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Formation and establishment of the legal concepts of social dialogue and social partnership in the field of labor in Ukraine

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Abstract: The development of most democratic states has achieved social stability through the implementation of social dialogue and social partnership in the country. Thus, due to low indicators of the effectiveness of social activity in Ukraine, the introduction of such a phenomenon in our state is actual. This article is aimed at revealing the essence and the meaning of such concepts as “social partnership and social dialogue” through the historical perspective of the given social relations. The article presents the doctrinal approaches to the study of the above-mentioned concepts, monitors the genesis of legal regulation of the definition, as well as the introduction of social partnership and social dialogue in independent Ukraine.

Subjects: Social & Cultural History; Labor Unions; Rise of the Middle Class

Keywords: social partnership; social dialogue; employee; employer; state; social labor sphere

1. Introduction
Contemporary transformational processes that take place in Ukraine are aimed at the formation of Ukraine as a highly developed European democratic state. As a result, an important goal for the Ukrainian society is ensuring sustainable economic development, achieving European standards of

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PUBLIC INTEREST STATEMENT
Emphasis is placed on one of the ways to define the collective way of working, which is social dialogue, and highlights the understanding of the concept of “social partnership”, how it interacts with each other. The preconditions for the formation and development of social partnership and dialogue are historical, legal, scientific, political, socio-economic and international, starting from the nineteenth century and ending with modernity, provide an opportunity to trace the genesis of development and realize its purpose and importance in social activities.
citizens’ lives, creating new forms of interaction between the man and the state, development, and improvement of already existing mechanisms and institutions, which is impossible without the well-established cooperation between employers and employees.

One of the main steps towards the establishment of a democratic society and an important condition for the transition to a socially oriented economy is a social partnership in which a person is considered to be the main factor of social progress and economic growth. The satisfaction of the person’s interests is ensured as the primary task of the state. The main sphere of realization of social partnership is the sphere of social and labor relations, which is an integral part of the regulation of the national labor market on the bases of its socialization.

A variety of contradictions such as tension and distrust are observed in the development of labor relations. N. A. Hromadska believes that social contradictions and conflicts can be solved in two ways. The first (confrontational) way consists in solving the opposite interests of different social groups only on condition of social elimination of the opponent, the second (civilized) way is, first of all, the cooperation between these groups, the search for compromises and the achievement of consent.

The external form of expression of the civilized way of resolving social disputes in labor relations is the formation of such a type of social relations, as the legal relationships of social partnership. The legal relationships play the role of the regulator of conflicts and act in the form of an organizational legally settled interaction of social groups—workers, employers and the state. This legal phenomenon helps to reduce the centralization of all management processes, to increase the productivity and profitability of production and to improve the social situation of the employed population. Besides, the legal relationships of social partnership is an important factor in consolidating the foundations and principles of democracy in the labor process.

Social partnership and its instruments are recognized around the world as the most civilized way of reconciling the interests of employees, employers and the state. In many foreign countries, the implementation of social policy is also reflected through the establishment of a social dialogue on a bilateral or tripartite basis as a mechanism of social-partnership system for more than half a century. The result of this process was the forthcoming of a social system, which became a model of the social harmony of the parties of social and labor relations.

The purpose of this work is to determine the essence of such phenomena as social partnership and social dialogue and their relationship, to carry out their historical and legal analysis in labor relations, to identify some historical, legal, scientific, political, socio-economic and international prerequisites (conditions and circumstances, due to which the development, change, and termination of social and labor relations are taking place) that influence the formation and establishment of social partnership and dialogue with the definition of their development stages.

The development of such phenomena as “social partnership” and “social dialogue” is premised on the extension and consolidation of Ukraine in the status of a social state. This is one of the basic constitutional principles which determines the basis of the state system of the country. In the international practice, social partnership has demonstrated the ability to increase the competitiveness of both employees and their employers, to solve the problems of the social and labor sphere as close as possible to the source of their occurrence, to cater to the needs of the parties of such a partnership the most accurately. Also, social partnership has proved its ability to normalize the social climate in the states.

Nowadays, it is important for Ukraine to determine the peculiarities of forming a social partnership, to identify the disadvantages of functioning and development of directions for its further improvement. Despite the urgency of the problem of the legal regulation of social partnership, it
has not received the appropriate scientific development yet. This is principally explained by the specificity of the establishment and development of social partnership in Ukraine.

2. Scientific approaches to understanding the concept of “social dialogue” and “social partnership”

In scientific literature and practice, social partnership is an ambiguous and multi-aspectual notion. Some understand it as a specific type of social relations between social groups, layers, classes, communities, and other structures, others as a mechanism of relations between state bodies, representatives of workers and employers, and the third ones as a special type of collective-labor relations (Liubokhynets, 2013).

International Labor Organization experts define the essence of social partnership as a mechanism by which entrepreneurs, workers’ representatives, and the state develop a set of concerted actions to address important issues of economic and social policy by finding compromises (Liubokhynets, 2013, p. 264).

The generalization of the existing definitions of social partnership, as defined in the works of modern scholars, shows that there are two main approaches to determining its content: broad and narrow. Speaking about the rather broad meaning of this term, they distinguish the following main features: social partnership is a form of implementation of relations between employees, employer and the state; it is carried out with the help of specific institutes, tools, and mechanisms; the result of the agreements is the adoption of acts of social partnership; it forms a certain system, the specific set of elements of which depends on the level of realization of relations and their subjects; the goals are to reconcile the interests of the parties, to reach an agreement between them and to ensure high social standards for the population; the object is social and labor relations (which are much wider than collective-labor relations); the parties of social-partnership relations are equal when making co-decisions (Shumliaeva, 2011).

The National Institute for Strategic Studies under the President of Ukraine also adheres to the position that in the narrow sense, social partnership can be considered as a special type of social and labor relations inherent in a market economy, which, on the basis of equal cooperation of employed workers and employers, can provide the optimal balance and the realization of their main interests. And in the broadest sense, social partnership is a specific type of social relations between different social groups, as well as the corresponding mechanism of relations between the state authorities, representatives of workers and employers. In this context, it is not about the identity or the merge of interests, but about achieving their optimal balance, the creation of conditions under which the owner will secure a stable profit, and the hired worker worthy conditions of his/her existence, corresponding to a certain quality of life (Shediakov, n.d.).

The study of the issue of social partnership requires attention to such a legal phenomenon as social dialogue. There are three views on the relationship between the concepts of “social partnership” and “social dialogue” in scientific legal literature. Some scientists believe that social dialogue is an element of social partnership and these concepts are related to each other as a process and a goal. Others suppose that social dialogue involves social partnership, while the third ones consider these concepts as identical. In relation to the first position, for example, O.S. Arsenteva states that the use of these concepts as synonyms is incorrect. In her opinion, there was a false substitution of concepts in the national legislation. Social partnership is aimed at regulating social and labor relations, which is why social dialogue is only an element of the system of social partnership (Koliada, 2013a).

As far as the second vision is concerned, the scientists R. S. Greenberg and T. V. Chubarova emphasize that social dialogue implies a wider understanding of social partnership as the interaction of all interested forces in solving a given problem. In the opinion of M. P. Stadnyk, both social partnership and social dialogue reflect only the form of relations between the parties of collective...
and legal regulation in the establishment of collective and labor relations, therefore, social dialogue means holding consultations and negotiations. While social partnership involves the conclusion of contracts, agreements between the parties of relations in the field of hired labor (Khutorian et al., 2009, p. 402).

As for the third position, we draw our attention to the scientific work of O. A. Tryukhan called “Organizational and Legal Forms of Social Dialogue in the Field of Labor”. In the said work, the specified terms are used by the author as synonyms in order to avoid frequent repetition of the same term (Koliada, 2013b).

As far as the European experience of applying these concepts is concerned, the term “social partnership” is not used at all in the documents of the International Labor Organization, the European Union and other international organizations. Such notions as “social dialogue”, “social partners” and “tripartism” are used instead. The phenomenon of interaction between parties of social and labor relations in terms of harmonizing their interests in the social, economic and labor spheres provided different names in different periods in Ukraine. By tracking the history of development and formation of social and partnership relations in the field of labor on Ukrainian lands, it can be noted that since the early 90s and the end of the twentieth century, the term “social partnership” was used in the legislative acts, and from the beginning of the twenty-first century it was replaced by the term “social dialogue” (Hromadska, 2012).

Maria Kolyada, in her scientific work called “The Correlation of Notions ‘Social Partnership’ and ‘Social Dialogue’ in Labor Law: Theory and Practice” adheres to the position that operation by these concepts as synonymous in the legal theory of labor law of Ukraine is not a mistake. Since such a position is justified by the fact that the legislator actually consolidated the legal use of these two conceptual categories. Thus, the Decree of the President of Ukraine “On the National Council of Social Partnership” of 27 April 1993 approved the Regulations on the Social Partnership Council, according to which the National Social Partnership Council was a permanent consultative and advisory body under the President of Ukraine. This body consisted of the representatives of the Cabinet of Ministers of Ukraine and the associations of enterprises of trade unions for a coordinated solution of issues arising in the social and labor sphere (Decree of the President of Ukraine, n.d.). The Decree was revoked on the basis of the Decree “On the Development of Social Dialogue in Ukraine” of 29 December 2005, where the legal category “social dialogue” began to be used, as well as on the basis of the order of the Cabinet of Ministers of Ukraine “On Approval of the Action Plan for the Development of Social Dialogue in Ukraine” from 1 August 2006. The Law of Ukraine “On Social Dialogue in Ukraine” of 23 December 2010 was also adopted. Therefore, one can observe the replacement of the concept “social partnership” with “social dialogue”, namely as synonyms. Regarding this issue, the legislator took a clear position on what term is used in the legislation of our state, while adopting the Law “On Social Dialogue in Ukraine”, trying to use the terminology that is in line with the legislation of the western countries and the legal practice of the International Labor Organization (Koliada, 2013b).

In the scientific and legal space of Ukraine, such a position is not absolutely recognized. A considerable number of researchers of this issue, including I.D. Shumlyaeva, is inclined to believe that the current legislation has narrowed the content of social partnership as evidenced by the introduction of the concept of “social dialogue” instead, in accordance with the Resolution of the International Labor Organization “On Tripathrism and Social Dialogue” of 18 June 2002. In line with Article 1 of the Law of Ukraine “On Social Dialogue in Ukraine” of 23 December 2010 No. 2862-VI social dialogue is explained as a process of definition and rapprochement of positions, the achievement of common arrangements and the adoption of agreed solutions by the parties of social dialogue, which represent the interests of employees, employers and executive authorities as well as local self-government bodies, on the issues of formation and implementation of state social and economic policy, regulation of labor, social and economic relations. According to the Law, the form of implementation of social dialogue includes information exchange, consultations,
conciliation procedures, collective bargaining on the conclusion of collective contracts and agreements (Koliada, 2013b, p.294). However, I. D. Shumliaeva believes that the introduction of the term “social dialogue” can not replace the broader concept of “social partnership”. Social dialogue is the mechanism (a set of processes, techniques, methods for carrying out certain actions), through which the executive authorities and representatives of organizations of workers and employers reconcile their interests and reach the main goal of the social partnership which is the provision of adequate social and labor rights to working people and the increasing standards of quality of life of the population. Therefore, “social partnership” should be the key term, and the concept of “social dialogue” should take place in the articles of legislative acts on the definition of the mechanism for its implementation (Shumliaeva, 2011).

In this scientific work, the terms “social partnership” and “social dialogue” are used as synonyms, depending on the position of legislators in each of the studied stages of the historical development of social and partnership relations in the field of labor.

The processes of globalization of social and labor and social and economic relations, which have not ceased during the last two centuries, irrevocably transform the sphere of labor relations. The influence of such processes not only on this sphere but also on society as a whole can not be described as sufficiently noticeable in the context of the gradual flow of time, although it is quite large in the context of the study of certain timelines. Over the past decade, the rights of workers have been significantly expanded compared with the past when each person was actually the property of his/her employer. Expansion of the spectrum of rights and obligations of the employee is one of the trends of the modern labor market, which requires effective interaction not only with the employer but also with the state, represented by its respective bodies. Such a tripartite interaction, which has gained its present form over many years of effective implementation of the means of protecting the rights of an employee and meeting the needs and requirements of the employer, has obtained the name of “social partnership” (Mishchuk, 2015).

As noted earlier, at the various stages of the development of social and labor relations in Ukraine, the concepts of “social partnership” and “social dialogue” replaced one another. To analyze their essence and significance for the sphere of labor relations more thoroughly, to trace how social partnership with all its advantages and disadvantages in the domestic labor realm has reached the current level, it is necessary to study the history of their formation and development and legislative consolidation and influence on regulation of relations in labor sphere. This will allow us to consistently analyze the individual stages of the evolution of social partnership and see what exactly became the consequences of the formation of this institute and which obstacles and difficulties arose in the way of its formation in independent Ukraine.

It is rather difficult to consider social partnership as a well-established mechanism in the field of social and labor relations in Ukraine. Since at least one of the parties of this partnership always remains dissatisfied with the results of interaction, and in the majority of cases, this side is the workers. In the system of social partnership in labor law, the latter plays a very important role, because it is they who were producers of the final product are hierarchically under the influence of the state and employers. Taking into account that Ukraine is a relatively young democratic state, it is clear that the current state of affairs in the system of social partnership in its labor realities is the result of its borrowing and adaptation from the experience of other countries (Mishchuk, 2015, p. 43).

As previously mentioned, the periodization of the development of social partnership was investigated by various scholars. In this scientific work, we consider it necessary to refer to the periodization of the stages of social partnership suggested by H.A. Trunova who relies on significant moments of its development in the Ukrainian territories, which before the proclamation of independence in 1991 belonged to the Russian Empire and the USSR.
H. A. Trunova divided the development of social partnership into seven stages. The first stage, according to the periodization of the researcher, covered the processes that took place from 1893 to 1917. This stage was marked by the formation of the law on the social partnership which is characterized by the appearance of the primary components of the investigated mechanism when the legalization of collective-labor rights is taking place, and the practice of concluding collective agreements extends. Although they did not have a legal force, but created precedents for their further legalization. During this period, the principles of compulsory social insurance were laid down, which was based on the principles of social partnership as a result of the cooperation of workers and employers in the active role of the state (Trunova, 2006).

The second stage from 1917 to 1922 was marked by the instability and chaos of the adoption and implementation of legal acts in this area due to the unstable political situation in the country (Trunova, 2006, p. 333).

The next stage of the evolution of social partnership falls on 1922–1933. According to H. A. Trunova it is distinguished by the adoption of the Labor Code of the USSR (1922), which acted under the new economic policy. The Code contained highly progressive provisions for the mechanism of social partnership. It consolidated the right to conclude a system of collective agreements with normative content, provided the action of conciliation procedures in solving collective-labor conflicts (Trunova, 2006, p. 334).

At the fourth development stage (1933–1947) of the investigated mechanism, the decision of the Central Executive Committee of the USSR, the Council of People’s Commissars of the USSR and the All-Union Central Council of Trade Unions “On the Association of the People’s Commissariat of Labor of the USSR with the All-Union Central Council of Trade Unions” was adopted. This led to the nationalization of trade unions and the monopolistic imposition of the tasks of public administration of important aspects of labor at the All-Union Central Council of Trade Unions (Trunova, 2006, p. 335).

The period from 1947 to 1970 is marked by the revival of the main elements of the mechanism of social partnership in the form of activities of trade unions as representative bodies of the labor collective and the restoration of the practice of concluding collective agreements. It was a positive moment in the history of the evolution of legislation on social partnership, which in general was in line with the principles of the latter. The collective agreement has become a form of implementation of power directives aimed at implementing production plans (Trunova, 2006, p. 335).

The sixth period (1970–1993) is characterized by the adoption of a codified legislation that regulated the legal status of trade unions and the issue of a collective agreement. Since the beginning of such a reconstruction, the Institute of Social Partnership contributed to the development of labor relations and labor collective as well. The maximum attention was paid to the development of the trade union movement and the protection of labor rights of the workers (Trunova, 2006, p. 336).

The final stage, according to the periodization formed by H. A Trunova began in 1993 and continues to the present. At this stage of the formation of the social partnership is marked by the fundamental changes in the legal regulation of the investigated mechanism. In accordance with the international legal and regulatory principles of social partnership, the legal principles of the activities of the social partnership parties and the legal forms of their interaction are laid down. A legal compromise is used in the form of collective contracts and agreements (Trunova, 2006, p. 335).

As opposed to H. A. Trunova, N. A. Hromadska in her scholarly works holds the opinion that the first attempts to initiate a social partnership took place in the first half of the nineteenth century. The peculiarities of social partnership during that time were pertinent to the division of Ukraine, its stay under the control of two empires and, accordingly, the existence of different economic
conditions and principles of development (the Ukrainian lands that were in the Austro-Hungarian Empire and the Ukrainian lands that were a part of the Russian Empire) (Hromadska, 2012).

Western Ukraine, which ethnographically united the Eastern Galicia, Transcarpathia and Northern Bukovina, belonged to the Austro-Hungarian Empire and developed as an agrarian region. The characteristic features of the social and economic situation of these lands were the growth of the rural population, the shredding of land holdings and, as a result, mass impoverishment. That is why a number of peasant uprisings followed by fires and murders were flooded in Western Ukraine in the first half of the nineteenth century.

3. The stages of the formation and establishment of social partnership and social dialogue in the Soviet period

The formation of the first “Society of Mutual Assistance Members of the Printing Industry” in a private printing house (Lviv city) in 1817 can be considered as certain germs of social partnership and dialogue. A mutual assistance fund was organized, through which employees were provided with material and monetary assistance in cases of illness and disability, concessional lending, etc. At the same time, the society solved the problems of not only economic but also legal protection of its members. Almost until the end of the nineteenth century, the trade union movement in this region remained fragmented, the organizations were few, their activities were of a local nature. Consequently, with no industry and industrial proletariat social policy, social dialogue and partnership were out of the question (Hromadska, 2012, p.39).

The Ukrainian lands that were a part of the Russian Empire had their peculiarities of economic and social development. The owners of enterprises based on these territories used the difficult situation of the proletariat. At that time there was a 14–16 hour working day, an extensive system of fines and low wages (Hromadska, 2012, p. 40).

To improve the situation of workers in printing houses of large cities such as Kyiv and Kharkiv, in the second half of the nineteenth century, mutual assistance societies started to be formed, which in most cases were initiated by liberal owners of typographies, doctors, university professors.

The main objectives of such societies were to pay cash assistance to members of the society, irreversible subsidies to their relatives and orphans in the event of an accident or death of parents, medical assistance on preferential terms, as well as a slight reduction in prices for food products if they were bought at certain stores (Hromadska, 2012, p. 41).

The formation of consumer associations and workers’ cooperatives in the 60s of the nineteenth century can be considered as one of the primary forms of initiating the practical implementation of social partnership and dialogue. The relevant legislation was widespread in the Ukrainian territories, which before the October Revolution of 1917 were a part of the Russian Empire. One of the first acts that became an indicator of the formation of the social partnership was the Statute on the Industry of the Russian Empire in 1893. This Act regulated the creation and operation of employers’ organizations, the issue of the adoption and dismissal of workers, payment for labor, the right of a pre-term cancellation of the contract, approval of rules of internal labor regulations, the implementation of conciliation procedures (Trunova, 2007). In those days, the workers were able to obtain labor rights similar to the working conditions of the modern model, which were very different from the earlier usual slavish ones.

The Statute on the Industry, for the first time, recognized and enforced the right of workers to elect and have their representatives in the relationship with the employer. Thus, on 10 June 1903, the Law “On the Introduction of the Headquarters in Industrial Enterprises” was adopted, which became a part of the Statute on the Industry. Article 204 of the Statute defined the range of powers of the headman as an institution of employee representation. Namely, they are: to be an authorized representative of his category for the implementation of an application on behalf of the
employees who elected him, to the management of the enterprise, and equally to the institutions and officials who carried out local supervision of the improvement and order in institution and industry. The headmen cooperated with workers and passed them the directions of business management as well as clarification of the statements made by them. At the same time, the introduction of the Institute of headmen did not exclude the possibility of individual workers to personally represent their interests before the management of the enterprise (Trunova, 2007, p.13).

The Act, which replaced the Statute on the Industry, became provisional Regulations on public associations and unions, approved on 17 October 1905. The norms established in the provisional Rules were extended to professional associations, to workers and to employers. Having analyzed the contents of the provisional Rules, it is possible to distinguish two main directions of their activities: the care for the worker and his family during forced unemployment and the care for the worker during his stay at work (Mishchuk, 2015).

The process of social and labor transformations in the Russian Empire laid the basis for the emergence of contractual relations between employees and the employer. It should be noted that under the conditions of an active strike struggle in the years 1894–1904 and the revolution of 1905–1907, professional unions which had become the active subject of collective-contractual labor regulation at that time were formed and centralized throughout the territory of Ukraine. Thus, as early as 1905 in Kharkiv region the first collective agreements in Ukraine and throughout the Russian Empire were signed with the help of trade unions between the workers and owners of the locomotive plant, as well as between the owners of the Kharkiv printing houses and the workers-printers, who together received the name “Agreement Protocols” (Amelicheva, 2016).

Such collective agreements established general provisions on the procedure for recruitment, payroll rates, and other conditions that must be fulfilled by the employer who entered into the contract in relation to the employees of the enterprises, members of the union. However, the disadvantage of collective agreements at that time was that the law and judicial practice did not recognize their legal force. The demands of the workers implied by the terms of the collective agreement were not even secured by formal judicial protection (Trunova, 2007).

However, it is worth pointing out that the positive result of the practice of concluding collective agreements was the formation of basic ideas about their essence and importance as well as awareness of the state of the need for legal regulation of relations related to the conclusion and implementation of collective agreements.

The activity of the trade unions of that time, as one of the subjects of social partnership, consisted in discussing the collective demands, the choice of representatives for negotiations with the administration and the consideration of the tasks of strikes. In the autumn of 1905, an All-Russian Conference of Trade Unions was held in Moscow. It was attended by the representatives of trade unions of Kharkiv and Katerynoslav. At this conference, the Central Bureau of Trade Unions was formed and the decision to prepare the First All-Russian Congress of Trade Unions was made (Hromadska, 2012).

Thus, the stage of development and formation of the social partnership until 1917 is characterized by the appearance of the primary components of this mechanism. At this stage, the state begins to take a bigger part in social and labor processes and often acts as a third party. At this particular time, the foundations of trilateral labor relations at the level the state—the employer—the worker begin to lay.

After the 1917 revolution, Ukraine had certain preconditions for the democratization of social and labor relations, and attempts were made to create reconciliation bodies with the aim of resolving labor disputes between employers and hired workers. These bodies included the
commissariats of the Provisional government labor, the conciliation chambers, arbitration courts, trade unions, labor departments of the councils of workers’ deputies. At the Central Council, the General Secretariat of Labor was set up, whose program identified areas for action based on the principles of freedom of coalitions, reconciliation and collective-labor conditions. Under the General Secretariat of Labor, which subsequently became a Ministry of Labor, a department for labor–capital relations was created, which directly resolved conflicts that arose in enterprises and institutions. The regulation of social and labor relations was conducted through collective agreements between employers and trade unions (Hromadska, 2012, p. 42–43).

At the same time, the above-mentioned changes in social and labor relations are caused by an active legislative process in the field of such relations. Among the newly adopted Provisional Government acts one should mention the Resolution “On Meetings and Unions” of 12 April 1917, which recognized the right of all citizens to organize public associations for purposes that do not contradict the legislation of the country. However, the registration procedure for the creation of these associations remained rather complicated. It provided for the mandatory registration of the statutes of associations in the relevant district departments of the district courts, which created obstacles and impeded the implementation of the provisions of the Regulation.

Regarding the creation and operation of the bodies of reconciliation, the legal regulation of this process was carried out by the Provision “On Conciliation Chambers and Arbitration Courts” of 5 August 1917. Reconciliation cameras were formed according to the territorial or branch principle and formed from an equal number of representatives from workers and entrepreneurs. If the reconciliation camera was unable to resolve the collective-labor dispute, the case was filed to the arbitration court, which was created on a parity basis (Trunova, 2007, p. 19–20).

A series of new normative acts appeared in the field of regulation of collective-labor relations with the establishment of the Soviet government on the territory of Ukraine. The Decree of the Council of People’s Commissars of the Russian SFSR “On Approval of Collective Contracts (Tariffs) Establishing Wage Rates and Working Conditions” of 2 July 1918 defined the scope of issues regulated by a collective agreement. In accordance with this act, the collective agreement was concluded between the union of employees and the relevant union or company of entrepreneurs. In its turn, the adoption of the Labor Code of the RSFSR in 1918 was a step back in regulating collective-labor relations. According to it the unions lost the function of representing the interests of workers and acquired the status of state bodies. The imperative centralized order replaced the collective-contractual regulation of working conditions. In fact, the Labor Code of 1918 eliminates the foundations of social partnership in Ukraine for the period from 1918 to 1922. (Amelicheva, 2016)

The revival of collective-contractual regulation of labor relations in Ukraine is associated with the adoption of the Labor Code of the Ukrainian Soviet Socialist Republic (USSR) of 2 December 1922. Analyzing the norms of the Labor Code of 1922, we can conclude that the right to conduct collective bargaining and concluding collective agreements was recognized only for trade unions. The main feature of collective agreements under the Labor Code of 1922 laid in their normative nature. The articles of the treaty which worsened the position of workers in comparison with the rules of law automatically ceased to be valid. This act contained articles defining the rights and obligations of trade unions and the procedure for resolving collective-labor conflicts (Labor Code of the USSR (Excerpt), 1922).

However, the progressive nature of the Code was lost in the country with the change in social and economic conditions in the early 1930s. This is due to the fact that some of its norms existed formally (collective agreements), but, in fact, did not work, other norms were abolished (the resolution of collective-labor disputes). During this period, the Resolution of the Central Executive Committee of the USSR, the Council of People’s Commissars of the USSR and the All-Union Central Council of Trade Unions “On the Association of the People’s Commissariat of Labor
of the USSR with the All-Union Central Council of Trade Unions" of 23 June 1933 is adopted to implement the provisions of this Resolution on 10 September 1933, the Resolution of the Council of People’s Commissars of the USSR and the All-Union Central Council of Trade Unions “On the Procedure of Merge of the People’s Commissariat of Labor of the Union of SSR with the All-Union Central Council of Trade Unions”. On the basis of the last Resolution, the People’s Commissariat of Labor of the USSR was liquidated, its organs were transferred to trade unions and combined with a trade union apparatus in the center and on the ground. There was held a process of nationalization of trade unions which led to the introduction of the important tasks of the work at the All-Union Central Council of Trade Unions in a monopoly of public administration (Trunova, 2007, p. 25–26).

As a result, the adoption of these acts led to the elimination of the system of consideration of collective-labor disputes and the conclusion of collective agreements until 1947.

As you can see, social partnership in those days is characterized by the instability of its formation, by the stages of rapid development, which are changing due to downturn caused by economic and political processes in the country.

The period from 1947 to 1991 is characterized by the revival of the constituent elements of the mechanism of social partnership. In the postwar period, the formation and development of social partnership in labor law were very important for workers, because every member of society was involved in the reconstruction of the ruined housing and industrial infrastructure (Mishchuk, 2015).

The Resolution of the Council of Ministers of the USSR “On the Conclusion of Collective Agreements at Enterprises” adopted on 4 February 1947, served for the reinstatement of the practice of concluding collective agreements. In content, the collective agreements provided by the Resolution were fundamentally different from the collective agreements of the 1920s by the fact that it was prohibited to improve the situation of workers compared with the law, and their main goal was to implement and over-fulfill the plan (Mishchuk, 2015).

At that time, the International Labor Organization played an important role in building social and partnership relations by adopting the Freedom of Associations and Protection of the Right to Organize Convention No. 87 in 1948, the Application of the Principles of the Right to Organize and Collective Bargaining Convention№ 98 in 1949, and Recommendation on Consultation and Cooperation between Entrepreneurs and Employees at Enterprise Level No. 94 in 1952 (Shashurin, 2012).

It was expected that with the accession of Ukraine in 1954 to the International Labor Organization and its ratification of the Conventions of this organization No. 87 “On Freedom of Association and Protection of the Right to Organize” and No. 98 “On the Application of the Principles of the Right to Organize and Conduct Collective Bargaining”, there would be radical changes in the field of social and labor relations in Ukraine. However, nothing has changed, regulatory documents did not meet international standards for social and labor relation regulation (Hromadska, 2012).

On the way to the restoration of active trade union movement, the decree of the Presidium of the Supreme Council of the USSR restored the State Committee of the Council of Ministers of the USSR on 24 May 1955. This led to a delimitation of the powers of organizations of workers and state bodies in regulating labor relations. Significant changes in the improvement of collective-contractual regulation were also related to the adoption by the Council of Ministers of the USSR and the All-Union Central Council of Trade Unions of 6 March 1966, of the Resolution “On the Conclusion of Collective Agreements at Enterprises”, which provided for the existence of two parts of the collective agreement. In the first part, the basic provisions on working conditions were set up, which were established for enterprises in accordance with the legislation in force at that time. The second part consisted of remedial regulations in the field of working conditions, which were a fundamentally new phenomenon and, in fact, gave rise to local regulation (Trunova, 2007, p. 27).
The bases of the legislation of the USSR and the Union republics on labor adopted on 15 July 1970 served as the legal basis for the approval of the Labor Code of the RSFSR of 10 December 1971. The value of the Code was very important since, after many editions, it remains valid until now. It defines the main aspects of contractual relations, which is a legal manifestation of social partnership in labor law. According to Article 12 of the Code of Labor Law of Ukraine, a collective agreement is concluded between the owner or an authorized body (person), on the one hand, and, on the other hand, between the primary trade union organization acting in accordance with its statutes and in case of the absence thereof, between representatives freely chosen at the general meeting of employee workers or their authorized bodies. Contradictions that arise in the conclusion of collective agreements were resolved by upper economic and trade union bodies with the participation of the parties (Labor Code of the Ukrainian SSR, 1971).

A serious step towards the development of social partnership was the attempt to create a legislative basis of participation in the management of the enterprise implemented by incorporating articles on the role of labor collectives in the management of production into the Constitution of the USSR in 1978 (Hromadska, 2012, p. 47).

The next step in this direction was the Law of the USSR “On Labor Collectives and Increasing Their Role in the Management of Enterprises and Organizations” of 17 June 1983. After its adoption many amendments were made to the regulatory acts with related functions, corresponding to the standards of this legal act.

The role of trade unions has grown rapidly in the Soviet labor space. This has led to the active development of the social partnership. In particular, the Law of the USSR “On the Procedure for the Resolution of Collective Labor Disputes (Conflicts)” was adopted on 9 October 1989, and “On Trade Unions, Their Rights and Guarantees of Activities” on 10 December 1990. These events marked the end of the investigated stage of development of the social partnership, since in 1991 the USSR completely collapsed into separate sovereign states, one of which is Ukraine (Mishchuk, 2015).

This periodization is quite profound. However, for further analysis and study of modern processes of the functioning of the Institute of Social Partnership, we find it necessary to consider in detail the development of social partnership in Ukraine since its inception as an independent state.

4. Development and establishment of social partnership and social dialogue in independent Ukraine

Considering the issue of formation of social partnership in the independent Ukraine, it should be mentioned that during the Soviet period almost all components of social partnership were quite actively used: collective agreements were concluded, the workers, the working population participated in the management of production, social issues were at the center of attention of the authorities. There was also the practice of elaborating five-year plans for the social development of the republic, regions, districts, enterprises, and agricultural collectives (Kudriachenko, 2008). But since the communist ideology that prevailed at that time did not anticipate the existence of opposite, antagonistic interests in society, the mechanisms for resolving these contradictions were out of the question (Butenko, 2014).

The transition to market relations in Ukraine led to the necessity of creating a legal mechanism for regulating social and labor relations in society. The first step was the adoption in 1991 of the Law of Ukraine “On Employment of the Population”. The article of this Law provides for the preparation of agreed decisions on the implementation of the employment policy, the establishment of coordination committees, and the promotion of employment of representatives of trade unions, public administration, and entrepreneurs (Law of Ukraine, 1991).

The first body of the social dialogue was the Ukrainian Coordinating Committee for Employment Promotion. It is a permanent trilateral body formed on a voluntary basis. The main objective of the
Committee was to develop and improve the legal and regulatory framework for the functioning of the labor market, to develop and implement state and regional employment programs and sources of their financing, to coordinate the efforts of economic, trade unions and government agencies to find ways to prevent unemployment and ensuring the social protection of employees of hired labor from unemployment; elaboration of proposals to executive authorities on the economic encouragement of enterprises to create additional workplaces, professional orientation and professional training of the population (Grishnova, 2004).

The next step of the state in the establishment of a trilateral social partnership was the adoption by the President of Ukraine of the Decree “On the National Council on Social Partnership” dated 27 April 1993, No. 151/93. The Decree established the National Social Partnership Council as an advisory body under the President of Ukraine to coordinate the interests of employees, employers and the state. In fact, according to the Decree, it was an institution of a bilateral, rather than a trilateral social dialogue, because the representatives of the state, which since the Soviet period was the main employer in the country, constituted a half of the employers’ side. The second part of the employers’ side representing the business of non-state ownership was formed by the Ukrainian Union of Industrialists and Entrepreneurs (formed with the active participation of parliamentarians in 1992) with its affiliates and the Union of Tenants and Entrepreneurs of Ukraine (1990), the oldest in Ukraine All-Ukrainian Self-Organized Public Organization of Entrepreneurs and other all-Ukrainian public associations of entrepreneurs (Bureau of Social and Political Development, 2014a).

The National Social Partnership Council was an advisory body that reported directly to the President of Ukraine. Among the main goals of the National Social Partnership Council were: preparing recommendations to the President of Ukraine on national social policy regarding the establishment of a tripartite consensus on national, economic and social issues to prevent confrontation; participation in the legislation of laws and other legislative acts in the field of social and labor relations; preparation of proposals for general and sectoral collective agreements, as well as analysis of measures taken for the implementation of the General Tariff Agreement; coordination of positions of social partners regarding the ratification or condemnation of the International Labor Organization conventions; informing the public through the media about the results of the parties’ agreements on labor and social relations (Grishnova, 2004, p 183).

Further active development of the modern system of social partnership is conditioned by the adoption of a number of laws. Among them, there is the Law of Ukraine “On Collective Contracts and Agreements” No. 3357 of 1 July 1993, which was developed with a partial consideration of international experience, norms, and provisions of the conventions and recommendations of the International Labor Organization. This Law defined the legal principles for the development, conclusion, and implementation of collective contracts and agreements with the aim to facilitate the regulation of labor relations and socio-economic interests of workers and employers (Bureau of Social and Political Development, 2014b).

The adoption of this Law gave grounds for ratification by Ukraine of the International Labor Organization Conventions “Tripartite Consultations to Promote the Application of International Labor Standards” of 21 June 1976, No. 144. According to Article 2 of the Tripartite Consultative Convention, Ukraine should execute procedures to ensure effective consultation between representatives of the Government, employers, and employees, taking into account national procedural issues, after consultation with representative organizations (Shumliaeva, 2011).

On 3 March 1998, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On the Procedure for Resolving Collective Labor Disputes (Conflicts)”. In accordance with Part 1 of Article 15 of the above-mentioned Law, the National Service of Mediation and Reconciliation, as a permanent state body was formed by the Presidential Decree of 17 November 1998. The aim of the Decree was to promote the improvement of labor relations and prevent the emergence of collective labor
disputes (conflicts), (Law of Ukraine, 1998) their forecasting and promotion of their timely resolution, mediation and reconciliation of such disputes (conflicts).

The main tasks of the National Mediation and Reconciliation Service are to promote the interaction of the parties of social and labor relations in the process of settling collective labor disputes that arose between them; forecasting conflicts and promoting their timely solution; mediation, and conciliation in resolving such disputes (Decree of the President of Ukraine, 1998).

The National Mediation and Reconciliation Service focuses on improving the interaction with central and local executive authorities, local self-government bodies, trade unions and employers, as well as active cooperation with the National Social Partnership Council since 2006 with the newly established National Tripartite Social and Economic Council (Zhadan, 2014).

An important factor in such interaction is the possibility of involving government officials, trade unions and employers in conciliation procedures as experts, independent mediators, and arbitrators.

The legal regulation of the representation of the parties in the social partnership and determination of their legal status took place through the adoption of the Law of Ukraine “On Trade Unions, Their Rights and Guarantees of Activity” of 15 September 1999. This Law determined that the representation of the interests of trade union members in their relations with employers, state body authorities and local self-government bodies is carried out on the basis of the system of collective agreements and agreements, as well as in accordance with the law, that is, on the principle of tripartism (Law of Ukraine, 1999). Also, due to the Law of Ukraine “On Employer Organizations” dated 24 May 2001, which clearly defined the legal framework for the creation and operation of employers’ organizations and their associations. The legislative recognition of the powers of employers’ organizations, their relationships with state authorities and organizations of employees is fundamentally important (Grishnova, 2004, p. 56).

The development of forms of social partnership in Ukraine took place quite slowly, due to political and socio-economic factors. Legislation on social partnership in Ukraine has just been formed, its imperfection, as well as many violations of the rights of working citizens by employers, led to the existence of very acute social and labor conflicts, and there was a lack of adequate legal mechanisms for the solution of them. Practical 12 year-experience of the National Council of Social Partnership showed the need for urgent reform and making adjustments to the provisions of the National Council of Social Partnership aimed at strengthening the role of the tripartite body which should be a unifying link between government, trade unions, and employers (Grishnova, 2004, p. 56).

Overcoming this situation required state-legal regulation and the formation of a regulatory framework that would contribute to improving the relations between the parties of social-partnership relations and the avoidance of social conflicts. In the view of this, according to the Presidential Decree “On the Development of Social Dialogue” on 29 December 2005, a National Tripartite Social and Economic Council was created, while the National Social Partnership Council was liquidated (Decree of the President of Ukraine, 2005). The state in this cooperation is presented by the Cabinet of Ministers of Ukraine, which is a full-fledged institution in the system of social and labor relations.

Together with the National Tripartite Social and Economic Council at the sectoral and regional levels, tripartite bodies on socio-economic issues were formed on a parity basis for a coordinated solution of the socio-economic problems affecting the rights and interests of workers and employers.

The adoption of the Law of Ukraine “On Social Dialogue in Ukraine” by the Verkhovna Rada of Ukraine on 23 December 2010, was the driving step in the settlement of social and labor relations and the interaction of their parties. The provisions of the Law of Ukraine “On Social Dialogue in
Ukraine” are aimed at the development of tripartism and promote the process of formation and development of social dialogue and interaction between representatives of the state, employers and trade unions at all levels of its implementation (Trunova, 2007, p. 33). Also, the National Tripartite Social and Economic Council was recognized by the Law as a permanent body created by the President of Ukraine for conducting social dialogue. The main tasks of the National Tripartite Social and Economic Council defined by the Law are the development of a consolidated position of the parties toward social dialogue on the strategy of economic and social development of Ukraine and ways of solving existing problems in this area; preparation and provision of agreed recommendations and proposals to the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine on the issues of formation and implementation of the state economic and social policy, regulation of labor, economic and social relations (The Law of Ukraine, 2010).

The Law of Ukraine “On Social Dialogue in Ukraine” finally defined the concepts, the basic principles of social dialogue, the level and parties, the criteria for representativeness for the subjects of the trade union side and the side of employers, the forms of implementation of social dialogue, the status of bodies of social dialogue (National Tripartite Social and Economic Council and Territorial Tripartite Socio-Economic Councils), control and responsibility of the parties of social dialogue (Chanysheva, 2012).

Social partnership in Ukraine is realized on the principles of bipartism and tripartism. However, the prevailing is precisely the principle of tripartism. This is evidenced by Article 4 of the Law of Ukraine “On Social Dialogue in Ukraine”, which establishes the multi-levelness of social dialogue. Social dialogue is carried out at the national, sectoral, territorial and local (enterprise, institution, organization) levels. At the national level, the parties are workers represented by all-Ukrainian associations of trade unions, employers represented by all-Ukrainian employers’ associations and the state, on whose behalf the Cabinet of Ministers of Ukraine enters into negotiations. At the sectoral level, the subjects of the negotiations are (a) employees whose interests are represented by all-Ukrainian trade unions and their associations, depending on the type of activity; (b) employers in the person of all-Ukrainian associations of employers’ organizations taking into account the specifics of a particular branch; (c) a state represented by the relevant central executive authorities. At the territorial level: (a) trade unions of the appropriate level and their associations, operating in the territory of a certain administrative-territorial unit, acting on behalf of employees; (b) the organization of employers and their associations of the respective administrative-territorial unit; (c) local executive bodies or local self-government bodies acting on behalf of the state and within the limits of their powers (The Law of Ukraine, 2010). At the local level, however, there is still bipartism, since the parties of such a partnership are the primary trade union organization or the representatives of the workers, freely chosen for collective bargaining, on the one hand, and the employer and/or their authorized representatives on the other (Mishchuk, 2015).

To analyze the state of implementation of the provisions of the established legal framework in the field of social and labor relations, which emerged during the independence of Ukraine, we find it necessary to consider the results of the functioning of the Institute of social dialogue.

During the Committee of 15 November 2017, of the Verkhovna Rada of Ukraine on social policy, employment and pensions provided a roundtable discussion on the topic: “Social Dialogue as an Instrument for Civil Society and State Interaction”, the results of the implementation of the social dialogue on the territory of Ukraine were made.

The most effective form of social dialogue at the national level is the conclusion of the General Agreement. In order to initiate collective bargaining on the conclusion of the General Agreement for a new term on 8 September 2017, representative all-Ukrainian associations of trade unions concluded the Agreement on the establishment of a Joint Representative Body of representative All-Ukrainian associations of trade unions at the national level. The said Agreement was signed by
all six representative trade unions at the national level (Minutes of the Round Table on the topic, 2017).

Thus, for the first time, as part of the Joint Representative Body of Trade Unions, all representative trade unions at the national level are introduced. This is an important step to ensure full representation and a joint decision of issues.

At the territorial level, three-sided socio-economic councils (hereinafter—TTSEC) have been formed for conducting social dialogue. According to the National Tripartite Social and Economic Council, as of 13 October 2017, there are 23 TTSECs, Lugansk and Donetsk TTSECs are in a state of formation (Official website of the National, n.d.).

Another level of social dialogue is the sectoral level. This level is conducted by the branch councils that carry out their activity. However, not all branches of economic activity are covered by social dialogue. At the sectoral level, in order to regulate production, labor and socio-economic relations in the relevant branches of the economy, the legislation provides for the conclusion of sectoral (international) agreements. At present, 95 sectoral agreements have been concluded and only 14 of the total were concluded with the participation of representative associations of employers’ organizations. Recently, there has been a steady trend towards a reduction in the number of collective agreements at the local level of implementation of social dialogue. This is due to a decrease in the number of both business entities and the average number of employees (Minutes of the Round Table on the topic, 2017).

The introduction and functioning of the principle of tripartism in Ukraine at the state, sectoral and regional levels is of great importance for employees of enterprises, institutions and organizations. Given that the establishment of additional, in comparison with the current legislation, guarantees for citizens in collective agreements are mandatory for observance by employers. Thus, a certain hierarchy of acts of the social partnership was established, when a collective agreement should be made taking into account the provisions of a general, branch or regional agreement, which improve the situation of employees in comparison with the current legislation. The development and adoption of rules of the sectoral and regional agreements must necessarily take into account the provisions of the general agreement and accordingly, cannot worsen the working conditions of citizens. At the same time, according to N. Klymenchuk, the guarantees provided for by the sectoral agreement are minimal, while collective agreements may be supplemented by additional social and labor guarantees at the expense of the enterprise (Shumliava, 2011).

In order to establish tripartism and improve the system of collective bargaining and effective solution of collective-labor disputes at various levels in Ukraine in accordance with the Program of Decent Work for 2016–2017, it is planned in the coming years to develop and adopt a new version of the Law of Ukraine “On Collective Contracts and Agreements”, to amend and complete the existing Provisions of the National Mediation and Reconciliation Service and Provisions of the State Service of Ukraine on Labor Standards regarding the improvement of their functions and powers as the main bodies in the system of collective bargaining and collective-labor disputes (Amelicheva, 2016, p. 72).

All the above mentioned can be argued that some historical, legal, scientific, political, socio-economic and international preconditions for the formation and development of social partnership and dialogue have been identified since the nineteenth century and ending with the present. It provides an opportunity to trace the genesis of development and to realize its purpose and importance in public activity.
In Ukraine, an institutional basis for the social-partnership system has been created. It contains the legal acts of its functioning, the procedures for concluding agreements and contracts, tripartite bodies for the concerted solutions of the social and labor sphere problems, implementation of the state employment policy and its social protection. However, in general, the social partnership in Ukraine has not been developed enough and this process is at its initial stage. Therefore, for the further development of the social-partnership system, it is necessary to use the experience of foreign countries, norms, and recommendations contained in the conventions of the International Labour Organization.

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All authors read and agreed with the published version of the manuscript. Determined the most effective forms of social dialogue at which levels the social dialogue is carried out, its advantages and disadvantages. We have identified the Peculiarities of the principle of tripartism, given ways to improve the collective bargaining system and effectively resolve collective-labor disputes at different levels, determined the institutional basis of the social-partnership system, which contains normative legal acts, its functioning, procedures for concluding agreements and contracts, three-sided bodies to agree on solving problems socially labor sphere, implementation of the state policy of employment of the population and its social protection.

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