

# **THE INSTITUTE OF SOCIAL PARTNERSHIP AS ONE OF THE TOOLS OF THE CONTRACTUAL REGULATION OF LABOR RELATIONS**

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## **Abstract**

The Institute of Social partnership is one of the tools of the contractual regulation of labor relations in the Republic of Kazakhstan. In this regard the legislation on social partnership is briefly analyzed and ways to improve it are considered. Both problems of a general nature relating to the regulation of social and labor relations through the social partnership and problems of maintenance and protection of labor rights of workers in certain sectors of the economy are identified.

## **Key words**

Social partnership; employee; employer; collective bargaining; trade unions; industrial relations.

Today the Republic of Kazakhstan is seen by the world community as an industrial country, standing on the threshold of WTO membership. However, the wealth of the country is largely achieved through the exploitation and export of natural resources due to their high prices on world markets. Other sectors of the economy of Kazakhstan are experiencing a gradual process of change in general, approaching the western standards of market economy based on competition and market-based economic and social relations. There is a continuous development of legal and regulatory framework based on the experiences and the changes taking place in western countries, in accordance with the principles adopted by the ILO and the EU and its member states.

“Over the years of independence, Kazakhstan has established a strong foundation of the welfare state. Objectively, Kazakhstan came close to a quality level of social development of Central European countries,” said N. Nazarbayev in his report, "Social modernization of Kazakhstan: Twenty Steps to a society of general labor." Social policy in the Republic of Kazakhstan aims to achieve such an important goal as improving the living standards of the citizens of Kazakhstan and creation of

appropriate conditions for the full development of the individual.

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<sup>1</sup>Social modernization of Kazakhstan: Twenty Steps to the Society of universal labor. Kazakhstan Today, July 10, 2012.

Measure and degree of implementation of the policy are undoubtedly determined by the level of economic development. Transition of Kazakhstan to market economy is characterized by significant changes in the content of labor law, which relates mainly to the method of regulation. If earlier labor relations were governed primarily by regulatory acts adopted in a centralized manner, with the adoption of the Labour Code of the Republic of Kazakhstan on 15 May 2007 there has been increasing in contractual bases of labor law.

With the adoption of the Labour Code codification of labor laws of the Republic of Kazakhstan was implemented and six laws regulating relations in the sphere of work were invalidated: "Collective Agreements" on July 4, 1992; "Collective labor disputes and strikes" on July 8, 1996; "Labour in the Republic of Kazakhstan" on December 10, 1999; " Implementation of the Law of the Republic of Kazakhstan "Labor in the Republic of Kazakhstan " on December 10, 1999; "Social Partnership in the Republic of Kazakhstan " on December 18, 2000; " Health and safety" on February 28, 2004.

The concept of decent work, developed by the International Labour Organization (ILO) in 1999, calls one of the elements reflecting labor rights of citizens, along with decent employment, wages and social security, the most important element of social dialogue.

Social dialogue and the practice of tripartism between governments, representative organizations of workers and employers within and between countries are now more than ever relevant, as they are directed at the problems and ensuring of social cohesion and the rule of law<sup>2</sup>.

According to the now canceled law "On social partnership" in Kazakhstan dated 18 December 2000, Kazakhstan identify three levels of social partnership: national, sectoral and regional. In fact Kazakhstani scientists suggested five levels, supplementing the two other levels: professional and territorial (including the local level - the level of a particular company)<sup>3</sup>.

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<sup>2</sup>Golovina S.Y. Legal tools for forming an integrated labor law in Euro-Asian region / In Legal forms of integration processes in the modern world: reality and prospects. Yekaterinburg, 2012, pp. 45-47

<sup>3</sup>Nurgaliyeva E.N., Serikov O.S. Regulation of collective bargaining for employees. Almaty: SRC "Gylym" 2002. – 280p.

The Labour Code of the Republic of Kazakhstan (RK TC) in Art. 260 distinguishes four levels of social partnership: the state, industrial, regional and local (at the level of organization).

Collective contract regulation is one of the forms of social partnership. The ideas of social partnership should get their realization especially in the area of labor relations, as no one's interests are so contradictory as the interests of the employee and the employer, and at the same time, neither one nor the other can exist separately: this creates favorable conditions for equitable cooperation.

Collective agreement is a legal act in the form of a written agreement between a group of employees and its authorized representatives and their employer, regulating social and labor relations in the organization. Procedure of its development and conclusion established by Article 282 of the Labor Code of the Republic of Kazakhstan (the LC RK) subparagraph 78 paragraph 1 of Art. 1. From this definition it follows that the collective agreement is not just an agreement, but a legal act, which may contain rules on almost all issues of labor, its organization and payment maintaining a minimum set by the state guarantees.

"Collective-contractual relationship contributed to crystallization and nomination of requirements concerning all employees, helped to defend them against the employer and allowed to take collective action in cases of their violation", note the scientists who have studied the history of the formation of collective contractual regulation<sup>4</sup>.

It is known that the system of acts of collective bargaining consists of four levels: the general agreement, regional and sectoral agreements, and collective bargaining agreements.

A collective agreement is a legal act of low-level social partnership concluded between the employer and the trade union of the organization in order to determine the conditions of work (paragraph 1 of Article 1, subp.21 of LC RC) and employment and regulate relations between parties to the collective agreement. This is defined by the ILO Convention № 154 "On promoting collective agreements" (1981).

ILO recommendation № 91 "On Collective Contracts" (1951) defines collective agreement as any agreement in writing regarding working conditions and employment, concluded between employer, a group of employers and one or more of the representative organizations of workers or, in the absence of such organizations, the representatives of workers themselves, duly elected or authorized under the law of the country.

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<sup>4</sup>Lushnikov A.M., Lushnikov M.V. The course of labor law. Volume 2. M., 2009. P.144

The difference between the definition of a "collective agreement" in Kazakhstan compared with the data of the ILO recommendations № 91 is that it contains the most important features of the agreement: a) collective agreement is not just a written agreement, and accepted as appropriate and legally binding act containing provisions regulating social and labor relations; b) having normative character legal regulations; c) the predominance of the regulatory conditions in relation to the terms of obligations. Although the Kazakhstani definition does not focus on contractual nature of the collective bargaining agreement, agreement as one of the essential features exists, and therefore it can be called a legal act adopted by agreement between certain parties, that is, legal act of agreement, thus the agreement should be attributed not only to the order of its rule establishment, but to the essential characteristics of the collective agreement. Furthermore in current situation in Kazakhstan, unfortunately, regulatory beginning is not determinative in this act for a variety of reasons. One cannot say that conducted and valid collective agreements, as a normative legal act, regulate all the important social-labor relations at the enterprise. Also a collective agreement cannot be considered as a kind of civil law contract.

Without going into the details of the different positions of scientists on the issue of why a collective agreement may or may not be recognized as a form of civil contract, we note only that the collective bargaining agreement, in fact, contains both public law and private law elements that make its content the same with the act of social partnership between equal partners, to defend its interests at the world of work and its organization. In this legal document social element, mainly its social purpose, is prevalent, and therefore it is the subject of the labor law as a branch of law, mainly social security of employees.

According to Art. 284 of LC RK content of the collective agreement includes the following provisions of normative character: a) standardization, forms and systems of remuneration, wage rates and salaries, allowances and bonuses to employees, including those engaged in heavy work or work under harmful (particularly harmful) and (or) hazardous working conditions; b) the procedure of indexation of wages, payment of benefits and compensation, including cases of accidents; c) the permissible relationship between the maximum and minimum wages in the profession, specialty and position in the organization; d) establishing inter rank coefficients; e) the duration of working time and rest periods and the leave; e) the creation of a healthy and safe working and living conditions, the amount of funding for health and safety, improving health safety. In this case, the collective agreement may include the regulations, if the laws and other legal acts grant this right. The

mentioned article of LC RK also includes an illustrative list of obligations which the parties determine by mutual agreement.

One of the key institutions of social partnership is trade unions, because they act as universal representatives of employees in social partnership with employers on their behalf at any level. Other representatives are known to be entitled to represent the employees at social partnership only at the level of the organization.

The legal basis for the activities of trade unions is a proper law on them, the rights and guarantees of their activity, and labor legislation in general, because it is used by trade unions to protect the rights and interests of employees. One of the embodiments of the protective function of the trade unions in the field of social and labor relations is to control the observance of labor laws.

Depending on the development of social relations involving trade unions, primarily on property relations and the socio-political situation in the country, legislation defining the legal basis of this mass social organization changes. Especially trade union's right to protect labor rights and interests of employees is corrected. In this case, the Convention and Recommendations of the International Labour Organization, which the Republic of Kazakhstan is a full member of, have a decisive impact on the content of the legislation on trade unions.

The main trends in the development and improvement of Kazakhstan legislation on trade unions at the current period should be:

- a) the adapting of the existing market relations;
- b) refuse from inappropriate for trade union powers as it is a public organization;
- c) preservation, enhancement and expansion of the rights allowing trade unions to securely defend the social and labor rights and interests of employees.

Related to labor relations of trade unions with employers' associations and representatives, as well as with government agencies and local authorities are included in the field of labor law. Therefore, the participation of trade unions in the regulation of social and labor relations is recognized in the theory of labor law as a feature of the method of labor law. In this regard, continuous improvement of labor law in a systematic analysis of the practice of its application, as well as international law, international standards in this field is important.

Article 8 of the International Covenant on Economic, Social and Cultural Rights obligations of the State to provide the following rights are listed:

- 1) the right of everyone to form trade unions for the protection of their economic and social interests and join them in their choice, on the condition that the rules of the organization will

not be broken. This right is not subjected to any restrictions except those which are prescribed by law.

2) the right of trade unions to establish national federations or confederations and the right of former to join international trade-union organizations;

3) the right of trade unions to function freely subjected to no limitations other than those which are necessary in a democratic society in the interests of national security, public order or for the protection of the rights and freedoms of others;

4) the right to strike, provided that its implementation is in accordance with the laws of each country.

These rules are intended to ensure the operation of the trade unions for the protection of the rights and freedoms of individuals and citizens in the world of work. The right to freedom of association in the Republic of Kazakhstan is one of the most important constitutional and human and civil rights, the implementation of which is according to public interest and is protected by the state. Thus, Article 23 of the Constitution of the Republic of Kazakhstan provides for a right of all citizens to freedom of association and states that the activities of public associations shall be regulated by law.

The current Law "On Trade Unions" 1993 as the first law of the sovereign Kazakhstan devoted to trade unions as mass organizations had a role in the development of social partnership in the country in the field of social and labor relations, labor rights and interests of employees. At the same time, the assessment of the participation of trade unions in the regulation of social and labor relations should be given not on formal grounds, but on grounds of substantiality, that is to what extent such participation corresponds to the implementation by the trade unions of their main tasks. The priority of the production function and the formal implementation of the protective powers of the trade unions, despite their abundance, gradually led to the decline in the authority of trade unions in the country.

The current structure of the practical activity of trade union committees and their staff and businesses, unfortunately, not meet the requirements of the primary protection of human labor. Need to protect the rights of workers is relevant especially in the modern period, when the country intensified socio-economic differences that had led then to strikes at enterprises especially in Western Kazakhstan.

Developing the new law "On Trade Unions" must be based on ILO Convention which are likely to have a decisive influence not only on its content.

ILO Convention № 87 "On Freedom of Association and Protection of the Right to Organize Convention" establishes the right of both workers and employers, without any distinction of any kind to create the organization of their choice without

previous authorization, and the right to join them at one condition which is to obey the rules of the former laws"(Article 2).

Consequently, the main trends in the development and improvement of legislation on trade unions, their rights and guarantees at the current period are as follows: a) bringing legislation into line with the existing social relations; b) refuse of trade unions from duties not appropriate for social organization; c) preservation, enhancement and expansion of the rights that allow unions to defend the aims of social and labor rights and interests of employees.

The field of labor law is related to labor relations of trade unions with employers' associations and representatives, as well as with government agencies and local authorities.

Therefore, it is recognized that one of the characteristics of the method of labor law and trade union participation in the regulation of social - labor relations, is particularly in the establishment and application of working conditions<sup>5</sup>.

Thus, we can assume that in the Republic of Kazakhstan the social partnership placed upon the appropriate legal framework and suggests the presence of mechanisms to coordinate the interests of participants in the production process: employers and employees, based on equal partnership.

In this system, the interests of employees are usually represented by trade unions and employers' interests are represented by business associations.

In the so-called three parties version the third participant in the direct coordination of interests is the state, which is also a guarantee of the agreements.

Reconciliation of interests is achieved through the negotiation process, in which the parties agree on the conditions of work and pay, on social guarantees for employees and their role in the enterprise.

However, as the current practice, further improvement of the legal and institutional framework of social partnership, increasing the responsibility of employers in the correct implementation of its basic responsibilities to employees.

As part of social modernization of Kazakhstan's society, among other priorities, directly indicated an effective model of social and labor relations, which will be based on mechanisms of social partnership between the state, private sector and professional associations, as well as the development and adoption of just laws, aimed at the prevention and control of labor conflicts<sup>1</sup>.

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