

THE ROLE OF SOCIAL PARTNERSHIP IN THE REGULATION OF SOCIAL AND LABOUR RELATIONS IN UKRAINE

The world practice shows that one of the key criteria for providing stability of the social and labour relations in society is the balance between the interests of different social groups that can be achieved through mechanisms of social partnership. The subject of social partnership is the collective relations between the social partners which arise from the participation of labour collectives in solving various production and social problems .

In Ukraine, in the pre-reform period there were certain forms of social partnership, such as collective agreements at enterprises, councils of labour collectives, works councils. During the years of economic reforms in the country and the transition to market economic conditions some experience in the use of new mechanisms of social partnership has been accumulated, the appropriate legal framework for regulating social and labour relations is in progress now and it is gradually adapted to the international standards. However, the existing positive developments do not make the problems less urgent, and the situation with unresolved problems does not allow the national system of social partnership to develop effectively, which determines the need for further research in this direction.

The problem of harmonizing and reconciling the interests of employers and employees through social partnership has been highlighted in the researches of the Ukrainian scientists and practitioners from different views. Among them are L. Bezzubko [1], L. Barannik [2], V. Berelizova [3], E. Grishnova [4], O. Gerasymov [5], I. Hnybidenko [6], V. Gorbach [7], M. Deych [8], V. Ignatenko [9], A. Kolot [10], O. Kazachenko [11], G. Osovoy [12], S. Skalko [13] and many others. The works of above authors pay great attention to the problems of the development of social partnership as the instrument of achieving the harmonization of interests of the state, employers and employees. They analyze the objective preconditions and subjective factors of social partnership development, investigate the issues of development and implementation of socio-economic policy and regulation of labour relations at the production and regional level of management, as well as the different aspects of collective bargaining and social responsibility of business. However, despite the significant results obtained in this area, many urgent issues related to the development and increase of the efficiency of social partnership remain poorly studied, and objectively they require further research.

To create an effective system of partnerships in Ukraine the appropriate conditions should be provided which include, first of all, a stable economic development, active social policy pursued by the government, the use of the parliamentary form of democracy, strengthening the credibility of workers' organizations in the society [9, 25]. It's no doubt that the legal framework for collective bargaining relations must become an unconditional component in the development of social partnership mechanism, as well as changing the mindset of employees and employers, allowing to perceive the social dialogue as the most efficient means of establishing peace and reconciliation between the conflicting parties. However, the practice shows that such conditions have not been yet provided in Ukraine in full measure, and the present mechanism of social partnership requires some improvements.

The aim of the study is to analyze the current state of social partnership in Ukraine and justify some ways of increasing the effectiveness of social dialogue in the context of management of labour disputes.

The importance of social partnership as the primary method of reaching a compromise in resolving social tensions increases especially under the transition of Ukraine to new market conditions and because of many negative phenomena in the system of labour relations accompanying this process, which cause the appearance of protest moods in the working collectives often developing into labour conflicts [13; 14].

In Ukraine, the process of social dialogue is regulated by the provisions of the Labour Code of Ukraine, the Economic Code of Ukraine, the Law of Ukraine "On Collective Contracts and Agreements", the Law of Ukraine "On Trade Unions, Their Rights and Guarantees", the Law of Ukraine "On the Organization of Employers, Their Associations, Rights and Guarantees", the Law of Ukraine "On the Procedure for Settling Collective Labour Disputes (Conflicts)" and other legal acts. In 1998, the Presidential Decree established the National Mediation and Conciliation Service (NMCS) and its regional offices in the regions. Taking into account the practice of the European Union, a tripartite body of social partnership – the National Tripartite Social and Economic Council has been created which performs advisory, consultative and conciliatory functions through the development of a common position and elaboration of recommendations and proposals to the parties of social dialogue on the formulation and

implementation of the government economic and social policy, regulation of labour, economic, and social relations; preparation of draft laws and other legal acts related to the social and economic policy and labour relations, government programs of the economic and social development, and other state target programs, state social standards, wages, etc. [15, p. 11].

In December 2010, a special law of Ukraine "On Social Dialogue in Ukraine" [16] was adopted that fixed legally the social dialogue in the system of management of the economy and social and labour sector of the country. According to this law the social dialogue in Ukraine is carried out on the national, branch, territorial and local (enterprise, institution, organization) levels on a trilateral or bilateral basis. The steps are taken to adapt the national legislation in the field of the social dialogue and collective agreement regulation of the social and labour relations to the international standards. Ukraine ratified several ILO Conventions and Recommendations concerning the social partnership, in particular "Freedom of Association and Protection of the Right to Organise" No. 87, 1948; "Right to Organise and Collective Bargaining" No. 98, 1949; "Tripartite Consultation (International Labour Standards) No. 144, 1976; "Promotion of Collective Bargaining" No. 154, 1981, and others. In 2006, Ukraine ratified the European Social Charter having joined its 27 articles and 74 points. Thus, we can say that currently in Ukraine a certain legal framework has been created to reconcile the interests of employees and employers, to conduct negotiations and conclude collective agreements. However, in the opinion of many experts and based on the practice, it should be said that the need for further improvements of the system of social partnership is still urgent now.

First of all, it goes about the poor state of the regulation by means of a collective agreement on the production level of management. The collective agreement is a particular form of social partnership between employers and employees, its provisions obtain regulatory and legal significance [17, p. 46]. In Ukraine, according to the legislation the conclusion of the collective agreement is compulsory for the enterprises, regardless of their form of ownership and management provided that they use hired labour and have the right of a legal entity. As of 31.12.2012, the total number of concluded and registered collective agreements amounted to 101712. The number of workers covered by collective agreements was 8730.0 thousand people, or 81.4% of the account number of the staff. For the corresponding period in 2010 this figure amounted to 8,967.6 thousand, or 81.6%, for the same period in 2011 – 8766.5 thousand people, or 81.6%. At the same time, the coverage by collective agreements in such economic activities as trade, repair of motor vehicles,

household appliances and personal items (41.7%), financial services (64.1%), construction (65.9%) remains rather low [18, p. 37].

It should be noted that if during the period from 1995 to 2004, Ukraine saw an upward trend in the level of coverage by collective agreement regulation of employees of enterprises, organizations and institutions (from 60.7% in 1995 to 83.1% in 2004), in recent years, this trend has not been preserved. Since 2008, there has been a downward trend in both the number of employees covered by collective agreements and the proportion of their coverage in the general account number of the staff [15; 14].

The analysis of current practices reveals much formalism manifested in the preparation and formulation of the collective agreement. There are also many violations of the terms of collective agreements and industrial agreements, including delay of wages payment, the presence of wage arrears, delaying the transition to a new level of tariff wages and salaries, "shadowing" of wages, violations in hiring and firing, the application of penalties not provided by the law, the introduction of working conditions that violate the provisions of labour law, the absence of the collective agreement at the enterprise, and others. According to the World Bank's information nearly 5 million Ukrainians capable to work are employed without any formalization of labour relations that ranks Ukraine as the country occupying one of the first places in the world by volumes of the "shadow economy" [5, p. 15; 10, p. 16].

Insufficient attention of enterprises' heads to pressing problems in the field of labour relations, ensuring good working conditions, compliance with labour regulations, a sharp decline of trust in the trade union bodies and their leaders as defenders of the interests of employees' interests as evidenced by the reduction of the number of trade unions' members during the years of reforms from 25.0 million to 15.0 million [6, p. 56] – all this provokes the emergence of tensions in the labour collectives, labour disputes and conflicts.

The development of social partnership is also complicated by increasing social inequality in society. Thus, according to the Institute of Sociology of NAS of Ukraine, while in the early 90s the ratio of income of the richest 10% and the poorest 10% in the Ukrainian society was 12/1, in 2002 – it increased to 30/1, and in 2010 it amounted already to 40/1. In such circumstances, the potential for conflicts increases substantially [19, p. 101]. Vividly, this information is presented by The National Mediation and Reconciliation Service in 2008, the number of enterprises whose workers took part in collective labour disputes (conflicts) was 5937, and they put forth 475 requirements; in 2009 the number of such enterprises

amounted to 5606, and the number of requirements was 490; in 2010 – 5550 and 459, respectively; in 2011, these figures were 5597 and 491; and in 2012, the number of enterprises was 5582, and the number of requirements put by the workers of these enterprises was 473. 44% of total number of requirements put forth by the workers in 1999 – 2012 were the requirements concerning the non-compliance of the provisions of the labour legislation; 40.5% of total requirements concerned the implementation of the collective agreement; 11.9% of total requirements were those which concerned the establishment of new or changes in the existing working conditions and industrial life [18, p. 39; 20, p. 38].

The analysis shows that in 2013 there were no any positive changes concerning the reduction of social tensions. Thus, in the first half of the year the National Mediation and Reconciliation Service of Ukraine has registered 488 cases of destabilization of social and labour relations. 1.6 million employees from 7395 domestic enterprises have taken part in collective labour disputes. Most of the requirements of employees concerned non-fulfillment of collective agreements, branch agreements or some of their provisions by employers (51.4%), redemption of wage arrears (47.6%), non-compliance with labour regulations (42.6%). The largest number of such requirements has been registered in the enterprises of Luhansk region (86.7% of the total number of requirements registered in the region), Kharkiv region (66.7%), Kherson region (50%) [21, p. 42 – 43, 51].

The attention should be paid to the fact that the developed market economies demonstrate the social and labour relations of a new type which are actively formed on the basis of real participation of employees in management, ownership and distribution of profits. Such rights of employees are fixed legally, and in this respect the international community has a great positive experience. The decisions made by the European Commission in 1991 and by the Council of the EU in 1992 recommended to encourage the plans of the participation of employees in management and distribution of enterprise results in the countries-members of the community [22, p. 86].

In Ukraine, as rightly noted L. Barannik, both the legislation itself and its application so far “consider the institute of labour collective as a formal tribute to the democratic trends”. Its rights are curtailed, the Law “On the Labour Collectives” is not adopted for a long time [2, 41]. The interest in the problem of the participation of labour collectives in production management has been practically lost. For example, in Donetsk region, one of the most industrial regions of Ukraine, in 1987 there were 650 councils of labour collectives in the production collectives, in 1988 – 2527, and in 1990 – 1991 their number grew to 3300. Now, such forms of social partnership as

production councils, councils of labour collectives are not used by domestic trade unions and employers. At the same time, it should be emphasized that the existing labour regulations (Article 245 of the Labour Code of Ukraine) and the Commercial Code of Ukraine (paragraphs 7 – 9, Article 65) create real conditions for this. However, to ensure the practical realization of the legitimate rights of workers to take part in production management these provisions should be reflected in collective agreements, branch and regional agreements in accordance with the legislation. Thereby, the conditions will be created to reduce social tensions in the labour collectives, to prevent possible occurrence of collective labour disputes and conflicts through the active involvement of employees in settlement of actual industrial and social problems.

The establishment of an effective system of social partnership involves objectively the formation of an effective mechanism of social responsibility of business. As evidenced by the foreign experience, in 90s in Europe there appeared many companies that adhere to the principles of social responsibility of business and which are characterized by “corporate social responsibility”. As for Ukraine, this practice is not yet widely used. Along with it, the results of inspections conducted by the state labour inspectors show that today almost 92% of employers violate the labour regulations [3, p. 25]. In this regard, the proposals of some scholars and practitioners should be supported who say about the necessity of adopting the Law of Ukraine “On Social Responsibility of Business” [2, p. 43]. Especially, as Ukraine in 2007 joined the development of ISO 26000 “Guidance on Social Responsibility” initiated by the International Organization for Standardization in January 2005 [8, p. 30]. The growing conflict of interests of business and employees in matters of employment, wages, distribution of profits, use of resources for the development and modernization of production, compliance with labour regulations create the situation in Ukraine when the business should take into account the consequences entailed by its activities and search for compromise ways to prevent and settle labour disputes (conflicts) using social partnership mechanism as the most effective tool for achieving a mutual agreement of social obligations and social responsibility. Social orientation of domestic business should become the most important principle of corporate governance.

The effective development of social partnership is impossible without appropriate staffing. So, it is necessary to make training of specialists in this field more active in order to increase the legal culture of the participants of collective labour disputes (conflicts), the level of skills of specialists in social partnership, and to teach them conflict-free communication in the negotiation, as

well as the methods of settling the contradictions by establishing a constructive social dialogue between the parties.

In Ukraine, the specialists in social partnership are prepared in two educational establishments Kharkiv Social and Economic Institute and the Academy of Labour and Social Relations under the Federation of Trade Unions of Ukraine. Training of specialists in settlement of conflicts is carried out only on the basis of the NMCS or within certain mediation centers, which is not enough under modern realities and social tension in the society. The need to provide an ongoing teaching the heads of enterprises and organizations, HR – professionals, managers, trade unionists and other categories the basic knowledge of conflict, social dialogue, mediation followed by the introduction of the specialty “conflictologist (conflict manager)” and creation of the department of conflictology at the higher educational establishments is quite obvious. The learning process can involve leading experts who are engaged in conflict settlement in the course of the professional activity. It may be specialists of regional offices of the National Mediation and Reconciliation Service of Ukraine, as well as the research workers, teachers, professional managers.

In this regard, the experience of St. Petersburg Humanitarian University of Trade Unions is particularly noteworthy where the first in Russia the department of conflictology was created in 2010. The adoption of the Federal Law “On Alternative Procedure for Resolving Disputes with the Participation of a Mediator (Mediation Procedure)” in 2011 is also of great importance.

The first steps in this direction have been taken at the Donetsk National University, on the basis of its economic department the educational and practical expert centre ArtDialog was created with the participation of the author that is aimed at teaching students and professionals the basics of conflict-free communication through different forms of training.

Conclusions. Social partnership realized in the form of social dialogue, collective bargaining, consultation, conclusion of collective agreements, branch, regional, and General agreements is an essential tool for regulating and achieving stability of the social and labour relations in the society, reducing social tensions in the labour collectives, preventing and resolving labour disputes (conflicts).

In this direction, Ukraine is doing a great job. However, as the practice shows, many problems are not solved completely which reduces the efficiency of social partnership.

Analysis of the practice of collective agreement regulation of the social and labour relations clearly

confirmed the need to strengthen on the legislative level the responsibility of all stakeholders for the formulation of the content of collective agreements, the establishment of specific mutual obligations on the regulation of production, labour, social and economic relations, the fulfillment of commitments, as well as for the resistance of employers to conclude collective agreements, and violation of labour regulations. It is very important to include the provisions on promotion of industrial democracy, involvement of employees in the management of production into collective agreements, branch and regional agreements. This will help to reduce the level of conflicts and detect quickly the reasons causing protest moods and social tensions in the labour collectives, as well as to prevent them. To achieve stability at the production level and in the society, it is also necessary to increase the social responsibility of business. To provide a practical solution of the problem of creating an effective mechanism of social partnership with business, it is necessary to accelerate the development and adoption of a special Law of Ukraine “On Social Responsibility of Business”.

The given research and analysis of current policies convince that under current economic conditions and social tensions in the labour collectives the system of training skilled personnel in the area of settlement of labour disputes (conflicts) should become a key component of social partnership interactions. To solve this task, it is necessary to elaborate by the Ministry of Education and Science of Ukraine a relevant state comprehensive program that will provide the organization of teaching heads of enterprises, managers, trade unionists, professionals of business structures the ability to conflict-free communication, the art of constructive dialogue, the use of alternative methods of settling labour disputes (mediation), advanced foreign techniques of resolving contradictions that arise in the labour collectives. It should be done on the basis of higher educational institutions, training institutions, courses, business schools, mediation centers. The adoption of the Law of Ukraine “On Mediation” by the Supreme Council of Ukraine, the draft of which is a long time under consideration by the relevant committees of the Supreme Council. Promotion of the active introduction of alternative forms and methods of settlement of social and labour conflicts in the management of labour conflicts, in particular mediation, improvement of forms, methods, ways and procedures of social and labour conflicts settlement with consideration of the best foreign experience, the legal definition of the scope of application are the important perspective directions of the researches aimed at the development of specific methodical principles and recommendations useful for the practice.

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Бунтовська Л. Л. Роль соціально-партнерської взаємодії в регулюванні соціально-трудових відносин в Україні

У статті досліджено проблему забезпечення стабільності соціально-трудових відносин в Україні шляхом використання механізмів соціального партнерства та соціального діалогу. Надано пропозиції щодо підвищення ефективності соціально-партнерської взаємодії між суб'єктами господарювання. Обґрунтовано необхідність організації на постійній основі системи підготовки кваліфікованих спеціалістів у сфері врегулювання трудових спорів (конфліктів).

Ключові слова: підприємство, соціально-трудові відносини, соціальне партнерство, трудові спори, конфліктологічне навчання.

Бунтовская Л. Л. Роль социально-партнерского взаимодействия в регулировании социально-трудовых отношений в Украине

В статье исследована проблема обеспечения стабильности социально-трудовых отношений в Украине путем использования механизмов социального партнерства и социального диалога. Даны предложения по повышению эффективности социально-партнерского взаимодействия между субъектами хозяйствования. Обоснована необходимость организации на постоянной основе системы подготовки квалифицированных специалистов в сфере урегулирования трудовых споров (конфликтов).

Ключевые слова: предприятие, социально-трудовые отношения, социальное партнерство, трудовые споры, конфликтологическое обучение.

Buntovskaya L. L. The Role of Social Partnership in the Regulation of Social and Labor Relations in Ukraine

With the transition to market economic conditions the problem of enhancing the role of social partnership as a main method of achieving the compromise in conflict-free regulation of social and labor relations has become especially actual.

The paper focuses on such main forms of realization of social partnership as social dialogue, collective bargaining, branch, regional agreements and General agreement. It is marked that Ukraine has done a lot in this area. The law of Ukraine "On Social Dialogue" was adopted, the steps are taken to adapt the national legislation on social partnership to the international standards, some ILO Conventions and Recommendations

that relate to collective bargaining were ratified. However, there are many problems which are not solved yet.

According to the purpose of this study, the present situation with social partnership relations in Ukraine has been analyzed, and the drawbacks have been revealed which significantly increase the potential for conflicts at the production level, in particular numerous violations of the collective agreements' terms by employers, the low coverage of employees by collective agreements, the formalism in their preparation or failure to enter into them, etc. The grounds are given why it is necessary to increase the responsibility of stakeholders for elaboration and implementation of collective agreements on the legislative level, as well as for the resistance of employers to conclude them. The arguments are advanced to pay attention to the importance of inclusion of provisions on promotion of production democracy into collective agreements, branch and regional agreements. It will help to eliminate the causes of protest moods in working collectives. The importance of creating the effective mechanism of social partnership with business is stressed, and the conclusion is made that to solve this task it is necessary to accelerate the elaboration and adoption of the Law of Ukraine "On Social Responsibility of Business".

It is emphasized that the organization of the system of teaching conflict resolution on the permanent basis is of great importance, as well as the training of qualified specialists in the field of settlement of labor disputes (conflicts).

Key words: enterprise, social and labor relations, social partnership, labor disputes, teaching conflict resolution.

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