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Scientific article

### Trade unions' function in labor dispute resolution as a social partnership entity

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**Abstract:** This investigation primarily examines the function of trade unions as participants in social partnerships and potential mediators in employment disputes within Kazakhstan. This research aims to elucidate the processes, responsibilities, challenges, and roles of trade unions in workplace relationships. Therefore, this research is useful to both the scientific community and practice, as it contributes ideas for increasing the effectiveness of partnership arrangements.

In research uses both the theoretical and practical analysis, a clearly defined logical method, as well as the method of consecutive conclusions to provide a comprehensive analysis of the facet of the trade unions. Some of the findings include the fact that trade unions play a vital role in the process of industrial relations, particularly as a way of addressing conflict and protecting workers' interests.

Key findings highlight the proactive role of modern trade unions in conflict prevention and resolution, as well as challenges they face, such as limited legal authority and political influence. The research identifies collective bargaining and social partnership agreements as important tools for maintaining stable labor relations. It also emphasizes the need for legal and organizational measures to strengthen trade unions' position in protecting workers' rights. The research contributes to understanding the evolving role of trade unions in Kazakhstan's labor relations and offers insights for enhancing their effectiveness in conflict resolution within the social partnership framework.

**Keywords:** trade unions, social partnership, labour relations, dispute resolution, labour law, collective bargaining.

### Introduction

Trade unions are considered to be one of the most significant parties to the social partnership system since they can function as democratic representatives of society. Trade unions remain a subject of social partnership in the regulation of labour relations in Kazakhstan, having

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received experience from foreign countries to develop a mechanism for the social protection of employees in the form of a balanced system of state and market institutions [1].

In recent years, the scientific community has increasingly focused on examining the social partnership sector as a crucial trend in the management of social and public policies. As socioeconomic relationships evolve and efforts to stabilize society's social sphere intensify, social partnerships continue to play a vital role in mediating labor relations among workers, employers, and the government [2]. Social partnership's significance stems from its core aims: aligning the interests of various groups like government officials, workers, and employers; averting and addressing organizational disputes; fostering democratic management in businesses; and boosting the employer's attractiveness to the workforce. This partnership serves as a crucial tool in social and labor relations, helping to regulate and enhance them. The idea of social partnership is still quite blurry. It can also be considered as one of the most popular types of corporatism, Neo corporatism, and it occurs in the context of three types of actors: entrepreneurship, trade unions, and states, and according to the intensity, social partnership can be classified as bipartism and tripartism, micro corporatism, and meso corporatism. At the national level, social partnership is recognized as a collaborative approach that integrates and connects various parties involved in social and labor relationships. This partnership functions as a vital system for overseeing social and occupational interactions, averting workplace disputes, and successfully addressing disagreements between workers and their employers. It's worth noting that this partnership represents a distinct type of social interaction, with a key focus on coordinated actions among various social entities within the socio-economic legislative framework.

To support social partnership efforts, individuals are allowed to freely unite and establish trade unions. These unions are voluntary groups of citizens with shared occupational and professional interests related to their employment. They are created to advocate for and protect citizens' rights and freedoms in work-related matters. Currently, two forms of trade unions exist: alternative unions, which concentrate on traditional protective functions, and traditional unions, which aim to maintain the employer-employee relationship [3]. The difference is that the latter is political and operates outside the organization's management hierarchy, tends to be confrontational, and focuses on social and welfare issues for the union members and organizations.

Trade union activity needs to be scrutinized so that the authorities would determine its role and its function of mediating social partnership between employees, employers, and the government needs to be determined. Another important aspect that is peculiar to the work of trade unions is that it contributes to the construction of civil society and social and labour relations. Efficient social partnerships make it possible to have possibilities of productive discussions on solving existing conflicts between employees and employers, cooperation between actors of the union, and the prevention of the growth of social tensions in a society. The key aspects of the research encompass examining a general trade union framework, incorporating this sector as a participant in social partnership for resolving labor disputes, recognizing potential barriers to the segment's effective operation, and offering suggestions to enhance its productivity.

## Materials and Methods

The research examining trade unions as social partnership entities in labor dispute resolution employed various methodological tools to identify theoretical and practical factors related to the

subject. This theoretical and methodological approach allows for a more detailed exploration of trade unions, highlighting key characteristics and best practices in their operations. Utilizing a dialectical methodological approach, the study identifies major goals, directions, and characteristics of trade unions in their work, particularly in labor dispute settlement.

Among the proposed approaches, logical analysis helps elucidate the unique aspects of labor dispute resolution involving trade unions as social partnership subjects. Equally important is the deduction method, which enables the identification of trade unions' specialization areas in resolving labor disputes and categorizes this mechanism within its role as a social partnership. Conversely, the induction method allows for the recognition of specific features in trade unions' implementation of their powers in labor dispute settlement, based on a general characterization of their activities. The legal methodological approach aids in analyzing individual legal norms that formalize social partnership acts.

When examining this aspect of the work, researchers employ analysis and comparative analysis methods. These approaches enable them to identify the main research objective after studying the work's theoretical and practical orientations. For instance, they may aim to establish the role of trade unions as social partnership entities in resolving labor disputes. The synthesis method is crucial in this research process, as it allows for the integration of analyzed theoretical and practical material into a comprehensive overview. This synthesis is essential for organizing the material and creating a logical flow in the work, which aligns with the primary research goal.

The research is conducted in three phases. The first work phase implies specifying the aspects of the theme with a view to enabling the subsequent analysis of the social partnership and the identification of its main business directions.

The second stage contributes to determining the main research objective: it examines trade unions as social partnership entities in labor dispute resolution, analyzes their activities, and explores the legal framework governing social partnership. The final stage of the research identifies features, trends, and weaknesses in trade unions' role as social partnership subjects in labor dispute resolution. Additionally, it proposes measures to enhance the potential and improve the effectiveness of trade unions.

## **Results and Discussion**

Before considering the role of professional unions in labor disputes, it is necessary to determine the meaning of the concept of "labor relations". It is assumed from two perspectives, which are outlined below.

The first is concerned with the improvement of the quality of working conditions, and the second is concerned with the protection of subjects of labour from their own interests. In the context of defining the first perspective on labour relations, dependencies and cooperation are seen as contractual and actual dependence and cooperation of the subjects in labour relations within the framework of labor activity for the purpose of regulating working conditions. Of equal importance, it is also noteworthy that social and labour relations are not strictly non-subjective, as they are set and regulated by their subjectively generated objectives and behaviours of the relations and depend on them. According to the second perspective of the approach, labor relations are relations between certain groups of workers, in the confrontation aspects, which

have certain stakes in the labor field, do so in some degree as separate, not as towards other groups of workers and exercise some organizational actions (including the application of the consciousness of special bodies) for the protection of these interests.

The second view is deemed to be more useful by the authors because the major benefit of this approach is the identification of the means for explaining the concept of “conflict of labour relations”. Conflict labor relations are characterized as: The interaction between parties with conflicting interests during their direct activities, where their disagreements are either implied or incorporated into their conflict as a means of addressing unmet needs and demands. In essence, contentious labor relations represent a state and level of connection between subjects in the research domain marked by incompatible and discordant interests, motivations, and objectives [4].

In today's society, the best way to manage labour relations is to seek a means of getting to an agreement. One of such is the concept of social partnership, which is also called Akintola model. On balance, it is necessary to underline that the term ‘social partnership’ is relative; this is because a partnership between the employer and the employee simply cannot be established. After all, they have opposing interests [5]. It's important to note that despite opposing aims, there exists a concurrent alignment of interests. For an organization to operate effectively, it must establish specific conditions that satisfy the essential interests of both employers and employees. The concept of social partnership is built on three main pillars, which are crucial for the mechanism's effectiveness. These include: firstly, a network of permanent operating bodies comprising employers, employees, and government authorities at various levels; secondly, a collection of diverse documents such as agreements, collective bargaining contracts, decisions, and similar instruments designed to regulate emerging social and labor relations; thirdly, methods for determining appropriate procedures and forms of interaction between social and labor relationship subjects [6].

Currently, there are three different mechanisms for protecting rights in the social and labour sphere:

- 1) the state mechanism used necessary by the state authorities of the Republic of Kazakhstan.
- 2) the process that is applied by local governments;
- 3) the cases where the social and labour activity of public associations and trade unions have been most actively used.

However, other organizations can be political parties or social movements that, if they have some tasks set, can participate in the protection of social and labour rights. However, these organizations themselves do not possess enough authority to establish a special mechanism for the protection of social and labour rights. Thus, if the state attributes certain tasks in the context of social and labour relations to trade unions, then other public associations are not assigned such tasks [7].

An examination of the legal classification of basic employee rights in the Labor Code of the Republic of Kazakhstan reveals that workers have the right to form trade unions and other organizations that ensure and protect their Labour rights (Article 22). And also, this provision of this law is one of the fundamental principles of the legal regulation of labour and others related to it.

Thus, the protection of workers' rights, which is the very core of trade unions, is a very complex question; it means that it implies measures on all the activities of trade unions and

with regard to the multiplicity of ways of performing the protective functions, which cannot remain invariable. In the process of defending the rights of employees, it is crucial to ascertain their functions in a specific timeframe [8].

As per Article 170 of the Labour Code of the Republic of Kazakhstan, there are certain bodies that deal with individual labour complaints, which mostly originated from the labour relations. It specifies two jurisdictional bodies that are competent to consider labour disputes between an employee and an employer: the award labour relations Conciliation Commission and/or the court or any other authorized body. The individual claims can be considered by the Conciliation Commission, whether the employee is a full-time, temporary, or part-time employee, it does not matter whether or not the employee is a member of the Trade Union [9].

Today, the system of social partnership is considered to be one of the most effective uses in other countries. The other subtopics within the social partnership involve income distribution and social and professional relations; national criteria for legal comparability and labor protection; negotiation in the collective agreement procedure for the settlement of conflicts and disputes involving the concerned social partners; management and control of the social partners at different levels; administration of employees of the various social partners; regulation of social and labor conflicts such as strikes and blockades through reconciliation means. Employer/employee conflict matters should be addressed before decision-making. It is advised that fairly neutral persons, for instance, elected trade union officials, some elected officials, for instance, board of directors of shareholders, to advocate for obligations in the adoption of the social partnership system [10].

The object of social partnership should be the implementation of the social and labor policy of the state and relations between subjects of labor activity: employees' working conditions, labor protection, labor unions, regulating wages, determining and extending social freedoms, supervising work quality, and participation in social and industrial issues. To analyze the mechanism of social partnership implementation, it is important to highlight its basic principles: equity of the parties, consideration and respect of the interest of all the parties through regulation of the interest, the interest of both parties in the conclusion of treaties, the active participation of the state in the processes of the accession of the signs of social partnership, democratization and stabilization through the formation of special institutions, Labor legislation, the freedom of choice in negotiations on labor standards are legal realities and enforceability of the obligations.

The concept of social partnership generally encompasses several elements: collective bargaining for agreements or employment terms and conditions, employee participation in organizational management decisions, mutual agreement aimed at reaching consensus, involvement of employee and employer representatives in preliminary labor relation hearings, consultation on social and labor policy implementation, bargaining actions and undertakings to pursue all parties' goals, and monitoring compliance of the involved parties [11]. Social dialogue stands as the most effective instrument of social partnership, fulfilling all its objectives and principles. It addresses the relationships between workers, employers, and state authorities regarding social and labor policies, as well as the resolution of economic, labor, and social matters. To state it briefly, it is thus appropriate to note that modern social partnership focuses on people and human interest, gives preference to national solidarity and where there is a conflict of interest, a solution is sought through bargaining and not by confrontation. Subsequently, models of social partnership should be explained to understand how it works

in more detail. According to the world practice, it can be stated that social partnership, as well as the relationships it creates, are necessarily accomplished with the participation of the state, having an advisory and legislative nature in this process, albeit the degree of state intervention may depend on the selected model of social partnership in the state.

As it was mentioned before, analysis of the experience of other countries' management of labour disputes contributes to problem-solving and further development. The experience of France is quite compelling since it was there that the first labour codes were established, which then became a means to guard workers. Specialized labour dispute courts in France can be considered as a lower instance, and appeals are addressed by professional judges. The municipal courts are elected bodies in which the representatives of employers and employees are elected during the special elections. Members of the trade union are elected, and it is not mandatory that the candidate have a law background. Judges continue to keep their judicial workplace and salary, therefore maintaining a check on the employment contract for the benefit of the parties involved.

The UK does not have a Labour Code and a unified system of labour courts. Labour laws are resolved through tribunals and common law courts. The main difference between them is in the procedure, the price of a claim, and the participation of lawyers. The Employment Tribunals Act of 1996 states that tribunals have exclusive jurisdiction over some kinds of claims; however, most employment-related matters fall under the purview of civil litigation. Pursuant to the changes made since 2014, it is required to go through preliminary reconciliation with the Advisory, Conciliation and Arbitration Service (ACAS) before applying to the tribunal.

All the proceedings taking place in court are governed by the Rules of the Labour Dispute Tribunal of 2013. At the outset of the proceedings, the claimant is required to fill out and file the claim form. The main hearing can be presided over by an Employment Dispute Judge or three people, including two laypersons. The Tribunal aims to be informal, and it may even examine a party or a witness. This decision of the tribunal can be appealed to the Employment Appeal Tribunal (EAT). An action in contract is filed either at the tribunal or a civil court, where more stringent procedures are followed and the plaintiff has to costs of other parties [12].

Before considering trade unions as a subject of social partnership, it is necessary to disclose the concepts and definitions of a trade union. A trade union is a non-governmental association of persons formed for the purpose of promoting and protecting its members' occupational, social, and economic welfare in the course of production and other services [13]. This has led to an increase in the incidence and spread of violations of labour law. Most conflicts of labour relations are about working time and employment conditions, wages, and the numerical establishment for the reproduction of the workforce, or to incentivise the employees. It is for the above reason that trade unions have a unique function to perform in the management of social and labour relations. This implies that trade unions are supposed to handle such relations at the macro, meso, and micro levels in an integrated manner.

At the micro level, such as during Collective Labor Agreement negotiations, trade unions aim to equilibrate social and labor relations within organizations. Organizational subjects may express dissatisfaction due to violations of labor law norms, high labor discipline indices, turnover rates, labor conflict metrics, conflict intensity, and the nature of conflicts arising. At the meso level, trade unions function as joint commissions in developing tariff agreements. At the macro level, they participate in tripartite commissions addressing work-related issues and

formulating strategies to enhance organizational social and labor relations. At the macro level, it is important to indicate that the purpose of trade unions is to engage in matters as members of the tripartite commission on matters concerning working relations and the formation of methods for enhancing social and labour relations in organisations.

That is the very essence of trade unions in regulating social and labor relations, which means that their main duty should be to coordinate the analysis and expertise of their state and perform some activities that will enhance their current state. However, no matter the level of regulation of social and labour relations, only several key stages must be overcome in the functioning of its own activity of any trade union organisation. Some of these key stages are as follows: informational, analytical problem identification, assessment of subjects' behaviours, compliance stage, analysis of the causes of disruptive behaviours of subjects, and project stages [14].

The first stage of the bargaining process is the informational stage, which acquires information regarding the needs and interests of the subject of the labour dispute and the extent to which these needs and interests can be met. The second stage, which is analytical, entails the identification of the needs and interests of the subject of the labour dispute, and information selectivity to identify what information has been gathered is most relevant to the issue under consideration. The third stage – problem identification, involves reviewing the subject of the social and labour relations related to the actors that may pose issues likely to evoke dissatisfaction. The subsequent phase assesses the engagement of the subjects and, that is, measures the behaviours of the employer and employee, which includes such factors as measuring the actions of the subject, measuring of cost of the employer to the employee and measuring the effectiveness of the cost of labour of the employee. The next operation is the compliance stage, which involves an evaluation of inherent interests of the actor and their interactions and identification of potential incentives for destructive behaviour; It is performed within assessing the actions of the employees that could impede the implementation of the employer's interests, within assessment of the actions of the employer that could hinder the realization of the employee's interests.

The following level permits an understanding of the causes that may result in aggressive and damaging actions on the part of the actors and cause labour conflicts. The last, the seventh stage of trade union powers in social partnership mechanism, enables the development of recommendations, methods, as well as the techniques of resolving labour disputes, enhancement of social and labour relationships and further enhancement of the mechanism for the implementation of these methods in social partnership.

It remains to note that the representation of employees in individual labour disputes by trade unions remains unregulated by law. This lack of regulation is seen in the fact that to apply to the court to implement the mechanism of protection of employee interests by the trade union, it can be done only in three cases: at its own accord, or acting on its own and in response to a complaint from members of the trade union or other employees. For matters under the court's jurisdiction involving trade union organization members, two crucial requirements must be met: membership in the trade union and the authority granted to the organization.

Something important which may be relevant is that a trade union organisation has the power to bargain or represent in the labour litigation of an individual who is not in the trade union organisation. This type of representation is typically applied in a case of labour relations when

the dispute concerns declaring a dismissal unlawful or in a case of the employee who seeks reinstatement because the employee cannot be a member of the trade union organisation at the time. Such representational relations could be said to be of purely private contractual structures. It should be noted that this is possible provided the local acts allow a trade union representative to represent not in terms of the trade union organisation legislation of a trade union organisation within the framework of its legislation, but for a trade union organisation on a voluntary basis.

Therefore, trade unions are very important organizations that occupy an important position in the protection of workers' rights, especially in labor disputes. Labour relations include not only the process of refining the quality of the work environment but also the employees' representation of interests as well. The system of social partnership envisages an organization of collective representation of the employers' and employees' conflicting concerns. Peculiarities of social partnership are the cooperation of the state and public authorities with trade unions and employees based on the legislation on labor relations and collective agreements.

## Conclusion

Sometimes, it applies traditional court practices when considering labour disputes, and sometimes it applies the simplified practices, which enable labour law judges to accelerate the consideration of cases. The decision over competence in labor conflicts is a matter of great significance since it influences the state of affairs. Measures made by agencies that lack legal authority are effectively nonexistent and cannot be collected. It's worth noting that conflicts arise between subjects of substantive relations, not from material orders, making the adjudicating body less relevant. Disputes remain indicators of relational procedures rather than becoming procedural phenomena. They differ from disagreements and carry a heavier conflict burden, encompassing both resolvable and unresolvable differences and contradictions when viewed from legal perspectives [15].

The previous system and methods for protecting rights through labor relations procedures differ from current practices. The conventional nature of labor and related legal norms inevitably influences how labor disputes are considered and resolved. This impact alters the procedural content of case consideration and resolution involving labor and related subjects, necessitating the identification of a new procedural approach for handling labor cases, as it significantly deviates from civil procedure.

Within the context of research on trade unions' role in social partnership for regulating labor relations, the pivotal function of Trade Union Organizations has been identified. This role is critical, as the Trade Union mechanism aims to safeguard the rights and interests of organizational and enterprise subjects. This research has been conducted in several important scenes that assist in the analysis of the study area in greater depth.

Therefore, it is not illogical to attempt to generalize on social partnership generically and provide a definition concerning its functions, principles and characteristics. It is used as a technique in social and labor relations to minimize and mediate social tensions or oppositions between employees and employers, as well as to solve them most efficiently and effectively. Its main components are: relations between organisations of employers and employees and other state bodies; legislation for social and labor relations; and existing types of communication. This



is why it becomes important to declare trade unions as subjects of social partnership. Trade unions as non-governmental associations, are aimed at defending social and labor interests and rights. It works at the micro, meso and macro levels and functions as explained in this paper are as follows: Other factors that can reduce trade unions' involvement were also noted, including poor awareness, decreased employer liability and poor interaction with the younger generation. Proposals for these challenges will improve the trade unions in addressing the rights and interests within labor relations.

### **The contribution of the authors**

#### **This article was written by three authors:**

**Bekbutayeva Zh.** – played a key role in conceptualizing and designing the study, gathering and analyzing data, and interpreting results. She took responsibility for the work's overall integrity, addressed concerns about data accuracy and article completeness, authored the manuscript, evaluated and refined critical sections, and examined relevant literature.

**Sabyr A.** – was instrumental in drawing key conclusions, overseeing the research process, and participating in manuscript revision. He also contributed to enhancing the quality and precision of the final draft.

**Tleulov B.** – provided expert guidance, overseeing the development of the research concept and methodology. He reviewed the manuscript, aided in interpreting findings, and ensured the work maintained a high scientific standard throughout.

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## **Еңбек дауларын шешуде әлеуметтік әріптестік субъектісі ретінде кәсіподақтардың рөлі**

**Аңдатпа:** Жұмыста кәсіподақтардың әлеуметтік серіктестіктердің қатысушылары және Қазақстан ішіндегі еңбек дауларындағы әлеуетті делдалдар қызметі ретінде зерттеледі. Бұл зерттеу кәсіподақтардың жұмыс орнындағы қарым-қатынастарының барысын, міндеттерін, қиындықтары мен рөлдерін түсіндіруге бағытталған. Сондықтан бұл зерттеу ғылыми қауымдастық үшін де, практика үшін де пайдалы, өйткені серіктестік келісімдерінің тиімділігін арттыру идеяларын алға тартады.

Зерттеулерде теориялық және практикалық талдау, нақты анықталған логикалық әдіс, сонымен қатар кәсіподақтардың қырларына жан-жақты талдау жасау үшін дәйекті тұжырымдар әдісі қолданылады. Кейбір тұжырымдар кәсіподақтардың өндірістік қатынастар процесінде, әсіресе қақтығыстарды шешу және жұмысшылардың мүдделерін қорғау тәсілі ретінде маңызды рөл атқаратынын қамтиды.

Негізгі тұжырымдар қазіргі кәсіподақтардың қақтығыстарын алдын алу мен шешудегі белсенді рөлін, сондай-ақ олардың шектеулі заңды өкілеттіктері мен саяси ықпалы сияқты алдында тұрған мәселелерді көрсетеді. Резервте ұжымдық шарттар мен әлеуметтік серіктестік туралы келісімдер тұрақты еңбек қатынастарын сақтаудың маңызды құралы ретінде анықталған. Ол сондай-ақ кәсіподақтардың жұмысшылардың құқықтарын қорғаудағы ұстанымын нығайту үшін құқықтық және ұйымдастырушылық шаралардың қажеттілігін атап көрсетеді. Зерттеу Қазақстанның еңбек қатынастарындағы кәсіподақтардың дамып келе жатқан рөлін түсінуге ықпал етеді және олардың әлеуметтік серіктестік шеңберіндегі қақтығыстарды шешудегі тиімділігін арттыру туралы түсінік береді.

**Кілт сөздер:** кәсіподақтар, әлеуметтік әріптестік, еңбек қатынастары, дауларды шешу, еңбек құқығы, ұжымдық келіссөздер.

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### **Роль профсоюзов в разрешении трудовых споров как субъекта социального партнерства**

**Аннотация:** В данном исследовании рассматриваются функции профсоюзов как участников социального партнерства и потенциальных посредников в трудовых спорах в Казахстане. Целью исследования является разъяснение процессов, обязанностей, проблем и роли профсоюзов в трудовых отношениях. Таким образом, данное исследование полезно как для научного сообщества, так и для практики, поскольку оно вносит идеи для повышения эффективности партнерских соглашений.

В исследовании используется как теоретический, так и практический анализ, четко определенный логический метод, а также метод последовательных выводов, позволяющий провести всесторонний анализ деятельности профсоюзов. Некоторые из выводов включают тот факт, что профсоюзы играют жизненно важную роль в процессе производственных отношений, особенно в качестве средства разрешения конфликтов и защиты интересов работников.

В качестве основного вывода подчеркивается роль современных профсоюзов в предотвращении и разрешении конфликтов, а также проблемы, с которыми они сталкиваются, такие как ограниченные юридические полномочия и политическое влияние. В исследовании коллективные переговоры и соглашения о социальном партнерстве рассматриваются как важные инструменты поддержания стабильных трудовых отношений. В нем также подчеркивается необходимость принятия правовых и организационных мер для укрепления позиций профсоюзов в защите прав трудящихся. Исследование способствует пониманию меняющейся роли профсоюзов в трудовых отношениях Казахстана и дает представление о том, как повысить их эффективность в разрешении конфликтов в рамках социального партнерства.

**Ключевые слова:** профессиональные союзы, социальное партнерство, трудовые отношения, разрешение споров, трудовое право, коллективные переговоры.

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