear somewhat theoretical : for example a strike is defined as " a right accorded to workers so that they may defend their interests ", where recourse to this right is made

conditional upon a written warning by the employer and there being a majority vote; or again collective bargaining is defined as “ a dialogue between union and employer or employers’ representatives that aims to resolve conflicts, improve working conditions or increase productivity ” (Palestine, employment law Art. 66 and 49).

Some legislations specifically confirm the existence of a legal monopoly for the negotiation and conclusion of collective conventions for unions that are sometimes called “representative” (Algeria, Tunisia). This restrictive approach is far from being the norm among the MPC countries surveyed. Others opt to confirm, in a general way, that workers and employers have the right to reach collective agreements on various economic and social matters (e.g. Turkey), even if at times this means specifying with reference to case law, not the bearers of the right to negotiate but rather the scope of this right and the issues subject to mandatory negotiation, or again issues with respect to which collective bargaining is prohibited (e.g. Israel, Turkey).

Some approaches to the question of collective action seem to testify to different concepts of the right to strike; the latter can be “accorded” or not to a union, can or cannot be strictly connected to collective bargaining, is conceived or not conceived as a last recourse. Accordingly, the exercise of the right to strike, is, in certain cases, lawful only when the union has approved the action (Tunisia). The acknowledgement of the right of the union to take collective action sometimes goes as far as stipulating that it must give an undertaking “ guaranteeing any pecuniary consequences arising from its civil responsibility ”, which may be called into play, especially in the event of strike actions that are in violation of national law or of a collective convention (Algeria). Some legislations, clearly preoccupied by the need for social governance, develop in this respect, a concept of the right to strike that is inextricably linked to that of collective bargaining and regarded as representing a last recourse (Israel, Turkey). At the same time, the right to strike or lock out is provided for in the context of a collective conflict at different stages of which mediation or arbitration may occur (Turkey). Moreover, the law can indicate the activities, enterprises or professions where recourse to strike or lock out is prohibited (Turkey). We can see then that while the right to collective action and bargaining is acknowledged in all the MPC countries surveyed ; the bearers of these rights, the procedures for upholding them, and their scope varies from one country to another.

## **8-Protection of workers’ representatives**

With the exception of Malta where there is no particular protection afforded to workers’ representatives, each of the MPC countries surveyed have at their disposal an internal protection system based on law or on legal precedence that makes or does not make a distinction between union representatives and representatives elected by staff, or between union representatives or workers acting as representatives.

One group of countries envisages forms of protection for workers’ representatives in general. The law can thereby protect the latter group “from all acts that are prejudicial” to their duties or to their employment (Cyprus), or it can make provision for disallowing persons “from being dismissed from their workplace in virtue of their affiliation to or activity within an organisation that defends workers’ rights” (Israel). The law may also confirm that “all dismissals of workers in virtue of their duties in a union or as a representative is improper” (the Lebanon). We note, however, that only the abuse of the right to dismiss workers can give rise to penalties, regardless of whether this is specified or not.

A second group of countries organizes the protection of union members, directors or representatives. Their legal systems make provision for sanctions in the event of an obstacle to the right to unionize (Egypt); ban all forms of discrimination in the workplace by virtue of union activities (Algeria, Jordan, Palestine); provide for a specific protection of unions delegates with

respect to dismissals (Algeria, Egypt, Turkey) which may include the possibility of declaring a dismissal invalid or reintegrating the worker (Algeria, Turkey).

Finally, a third group of countries (Morocco, Tunisia) do not make any provision whatsoever for protection by virtue of affiliation to or duties carried out within an association or union. At times the exercise of the right to unionize is nonetheless protected via the banning of all forms of discrimination that are “based on membership of a union or activities carried out therein, and especially with respect to practices for hiring, the management or assignment of tasks, professional training, promotions, the allocation of social benefits, termination of employment and disciplinary measures” (Morocco). It can happen, however, that case law assimilates union representatives with staff representatives, the latter being better protected in some instances. (Morocco, Tunisia).

## **B - Elimination of all forms of forced or compulsory labour**

The question of the elimination of all forms of forced or compulsory labour is analysed hereafter from the perspective of: extant forms of forced labour (1), instances of forced labour deriving from a civil or military authority (2), forced labour of prison detainees (3) and finally new forms of forced labour in the private sphere (4)

### **1-Surviving forms of forced labour**

Some countries appear able to confirm that forced or compulsory labour has been eradicated (Tunisia), or that it does not occur in working relations (Algeria, Jordan, Palestine), or finally, that no form of forced labour is extant (Lebanon, Malta). International employment law is often referred to: although ILO Convention N° 29 on the prohibition of forced labour was ratified, in theory no practice of this kind currently exists. The only question that remains open for debate is that of the continued existence of regulations that date from the colonial era which in theory allow such practices, especially in the context of services that are judged to be essential. In the framework of dialogue with the ILO, a legislative amendment was deemed necessary in order to iron out this theoretical difficulty (Cyprus). In support of the affirmation of the inexistence of compulsory forms of labour, we can invoke the ratification not only of ILO Convention N° 29 (Cyprus, Israel, Jordan, Turkey, ...) but also of Convention N°105 (Israel, Turkey) or again of the qualification of obligatory work as criminal under national penal law (Israel) or the article of the national Constitution banning forced and compulsory labour as well as the related penal sanctions (Turkey).

In other cases, the *de facto* situation – and not just the legal one – remains complicated (e.g. Morocco). Despite the fact that situations of forced labour are accorded no legal acknowledgment whatsoever and run counter to all legal declarations, social practices that are analogous to forced labour have been reported in individual or collective work relations. Accordingly, “in rural areas, work contracts not only oblige tenant farmers to work on behalf of owners but also lead to the confinement of families”. In the same way, collective work carried out for a community, testify at times to forms of coercion by a group or by an administrative authority. To a certain extent, a part of the work of domestic labourers can be similar to forced labour where members of a family, including children, have scant alternative but to accomplish the chores that the head of the family designates. Prostitution, despite being illegal, is not infrequent and at times is carried out under threat of force. Similarly, the work of young domestic labourers and apprentices, often based in rural areas, is reminiscent of the worst forms of slavery – so much so that all ties are severed with the workers’ legal guardian and they are submitted to the absolute authority of a master in return for a salary which is accorded to them directly.

### **2- Forced labour by order of a civil or military authority**

In one set of countries, forced labour by order of a civil or military authority has not only been banished from legal texts but also from social realities, albeit subject to certain restrictions, especially with regard to the regular exercise of military duties (e.g. Cyprus) or the possibility of requisitioning workers in the event of a strike in sectors providing essential services (Tunisia) or activities such as those of bakers or of Electricity employees (Lebanon). While all forms of compulsory labour are at times condemned under countries' constitutions, some scenarios for the requisition of workers following a court order or in the context of a disciplinary measure taken with respect to a soldier may exist (Malta). In rare cases, persons may be condemned to carry out work or provide services in the public interest (e.g. Malta). The occupation of a country by foreign troops highlights – perhaps paradoxically – the fact that forced labour on the order of civil or military authorities cannot exist in conditions where an army has been reduced to a few corps of internal police (Palestine).

A second group of countries, while not disputing the prohibition of forced labour, nonetheless provides for some derogations from the principle. Accordingly reference is made to some exceptions provided for under Convention N° 29 (Art. 2) for recourse to forced labour in the event of war or of a catastrophe that threatens the well-being of all or part of the population, specify that this recourse must be carried out in respect of all legal procedures and for a limited period of time (Israel). In the same way, it should be emphasised that all instances of forced labour on the order of civil or military authorities is anti-Constitutional except where expressly provided for by the same Constitution : i.e. a state of emergency, martial law or of war (Turkey).

A third group of countries allows for the possibility of forced labour by order of a civil or military authority. Civil requisition can occur in order to ensure “the maintenance of the security, peacefulness and well-being of populations in exceptional circumstances such as accidents, public disorder, shipwrecks, floods, fires, epidemics and other calamities as well as in the event of banditry, pillage, blatantly illegal acts, civil unrest, ...” Workers may also be requisitioned in order to put out a forest fire. Moreover, a military authority may have recourse to requisition even when a state of war has not been proclaimed, and may delegate this procedure to a civil authorities, in the context of for example, general strikes (Morocco). Another example, since 1990, is the law that authorizes the requisition by a public authority of striking workers engaged in an activity whose continued provision is “indispensable to the security of persons, installations or properties as well as to the fulfilment of the country's basic needs, or where the activities are deemed indispensable for the population's supplies”. Recourse to requisition would appear to be limited to the hypothesis of a strike or the continued provision of an essential public service. A more thorny problem is represented by the legal imposition in place since 1984, involving a mandatory period of civil service of two to four years in a geographic area designated by a public authority for persons who have been trained in certain sectors (medicine, pharmaceuticals, surgery, dentistry). The ILO holds that such forms of civil service which are imposed under threat of a penalty are contrary to the provisions of Convention N° 29 and N° 105 (e.g. Algeria)

### **3- Forced labour of prisoners**

Some of the MPC countries surveyed do not contemplate any form of forced or compulsory labour in respect of prisoners. Indeed in Palestine the issue does not even arise in view of the country's legal system and almost total absence of prisons supervised by an official authority. More generally, in some countries, prisoners are not legally obliged to engage in forced labour. They may, on the other hand, choose to accept a work proposal which is subject to remuneration (i.e. Tunisia). They can travel on a voluntary basis and carry out tasks that are in line with their qualifications with the aim of providing them with employment and promotion or with a view to their rehabilitation - in accordance with the laws governing their conditions of employment for the time they are in prison (Cyprus, Turkey). If they work outside the prison, they can be employed without recourse to an employer/worker contract as part of the rehabilitation process (Israel) or they may have a contract (Israel, Turkey). Moreover, persons condemned in a court of law but not

imprisoned may be obliged to carry out, as their punishment or as part of their punishment, non-remunerated activities deemed to be in the public interest in hospitals or for the elderly (Israel).

In another group of countries, forced labour of prisoners appears to be a reality. Mandatory penitentiary work can be legally provided for or imposed, with the exception of minors, under various guises and with respect to all condemned persons provided that they have received a final judgement (Algeria). Elsewhere, even if “forced labour is not a penalty envisaged by the penal code”, persons who have been condemned to a prison term are obliged to engage in some kind of “acceptable form of” work. They are only exempted from this by virtue of their age or where they have been judged to be unfit for work by a doctor (Morocco). Save for a decision to the contrary by a judge, a prisoner may also be obliged to carry out work for the cleaning and upkeep of the prison buildings or education of inmates (Malta). Finally, it may be that penal law authorizes the courts, in the case of persons charged with committing certain crimes, to include forced labour in the sentence (Lebanon, Jordan).

#### **4- New forms of forced labour in private relations**

In many countries new forms of forced labour would appear to be an “unknown evil” (Algeria, Cyprus, Egypt, Israel, Jordan, Malta, Morocco, Palestine and Tunisia). Sometimes countries highlight the fact that their territory is both a point of transit and of destination for all kinds of migration, a fact that leads to trafficking problems of all sorts, including in human beings, and with respect to which countries confirm their intention to do battle (Turkey). The range of legislative measures adopted in August of 2002 offers further evidence of this intention. Elsewhere the substantial presence of domestic workers from Sri Lanka, the Philippines and Ethiopia in homes and institutions, some of whom may be subject to forms of forced labour, is also highlighted. (Lebanon).

### **C - The positive abolition of child labour**

We will now attempt to tackle the issue of the abolition of child labour by examining the conditions for the exercise of child labour in formal employment (1), atypical salaried child labour (2), non-salaried child labour (3) and finally with respect to the measures taken to curb or abolish child labour (4).

#### **1- Children’s working conditions in the formal sector**

Despite the persistence of very marked derogations from country to country, we can group the various situations according to the legally defined age of access to employment. A first group refers in a more or less strict way to the banning of employment in all sectors for persons under the age of 16 years (e.g. Algeria, Jordan and Malta) or in an industrial sector (Cyprus) with the exception of an apprenticeship which may be carried from the age of 14 (Cyprus) or from the age of 15 (Algeria). In other cases, the existence of a law on compulsory schooling for children until the age of 15 constitutes an objective limit to child labour whereby only a young person who is in receipt of an exemption in virtue of their incapacity to study may be employed from 14 years (Israel). Moreover, this first group of countries share an official intolerance of child labour except during school holiday periods (Israel, Malta) or in the context of a family-based enterprise (Malta) and openly impose a series of bans whether in respect of night work (e.g. Cyprus); activities in certain sectors (e.g. Cyprus : mines, healthcare,...); activities posing mechanical, physical, chemical or biological risks (Israel); or finally activities deemed dangerous, insalubrious or liable to harm the health or moral integrity of the young person (Algeria).

A second group of countries is more problematic in terms of the conditions governing formal child labour. In fact, some countries report a high level of child labour despite legal frameworks designed to ban employment of children under 15 years (Palestine) or 16 years (Tunisia). The political context (political) can be partially explicative (Palestine) ; the law itself can make provisions for derogations that are quite attractive when, for example, it allows children under 14 to work as part of a study cycle or training programme or children under 16 to work in “family-based enterprises” , or even for children of 13 years to carry out “ light work” in the agricultural sector and engage in “ non-agricultural and non-industrial activities ” (Tunisia). In other cases, even though the age of access to employment must in principle be closely upheld, in practice only persons under the age of 12 may not be employed (Morocco). Certainly, the law can at the same time impose restrictions for the 12 – 16 age group on night work, the duration of rest periods and paid annual leave and on the loads to be borne or dragged. It can also make employment subject to a medical examination. However, it should be also pointed out that in some contexts the law on minimum salaries enables salaries of young workers to be reduced, and appears to constitute in itself an incentive to employing child labourers. (e.g. Morocco).

Among the MPC countries studied, a third scenario involves countries where, *de jure* or *de facto*, the age of access to employment is much lower than the previous group. Accordingly while children of under 15 years are prohibited from carrying out activities that pose a risk to their health, or if under 16 to engage in “life threatening projects or projects that are harmful to the health or moral integrity of the person”, the employment of adolescents may be authorized from 13 years of age subject to a medical examination (Lebanon). This situation appears, however, to be relatively better than a scenario where a little over 10% of children of between 6 and 17 years work (Turkey). Elsewhere, children are permitted to carry out apprenticeships or be employed in family-based enterprises or for light work from the age of 12. This legal permission is certainly “complemented” by the existence of sanctions for employers who hinder children who work for them from “pursuing their studies” or who engage children for more than six hours a day or night, or finally where employers are formally prohibited from employing children to carry out working activities that may harm their health, their physical or mental development, hinder their education or represent a breach of accepted standards of behaviour.

## **2-Atypical salaried child labour**

Atypical paid work undertaken by children would appear in some cases to be infrequent and restricted to school breaks and summer holidays (Cyprus). In some countries work that is not necessarily remunerated carried out by children in the summer period in a family-based enterprise, and in fishing and agricultural sectors, is not punishable by law (Israel, Malta). This is not the case elsewhere, especially when the transition of a country from an essentially agriculture-based economy to an industrial economy provokes the consequent disintegration of social and family networks; in a scenario of this kind many children are forced to work on the streets and, at the same time, are exposed to all kinds of risks and abuse (Turkey). In the absence of compulsory schooling (e.g. Lebanon), young people are discouraged from pursuing their studies whether resident in rural or urban areas. They tend not to work in factories but to engage in minor activities that range from apprenticeships and lowly paid daily work (mechanical assistants, load-bearers, newspaper sellers...) ; these reduced incomes nonetheless constitute an important source of income support for their family (Lebanon, Jordan).

These minor activities, which in principle are remunerated, would appear to be increasingly organised in an informal manner, as is the case of the employment of young girls recruited from disadvantaged environments as domestic-helpers or mechanical and electrical repair activities which in theory should be covered by the employment law and the social security system (Egypt). In the same way, boys who are inserted in workshops as apprentices, whether formally apprenticed or salaried, should be safeguarded under employment law and social security systems. But in reality, their relations with employers are more frequently subject to customary practice and the

laws of offer and demand than to any other criteria (Morocco). This shift towards informal work would seem to be on the rise, also in countries where the phenomenon is not traditionally seen in certain types of employment (weekly markets, street vendors, ...) or in activities such as mechanical and electrical repair work (Tunisia). In any event it is certainly worrying to see a country where one quarter of children who work for an employer are under 14, do not have a contract, are almost never granted holidays or sick leave, are not insured, and are paid wages equal to 50% of the average monthly wage of adults (Palestine).

### **3-Non-salaried child labour**

The most common form of unpaid child labour is that of domestic labour, even if the development of other forms of non-salaried work must not be excluded. The phenomenon varies sharply from one country to another. At times it is even officially unheard of (Malta). While rare, (Algeria, Cyprus, Tunisia), children may be permitted to work in a family-based enterprise in activities related to tourism (restaurants), in order to help a neighbour (Cyprus), during holidays or weekends (e.g. Cyprus, Tunisia), in agriculture and retail businesses (Jordan, Tunisia), repairs and craftwork, or finally as a result of a shortcoming in the educational system (Tunisia). In the eyes of the parents, these children are allowed to learn a skill in order to inherit a business or to take their place therein (Tunisia).

Unpaid work in a family-based enterprise would appear to be a rapidly growing phenomenon in some countries (Palestine, Turkey). However specific practices such as the placement of young girls in families as domestic labourers would appear to be on the wane (Lebanon) or to have stabilised (Egypt). But once again, the absence of compulsory schooling and conditions of poverty means that many children stay at home and help with domestic chores (e.g. Lebanon). In exceptional cases, this has become a full-scale sociological phenomenon where it is estimated that over 3 million children between the ages of 6 and 18 do not attend school and are potentially involved in carrying out some form of economic activity (Morocco). Most of these children live in rural areas and work in the home as unpaid domestic labourers. The same is true in urban areas, in the case of young girls that are placed in homes which are fortunate to a greater or lesser extent, who work in return for wages that are most often collected by their parents (Morocco).

Apart from domestic activities, the non-salaried work of children exists or is liable to develop in some of the MPC countries surveyed, in the guise of casual work in the informal sector. For example there are the "odd jobs" such as parking lot supervisors, sellers of commonplace products for mass consumption (*chiklets*, chocolates,...) and "odd jobs" performed by street traders or at market stalls (Egypt, Lebanon). In order to survive children carry out all kinds of activities on the street: cigarette sellers, shoe-shiners, porters, beggars and street hawkers (Morocco). A significant number of children end up working in the informal economic sector due especially to the poverty of their family or to failures in the educational system (Algeria).

### **4-Measures adopted to curb or abolish child labour**

The attitude and measures taken to curb or abolish child labour clearly vary in virtue of the extent of the phenomenon in each of the countries. A first group of countries, while remaining vigilant, does not seem to have any reasons for making the decline of child labour a priority (Cyprus, Israel, Malta). In some cases, where it is believed that child labour does not constitute a full-scale sociological phenomenon (given the solidity of the family base, widespread schooling and a voluntarist policy) attention is nonetheless given to the development of programmes for needy families and the poor in order to combat severe poverty and to curb child labour (Tunisia). Elsewhere there are policies for the support of poor families or unmarried women (Jordan). Finally, despite the reality of the situation, other countries simply assert that the curbing of child labour must be achieved by combating poverty and introducing measures to help single mothers (Lebanon).



Others insist on the need for awareness of the extent of the problem and on the need to take voluntary action. Accordingly, some countries develop an action plan involving both public institutions and civil society actors (employers, unions, associations, ...). Awareness campaigns targeting parents and aimed at highlighting the importance of schooling are conducted alongside social aid and solidarity programmes as well as other campaigns waged by public powers in the fight against poverty (Algeria). The desire to curb child labour is seen elsewhere in the planned imposition of a minimum age for access to employment of 12 to 15 years and the establishment in the year 2000 of compulsory schooling that has now been extended up to 15 years. Moreover, awareness campaigns are primarily conducted out by the press and media with the support of UNICEF and a "Children's Institute" (Morocco). The curbing of child labour has been identified as one of the State's priorities in the form of a five-year development plan aimed primarily at increasing income levels of families, developing security and social protection and reducing the cost of education for poor families while imposing the effective respect of compulsory schooling for children between the ages of 6 and 14 years (Turkey).

Where child labour is an all too commonplace and growing phenomenon, the importance of technical aid programmes concluded with international institutions is sometimes underscored, especially when these enable public awareness to be raised, and studies of the problem to be developed in tandem with the introduction of improvements in national law (Egypt). In order to be effective, however, the law must have at its disposal means of supervision that at the time of writing are in most cases woefully insufficient. Above all, one can note that more than a legal issue, child labour is first and foremost an economic issue of poverty of families. While not discounting this variable, one can also note that the disorganization of a society due to its occupation by a foreign power creates a climate that is conducive to child labour. (Palestine).

## **D - The elimination of discrimination in respect of employment and occupation**

The elimination of discrimination in employment and occupation can be analysed from the point of view of access to employment (1), the exercise of workers' rights (2) and finally the development of positive measures to combat discrimination (3).

### **1-Access to employment**

In respect of equality of access to employment, the MPC countries surveyed can be organized into three distinct groups not only from the point of view of national legal provisions but also with regard to eventual forms of discrimination signalled by national reporters.

The first of these groups, including in particular countries that will soon be members of the European Union, is characterised by the assertion of the right to access employment in both the public and private sectors and by the banning of all forms of discrimination. In these countries there are legal provisions related to equal pay of men and women aimed at implementing the principle of "equivalent pay for equivalent work". Elsewhere the equality of men and women in respect of employment and professional training is asserted, in line with the harmonisation of various European directives (Cyprus, Malta).

Other national rights can be assimilated to the prescriptions of these new members of the European Union, which are especially marked in respect of the principle of non-discrimination. For example this is the case where the principle of non-discrimination – be it the freedom to choose one's activity, profession or trade – is regarded as a fundamental right (Israel). This is also true when not only the Constitution asserts the equality of rights and duties of citizens but also where there the law does not admit any form of discrimination in respect of employment or profession on

the basis of gender, race, religion or opinion, both in the public and private sectors (Tunisia, Jordan).

The legislation of the second group of countries is quite similar to the first ; but there are important gaps between the law and social realities and, indeed, the possibility of negative legal interventions cannot be denied in the analysis of the issue of equal access to employment. It can be that employment regulations incorporate the principle of equality of opportunities unreservedly in the hiring procedures and in respect of men and women while elsewhere, all forms of discrimination based on “ social origin, gender, colour, religion, political opinions and disability ” are rejected. However, “the increase in costs associated with employing women induced by the principle of equal pay” is one of the justifications that nowadays is advanced by employers in order to favour the hiring of men (Palestine). Elsewhere, the Constitution confers equality to citizens from the point of view of both rights and duties “irrespective of race, social origin, mother-tongue, religion or beliefs” while the law acknowledges equality of access to employment for men and women in both public and private sectors. But, in the case of the latter, we must highlight the extent to which the fact that pregnant women benefit from rights leads employers to favour the recruitment of men (Egypt). In the same way, the Constitution can acknowledge the equality of opportunities for both men and women in public offices and for public duties, in both the civil and military sectors. The Employment Code can ban employers from introducing forms of discrimination among men and women with respect to employment, pay levels, promotion and training, ... Access to activities or professions may not be officially excluded on the grounds of gender, religion, race or ethnic extraction. Having said this, while the attainment of work in the private sector is in most cases “ on merit or depending on skills offered ”, in the public sector, many of the posts are assigned by virtue of the worker’s “ political affiliation” (the Lebanon). Finally elsewhere, the Constitution proclaims that “equal access to State offices and jobs is guaranteed to all citizens”. These provisions are echoed in legislation and regulations that are applied not only to civil servants and State officials but also in the private and public economic spheres. However, one can nonetheless observe the extent to which Constitutions are counterbalanced (perhaps increasingly) by the Family Code based on traditional Muslim law (Algeria).

Finally, a third group of countries is characterised by the absence of any legal provisions guaranteeing equality of access to employment in the private sector. Certainly, the Constitution and the general statutes of public offices can guarantee access for all citizens to public employment, so long as this is in conformity with any special legal or statutory provisions. But no provision exists in the private sector for equality of access. Only employment codes envisage a principle of this kind and should bring about significant progress in combating existing forms of inequality in respect of the equality of access to employment or occupations of men and women (Morocco). A similar legal system is reported elsewhere whereby the law does not limit or ban any activity in the private sector but also to date fails to make any provision for the conditions of hiring and does not truly protect women from eventual instances of discrimination (Turkey).

## **2-The exercise of workers’ rights**

The elimination of discrimination in respect of employment and occupation appears to be a priority for one group of countries; equality seems to be making progress in others; while in the case of a third group of countries, one cannot conceal a *de facto* scenario of inequality, and even of the worrying phenomenon of a deterioration of rights.

The first group undoubtedly includes all those countries which shall soon accede to the European Union. The latter, also partly in view of the need to bring their laws into line with European legislation, have, quite recently, introduced legal measures to combat discriminatory practices among men and women on questions of remuneration, part-time employment, fixed term

contracts, provisions for healthcare and in respect of the termination of employment, working conditions and even of the right to access social security benefits (Cyprus, Malta). Alongside these countries which nowadays are part of the European Union, we can compare the similar legal situation of a Maghreb country which is characterised not only by the absence of discriminatory provisions with respect to wages, working conditions and social cover both in the private and public sectors, but also by an assertion of workers' rights according to which men and women may "access all kinds of employment without being subject to discrimination in either professional classification or wages" (Tunisia). We are making progress towards the enviable situation of Jordan – where exceptionally no forms of discrimination in wages, working conditions or social protection exist.

Other countries have made significant strides forward in the promotion of equality of rights. Various legal provisions or principles testify to the elimination of certain forms of discrimination, in according to all workers the same right to a minimum wage, and in asserting that working conditions envisaged in a collective convention applicable to any given enterprise apply not only to the salaried employees of the aforementioned enterprise but also to labourers in the same location, or again in establishing the equal rights in respect of the retirement age of men and women (Israel). In other cases, the Employment Code incorporates the principle of equal pay, irrespective of the size or sector of the enterprise; or directly combats instances of clearly discriminatory dismissals – not by identifying an abuse but by invalidating the dismissal (Turkey). In this sense, some countries are following in the footsteps of a long legal tradition of others through the successive and repeated affirmation of equality of men and women in respect of employment, wages, holidays and professional training (Egypt).

A third group of countries, although often having similar legal provisions, seems to stand out by virtue of the persistence of *de facto* inequalities rather than inequalities sanctioned by law. This may be the case when grave differences in the conditions of employment and work exist despite the presence of regulations based on ILO conventions and referring to ALO conventions integrating the principle of "equal pay for equal work", as well as those of non-discrimination and equality of rights for men and women (Palestine). Elsewhere, in public administrations the assertion of the equality of men and women *should* ensure equivalent working and wage conditions (Lebanon) and at times does so only quite theoretically, (Morocco). In the private sector, discrimination occurs via other channels, in certain sectors which are less well paid and which are primarily occupied by women (Morocco) while at times the most significant instances of discrimination are observable in the Lebanon despite the formal existence of an employment code that prohibits same.

Finally there is the scenario wherein – if it does not in fact constitute a deterioration in the exercise of workers' rights – it at least testifies to the challenging of the first of these rights i.e. the rights of the worker. From this point of view, it is worrying to note the extent to which the development of female employment is, at times, prejudiced by the legal status women in a given society and by weighty socio-cultural problems. In spite of everything, it is cheering to note the extent to which the traditional sectors of female employment have resisted over time and happily, the extent to which activities that require strong skills are increasingly the object of equal pay for men and women (Algeria).

### **3- Positive actions**

The very term "positive action" delineates the differences between the MPC countries surveyed. One group of countries considers "positive actions" as consisting not in actions aimed at curbing discrimination but rather at "protective measures" introduced in respect of particular categories of workers. In this context, we have seen how the majority of legislations most often make provision for the protection of children and young workers (minimum age of access to employment, working and rest hours, unlawful work, ...) But the category that is protected *par*

*excellence* by the law (despite the fact that most countries maintain a certain image of the place of women in their societies) is that of women, or to be more precise, of mothers or future mothers.

Indeed there is a whole range of legislative measures that together constitute a kind of protective statute of women through the banning of night work in general (e.g. Algeria, Morocco, Tunisia) or of work in particular sectors (e.g. Lebanon); the provision of special protection in the field of hygiene and social security or working conditions (Algeria, Palestine, Morocco, Tunisia); the provision of maternity leave of variable durations (Algeria, Jordan, Lebanon, Morocco, Palestine, Tunisia); at times subject to certain conditions (Egypt); the organisation of protection from dismissal of pregnant women (Algeria, Jordan, Lebanon, Morocco and Tunisia). Without being formally justified by virtue of the status of the mother or future mother, other legal measures provide for the protection of working women: this is the case of the termination of an apprenticeship contract with younger daughters in the event of the divorce of their employer or the death of his wife (e.g. Lebanon), and in respect of the duty of employers to act in accordance with established practices of good behaviour and public propriety (e.g. Tunisia).

Other countries, despite disposing of legal measures that protect certain categories of workers, follow a different logic. Positive actions and anti-discriminatory measures benefiting women can be included especially in collective conventions (Cyprus). In this case provision is made for the achievement of “full and effective equality in employment of men and women”. Aside from the principles that are at times asserted in constitutions (e.g. Malta) several laws assert in a general way the equality of men and women, or more specifically with regard to professional relations they may also establish a policy of positive discrimination that favours women (Malta, Israel). Others commonly incorporate the principle of “equal pay for equal work” (Cyprus, Malta, Israel); or provide for more efficient sanctions of any person claiming damages or having filed a complaint in respect of sexual harassment (Malta). By virtue of a Republican tradition or the influence of European directives, a Muslim country can be particularly strict when asserting and seeking to achieve a situation of genuine equality of rights in respect of men and women (Turkey).

Finally, one should note that besides women, other categories of workers may benefit from positive actions – young persons, foreigners and disabled persons for example. In this respect the existence of legal measures in Israel and the Lebanon in respect of disabled persons merit special note. Incentives to employ the latter can go as far as legally obliging employers to hire disabled persons within a set limit of a percentage of the workforce and this may or may not depend on the size of the enterprise in question (e.g. Egypt, Jordan, Palestine, Tunisia).

## **Conclusion:**

There are undeniable differences in the manner and level of recognition of these fundamental social rights in the Euro - Mediterranean area and among the Mediterranean Partner Countries considered. Economic development, current or projected political situations, as well as legal and, more generally, cultural traditions and influences are, of course, the explanatory variables. However, these countries obviously have a shared determination, expressed in law and frequently, in spite of continuing difficulties, in fact, to affirm and protect fundamental social rights. The degree of acceptance of instruments such as the UN Pacts or international agreements on specific topics, as well as ratification of the ILO Conventions are indicative of their shared recognition of a set of fundamental social rights.

This snapshot taken from the different angles of the various countries demonstrates the existence of shared values, as well as the many and, frequently, unusual approaches to the recognition of fundamental social rights in Constitutions or fundamental national legislation. This led, of course, to observing the variety of international references in the different countries in this area: those which have joined, or will eventually be part of the European Union, those where norms

issued by the World Labour Organisation continue to take precedence, or those which adhere, to a greater or lesser extent, to the Arab Labour Organisation.

The proximity of these standards should not mask the heterogeneity and sometimes, the gap between legislation and actual situations. The issue of the reality of these national practices and the actual effectiveness of these norms cannot be ignored. On the contrary, they should be raised in the context of exchanges of ideas, ongoing discussion and action, making allowances for national difficulties and taking care to distinguish formal divergences from those which may seem more fundamental, or even problematical.

We must, therefore, be aware not only of shared values but also the wide range of socioeconomic and cultural situations. Thus, depending on the country, issues relating to values that comparative legal analysis would tend to consider identical, are not - in practice - expressed in the same terms or with the same intensity. Examples include equal access to work for men and women or the prohibition of child labour. From another point of view, comparative legal analysis raises the issue of significant differences in values or, at the very least, in legally permissible practices. Cases in point include the possibility of forced labour, or the close governmental control of employers' or workers' organisations in some countries, calling into question the reality of freedom of association or the right to join a trade union.

Similarly, particular attention should be paid in our exchanges including, especially, those between countries in the Euro- Mediterranean area, to the right to health, safety, and dignity at work, as well as to the rights of foreign workers or the right to further training. This dialogue is certainly likely to be very mutually informative on the effect of the recognition of certain rights on other rights sometimes considered just as basic, such as freedom of enterprise, and the social impact of some extreme forms of liberalisation. Finally, an in-depth examination of social protection, security, and welfare is required. Indeed, how is it possible to envisage the existence of shared fundamental social rights, a compulsory minimum requirement for sustainable development and Euro- Mediterranean partnership, while remaining silent on the extraordinary fragmentation, weakness, and, in some cases, the quasi non-existence of social protection systems in a number of Mediterranean Partner Countries?

In these cases, an improvement of social rights is certainly dependent on the more developed European countries and companies becoming aware of their own responsibility for the existence of such questionable situations, whether they are legally sanctioned or not. However, the most significant developments will no doubt result from the installation of true social dialogue in each of these countries. Unfortunately, social dialogue is now confronted with contradictory socioeconomic and cultural trends, alternating between becoming more open to the world and nationalistic reflexes. In addition, political uncertainties lead to the coexistence in the same country of liberalisation policies and tensions, together with the need to reaffirm a minimum of governmental economic and social responsibility. We can only hope that in this Euro-Mediterranean area employers' and trade union organisations will be able to face their responsibilities with increasing freedom, and play a full part in stabilising or strengthening social democracy, which fosters respect for fundamental social rights, a guarantee of peace and continued development.