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Tripartite Cooperation in Labour Relations in Bulgaria

1. Introduction

The tripartite cooperation in regulating the employment relationships (tripartism) is one of the great social ideas of the 20th century. It came into existence at the end of the First World War with the 1919 foundation of the International Labour Organization (ILO) and has ever since been a corner stone of its activity and a source of its unique longevity and vitality¹. The development of tripartite cooperation is accompanied by its broad dissemination in the national legislation and practice of the Member States.

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Tripartite cooperation consists in common and joint participation through dialogue, discussions, mutual concessions and compromises of the three parties most concerned – the state, the employers and the trade unions – in the regulation and resolution of labour and social issues. In the period between the two world wars it was applied in Bulgaria through the employers' and trade unions' organizations, officially recognized by the state. After the end of the Second World War and the world's new distribution made by the Great Powers, Bulgaria was given a place in the Soviet zone of influence. During this period (1945–1989) there were some difficulties in the consistent application of tripartism because of the absence of really autonomous and genuinely independent

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¹ D. Morse, *The Origin and Evolution of the ILO and Its Role in the World Community*, New York 1969, pp. 37–114; N. Valticos, *Droit international du travail*, 2nd edition, Paris 1983, pp. 40–94; B. Hepple, *Reinventer le tripartisme et les normes universelles*, [in:] *Regards sur l'avenir de la justice sociale. Mélanges à l'occasion du 75^{ème} anniversaire de l'OIT*, BIT, Genève 1994; A. Trebilcock, ILO, Geneva 1994, pp. 3–66. Bulgaria has been an ILO member since 1920.

of the government employers' organizations. And yet, after the country's democratic changes started in late 1989, along with the deep democratic changes in the society, tripartism was spontaneously and immediately introduced at the beginning of 1990, even before its legal regulation, and formed part of those changes².

The application of tripartism in Bulgaria is characterized by 'boom and bust' periods. The reason for that is the lack of political will for its realization on the part of the official authorities. However, each time the government neglected it, social tension used to rise, and the government stepped down. As a result, the unresolved problems accumulated. In spite of the difficulties, in the recent decade it has been functioning in a relatively constant way and become established as an important part of social dialogue³.

The tripartism legal framework was laid down through the amendments to the Labour Code (LC) of November 1992 and March 2001 (Art. 3–3e) and the Rules on the bodies and activities of the councils for tripartite cooperation (prom. OJ, No 57 of 2001), using the ILO experience. The framework was created at the time of introduction of the regulations in the national legislations of the former socialist countries in Central and Eastern Europe, after the collapse of their totalitarian regimes⁴.

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2. Institutionalization of tripartite cooperation

The operative legal regulation institutionalized tripartite cooperation, established its bodies, determined their competences and created the national system of these bodies for the realization of tripartite cooperation.

The bodies of tripartite cooperation are:

(1) At the national level – the National Council for Tripartite Cooperation (NCTC), created as a social body independent of the executive power bodies. It consists of a Deputy Prime Minister (Chairperson of the NCTC), one more government member, and two representatives of each represent-

² About the historical development of the tripartite cooperation in Bulgaria, see V. Mrachkov, *Labour Law*, 2nd edition, Sofia 1998, pp. 696–698.

³ V. Mrachkov, *Labour Law*, 9th edition, Sibi Publishing House, Sofia 2015, pp. 803–817.

⁴ L. Hethy, Kyloh R., *A Comparative Analysis of Tripartite Consultations and Negotiations in Central and Eastern Europe*, [in:] *Tripartism on Trial*, ILO, Geneva 1995, pp. 1–40; M. Seweryński, *Polish Labour Law from Communism to Democracy*, Dom Wydawniczy ABC, Warszawa 1999, pp. 199–205; idem, *Toward a New Polish Labour Law*, "Comparative Labour Law and Policy Journal", Fall 2004, vol. 1, pp. 93–95; A. Oldero, C. Phouangsavath, *Relations professionnelles*, [in:] *Les normes internationales du travail. Une approche globale*, BIT, Genève 2001, pp. 557–567; V. Mrachkov, *Labour Law in Bulgaria*, Kluwer Law International, Warszawa 2011, pp. 223–225.

ative trade unions' and employers' organization (Art. 3a, paras 2 and 3 LC). After the latest counting of the trade unions' and employers' organizations in the country and their members, on the grounds of the legal criteria laid down in the Labour Code (Arts. 34–36a), in July 2012 the Council of Ministers recognized two trade unions' organizations as representative ones for a new four-year term: the Confederation of Independent Trade Unions in Bulgaria and the Confederation of Labour "Podkrepa", and four employers' organizations: the Bulgarian Chamber of Commerce and Industry, the Bulgarian Industrial Chamber, the Confederation of Employers and Industrialists in Bulgaria and the Association of Industrial Capital.

The main functions of the NCTC consist in discussing bills, drafts of sublegal normative acts and decisions of the Council of Ministers. These discussions produce opinions, views and proposals for changes and improvements in the respective drafts (Art. 3c, para. 1 LC).

The amendments to the Labour Code of March 2001 imposed a new obligation on the NCTC, namely to deliver opinions on the request of the supreme state bodies: the President of the Republic, the President of the National Assembly, the Heads of the standing parliamentary commissions and the Prime Minister (Art. 3c, para. 2 LC). Such opinions can be sought in connection with the discussion process and the final adoption of laws, sublegal normative acts, *etc.* The sequel to Art. 3c, para. 2 LC and Art. 76, para. 3 of the Rules on the Organization and Activity of the National Assembly (prom. OJ, No 97 of 2014) explicitly provides: "As for Bills regulating employment and social security relationships, the Head of the leading commission shall seek the opinion of the National Council for Tripartite Cooperation". The aim is to support the preparation of laws and other normative acts which reflect as fully as possible the interests of the separate social strata and the balance of these interests.

(2) Sectoral councils are set up at the sectoral level. These councils comprise representatives of Ministries, other administrations and the national sectoral trade unions' and employers' organizations. Such councils are set up in all sectors of the national economy. The 'sectors' are determined by the National Statistical Institute. The operative Classification of Economic Activities has been in force since 1 January 2008 and comprises 88 sectors (prom. OJ, No 107 of 2007).

(3) Branch councils are set up at the branch level. The 'branch' is a separate group of enterprises of a similar subject of activity within a sector and forms part of the latter, e.g. the branches within the processing industry sector are: foodstuff industry, textile and clothing, wood processing, *etc.* The branch councils for tripartite cooperation comprise representatives of the respective Ministries, other administrations and the representative employers' and trade unions' organizations.

(4) District councils are set up in the country's 28 district centres as administrative territorial units for implementing the regional policy, carrying out state governance at the local level and ensuring compliance between the national and local interests (Art. 142 Constitution). They are composed of representatives of the district administration and the district representative trade unions' and employers' organizations.

(5) Municipal councils are set up in the 265 municipalities, which are the country's basic administrative territorial units. The municipal tripartite councils include representatives of the municipal administration and the municipal representative trade unions' and employers' organizations.

The sectoral, branch, district and municipal councils for tripartite cooperation discuss and give opinions on employment relationship matters that are specific to the respective sector, branch, district or municipality and concern the interests of the employees and workers employed therein.

3. Scope of tripartite cooperation

648 Tripartite cooperation has a broad scope. It covers the employment and social security relationships and matters relating to the standard of living.

Employment relationships are those concerning the provision of workforce and the performance of work under an employment relationship. These are matters relating to labour remuneration, working time, rest, leave, healthy and safe working conditions, social and community services, and the like. What was new in the amendments made to the Labour Code of March 2001 was the fact that they explicitly added to the employment relationships those which are directly related thereto, such as the relationships concerning professional qualification, social and community services, *etc.*

Social security relationships concern the categorization of labour upon retirement, the group of persons insured, insurance-covered social risks, grounds for and amount of indemnities in case of temporary incapacity for work, conditions of receiving pension and amount thereof, the basis on which pensions are calculated, pension updating and insurance benefits, health insurance, *etc.*

Matters relating to the standard of living constitute a broad term. It expresses the degree to which the workers and employees meet the basic vital necessities with their labour incomes. In pursuance of the delegation under Art. 3, para. 1, sentence 2 LC, its scope and content are specified in decision No 860 of 2 November 2004 of the Council of Ministers. Those

comprise 13 groups of matters including: social support, tax and budgetary policy, prices, health care, education, demographic policy, environment protection, *etc.*⁵

By the way, the scope of tripartite cooperation exceeds the subject matter of labour law, as it also covers the social security relationships and the matters related to the standard of living that remain outside the scope of labour law.

3. Realization of tripartite cooperation

The realization of tripartite cooperation is obligatory (Art. 3, paras 1 and 2 LC). The cooperation and consultations are necessarily held prior to the adoption of normative acts on employment relationships and those directly related thereto, the social security relationships and the matters related to the standard of living. These can be either laws or sublegal normative acts of the Council of Ministers, acts of Ministers or Heads of other institutions.

The obligatory nature of tripartite cooperation and consultations is an indispensable constituent of the law-making process involving adoption of these acts. The inclusion of obligatory consultations in the procedure for their adoption creates a legal guarantee of the preparation and adoption of lawful normative acts, which more largely reflect the interests of various social strata, the balance of these interests, the social justice requirements, etc. The observance of this procedure does not necessarily mean any legally binding compliance – on the part of the competent state body – with the opinions expressed in the course of consultations. These opinions are of a consultative-recommendatory nature. The final adoption of the respective acts remains within the law-making competence of the respective state body. An obligatory issue is only the holding of consultations in a spirit of cooperation, and not compliance with the opinions expressed in the consultations. Of course, it is normally expected that these discussions and preliminary consultations will give rise to reasonable ideas and proposals providing a chance for the competent state body to improve the drafts under preparation, so the latter must carefully study them. The practice of realization of tripartite cooperation shows that the competent state bodies seek to achieve compromise solutions with their social partners.

⁵ Decision No 860 of the Council of Ministers dated 2 November 2004 was published in the “Labour Information Bulletin of the Ministry of Labour and Social Policy”, No 12, p. 12, and in the “Employment Relationships – 2005 Yearbook” [Sofia] 2005, pp. 156–157.

Lastly, the following question is posed: what are the consequences for the respective normative act if the cooperation and consultations under para. 1 are not observed?

It is necessary to make two distinctions here.

The first one concerns the non-observance of the requirement for co-operation and consultations under Art. 3, para. 1 LC which is due to the refusal of the representative employers' and trade unions' organizations to take part in the discussion of the respective projects after being duly invited to do so. In these cases, the acts should be regarded as duly adopted because the failure to realize the tripartite cooperation in the course of the adoption of the act is due to reasons beyond the control of the respective state bodies. The latter have the obligation to invite the social partners in due time, but they cannot oblige them to take part therein.

The second distinction concerns the cases in which the social partners have not taken part in the discussion because they have not been invited by the respective state bodies. In this hypothesis, it is necessary to make a distinction in view of the type and rank of the normative act.

650 If a bill is introduced into the National Assembly by the Council of Ministers and adopted by the Parliament under the procedure laid down in the Constitution, the breach of Art. 3, para. 1 and 2 LC does not result in unconstitutionality of the respective law because the breach concerns the legal requirement of prior consultations and cooperation with the representative trade unions' and employers' organizations. And the Constitutional Court only assesses the constitutionality of the adopted laws and not the non-observance of their adoption procedure which precedes their introduction into the National Assembly, this procedure being laid down in separate laws. Of course, there are no obstacles and it is even advisable for the National Assembly to return such a bill to its sponsor because of the non-observance of the procedure under Art. 3, paras 1 and 2 LC, to have this question raised within the parliamentary control under Art. 62 of the Constitution, and to have the social partners give publicity to the unlawful disregard of tripartite cooperation, *etc.* These are other matters not concerning the 'constitutional regularity' of the adopted law.

And what happens if the procedure under Art. 3, para. 1 LC is not observed when a sublegal normative act of the Council of Ministers or a Minister is adopted? The Labour Code does not give an explicit answer to this question. And yet, given the categorical provision of para. 2 of Art. 3 LC, it follows that failure to observe it violates the legal procedure for adopting the respective sublegal normative act, and that brings about the unlawfulness of the latter. The lawfulness of the acts of the Council of Ministers and the Ministers, including the lawfulness of the sublegal normative acts they issue, is subject to the control of the Supreme Administrative Court

(abbr. SAC) (Art. 125, para. 2 Constitution, Arts. 185–196 of the Administrative Procedure Code – abbr. APC). One of the grounds for the repeal of such acts is the commitment of “a material breach of the administrative procedure rules” in the course of their adoption (Art. 146, subpara. 3 APC). Such material breach is the contravention of the procedure laid down in Art. 3, paras 1 and 2 LC relating to the adoption of acts regulating the employment relationships and those directly related thereto, the social insurance relationships and the matters of the standard of living. The breach is a material one because, if prior consultations under paras 1 and 2 of Art. 3 LC had been held, the content of the adopted sublegal normative act might have been different from the content of the act adopted without such consultations. Such a sublegal normative act is repealed by the SAC.

As for its substance, tripartite cooperation consists in participation in the regulation of employment relationships. This predetermines the forms of participation of the representative trade unions’ and employers’ organizations in the realization of tripartite cooperation. It is expressed in “cooperation and consultations”. As mentioned above, the final and definitive solution to the questions is given by the respective competent state bodies. Owing thereto, tripartite cooperation is not “joint” or “equitable” regulation of employment relationships. It is tripartite cooperation in the regulation of employment relationships, and not tripartite regulation of employment relationships. That does not at all belittle its role. Tripartite cooperation has its high social value and is unconditionally necessary, especially in hard times of a crisis as the ones which the country is currently going through. It considerably contributes to finding social solutions that are fairer and ensures social peace. Therefore, the common will of all the three parties concerned is necessary for its realization and maintenance.

The meetings of the councils are duly held if they are attended by representatives of all the three parties composing the council (Art. 3e, para. 2 LC). However, if a meeting is not attended by some of the participants from the representative trade unions’ and employers’ organizations although they have been notified thereof, the meeting is regarded as duly held (Art. 3e, para. 3 LC). The reasons for non-attendance are of no importance. The idea of this exception is to provide regular holding of the meetings of the tripartite cooperation bodies and to prevent the adjournment of meetings which the social partners’ representatives boycott through their non-attendance. The purpose of this solution is to stimulate the social partners’ representatives to attend the meetings of the councils for tripartite cooperation even in those cases where they do not share the solutions proposed by the state representatives, and to be motivated

to participate in the meetings directly and actively, to argue with each other and with the representatives of the government and the public authorities, instead of neglecting them tacitly, as this generates and cumulates tension.

There is a dual legal nature of decisions of the councils for tripartite cooperation. On the one hand, these decisions are final juridical acts from the viewpoint of the internal functioning and activity of the councils for tripartite cooperation and express the common will of their members. They are 'final' because they do not need the approval or sanction of another body. On the other hand, from the viewpoint of the ongoing process leading to the final adoption of the respective act (a law, a sublegal normative act or a decision), they have a recommendatory nature and express the so-called 'recommendatory power'⁶. In this connection, they support the creation of the respective legal acts and are an element of the process of their drafting and adoption. These are not normative acts, except where, by virtue of the explicit authorization given by law (Art. 3f, para. 1 LC), the NCTC adopts the Rules on the organization and activity of the councils for tripartite cooperation.

What is extremely important in tripartite cooperation is the knowledge, skill and ability to adduce arguments, to persuade the partners in the justification and fairness of the claims brought, and to make mutual concessions and compromises in order to reach generally acceptable solutions. Compromise is a great achievement of social intercourse and communicative links among social communities and participants in tripartite cooperation in the civil society. Tripartism must be free from any prejudice or ideological encumbrance layered in the past which regard compromise as 'a retreat', 'a defeat' and even a treachery and abandonment of the interests defended. On the contrary, a reasonable compromise is a form of optimum protection of interests in a specific situation and an inevitable companion of this process.

Compromises should be mutual, i.e. they should be made by each party, which is the essence of tripartism. It must be adhered to by all the three parties. Tripartism cannot be realized through 'slamming doors', frequent withdrawal, walking out of the discussions and joining them anew, as this creates tension. The culture of discussions is the basics of tripartite cooperation. It is tolerance, attentive listening and respect for differing views. Tripartism is a way of cultivating civilized democracy in employment relationships. Therefore, any attempt of a party to impose its stand through force contravenes the spirit of tripartism⁷.

⁶ Y. Stoilov, *State Power*, Sibi Publishing House, Sofia 2001, pp. 181–185.

⁷ About tripartite cooperation, see V. Mrachkov in: V. Mrachkov, K. Sredkova, A. Vassilev, *Commentary on the Labour Code*, 11th edition, Sibi Publishing House, Sofia 2013, pp. 38–66.

The latest social legislation provides for setting up separate tripartite bodies, which – along with the state representatives – also include representatives of the representative trade unions' and employers' organizations. Such are: the Supervisory Board of the National Social Security Institute (Art. 35, para. 1 of the Social Security Code), the National Council on Working Conditions (Art. 32 of the Law on Healthy and Safe Working Conditions), the National Council for Employment Promotion (Art. 8 of the Law on Employment Promotion), the National Consultative Council for Professional Qualification of Workforce (Art. 59 of the Law on Employment Promotion), the Supervisory Board of the National Health Insurance Fund (Art. 13 of the Health Insurance Law). Each of these bodies has its own specificity of content and functions which results from the subject of regulation of the respective law and their differentiation from each other, on the one hand, and from the bodies of the National System of Tripartite Cooperation, on the other. However, all of them proceed from the general idea of tripartite cooperation and have a common social finality with the bodies under Art. 36 LC, which is involvement of civil society – through the employers' and trade unions' organizations – in carrying out the activities which form the subject of regulation of the respective special law.

In recent years, there has been a passion for setting up bodies of social dialogue and tripartite cooperation. Instead of enlarging the number of such bodies, it would be better to improve the coordination between them in order to avoid overlapping of their activities.

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4. Conclusions

For the past 26 years, tripartite cooperation has been accompanied by difficulties, lengthy and strenuous disputes between the state representatives and the social partners, and among the social partners themselves. In spite of that, tripartite cooperation has established itself as a necessary and useful component of social dialogue in the country's painful transition to democracy. The realization of tripartite cooperation contributes to building a democratic, law-governed and social state. The potential of tripartism is not exhausted and the prospects of tripartite cooperation consist in its more consistent practical application as well as in the enhancement of its social efficiency.

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Trójsstronna współpraca w stosunkach pracy w Bułgarii

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Streszczenie

Współpraca trójsstronna (trójsstronność) polega na wspólnej partycypacji przez dialog, dyskusje, obopólne ustępstwa i kompromisy trzech najbardziej zainteresowanych stron – państwa, pracodawców i związków zawodowych – w regulacji i rozwiązywaniu problemów zatrudnienia i socjalnych. Współpracę tę charakteryzują okresy „wzrostu i spadku”. Przyczyną takiego stanu rzeczy jest brak politycznej woli realizacji rozważanej współpracy wykazywana przez część oficjalnych władz.

Prawny grunt dla trójsstronności został stworzony przez zmiany Kodeksu pracy (KP) z listopada 1992 i marca 2001 r. (art. 3–3a) oraz zasady dotyczące organów i działalności rad współpracy trójsstronnej (DzU, 2001, nr 57) z wykorzystaniem doświadczeń MOP. Trójsstronność ma szeroki zasięg, obejmujący stosunki pracy i stosunki zabezpieczenia społecznego oraz zagadnienia standardu życia. Jej realizacja jest obowiązkowa (art. 3 par. 1 i 2 KP). Współpraca i konsultacje są wymagane przed przyjęciem aktów prawnych. W ciągu ostatnich 26 lat współpracy trójsstronnej towarzyszyły ciągle trudności. Pomimo to stała się ona koniecznym i użytecznym składnikiem dialogu społecznego w bolesnym procesie przechodzenia do demokracji. Jej postęp zależy od bardziej zgodnego praktycznego stosowania i wzmocnienia jej społecznej efektywności.

Tłumaczenie z języka angielskiego – Zbigniew Hajn