

Social partnership: transformation issues and legal aspect

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Annotation. In the scientific article the authors investigate the scientific and theoretical approaches to the definition of "social partnership", the influence of the current national law on its content. On the basis of this analysis, the interpretation of the category "social partnership" is determined. Shows the transformation in historical -legal aspect, where the main objective of the study is to attempt to bring this category to a wider range of relations between state and society, defining relationships in regulating the social status of the concept.

Keywords: social rights, social partnership, rules, objectives, principles, features, concept, branch of law, law Institute, codification.

Studying this legal phenomenon, it is necessary to find out the literal interpretation of the category of "social partnership" and to trace its transformation in the historical and legal aspect, where the main objective of the study is to try to bring this category to a wider range of relations between the state and society, determining the legal relationship in regulating the social status of this concepts.

The concept of "social partnership" is made up of two components: "social" and "partnership". In a broad sense, "social" means "generally related to the human social type of interaction and communication." The content of the "social" category is the joint nature of various manifestations of human life [1]. The word "partner" has French origin ("lepartenaire") and translates as partner, companion [2].

In principle, the very concept of "partnership" already has a social meaning and, in general, there is no need to add the word "social" here, however, in everyday life the phrase "social partnership" has taken root and suggests a special type of partnership - not between any entities, but namely, between the state, employers and workers (the most common interpretation).

The category of "social partnership" was studied by representatives of various branches of science; therefore it has an ambiguous interpretation. At the same time, scientists differently establish the moment of the emergence of the idea of social partnership and the time frame for the development of these relations.

The longest history of the origin of social partnership is offered by philosopher scientists. So, G.V. Mirzoyan suggests [3] that the idea of social partnership appeared in the XVII – XIX centuries. P. Golbach, J. Locke, W.-L. Montesquieu, J.J. Rousseau and other philosophers left an extensive methodological legacy that helps to understand the axiological content of the problem of social partnership. In particular, G. Hegel in the Philosophy of Law defined partnership as an agreement expressing the "common will" existing in society. Such an agreement is based on a conventional agreement between individuals.

In the framework of the concepts of social evolutionism, which were developed by G. Spencer and his followers, social partnership was studied as part of the evolutionary process of integration of individual systems of a single social organism [3].

Specialists in the field of labor law, historians establish a shorter chronological framework. So, A.A. Fedulin, conducting his research, proceeds from the hypothesis that “social partnership as a new type of interaction of social forces arises as a social need and a necessity only at certain stages of the industrial and post-industrial development of society” [4]. Therefore, this author believes, the main theoretical and methodological aspects of social partnership were disclosed in the works of M. Weber, E. Bernstein, K. Marx, F. Engels, E. Durkheim, R. Darendorf [4]. Theorists of labor law link the emergence and development of social partnership from the moment of aggravation of contradictions between workers and employers, therefore, as historians believe, from the moment of active industrial development of state economies.

Also, representatives of various sciences do not have the same approach to the concept of “social partnership”.

I.A. Ivanova in her study identified three aspects of understanding this category:

- in the philosophical aspect, social partnership is a system of relations between various social actors, which is focused on achieving national interests, taking into account group and corporate interests;

- in the economic and legal aspect, this is a system of relations between employers, state and municipal bodies and employees, based on negotiations, the search for mutually acceptable solutions in the regulation of labor and other relations directly related to them; or - it is a system of measures aimed at cooperation between workers, employers and the state in the field of social and labor relations;

- in the historical aspect, social partnership is a system of relationships between these entities, which replaced the theory of class struggle and is essentially the opposite of the last one [5].

However, these definitions do not give a complete picture of social partnership in the legal aspect and can only partially be used to solve this problem. The philosophical definition proposed above has two positive aspects: firstly, here social partnership is presented as a system of relations between various social entities, that is, the list of entities is not limited; secondly, the goal of social partnership is indicated - the achievement of national interests, taking into account group and corporate interests. The disadvantage is the lack of reference to the state as a subject of social partnership. In another definition formulated by the representative of philosophy G.V. Mirzoyan, there is an indication of the state as a side of social partnership: “It should be noted that the most acceptable definition of social partnership is a set of traditional and cultural values, ideological and spiritual foundations that govern the nature and direction of collective relations between representatives of business-organizations, state structures and non-profit organizations civil society to ensure the stability of society based on an objective consideration of the basic interests of all its s” [3]. However, when formulating the legal definition of social partnership, one cannot characterize it as a “set of traditional and cultural values, ideological and spiritual foundations”, rather, it should be considered as a set of legal norms.

The concept of social partnership presented in historical aspect as a contrast to the theory of class struggle also does not reflect the legal essence of social partnership.

The most common interpretation of social partnership is that which is presented in the economic and legal aspect. This understanding is also characteristic of scientists - representatives of the science of labor law. So, I.A. Ivanova, points out that “in relation to the labor-legal aspect of social partnership, it can be defined as follows: it is an objectively determined system of relations between employees (representatives of employees), employers (representatives of employers),

state and municipal bodies, based on negotiations, the search for mutually acceptable decisions in the regulation of labor relations and other relations directly related to them”[5]. V.G. Belov and O.V. Pishchulin represent social partnership as “a special type of regulation of social and labor relations in the labor market, aimed at achieving social consensus on the basis of a historically determined compromise of the economic interests of employees, employers and the state” and as “a type of relationship between employers and employees, in which the social world ensures a balance in the implementation of the most important social and labor interests.” In the last concept, such an important element as the third party - the state [6] is missing.

Such a narrow understanding of social partnership is reflected in the current legislation of the Republic of Kazakhstan. So in accordance with paragraph 7 of an art. 1 of the Labor Code of the Republic of Kazakhstan dated May 15, 2007, social partnership is a system of relations between employees (representatives of employees), employers (representatives of employers), government bodies, aimed at ensuring coordination of their interests on issues of regulation of labor relations and other relations directly related to them [7].

A narrow understanding of social partnership runs counter to developing public relations. The expansion of this institution should be carried out in two directions - in terms of subject composition and scope. Firstly, at present, the qualitative characteristics of the parties to social partnership have changed. Unlike traditional tripartism, in which the state, employers and unions of employees were parties, a layer of working owners has now formed, and it would be interesting to determine their place in the system of social partnership. In addition, the interests of the unemployed, or, for example, civil servants outside the civil service, as residents of a certain region, should not be protected, because some categories of civil servants do not have the right to create trade unions, as mentioned earlier. Also in the socio-economic life of society, not only the labor interests of the population, but also other, for example, environmental, or issues of the development of territories or health can be affected. Therefore, one cannot limit oneself only to the activities of trade unions; after all, they are not only public organizations. Therefore, some scholars suggest that NGOs (non-profit organizations), local communities, territorial public organizations and other civil society institutions be considered as one of the parties to social partnership [8]. Secondly, the scope of social partnership is expanding. You can't be limited only to labor relations. “Today, we can safely say that the sphere of public demand for social partnership is much wider than the actual social and labor relations,” Russian authors rightly note [9]. As already noted above, in life there are problems of the development of territories, the social sphere as a whole, therefore, some scientists, in particular, S.I. Alekseev, another form of partnership is proposed - intersectional social partnership or local-territorial social partnership, the essence of which is to establish constructive interaction between the three forces operating in a particular territory of the country - state structures (institutions and authorities), commercial enterprises and non-profit public organizations in order to form and improve the functioning of the social sphere of a particular territory [10].

We offer the following definition of social partnership: social partnership is a system of relations between citizens of the Republic of Kazakhstan (their representatives in the form of public associations, labor collectives), business entities (their representatives), state bodies, and local governments aimed at ensuring coordination of their interests.

Parties to a social partnership may be: a) citizens of the Republic of Kazakhstan (their representatives in the person of public associations, labor collectives); b) local authorities; c) business entities (their representatives);

d) government bodies. In the literature of these entities, only workers and employers are usually referred to as parties. So, according to A.V. Lukashevich and V.V. Lukashevich, “the parties to

social partnership are workers and employers represented by authorized representatives” [11]. This is a controversial statement. Social partnership cannot be carried out without a state as a third party. If there was an opportunity to coordinate the interests of workers and employers without possible conflicts, then there would be no need to turn to the state and form the institution of social partnership. In addition, citizens of the Republic of Kazakhstan (their representatives represented by public associations) are an obligatory party in social partnership. The main meaning of social partnership is to coordinate the interests of citizens of the Republic of Kazakhstan, the interests of business entities and public policy. Therefore, such a new legal phenomenon as public-private partnership cannot be attributed to the forms of social partnership without any reservations. So, E.M. Petrova defines public-private partnership as “mutually beneficial cooperation between government and business, implemented in various forms and aimed at solving political and socially significant problems at the national, regional and local levels” [12].

According to K.A. Antonova, it is proposed that public-private partnerships be understood as an institutional and organizational alliance between the state and business, carried out on a contractual basis between state (municipal) governing bodies and private structures, in which the subject of the agreement is state (municipal) property or services [13]. However, it should be borne in mind that such a partnership does not always pursue the goals of social protection of citizens. As the main features of public-private partnership that distinguish it from social partnership, K.A. Antonova points out the following: the purpose of the agreement between the state and business is to achieve a “mutual additional benefit” and to fulfill a joint task; participants in the conclusion of the agreement are guided by their own interests; revenues are divided in proportion to the investments of participants and the acceptance of risk [13]. However, in the Republic of Kazakhstan there is a unique case of public-private partnership carried out in the interests of citizens. And this allows appropriate cooperation to be linked with the tasks of social partnership. Since 2007, the so-called socio-entrepreneurial corporations have been created and are functioning in the Republic of Kazakhstan.

Local government bodies are also indicated as a party to social partnership. Although the institution of local self-government in the Republic of Kazakhstan is in its infancy, we believe that in the future they may be a party to social partnership. The lack of reference to these bodies in the definition of social partnership under the Labor Code of the Republic of Kazakhstan is a gap in the labor legislation of the Republic of Kazakhstan.

Social partnership can be carried out in the following forms: a) collective bargaining on the preparation of draft collective agreements, agreements and their conclusion; b) mutual consultations (negotiations) on the regulation of social, labor and other relations, ensuring guarantees of citizens' rights in various areas of socio-economic development of the Republic of Kazakhstan; c) participation of representatives of the parties in pre-trial settlement of various disputes (labor, land, environmental, etc.).

As noted earlier, the concept of “social partnership” is multi-faceted. We can consider social partnership as a system of relationships, and as a method of regulation, and as a specific process (activity), and as a legal institution. According to the political scientist F.I. Gaynullina: “Social partnership is not only a mechanism (methods and methods) to achieve a balance in the realization of the interests of the parties, but also a certain spiritual and ideological complex, including ideas and ideals, values and value orientations, attitudes aimed at seeking consent and cooperation” [14]. That is, social partnership can be considered as a certain set of moral values.

From a legal point of view, social partnership is a set of legal norms that occupy a specific place in the legal system.

The rules on social partnership are generally binding (i.e., these are the rules of behavior that must be strictly followed by all entities), formally defined (as they are prescribed in regulatory legal acts adopted in the manner prescribed by the state (Labor Code of the Republic of Kazakhstan, etc. , or in collective agreements and agreements) interconnected with the state (as they express the will of the state, its interest in social partnership and are provided with the coercive power of the state), obligatory (i.e. Nomen law corresponds to the duty).

At the present stage, the rules on social partnership are integrated into a single community; it remains only to find out what this community is - a legal institution or a legal sub-institution.

Let us consider whether all the features of a legal institution correspond to a commonality of norms on social partnership. Firstly, the uniformity of the actual content is inherent in these norms. The rules on social partnership regulate their narrow circle of homogeneous social relations - relations on social partnership. Secondly, there is also legal uniformity of social partnership rules. The norms under consideration are expressed in general provisions, specific legal principles, specific legal concepts, which create a special legal regulation regime inherent in this type of relationship. So, Kazakhstan legislation has already enshrined: the definition of social partnership, specific legal categories related to it, the main tasks and the basic principles of social partnership. In particular, the tasks of social partnership are enshrined in the Labor Code of the Republic of Kazakhstan. It is interesting that although the Labor Code of the Republic of Kazakhstan contains a narrow interpretation of the concept of "social partnership", the complex of tasks enshrined in Art. 258 LC RK, says the opposite. It is indicated here that social partnership in the Republic of Kazakhstan is aimed at solving the following problems:

1) creating an effective mechanism for regulating social, labor and related economic relations; 2) assistance in ensuring social stability and social harmony on the basis of objective consideration of the interests of all sectors of society; 3) assistance in ensuring guarantees of the rights of workers in the field of labor, the implementation of their social protection; 4) facilitating the process of consultations and negotiations between the parties to social partnership at all levels; 5) assistance in resolving collective labor disputes; 6) development of proposals for the implementation of state policy in the field of social and labor relations. As we see, the first two tasks allow us to give a broader interpretation of social partnership.

In theory, the principles of social partnership are also highlighted. So, according to A.A. Fedulina, "social partnership is built on the principles of legality, voluntariness, democracy, interaction, competitiveness, competition, competition, struggle, compromise, consensus and tolerance" [4].

Normative isolation, i.e. Separation of norms forming a legal institution in chapters, sections, parts, other structural parts of a law or other normative legal act, norms on social partnership also exists. The Labor Code of the Republic of Kazakhstan has a special Section 4 "Social Partnership and Collective Relations in the Sphere of Labor". However, it cannot be said that the norms in question have the fullness of regulated relations. The current rules on social partnership are clearly insufficient for the comprehensive regulation of social partnership relations.

Despite this, the norms in question should not be considered a sub-institution (an integral part of a legal institution) of any particular branch of law. This set of norms is intersectoral in nature. Thus, the rules on social partnership are an interdisciplinary legal institution. As a legal institution, social partnership is a set of legal rules governing relations between citizens of the Republic of Kazakhstan (their representatives in the form of public associations), business entities (their representatives), state bodies, and local governments aimed at ensuring the coordination of their interests.

This institution will develop; however, we believe that so far there is no reason to recognize the totality of norms on social partnership as a branch of law.

Based on the above thesis about the intersectional nature of the institution of social partnership, it can be concluded that the rules on social partnership should not be contained in the framework of a normative legal act of one branch of law - labor law. Probably, we should return to the original model - a separate law "On Social Partnership in the Republic of Kazakhstan". Or to codify the legislation of the Republic of Kazakhstan on the social rights of citizens, the communities formed by them, where issues of social partnership will be provided.

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ӘЛЕУМЕТТІК ӘРІПТЕСТІК: ТРАНСФОРМАЦИЯ ЖӘНЕ ҚҰҚЫҚТЫҚ АСПЕКТ МӘСЕЛЕЛЕРІ

Мақалада авторлар «әлеуметтік серіктестік» анықтаудың ғылыми-теориялық тәсілдерін, қолданыстағы ұлттық құқықтың оның мазмұнына әсерін зерттейді. Көрсетілген талдау негізінде «әлеуметтік әріптестік» санатын түсіндіру айқындалады. Тарихи-құқықтық аспектіде трансформация көрсетілді, онда зерттеудің негізгі мақсаты осы категорияны мемлекет пен қоғам арасындағы, осы ұғымның әлеуметтік мәртебесін реттеудегі құқықтық қатынастарды айқындайтын қатынастардың неғұрлым кең шеңберіне шығаруға әрекет ету болып табылады.

Түйін сөздер: әлеуметтік құқық, әлеуметтік серіктестік, ережелер, міндеттер, принциптер, белгілер, ұғым, құқық саласы, заң институты, кодификация.

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СОЦИАЛЬНОЕ ПАРТНЕРСТВО: ВОПРОСЫ ТРАНСФОРМАЦИИ И ПРАВОВОЙ АСПЕКТ

В статье авторами исследуются научно-теоретические подходы к определению «социальное партнерство», влияние действующего национального права на его содержание. На основе указанного анализа определяется толкование категории «социальное партнерство». Показана трансформация в историко-правовом аспекте, где основной целью исследования является попытка вывести данную категорию на более широкий круг отношений между государством и обществом, определяющих правоотношения в регулировании социального статуса данного понятия.

Ключевые слова: социальные права, социальное партнерство, правила, задачи, принципы, признаки, понятие, отрасль права, юридический институт, кодификация.