

Historical Legal Analysis Of Formation And Development Of Social Partnership Legislation

Cholponbay Karynov¹, Nazikgul Osmonalieva², Upol Aitmamatova³, Nurmira Omukeeva⁴, Gulnaz Kachkyn kyzy², Zhympargul Abdullaeva*⁵

¹*Department of International Relations and Jurisprudence, Kuwait International University, Bishkek, Kyrgyzstan*

²*Department of Civil, Work and Ecological Law, Kyrgyz National University named after J. Balasagyn, Bishkek, Kyrgyzstan*

³*Department of Civil Law and Process, Osh State University, Kyrgyzstan*

⁴*Department of Entrepreneurial and Finance Law, Kyrgyz State Juridical University, Bishkek, Kyrgyzstan*

⁵*Science and Research Department, Osh State University, Osh, Kyrgyzstan*

*Corresponding author: Abdullaeva Zhympargul, E-mail: jypar.science@oshsu.kg,
ORCID <http://orcid.org/0000-0001-5777-4478>

Abstract

This article is investigating study of domestic labor legislation origin, historical and legal analysis, its formation and development, its main social partnership institutions and helps to clarify the role of Kyrgyz government in development of a modern model of social partnership, as well as solving an urgent problem related to the effective implementation of norms in labor legislation in new socio-economic and political conditions in Kyrgyzstan. Development of conceptual basics and prospects for social partnership legal regulation in the labor sphere is a system of social relations.

Keywords: social partnership, sphere of labor, laws, regulations, state, historical and legal features, social dialogue, labor relations, labor law, collective agreements, agreements, employees, employers, trade unions.

1. Introduction

The most effective way to resolve disputes and conflicts of interest arising from objective contradictions between employees and employers is social partnership the path of constructive cooperation based on agreements reached between employers and trade unions. This principle underlies the International Labor Organization (ILO) activities (Chen, 2021) which are connecting government, employers and trade unions representatives in most countries of the world on equal basis. Semantic meaning of the term "social partnership" is the joint activity of subjects in the labor relations; in economic and social policy, this term means consultation and cooperation between employees and employers at different levels. Social partnership is characterized by parties' initially coinciding interests that are common,

interdependent or any other, if they can hypothetically be transformed into generic ones by expanding partnerships (Khovrin, 2009).

Social partnership as also called as "tripartism" because in regulation of social and labor relations three parties are involved: organizations representing the interests of employees, associations of employers and the government (Zaitseva & Kandrichina, 2021). Social partnership and its instruments are considered as the most civilized way to adjust the government, employees and employers interests (Inshyn et al., 2020). Increase in the social partnership system effectiveness for protecting workers socio-economic, labor rights and interests largely depends on efforts consolidation, solidarity and unity of action in all trade unions, trade union bodies, trade union members, expanding the scope of collective agreements of various forms and levels,

increasing responsibility of all parties to agreement assumed obligations fulfillment, improvement of the social partnership legal framework. Concept, essence of social partnership and its significance in the general history of law was studied (Karynov et al., 2022).

To create a powerful trade union movement in our republic, much needs to be done, the main thing is to change and restructure the conceptual approaches, organizational forms and methods of professional associations themselves. They should become active participants in social partnership, who can negotiate at a higher level, ensuring their presence in all spheres of public life. Trade unions in the Kyrgyzstan should become a strong organization with great influence and respect among employees. There are certain conditions affecting the social partnership effective operation, conditions affect the correct functioning of social partnership in labor relations (Rakhimova et al., 2019). Parties' interaction effectiveness as well as characteristic features at various levels in social and labor relations regulation are important in the framework of social partnership (Karynov, 2019).

Social partnership as a civilized regulation of social and labor relations between workers and employers through the government mediation is widespread in world practice, and is now being approved and developing in the conditions of market relations stabilization in the Kyrgyz Republic.

Kyrgyz Republic modern labor law considers social partnership in the sphere of labor as one of its main institutions. It is "cross-cutting", penetrating almost all other institutions. Kyrgyz Republic Labor Code (Kyrgyz Republic Labor Code, 2004) regulates in concentrated form the main issues of social partnership in the sphere of labor within the framework of a special section (section II "Social partnership in the sphere of labor"). It contains the most significant provisions for regulation of social relations in the social partnership, which are same as number of other social relations directly related to labor relations, are included in the subject of labor law.

Provisions in the Labor Code of the Kyrgyz Republic, contained in Section II, are significantly supplemented and specified by the laws "On social partnership in the field of labor relations in the Kyrgyz Republic" (Kyrgyz Republic Law, 2003), "On collective agreements" (Kyrgyz Republic Law, 2004b), "On associations of employers" (Kyrgyz Republic Law, 2004a).

Article 22 in the Kyrgyz Republic Labor Code gives the concept of social partnership in the sphere of labor. This is a system of interactions between public authorities, associations of employers and trade unions in determining and implementing an agreed socio-economic policy in the field of labor relations, as well as bilateral relations between employers and trade unions, in which government determines the parameters of interaction between the parties. This means that social partnership operates at all levels of economic activity from the organization (as well as a branch, representative office, other separate structural unit) to the republican level. Government reserves solution of issues that are most significant for employers and trade unions association in the establishment of minimum social and labor standards, providing more and more scopes for collective-contractual and individual-contractual regulation of labor relations.

In this regard, the establishing working conditions role on agreements basis between employers' associations and trade unions is significantly increased, and their interests in the sphere of labor are coordinated. Coordination of parties' interests in the social partnership is set by the Kyrgyz Republic Labor Code as the main goal on which parties should strive in their relationship.

2. Research methods and materials

In this article historical narrative and descriptive methods were used to determine the social partnership legislation formation and development. Definitions were given to the term social partnership and main characteristics of social partnership system effectiveness were

explained including agreements for labor relations regulation.

3. Results and discussion

The expansion of contractual principles in the sphere of labor relations regulation, increase in the role of local acts are result of implementation of a new government policy in this area. A transition is being made from directive regulation to contractual regulation, from the employers and employees "unity of interests" to search for mutually acceptable conditions for joint work and social partnership. Thus, the role of social partnership in the labor sphere ensuring stability of labor relations is obvious.

In the sphere of social and labor relations, it is the concept of social partnership, based on negotiations, mediation, consulting, cooperation and expertise, which can and should play a decisive role in development of a real market economy (Mikhailenko & Mikhailenko, 2005).

Contractual issues including collective-contractual regulation of labor and other closely related relations, worried employers, workers themselves as well as the government for many decades. Industrial production development, plants and factory owners desire to get the maximum profit from the activities of their enterprises, of course, led to cruel exploitation of workers. Throughout the 19th century, workers became aware of their social interests, for representation and protection of which professional associations are trade unions began to be created. The first negotiations on wages, working hours and working conditions took place in an atmosphere of strikes and lockouts (Lushnikova, 1997).

In social and economic policy, the term "social partnership" means consultations and cooperation between employees (trade unions) and employers (entrepreneurs) at different levels regarding the definition of mutually acceptable terms of employment and remuneration. Consequently, social partnership is the exact opposite of what we are accustomed to call the class struggle between labor and capital. Workers in industrialized countries have come

to realize the need for such cooperation with employers as a result of a long historical experience. Various factors contributed to the new understanding of the prevailing conditions in economic life in the West: the scientific and technological revolution in industrial production and agriculture, general rise in the living and cultural standards of population in developed countries in the world, and so-called humanization in the sphere of labor relations, or the quality of working life.

The social partnership concept and slogans were put forward by the social democratic parties in Western Europe at the beginning of the 20th century and since then have firmly entered the political life of developed countries in the world. Social partnership has become one of the means of regulating labor relations (Lushnikov & Lushnikova, 2003).

Already in the early 1920s, the USSR legislation contained norms that determined the procedure for concluding a collective agreement, its scope, its content, control over its implementation, and so on. During the period of New Economic Policy and before the Great Patriotic War, collective agreements were concluded everywhere at enterprises. The war and the subsequent period of restoration of national economy interrupted the process of democratization of economic management until the 1970s.

However, existed political regime, official ideology, which denied the possibility of social conflicts at enterprises, gradually led to the fact that collective agreements were concluded formally, there was no talk on social dialogue.

Meanwhile, already in the eighties of the last century, democratic principles in enterprises, institutions, and organizations received a new impetus. The role of labor collectives began to rise. In June 1983, the Law of the USSR "On labor collectives and increasing their role in the management of enterprises, institutions, organizations" was adopted, which enshrined the collective authority to conclude a collective agreement. This led to the need for further improvement of legislation on collective agreements.

Transition of economy to a market economy, enterprises denationalization, emergence of private business companies and partnerships forced government to overlook at the role and significance of collective labor agreements. They began to be considered not only as regulators of social and labor relations, but also as a form of participation of workers in the management of enterprises and, importantly, as a means of achieving social peace between employees of organizations and their owners (Lushnikova, 1997).

Currently, the problems of national economies globalization and the unification of labor legislation are coming to the fore (Chucha, 2001). In the same direction towards unification and standardization in addition to the processes of economic globalization taking place in the world, labor legislation in different countries is also "pushed" by international labor standards developed by the International Labor Organization (ILO) in the form of conventions and recommendations.

A.A. Silin notes that neither the ILO nor the national legislations of its member states have adopted any legal documents on social partnership as a special method of regulating labor relations. On the other hand, there are regulations concerning the main subjects of social partnership (i.e., trade unions and employer-entrepreneurs), as well as affecting the main components (institutions) of the social partnership mechanism (collective agreements and agreements, advisory bodies, participation of employees in the affairs of enterprises and joint-stock companies (JSC), resolution of labor disputes and conflicts) (Silin, 2000).

It is this circumstance that makes it possible to carry out a comparative analysis of the legal norms adopted in the Kyrgyz Republic in the field of social partnership and the relevant laws in force in Western countries: on the legal status of trade unions and associations of entrepreneurs, on collective agreements and agreements, on bilateral and tripartite advisory bodies, on the representative bodies of workers at enterprises, on the forms and methods of resolving labor disputes and conflicts.

In the Labor Code of the Kyrgyz Republic, taking into account the particular relevance of the problems of regulating social partnership in the sphere of labor, part two is devoted to them, containing 4 chapters (Chapters 3-6) and 30 articles (Articles 22-52). However, there are many problems in the development of social partnership in our republic. Among them are organizational, political and legal problems.

The biggest organizational, political, and even legal obstacle is the reduction of the role and influence of trade unions on the solution of social and labor issues.

The current Labor Code of the Kyrgyz Republic for the first time in domestic legislation was fixed in Art. 20 not only the right, but also the obligation of the employer to conduct collective negotiations, as well as to conclude collective agreements in the prescribed manner. This is definitely a step forward. But it turned out that apart from trade unions there are no other representative bodies that would like to take on the heavy burden of protecting the interests of workers. Therefore, today there is no one to turn to the employer with proposals to start collective negotiations and conclude a collective agreement.

In this regard, trade union associations need to intensify work on the creation of primary trade union organizations, primarily at small businesses, in other newly created commercial structures. To do this, when concluding regional agreements, it is possible to include in them a norm that allows the relevant trade union bodies to receive free information about legal entities created in a given territory and begin work on involving them in trade union members (Lushnikov & Lushnikova, 2003).

Another way that could contribute to strengthening, protection of workers' rights through a social partnership system is to grant the right to territorial labor authorities to extend the effect of the main collective agreements provisions concluded in most organizations in a given territory to other employers who do not have a collective agreement in their organization contracts. These provisions include, first of all, employment issues, working hours and rest time,

improvement of working conditions and labor protection.

Undoubtedly, social partnership will actively develop if those for whom negotiations are conducted, collective agreements concluded, feel their real benefit. If agreements reached from year to year remain unfulfilled and no one is responsible for this, workers will not have faith in possibility of their implementation and in social justice.

Officials of executive government bodies, local self-government bodies, persons representing employer (employers), employees of governing bodies in trade unions, whose labor duties include ensuring the implementation of concluded agreement, collective agreement, are subject to disciplinary liability for violation or failure to fulfill obligations under collective agreement.

The head and persons authorized among the administration may be fined on the basis of a decision of authorized body in the government labor inspectorate. Employer representatives may also be subject to disciplinary action, since duties that they had to perform in connection with preparation and implementation of collective agreement are their official duties.

As for bringing employees' representatives to disciplinary or administrative responsibility, i.e. members of trade union activists, who for the most part perform their functions on a voluntary basis, possibility and expediency of such involvement is very problematic. Despite the fact that article 45 in the Kyrgyz Republic Labor Code states that for failure to fulfill obligations stipulated by the collective agreement, the parties are liable, in accordance with the collective agreement, it occurs as a rule, for violation of specific obligations, conditions and is formed by its relevant employees and officials, in the organization.

Since the main principle of social partnership is the parties' equality, then it seems appropriate to raise the issue of responsibility and representatives of government bodies, who are also a party to the conclusion of tripartite agreements or collective agreements concluded by organizations financed from the relevant budget.

In advanced countries of the world, despite the high degree of public consent in socio-economic development, political elite and trade unions avoid using the term "social partnership", preferring to it more neutral definitions such as "social dialogue" and "bilateral consultations".

Conclusion

Thus, it is possible to define social partnership in the sphere of labor in the Kyrgyz Republic as a system of regulated and unregulated relations between employees (labor teams of organizations, teams of employees of branches, representative offices, other divisions and trade unions), employers as well as public authorities, local self-government bodies with a third party, their representatives and jointly formed bodies. These relations consist of mutual consultations, negotiations on issues in socio-economic policy and conclusion of agreements, preparation and conclusion of collective agreements, participation of employees and their representatives in organizations management, pre-trial and out-of-court resolution of labor disputes with participation of employees and employers representatives.

They are based on the principles of parties equality, respect and consideration of their interests, the interest of parties in participating in contractual relations, government assistance in strengthening and developing social partnership on a democratic basis, compliance by the parties and their representatives with laws and other regulatory legal acts, parties representatives authority, freedom choice when discussing issues within the scope of work, voluntariness and reality of obligations assumed by parties, obligation to fulfill collective agreements, control over the implementation of made decisions, parties responsibility, their representatives for failure to comply through their fault with agreements, collective agreements and pursue the goal of protecting the workers, employers and society rights and interests.

References:

1. Chen, Y. (2021). Proliferation of Transnational Labour Standards: The Role of the ILO. In: T. Halonen, U. Liukkunen (eds.), *International Labour Organization and Global Social Governance*, https://doi.org/10.1007/978-3-030-55400-2_5
2. Chucha, S.Yu. (2001). Formation and development prospects of social partnership in the Russian Federation. Moscow: Verdict, 29.
3. Inshyn, M., Kovalenko, R., & Denysyuk, M. (2020). Formation and establishment of the legal concepts of social dialogue and social partnership in the field of labor in Ukraine. *Cogent Arts & Humanities*, 7:1, 1846255. <https://doi.org/10.1080/23311983.2020.1846255>
4. Karynov, Ch. K. (2019). THE ROLE AND IMPORTANCE OF THE STATE AND LOCAL GOVERNMENTS IN THE SYSTEM OF SOCIAL PARTNERSHIP. *Bulletin of the Academy of Public Administration under the President of the Kyrgyz Republic*, 26, 47-52.
5. Karynov, Ch., Jylkicheva, K., Makambay, M., Omukeeva, N., Gerasko, V., & Abdullaeva, Z. (2022). Concept, Essence and Significance of Social Partnership in the General History of Law. *Journal of Positive School Psychology*, 6, 6, 4821-4824. <https://journalppw.com/index.php/jpsp/article/view/8293>
6. Kyrgyz Republic Labor Code. (2004). August 4, No. 106. Adopted by the Legislative Assembly of the Jogorku Kenesh of the Kyrgyz Republic on May 25, 2004. Kyrgyz Republic Regulatory acts. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/1505>
7. Kyrgyz Republic Law. (2003). July 25, No. 154 “On social partnership in the field of labor relations in the Kyrgyz Republic”. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/1280>
8. Kyrgyz Republic Law. (2004b). August 21, No. 164 “On Collective Agreements”. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/1564?cl=ru-ru>
9. Kyrgyz Republic Law. (2004a). May 22, No. 66 “On associations of employers”. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/1452?cl=ru-ru>
10. Lushnikova, M.A. (1997). *Governemnt, employers and employees: history, theory and practice of social partnership legal mechanism (comparative legal study)*. Yaroslavl: YarSU, 24.
11. Lushnikov, A.M., & Lushnikova, M.V. (2003). The course of labor law: In 2 volumes. T. 1. Historical and legal introduction. A common part. *Collective labor law: Proc. Moscow: Prospekt*, 182-192.
12. Mikhailenko, N.T., & Mikhailenko, V.N. (2005). *Labor law of the Kyrgyz Republic. Textbook*, Bishkek: Enlightenment, 2005, 78.
13. Rakhimova, A.M., Kaitasheva, A.K., & Karynov, Ch.K. (2019). SUBJECTS OF SOCIAL AND LABOR RELATIONS IN THE FIELD OF SOCIAL PARTNERSHIP IN THE REPUBLIC OF KAZAKHSTAN. *Bulletin of the Kazakh Humanitarian Legal Innovative University*, 2(42), 39-43.
14. Silin, A.A. (2000). The place and significance of social partnership in the regulation of labor relations in the West and in the Russian Federation. *Legislation*, 8, 32.

15. Zaitseva, N.V., & Kandrichina, I.N.
(2021). SOCIAL PARTNERSHIP:
HISTORY AND MODERNITY.

Proceedings of BSTU. Series 6: History,
Philosophy, 2 (251), 74-76.