

Social Partnership: A Form of Solidarity and a Basis for Alternative Labor Dispute Resolution

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Abstract: The constitutions of numerous countries across the globe somehow express the principle of solidarity associated with the drive of the state, society, and each individual for the common good, though with the observance of human rights and freedoms, as well as the creation of conditions for their maximum enforcement. Social partnership acquired constitutional status due to the 2020 amendments. Due to this fact, the problem of implementing this principle and method of interaction in social and labor relations is highly relevant. Social partnership allows using an alternative, compared to the judicial, labor dispute resolution method based on a dialogue and cooperation. The aim of the article is to assess the potential of the implementation of norms on social partnership for the effective resolution of labor conflicts, to identify relevant legal and organizational problems, and to outline the ways of their solution. The study used general scientific methods – analysis and synthesis, deduction and dialectical method, and special legal methods – comparative jurisprudence and legal modeling. An analysis of Russian legislation, its application practice, and legal literature allows the conclusion that conciliation in resolving collective labor disputes in Russia is ineffective because of the imperfection of labor legislation and the refusal to use mediation, which causes a negative response among lawyers. Such a policy results in the inadequate use of social partnership capabilities, as well as the employees' use of other, more stringent, often not formalized, methods to influence employers. The above facts require strengthening the state's role in social partnership and promoting conciliation in collective labor dispute resolution. There is a need to simplify conciliation procedures legislatively. The changes could begin with the adoption of a law to establish the general principles of social partnership in Russia, the main areas, and the role of all the main actors therein – the state, public organizations, entrepreneurs, and employees.

Keywords: Collective Labor Disputes. Alternative Conflict Resolution Procedure. Solidarity. Social Partnership. Conciliation. Strike. Mediation.

Summary: **1** Introduction – **2** Constitutional correlation between solidarity and social partnership – **3** An alternative procedure for collective labor dispute resolution as a form of social partnership – **4** The effectiveness of social partnership agreements and the collective labor dispute resolution mechanism in Russia – Conclusion – References

1 Introduction

The theory of social solidarity developed, in particular, by L. Duguit and A. Giddens¹ in the socio-economic sense is not aimed at opposing the state to the market, but is designed for the mutual responsibility of the state and the individual.² E. Durkheim proposed the idea of solidarity as an alternative to the liberal and socialist development of society. In his opinion, organic solidarity presupposes social unity with the division of labor of individuals pursuing their personal interests.³ In other words, solidarity is a social order based on the unity of individual and collective interests.

The concept of social solidarity is expressed in the constitutions of numerous countries across the globe. In some countries, for example, in Ireland, the term “solidarity” is not used, though its principles are enshrined directly and unambiguously. In particular, paragraph 1, Art. 45 of the 1937 Constitution states: “The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life”. Further, it emphasizes the need for a reasonable and fair distribution of material resources between individuals and different classes, support for private initiative, the denial of misusing labor resources, the prohibition of exploiting the population, the social responsibility of entrepreneurship, and some other essential provisions filling the concept of “solidarity”.⁴ The 1988 Brazilian Constitution explicitly states solidarity as a constitutional goal. It is strengthened by the tasks of building a fair and free society, ensuring socially valuable freedom of labor and entrepreneurship, as well as endowing property rights with the social function.⁵ At the same time, most constitutions enshrine a wide range of social and labor rights which embody both a social state, and solidarity.

In 2020, the Constitution of the Russian Federation was amended to change the nature of interaction between the individual, society, and the state. The principles of such interaction are, in particular, mutual trust of the state and society, protection of human dignity, respect for labor and laborers, balance of civil rights and responsibilities, social partnership, economic, political and social

¹ DUGUIT L. Constitutional Law. General theory of the state, 910, 1908; GIDDENS A. The Third Way and its Critics. Moscow, 165, 2010.

² AUBAKIROVA I.U. Transformation of the paradigm of the social state: theoretical and legal aspect, *State Power and Local Self-government*, 6, 5-6, 2014.

³ YUDIN G.B. Collective and individual in the philosophical anthropology of E. Durkheim, *Russian Sociological Review*, 12(2), 128, 2013.

⁴ See at <https://www.irishstatutebook.ie/eli/cons/en/html#part14> Access: 17.07.2024.

⁵ See at https://www.constituteproject.org/constitution/Brazil_2017 Access: 17.07.2024.

solidarity (Part 5, Article 75 and Article 75.1 of the Constitution of the Russian Federation).

In other words, since 2020, the concept of solidarity has received its direct constitutional embodiment, while social partnership is named one of its main manifestations. In turn, the interaction between the parties to social partnership when resolving collective labor disputes considered through the use of an alternative, compared to the judicial, procedure is a form of constitutional solidarity.

The literature review has shown that social partnership as a platform for resolving labor conflicts is of great interest to researchers. A number of works are aimed at identifying negative aspects of social partnership.⁶ Other studies point out the positive potential of resolving contradictions between employees and employers within the framework of social partnership.⁷ Closely related to this issue is the analysis of the role of trade unions in resolving labor disputes,⁸ as well as the ways of interaction between the parties.⁹

The aim of the article is to assess the potential of the implementation of norms on social partnership for the effective resolution of labor conflicts, to identify the relevant legal and organizational problems, to identify ways to solve them. The prerequisite for achieving this goal is scientific and legislative disclosure of the content of constitutional solidarity in relation to labor relations, in general, and to the ways of resolving labor disputes, in particular.

The scientific study of these problems is based on the use of the general scientific dialectical method, which allows linking together three related categories – solidarity, social partnership and resolution of labor disputes. The deductive method allowed us to move from the general constitutional-legal phenomenon of solidarity through social partnership to private issues of labor dispute resolution, including the use of alternative procedures. By means of the special legal method

⁶ KELLY J. Social partnership agreements in Britain: labor cooperation and compliance, *Industrial Relations*, 43(1), 289-290, 2004; GUEST D., et al. Does partnership at work increase trust? An analysis based on the 2004 Workplace Employment Relations Survey, *Industrial Relations Journal*, 39(2), 2008; Ó CINNÉIDE S. Democracy and the Constitution, *Administration*, 46(4), 1998.

⁷ XI M., et al. Labor relations conflict in China: An analysis of conflict measure, conflict solution and conflict outcomes, *The International Journal of Human Resource Management*, 33(17), 2021; Paolucci V., ROCHE W. K. Social partnership, company-level collective bargaining and union revitalization in Ireland, *Economic and Industrial Democracy*, 2024, <https://doi.org/10.1177/0143831X231220136> Access: 18.06.2024.

⁸ ACKERS P., PAYNE J. British trade unions and social partnership: rhetoric, reality and strategy, *The International Journal of Human Resource Management*, 9(3), 546, 1998; DONAGHEY, J., CULLINANE, N., DUNDON, T., & DOBBINS, T. Non-union employee representation, union avoidance and the managerial agenda, *Economic and Industrial Democracy*, 33(2), 163-183, 2012; RAKHIMOVA A.M., KAISHATAEVA A.K. The role of trade unions as a subject of social partnership in the settlement of labor disputes, *Journal of Advanced Research in Law and Economics*, 3(49), 2020.

⁹ WILSON E.J., BUNN M.D., GRANT T. Savage anatomy of a social partnership: A stakeholder perspective, *Industrial Marketing Management*, https://www.sciencedirect.com/science/article/abs/pii/S0019850109001461?casa_token=Rx-bqW3UNL0AAAAA:g8QDoinnmQiwEeUXYHb0K3SQLhz3m-29Q0pSnRv06Lic7CLB0Ou9PRA6nV03Tc2aFqOV2cehc Access: 18.06.2024.

of comparative jurisprudence the research of development of institutions of social partnership, the role of trade unions in the resolution of labor conflicts in different countries was carried out. The method of legal modeling, applied on the basis of the general scientific method of analysis and synthesis, allowed to identify a number of practical problems in the field of collective labor disputes resolution in Russia and outline ways to solve them.

2 Constitutional correlation between solidarity and social partnership

It is easy to conclude that constitutional solidarity directly follows from the development of the theory of the social state originating in the works of the German scientist L. von Stein. In his opinion, the social state promotes the harmonization of social relations and social order in general, first of all, by resolving contradictions between labor and capital, i.e., between two opposing classes, and the means of managing this conflict should be the free development of each member of society contributing to the freedom of society in general.¹⁰ B.S. Ebzeyev repeats this idea already in relation to the Constitution of the Russian Federation.¹¹

Many authors, for example, K.D. Krylov, understand justice and the essence of the social state in the context of a certain “social ideal” which would reflect the consistency “between the practical role of various social strata, groups, and individuals in the life of society and their social status, between their rights and responsibilities, labor and remuneration, merits and their public recognition”. According to author, this consistency primarily enables every person to find a decent job¹² which constitutes the scope of the constitutional value of the freedom of labor.

According to V.E. Chirkin, decent work and decent working conditions (working time, rest time, labor safety) are the basis of social justice and the goal of the social state.¹³ An essential indicator of social justice is a decent level of wages, wherein, according to V. E. Chirkin, not only absolute amounts of earnings, but also the absence of economically and socially unjustified gaps in the incomes of

¹⁰ BIRYUKOV S.V., EVSTRATOV A.E. The idea of a welfare state in the aspect of state-legal monism and pluralism. *Law Enforcement Review*, 7(3), 18, 2023.

¹¹ EBZEYEV B.S. Introduction to the Constitution of Russia: a monograph. Moscow: Norma: INFRA-M, 16, 2019.

¹² KRYLOV K.D. To the question of the general concept and legal content of social justice, *Social justice and law: problems of theory and practice: materials of the International Scientific and Practical Conference* / ed. by T.A. Soshnikova, Moscow: Moscow Humanitarian University, 26-27, 2016.

¹³ CHIRKIN V.E. The Constitution and the Social State: Legal and Factual Indicators, *Journal of Russian Law*, 12(144), 2008.

various categories of citizens are important.¹⁴ I.A. Alebastrova speaks of the need to overcome the dominance of some social groups over others, including employers over employees, in order to create decent living conditions for everyone.¹⁵

A.S. Shaburov associates the social state with the guarantees of “freely realizing one’s labor and intellectual potential”. The freedom of labor, and accordingly, the social state are manifested not only in the choice of a decent job, which we have already talked about earlier, but, according to A.S. Shaburov, in the freedom of social partnership and employees’ participation in the development and making management decisions at the employer level and all levels of public authority. It ultimately leads to the fair distribution of social burden between the state and business entities, including through the state policy “focused on investments in people and the targeted support of the most vulnerable groups of the population”. The author recognizes the need to broaden the concept of the social state to the economic component, whose key factors are labor and its remuneration.¹⁶

The information and analytical review¹⁷ published by the Constitutional Court of the Russian Federation in November 2023 also links solidarity with social partnership, especially in the context of interaction between employees and entrepreneurs. The Constitutional Court of the Russian Federation sees the role of social partnership and the essence of solidarity in the “creation of regulatory conditions to achieve a balance of rights and legitimate interests of the employer and employee, protection of employees from exploitation, adequate monetary valuation of labor costs, as well as ensuring other guarantees provided to the employee as a weaker party of labor relations”.

When analyzing the phenomenon of solidarity, the Constitutional Court could not move away from the triality of solidarity in Art. 75.1 of the Constitution, and therefore considers these three “solidarities” separately from each other. At the same time, the Constitutional Court cannot but note the dependence of different forms of solidarity on the same constitutional principles and values. For example,

¹⁴ CHIRKIN V.E. Some aspects of the constitutional principle of social justice in a comparative dimension, *Social justice and law: problems of theory and practice: materials of the International Scientific and Practical Conference* / ed. by T.A. Soshnikova, Moscow, Moscow Humanitarian University, 42-43, 2016.

¹⁵ ALEBASTROVA I.A. The principle of social solidarity in constitutional law: dissertation of the Doctor of Juridical Sciences. Moscow, 8, 2016.

¹⁶ SHABUROV A.S. “Rule-of-law” and “Social” in the description of the social rule-of-law state, *The Rule of Law State: Theory and Practice*, 3(41), 8-9, 2015.

¹⁷ Information of the Constitutional Court of the Russian Federation “Actual constitutional and legal aspects of ensuring economic, political and social solidarity: to the 30th anniversary of the Constitution of the Russian Federation (based on the decisions of the Constitutional Court of the Russian Federation of 2020–2023)” (approved by the decision of the Constitutional Court of the Russian Federation dated 14.11.2023). https://www.consultant.ru/document/cons_doc_LAW_462470/?ysclid=lyux28njzk474997828 Access: 18.06.2024.

“sustainable growth in the well-being of citizens, being a prerequisite for social solidarity, simultaneously presupposes the manifestation of solidarity in the economic sphere”.

The attribution of rules and limits for the enforcement of labor civil rights, including freedom of labor, and balancing the rights and interests of employees and employers to economic solidarity seems controversial. The Constitutional Court, certainly, declares an “integrated manifestation of economic and social solidarity” in relation to the labor sphere, but still considers it as a field for establishing economic solidarity, since the “divergent” interests of employees and employers develop in the economic sphere. Linking social solidarity with a social state and social justice, as well as decent human development, the Constitutional Court further considers it only in the context of enforcing civil rights in the field of social protection and social security.

According to the Constitutional Court, social solidarity “is an important value-regulatory means of mitigating social inequality, overcoming the constitutionally unacceptable consequences of income polarization, and ensuring decent living conditions for all citizens, including those belonging to vulnerable groups”. In our understanding, these constitutional goals are primarily inextricably linked with labor rights, since they are expressed in the dichotomy of “private property – freedom of labor” constitutional values. Material benefits are distributed within the framework of interaction between an employee and an employer (owner), given the coordinating role of the state, i.e., the potential of balancing social groups that are opposite in their initial aspirations is realized.

Moreover, our reflections herein and the previous sections of the work allow saying that the correlation between individual and collective interests within the framework of the “employee – owner – state” interaction determines, speaking the language of the Constitution, not only economic and social, but and political solidarity. In our opinion, mutual trust between the authorities and society, which, according to the Constitutional Court, complements domination and subordination and thereby forms political solidarity, cannot develop without ensuring social justice. It is hard to imagine strengthening, in the words of the Constitutional Court, of “free loyalty” in the conditions of sharp social stratification, inequality, and the absence of the genuine freedom of labor based on the guarantees of decent work and a decent life. The effective use of social partnership mechanisms contributes to the solution of these problems in the paradigm of solidarity. Being a means for settling disputes, resolving conflicts, and establishing cooperation, it contributes to balancing various constitutional values, public and private interests, as well as to the cooperation of all parties concerned. Social partnership can ensure a compromise providing for the renunciation of some interests and their maximum satisfaction.

Labor acts as a means of achieving solidarity. In this regard, law, including certain fields, should move away from the narrow subject of regulation, which consists primarily in determining legal guarantees and means of protecting employees' labor rights, and, in a sense, employers' interests, as well as ensuring favorable working conditions. This is exactly how Art. 1 of the Labor Code of the Russian Federation formulates the goals of labor legislation. Some authors believe that law should pay close attention to such aspects of the labor sphere as the future responsibility of subjects for the conscientious performance of labor duties, updating of labor relations, unemployment and dependency, as well as the labor function implementation procedure. We can supplement the list with the need to regulate the prohibition to abuse the rights by subjects of labor relations, encourage social partnership, and other forms of cooperation between employees, employers, and the state. In other words, the emphasis of labor legislation should be shifted from protective and guarantee standards (although it is impossible without them) to positive regulatory, encouraging standards mediating solidarity in society.¹⁸

L.S. Tal considers it vicious to resolve contradictions between labor and capital "by force, rather than law", which leads to fundamental contradictions. Yu.V. Ivanchina concludes: "to move to a qualitatively new level, we need to transit from simply social to solidarity-based cohesion".¹⁹ Probably, this approach should be facilitated by the 2020 amendments to the Constitution of the Russian Federation which expanded the partnership to "cooperation between public authorities and legal entities or individuals for public and other socially significant purposes" embodying the principle of solidarity, which is also compatible with the provisions on maintaining civil peace and harmony, support for civil society,²⁰ including in the context of following the principles of interaction between society, business, and the state. It is the combination of solidarity and justice expressed in all the above principles that forms the basis for a new model of social partnership in the labor sphere.²¹ The doctrine of social partnership has become a model for resolving socio-economic contradictions through evolutionary, contractual means in numerous countries across the globe.²² This model allows making decisions

¹⁸ STEPANENKO R.F., SOLDATOVA A.V., STEPANENKO H.N. Labor as a manifestation of identity in the construction of a social state (philosophical and legal aspects), *Law and the State: Theory and Practice*, 1(217), 47, 2023.

¹⁹ IVANCHINA Yu.V. Fundamentals of the formation of the function of social solidarity and compromise of labor law in Russia, *Labor Law Yearbook*, 11, 107-108, 2021.

²⁰ SUSHILNIKOV I.S. The Right to Partnership between Entrepreneurs and Authorities in Russia. *Russian Law Journal*, 6, 2022, <https://base.garant.ru/77076788/> Access: 14.06.2024.

²¹ OBUKHOVA G.N. Trade unions of Russia in the system of social partnership: legal regulation, problems and prospects of development, *Law Enforcement Review*, 7 (3), 135-144, 2023, [https://doi.org/10.52468/2542-1514.2023.7\(3\).135-144](https://doi.org/10.52468/2542-1514.2023.7(3).135-144) Access: 19.06.2024.

²² ILYINA O.Yu. Social Partnership: From Social and Labor Tripartism to a Universal Constitutional Principle, *Constitutional and Municipal Law*, 8, 33, 2022.

acceptable to all parties to social partnership, which allows avoiding extreme methods of confrontation, such as strikes.²³

3 An alternative procedure for collective labor dispute resolution as a form of social partnership

Social partnership in the context of solidarity is a mechanism used to resolve global contradictions between labor and capital in the format of an alternative procedure for settling specific labor conflicts. The purpose of this procedure is to allow each party concerned to realize all of its interests, though jointly with other parties concerned, including the state.

The 1998 Declaration of the International Labour Organization “On Fundamental Rights and Principles at Work”²⁴ emphasizes the principle of ensuring “freedom of association and the effective recognition of the right to collective bargaining” (subparagraph “a”, paragraph 3). It does not only express the importance of settling disputes between employees and employers through contractual means, but also emphasizes the importance of social partnership to ensure the actual freedom of labor. According to the Constitutional Court of the Russian Federation, it is revealed primarily in the contractual nature of labor relations.²⁵

According to paragraph 5, Art. 27 of the Labor Code of the Russian Federation, “the participation of employees and employers’ representatives in labor dispute resolution” is a form of social partnership. In turn, Federal Law # 193-FZ dated 27.07.2010 (as amended on 26.07.2019) “On an alternative procedure for resolving disputes with the participation of a mediator (mediation procedure)” directly prohibits its use for resolving collective labor disputes most associated with social partnership. Collective labor disputes are characterized by lack of relation between their subject and the statutes of law. The conflict between the parties to the partnership concerns only issues that go beyond statutory requirements and are related to interests to be satisfied through cooperation and mutual consent of disputants.

In this regard, it is obvious that the judicial or, as it can be called, the conventional procedure, which presupposes the victory of one of the parties, is unsuitable for collective labor disputes. Such understanding of collective labor

²³ IVANCHINA Yu.V. Fundamentals of the formation of the function of social solidarity and compromise of labor law in Russia, *Labor Law Yearbook*, 11, 109, 2021.

²⁴ ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022, https://normlex.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453911:NO Access: 14.06.2024.

²⁵ Decision of the Constitutional Court of the Russian Federation of 27.06.2023 N^o 1675-O, <https://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ARB&n=769078#0w5o0CUWCMYU6PXk> Access: 14.06.2024.

disputes is developing not only in Russia, but also in other countries. N.L. Lyutov notes that in the UK and the USA, priority in labor cases is given to the Alternative Dispute Resolution procedure.²⁶ This procedure follows from the essence of social partnership.

At the same time, the attitude towards social partnership expressed in foreign literature is ambiguous. In particular, one study concluded that agreements entered into within the framework of social partnership do not always directly correlate with the problems of employment, wages, etc. or increase the role of trade unions.²⁷ Some authors compare social partnership with the negative aspects of the policy of clientelism.²⁸

Other works, on the contrary, state the growing role of social partnership, which can become one of the main lines of social policy²⁹ linking the social state and solidarity.³⁰ It helped trade unions to regain their flagship role in promoting employee participation and protection in relations with employers and authorities. At the same time, trade unions exercise the public function, representing the interests of all employees, regardless of whether they are members of a trade union or not.³¹ In this case, the trade union plays the role of a public rather than a private representative.³²

Moreover, in recent decades, social partnership has gone beyond social and labor relations and is a form of involving the population and professional subjects, seemingly far from administration and politics, into relevant processes.³³ Thus, the high degree of involving the main players in various forms of social partnership contributed to “Ireland’s Economic Miracle” – the country had the highest rates of

²⁶ LYUTOV N.L. Collective labor law of Great Britain: a monograph. Moscow: Volters Kluwer Publishing House, 96, 2009.

²⁷ KELLY J. Social Partnership Agreements in Britain: Labor Cooperation and Compliance, *Industrial Relations*, 43(1), 289-290, 2004; GUEST D., et al. Does partnership at work increase trust? An analysis based on the 2004 Workplace Employment Relations Survey, *Industrial Relations Journal*, 39(2), 2008.

²⁸ O RIAIN S. Social Partnership as a Mode of Governance: Introduction to the Special Issue, *The Economic and Social Review*, 37(3), 313, 2006.

²⁹ TULIEV I.R. Social partnership as the main direction of social policy of the Russian Federation, *Law Bulletin*, 2, 20, 2020.

³⁰ SUSHILNIKOV I.S. The Right to Partnership between Entrepreneurs and Authorities in Russia. *Russian Law Journal*, 6, 2022, <https://base.garant.ru/77076788/> Access: 14.06.2024.

³¹ ACKERS P., PAYNE J. British trade unions and social partnership: rhetoric, reality and strategy, *The International Journal of Human Resource Management*, 9(3), 546, 1998; DONAGHEY, J., CULLINANE, N., DUNDON, T., & DOBBINS, T. Non-union employee representation, union avoidance and the managerial agenda, *Economic and Industrial Democracy*, 33(2), 163-183, 2012.

³² SAGANDYKOV M.S. A primary trade Union organization as a public representative of the rights and interests of employees, “For the rights of workers. Man of labor and trade unions in the modern world”: materials of the Second International Scientific and Practical Conference (Yekaterinburg, December 21–22, 2016), Yekaterinburg, 182, 2016.

³³ MUMINOV A., MUMINOV O., NOROV Sh. Social Partnership in Uzbekistan: Status And Prospects, *International Journal of Scientific & Technology Reserch*, 9(2), 5876-5878, 2020.

economic development for many years, including due to a smooth-running dialogue between business, trade unions, and public authorities.³⁴

Social partnership can be defined as regular negotiated relations between organized business and labor, often tripartite, with government participation, to establish the basic standards of wages and employment and influence broader economic and social policy.³⁵ Social partnership mechanisms reflect the transition from paternalistic³⁶ to participatory social policy, which assumes the active role of all parties concerned.³⁷ This significantly changes the scope of the social state which becomes the state of opportunities for everyone. Accordingly, such a transformation also means a transition from administrative conflict settlement to dispute resolution through fair negotiations between equal parties concerned, which makes the essence of alternative methods of legal dispute resolution. The fact is that social partnership includes a wide range of relations: some develop over time into formal contractual relations, while others come and go in less formal ways, existing at the level of contacts between parties concerned.³⁸ Social partnership allows realizing the great potential of law and its individual branches, primarily constitutional law which covers not only the level of legal relations, but also the entire social order. The subject of collective labor conflicts considered through the use of alternative procedures is not statutory provisions and often not even the provisions of agreements or local statutory instruments, but the interests of the parties not initially protected or guaranteed by law. Collective conflicts fall into the category of “disputes of interest”³⁹ rather than “disputes of right”. Thus, the subject of a collective labor dispute is, for example, the rate of employees’ wage increase above the official inflation rate. The Labor Code does not contain such a guarantee, but it can be enshrined at the level of social partnership agreements,

³⁴ HOUSE J. D., MCGRATH K. Innovative Governance and Development in the New Ireland: Social Partnership and the Integrated Approach, *Governance*, 17(1), 29-57, 2004. See also: HASTINGS T., SHEEHAN B., YEATES P. Saving the future: how social partnership shaped Ireland’s economic success. Blackhall Publishing, 2007.

³⁵ IANKOVA E., TURNER L. Building the New Europe: Western and Eastern Roads to Social Partnership, *Industrial Relations Journal*, 35(1), 76-92, 2004.

³⁶ KENDALL G. From Liberalism to Neoliberalism, *Social Change in the 21st Century 2003 Conference Refereed Proceedings. Centre for Social Change Research, School of Humanities and Human Services QUT*, Australia, 6, 2003; See also: CONLY S. Three cheers for the Nanny State, *New York Time*, 24, 277, 2013.

³⁷ SHCHETININA O.V. Philosophy of active turn in social policy: priorities of social partnership technologies, *Legal science and practice: Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia*, 1(53), 295, 2021.

³⁸ WILSON E.J., BUNN M.D., GRANT T. Savage anatomy of a social partnership: A stakeholder perspective, *Industrial Marketing Management*, https://www.sciencedirect.com/science/article/abs/pii/S0019850109001461?casa_token=Rx-bqW3UNL0AAAAA:g8QDoinnmQiwEeUXYHbOK3SQUALhz3m-29QOpSnRv06Lic7CLB0oAu9PRA6nV03Tc2aFq0V2cehc Access: 18.06.2024.

³⁹ SPIELMANS J. V. Labor disputes on rights and on interests, *The American Economic Review*, 29(1), 299-312, 1939.

i.e., with the consent of all parties. Specific values of growth rates will be the subject of negotiations, and if no agreement is reached – the subject of a collective labor dispute.

Partnership does not only result in the achievement of publicly significant goals, but also the enforcement of individual rights and freedoms and legitimate interests by citizens and employers. This is primarily facilitated by the unique procedure for resolving disputes between employees and employers' representatives when the subject of conflict is interests that, on the one hand, are collective, since they affect all employees or all employers, and, on the other, individual, since they can be realized by an employee or employer independently without the involvement of other team members. This can be exemplified by the mechanism for setting the minimum wage at the regional level. M.A. Malyshev rightly notes that the main contradictions between labor and capital concern wages.⁴⁰ Social partnership is aimed at solving this problem. According to Art. 133.1 of the Labor Code, the minimum wage can be increased compared to the federal level through entering into a regional agreement. The set minimum wage level becomes not only a condition of the agreement, but also the right of each employee which can be defended in court.

4 The effectiveness of social partnership agreements and the collective labor dispute resolution mechanism in Russia

A profound analysis of the General Agreements concluded by the Russian Tripartite Commission for the Regulation of Social and Labor Relations shows their framework nature and the lack of specific measures aimed at improving the interaction between employees and employers and upgrading the employees' actual social status. Thus, the section of the General Agreement on wages between all-Russian associations of trade unions, all-Russian associations of employers, and the Government of the Russian Federation for 2021–2023 actually lists only the same guarantees that are enshrined in the Labor Code and indicates some measures the parties take to implement these guarantees. At the same time, neither employers, nor the state and employees assume any real obligations in addition to those already applicable in the law.

The scientific literature has repeatedly noted that such agreements are ineffective. Thus, M. Fichter and J.K. McCallum believe it is caused by the low involvement of the bottom-level elements of the institutionalized structure in the dialogue between trade unions and employers, which significantly defuses

⁴⁰ MALYSHEV M.A. The level of development of social partnership in Russia, *Public Administration. Electronic bulletin*, 1, 30-31, 2021.

conflict situations and removes the acute real local problems from the subject of communication. According to the authors, unions must “broaden the scope of the conflict” by involving more participants and using a wide range of strategies to pressure anti-union management to gain access to the negotiating table for direct dialogue. In the current situation, the list of issues to be discussed is inevitably supplemented by employees’ specific demands resolved within the framework of conflict interaction.⁴¹

St. Petersburg State University of Trade Unions provides statistics on social and labor conflicts in Russia for 2022.⁴² Its analysis allows drawing several conclusions.

Firstly, the number of conflicts is not that high. We believe 122 conflicts a year is not so much for vast Russia. Secondly, conflicts are harsh and often take the form of hunger strikes and other extreme manifestations of intolerance. Thirdly, the vast majority of labor conflicts concern wages, i.e., the basis of contradictions between employees and employers. Such conflicts often arise in budgetary organizations where the state acts as the employer. This also opens up the problem of material resource redistribution. The most skilled healthcare and education professionals who spend years on professional training face unfair labor payment practices.

Thus, T.Ya. Khabrieva and V.E. Chirkina absolutely rightly exemplify social inequality and injustice by the low level of remuneration of knowledge workers compared to other categories of workers, as well as the unreasonably high incomes of the heads of state-owned companies, often regardless of the success of the organizations they head.

Fourthly, all labor conflicts arise at the level of individual organizations,⁴³ which indicates the low efficiency of trade unions at the upper levels of social partnership. It turns out that employees of individual organizations are left to themselves and not properly represented in relations with employers’ associations. Trade unions are not engaged in conflict interaction with employers’ associations and the state, which indicates the weak involvement of bottom-level groups in the trade union movement and the ignorance of pressing social and labor problems solved momentarily rather than systematically.

⁴¹ FICHTER M., MCCALLUM J. Implementing global framework agreements: The limits of social partnership, *Global Networks*, 15(s1), 67, 2015.

⁴² See at: http://industrialconflicts.ru/i/msg2_i/37/sotsialno-trudovye_konflikty_w_rf_w_2022_god._statisticheskij_sbornik.pdf Access: 14.06.2024.

⁴³ KHABRIEVA T.Y., CHIRKIN V.E. Social Justice (Some Constitutional Issues), *Social sciences and contemporary world*, 3, 9, 2017.

In Europe and North America, the main events are on the contrary moving at the highest level of interaction with frequent disputes and strikes on a national scale.⁴⁴

A high rate of collective labor disputes indicates that the trade union movement is mature and there is a meaningful dialogue between employees and employers. An alternative to the conventional collective labor dispute resolution procedure ensures effective interaction between actors and avoids the escalation of contradictions due to the complexity of the procedure and the multidimensionality of the institutional structure of social partnership. Conflicts arise at different levels but they are all interconnected in the structure of social partnership, which is a form of solidarity that allows the parties' representatives to regulate their number, scope, and the rigidity of the parties' positions at the highest level. In other words, real and unrepresentative dialogue on the verge or even beyond the conflict at the high level of social partnership, with the participation of the state, taking into account the interests of certain parties, allows avoiding conflicts at the level of individual organizations, which, otherwise, go to the level of individual labor disputes in the most negative format.

In Russia there are few collective labor disputes and strikes, but a huge number of individual labor disputes, which, in our opinion, mainly results from the lack of general agreements on wages and employment conditions. In this regard, the statement of S.Yu. Chucha that one of the main tasks of social partnership is to prevent collective labor disputes⁴⁵ seems controversial since, as noted earlier, they are a form of social partnership. They allow resolving disputes between employees and employers in much more effective ways than through individual labor disputes. The latter are prevented through effective social partnership, including collective labor disputes.

Conclusion

Legislation should be naturally improved to realize the potential of social partnership and collective labor disputes.

Firstly, the constitutional principle of social partnership understood in a broad sense that goes beyond labor relations should be clarified and implemented at the federal law level. The positive experience of the Republic of Uzbekistan can be used as an example.⁴⁶ The content of the law is not irreproachable, but it forms

⁴⁴ See at: <https://www.solidarnost.org/articles/top-10-zabastovok-2023-goda.html> Access: 14.06.2024.

⁴⁵ CHUCHA S.Yu. Social partnership in the regulation of labor and other relationship directly related to them, *Gosudarstvo i pravo=State and Law*, 1, 131, 2022.

⁴⁶ The Law of the Republic of Uzbekistan "On Social Partnership" of September 25, 2014. Collection of Legislation of the Republic of Uzbekistan, 2014, no. 39, art. 488; 2017, no. 37, art. 978.

the basis for the development of social partnership in many areas of the socio-economic sphere of relations between the state and society. Perhaps, it is worth considering the development of a Russian bill that would define mechanisms for the implementation of social partnership in social, economic, political, and cultural spheres.

Consideration should be given to optimizing the procedures for collective labor disputes to enhance their effectiveness as a means of overcoming contradictions between employees and employers. Many authors point out the imperfection of conciliation procedures according to the applicable Russian legislation. E.S. Gerasimova rightly notes that the low rate of collective labor disputes is in no way compatible with the wide range of problems local employees face. Collective protest often takes a non-legal (not established by law) form, since legal methods are difficult to implement. This concerns the requirements for laying down demands and declaring a strike.⁴⁷ The author notes that the problems highlighted by the Committee on Freedom of Association of the International Labour Organization “include regulation of the level of collective bargaining, the goals of strike actions, quorum requirements for holding general meetings and employees’ conferences; the possibility of laying down demands by trade unions; restrictions on the right to strike for employees in several professions; requirements for ensuring the minimum necessary work”.⁴⁸ I.A. Filipova notes that the legislative ban on the use of mediation in resolving collective labor disputes also significantly depletes the possibilities for peaceful conflict resolution, whereas abroad the relevant procedures are allowed and actively used.⁴⁹

This paper does not aim to analyze in detail the procedures themselves used to resolve collective labor disputes. The emphasis is made on justifying the need to increase the importance of both social partnership in general and its individual elements, which are collective labor disputes. However, even a shallow analysis of regulations, domestic legal literature, and the practice of applying relevant procedures in Russia and abroad (including the quantity and quality of collective labor disputes and strikes) indicates significant omissions and limitations inherent in Russian legislation in this area. Despite the fact that in 2011 the collective labor dispute resolution procedure was simplified, it still remained complicated to implement at the level of individual organizations, especially in the absence or weakness of the primary trade union organization.

⁴⁷ GERASIMOVA E.S. Collective Labor Disputes, Strikes and Protests in Russia: Relevant Laws and Practices, *Journal of Russian Law*, 9, 60-61, 2016.

⁴⁸ GERASIMOVA E.S. Collective Labor Disputes, Strikes and Protests in Russia: Relevant Laws and Practices, *Journal of Russian Law*, 9, 61, 2016.

⁴⁹ FILIPOVA I. A. Mediation in Collective Labor Disputes: Limitations and Opportunities (Taking into Account Foreign Experience), *Journal of Russian Law*, 5, 114-122, 2018.

In our opinion, one of the main problems influencing the effectiveness of collective labor disputes is the generally negative attitude towards them on the part of the state. Article 37 of the Constitution enshrines the right of employees to collective labor disputes, including the right to strike. However, Article 352 of the Labor Code does not even list these employees' opportunities among the main ways of labor right protection. From the standpoint of the state, a collective labor dispute, especially a strike, is the least desirable way to protect labor rights. This is why the activities of governmental authorities responsible for promoting the resolution of labor conflicts in Russia are generally assessed as ineffective. For example, the institution of mediation, which is in high demand in many countries, is almost not used in Russia,⁵⁰ while mediation procedures, as we have already said, are prohibited by law. In such conditions there is no hope for the effectiveness of conciliation procedures.

The 2020 constitutional amendments require the legislator to update significantly social partnership legislation and the collective labor dispute resolution procedure. Only in this case social partnership will become a reliable form of solidarity in Russian society.

Parceria Social: uma forma de solidariedade e uma base para resolução alternativa de disputas trabalhistas

Resumo: Muitas constituições ao redor do mundo refletem o princípio da solidariedade, enfatizando os esforços coletivos do Estado, da sociedade e dos indivíduos em prol do bem comum, respeitando os direitos humanos e as liberdades, além de criar condições para sua máxima efetivação. A parceria social adquiriu *status* constitucional na Rússia após as emendas de 2020, tornando altamente relevante a implementação deste princípio e método de interação nas relações sociais e trabalhistas. A parceria social permite o uso de um método alternativo, em comparação ao judicial, para a resolução de disputas trabalhistas, baseado no diálogo e na cooperação. O objetivo deste artigo é avaliar o potencial de implementação das normas sobre parceria social para a resolução eficaz de conflitos trabalhistas, identificar problemas legais e organizacionais relevantes, e apontar caminhos para sua solução. O estudo utilizou métodos científicos gerais – análise e síntese, dedução e método dialético – e métodos jurídicos especiais – jurisprudência comparada e modelagem jurídica. A análise da legislação russa, sua aplicação prática e a literatura jurídica permitem concluir que a conciliação na resolução de disputas coletivas de trabalho na Rússia é ineficaz devido à imperfeição da legislação trabalhista e à recusa do uso da mediação, o que gera uma resposta negativa entre os juristas. Essa política resulta no uso inadequado das capacidades da parceria social e leva os trabalhadores a utilizarem outros métodos, mais rigorosos e muitas vezes não formalizados, para influenciar os empregadores. Esses fatos exigem o fortalecimento do papel do Estado na parceria social e a promoção da conciliação na resolução de disputas coletivas de trabalho. Há a necessidade de simplificar legislativamente os procedimentos de conciliação. As mudanças poderiam começar com a adoção de uma lei que estabeleça os princípios gerais da parceria social na Rússia, as principais áreas de atuação e o papel de todos os principais atores – o Estado, organizações públicas, empresários e trabalhadores.

⁵⁰ FLIPOVA I. A. Mediation in Collective Labor Disputes: Limitations and Opportunities (Taking into Account Foreign Experience), *Journal of Russian Law*, 5, 114-122, 2018.

Palavras-chave: Disputas Coletivas de Trabalho. Procedimento Alternativo de Resolução de Conflitos. Solidariedade. Parceria Social. Conciliação. Greve. Mediação.

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