

National social dialogue in Bulgaria: within and beyond tripartism¹

In Bulgaria, as in many European countries and in particular in Hungary, two institutionalized forms of national social dialogue exist - tripartite social dialogue and a wider type of social dialogue involving various civil society organizations beyond employers and employees.

I. Historical background

1. The social dialogue is leading principle of each democratic society. Taking into account of the interests of the widest circle of citizens and legal entities during the elaboration and implementation of the national policy is amongst the most important guarantees for its implementation. It is even more important during transition periods like the one, which Bulgaria has been undergoing already for 20 years.

2. The social dialogue in its current form in Bulgaria has its roots deep in the history. We find its rudiments in some bodies for control for the observation of the labor legislation and settlement of labor disputes, which have been known to our labor legislation even before the World War II, such as the Supreme Labor Council. The actual development of the social dialogue however has started after the political changes from November 1989.

3. The political changes from 10th November 1989 were naturally followed by economic changes. The development of the economy has declined sharply, the income of the citizens has diminished, and their standard of living has deteriorated. The logical sharp increase of the unemployment, on one hand, and the deterioration of the conditions, on the other, have led to mass discontent among the citizens and in particular among the employees. The strikes and other forms of protest have increased like avalanche.² In this situation it was necessary to find ways to control the discontent and to make common efforts for improvement of the grave economic and social situation.

¹ This survey has been fulfilled under a Project N A280.12.401.052 of the ILO.

² For further information on economic and social situation during this period, see: Мръчков, В. Колективни трудови спорове и правото на стачка. Sofia: University Publishing House 'St. Kl. Ohridski', 1992, 5—6; the same author. Социалният диалог и трудовото право в България. - In: Социалният диалог и трудовото право в: Белгия, Германия, Испания, Полша, България. Sofia: Phare, 1997, 131 - 132.

The first step in this direction was made on 15th March 1990. On that date a General agreement between the Government, the Confederation of the Independent Trade Unions in Bulgaria and the National Union of the Business Managers was concluded, by virtue of which a National commission for conciliation of interests was established. A new Agreement between the Government, the Confederation of the Independent Trade Unions in Bulgaria, the Confederation of Labor 'Podkrepa', and the National Union of the Business Managers was concluded on 14 August 1990. It envisaged some measures for improvement of the economic situation and, in particular, for freezing the raise of the prices of commodities of first necessity. An Agreement between the Government, the Confederation of the Independent Trade Unions in Bulgaria, the Confederation of Labor 'Podkrepa', the National Union of the Business Managers, the Bulgarian Union of Private Entrepreneurs 'Vuzrazhdane', the Union for Economic Initiative, the Union of Worker Producers' Cooperatives, the Central Cooperative Union and the Bulgarian Industrial Association for Keeping the Social Piece until July 1991 was concluded on 8th January 1991. By virtue thereof, a Statute of the Standing trilateral commission for conciliation of interests was adopted. This commission was established as an advisory body at the Council of Ministers and its task was to contribute to the establishment of the dialogue and negotiations as essential elements of the social partnership regarding employment and employment relations issues.³ 9 problem commissions and 23 branch sub-commissions have been established. This trend was continued with the Agreement between the Government, the Confederation of the Independent Trade Unions in Bulgaria, the Confederation of Labor 'Podkrepa' and the Bulgarian Industrial Association for further implementation of the economic reform and for preservation of the social peace from 13th June 1991. Thus the foundations for establishment of a permanent legal framework in the Labor Code have been laid.

4. The amendments in the Labor Code from 1992 established the legal basis for the tripartite cooperation as a form of the social dialogue. They institutionalized the tripartite cooperation and laid down the basic rules for its implementation. They were developed and improved further with the following amendments in the Labor Code.

5. The positive experience from the tripartite cooperation in the field of employment relations, social security relations, and standard of living was spread also to the management of some bodies in this field. They were established on a tripartite basis in order to ensure the fuller taking into account of the interests of the participants in the respective relationships. This is the case of the National Social Insurance Institute Supervisory Board, the National Health Insurance Assembly of the Representatives, etc., which will be discussed later (see point 19). This is another important aspect of the tripartite cooperation, albeit outside of the system established with the Labor Code.

6. With the progressive establishment of the democratic principles in the Bulgarian society, there was an increasing need of wider cooperation between the state and the

³ See Мръчков, В. Колективни трудови спорове, 8 – 9.

civil society, not only with the employees' and employers' representatives. One example of initial form of such wide cooperation was the Committee on the European Social Charter, which had the task to discuss the preparatory works for ratification thereof and afterwards – to draw the first national report on the implementation of the European Social Charter.

The institutionalization of the social dialogue by establishment of the Economic and Social Council was carried out with the Law on the Economic and Social Council of 2001, established in 2003.

II. The role of the ILO and the EU

7. As it is well-known, ILO is the founder of the social dialogue generally, and in particular of the tripartite cooperation.⁴ The ILO experience has always been used as a model for the legislative framework and for the practice in the different democratic states, including Bulgaria.

Apart from this, ILO played a very important specific role in the establishment of the system of tripartite cooperation, and afterwards of the social dialogue in the framework of technical cooperation with Bulgaria. Esteemed ILO experts took part in the preparation of both Labor Code and Law on Settlement of Collective Labor Disputes and assisted in finding of the most appropriate solutions for our country.

8. Whilst ILO is the model for establishment of the system of tripartite cooperation, EU is the model for establishment of the Economic and Social Council. The important role played by Economic and Social Committee in the life of EU is well-known.⁵ The idea for involvement of wide circles of the population, not just the governments, in the decision making process on main issues of the economic development and social policy of the EU inspired the establishment of such form of social dialogue also in our country. For the first time this idea was launched in the 'Social Dialogue' Project under Phare Program in 1995–1997. There were also other projects dealing with such issues. For that reason the idea – institutionalized in Economic and Social Council – for wider participation of the civil society in the solving of the common problems of the state and

⁴ See Янулов, Ил. Компетенция на Международната организация на труда. – Годишник на Софийския университет. Т. 31, 1936, 11–25; Мръчков, В. Българското трудово законодателство и международните трудови конвенции и препоръки. С.: НИ, 1978, 15–43; the same author. Международно трудово право. С.: Сиби, 2000, 113–126; the same author. Тристранно сътрудничество в конвенциите и препоръките на Международната организация на труда. – Правна мисъл, 2001, № 2, 65–85; the same author. Трудово право. 6 изд. С.: Сиби, 2008, 754–755; Jenks, W. C. The International Protection of Trade Union Freedom. London, 1957, 92–114; Morse, D. The Origin and Evolution of the ILO and its Role in the World Community. New York, 1969, 37–114.

⁵ See for instance Schley, N. Wirtschafts- und Sozialausschuss. – In: Weidenfeld, W., W. Wessels. Europa von A–Z. Bonn: Bundeszentrale für politische Bildung, 1995, 340–342; Emmert, Fr. Europarecht. München: C.H. Beck'sche Verlagsbuchhandlung, 1996, 108–109; Fairhurst, J. Law of the European Union. 6 Ed. London and oth.: Pearson Longman, 2007, 118–121.

the society was implemented as a natural reflection of the common European trends in the Bulgarian legal system.

III. Differences and complementarities

1. Mission of both forms of national social dialogue

10. Generally, the social dialogue is being established slowly, with difficulties, but also with results as a leading principle of the modern Bulgarian society. It is manifestation of a number of constitutional founding principles, enshrined in or deriving from the Constitution of 1991.⁶

First of all, it is manifestation of the principle of the social state, proclaimed in the Preamble of the Constitution. This principle requires drawing the attention of the state to the protection of the individual, to the realization of the social and economic rights of the citizens, and the more the citizens are involved in the process of elaboration of the legislation in the relevant fields and in the practical solving of the relevant issues, the greater will be the success of this undertaking. And that's exactly the function of the social dialogue.

The Rule-of-Law state, which Bulgaria has defined as a goal before itself in the Preamble and in Art. 4 Const. encompasses, inter alia, ensuring the social and economic rights of the citizens. And this is a function also of the social dialogue.

The Constitution, in its Art. 4, para. 2, sets the objective to develop the civil society. One of the essential manifestations is the participation of the members of the society in solving of the main problems of the economic and social life, which is also a function of the social dialogue.

The principle of the social dialogue is expressly laid down in several acts of the legislation in force.

First of all, it is provided for in Art. 2 of the Labor Code (LC)⁷, according to which “the state shall regulate employment relations and the relations immediately associated with employment relations, the social insurance relations and the living standard issues after consultations and through dialogue with the employees, the employers and their organizations, in the spirit of cooperation, mutual concessions and respect for the interests of each of the parties”. This provision lies down:

⁶ In particular, regarding the constitutional foundations of the social dialogue, see Мръчков, В. Социалният диалог, 135–138.

⁷ More about this provision: Мръчков, В. – In: Трудови отношения 2006. С.: Труд и право, 2006, 386–391; the same author – In: Мръчков, В., Кр. Средкова, Ат. Василев. Коментар на Кодекса на труда. 9 изд. С.: Сиби, 2007, 33 –38.

First, the obligation of the state to conduct social dialogue.

Second, the object of the social dialogue – the relations, under which it should be conducted. These are the employment relations and the relations immediately associated with employment relations, the social insurance relations, and the living standard issues.

Third, the forms of activity in which the social dialogue should be carried out – i.e. the legal regulation.

Fourth, the content of the social dialogue. It includes consultations and dialogue with the employees, the employers and their organizations, in the spirit of cooperation, mutual concessions, and respect for the interests of each of the parties.

Fifth, the time, when the social dialogue should be carried out. It precedes the conducting of the respective regulation.

The provision of Art. 2 LC is the basis for the legislative regulation of the various forms of social dialogue – tripartite (tripartite cooperation, some of the cases of settlement of collective labor disputes) and bipartite (collective bargaining, settlement of collective labor disputes; employees' participation in solving of the general issues of the undertaking).

As a principle of the legislation, the social dialogue is proclaimed also in a number of acts in the field of social legislation, e.g. Art. 1, para. 3 LC; Art. 3, p. 4 of the Social Insurance Code; Art. 5, p. 2 of the Health Insurance Act, etc. It is carried out within the structure of the governing bodies of the institutions, which govern the respective public relations: the National Social Insurance Institute Supervisory Board, the National Health Insurance Fund Assembly of Representatives, etc.

11. The main forms of multilateral⁸ social dialogue are the system for tripartite co-operation and the Economic and Social Council. Both forms have their own place in the public life of Bulgaria. This is envisaged in the relevant legislation. However, real assessment can be done of the tripartite cooperation, while the ESC exists only for a short period of time for making definitive conclusions.

12. Before discussing the specific features of the respective forms, it is necessary to point out their common features.

First of all, both categories of bodies have common designation: involvement of representatives of the society in solving of general issues of life in the society. Representatives

⁸ I denote them as forms of multilateral dialogue, as not only representatives of the social partners – trade union and employers' organisations, but also other legal entities: the state, other public organizations, etc., participate in them.

of major citizens' organizations participate in both categories of bodies. The role of the acts adopted by both categories of bodies is consultative. Both categories of bodies are envisaged as guarantee for more real taking into account of the interests of various strata of the society during regulation by the state of the relations, in which they take part.

However, there is a definite difference between the two categories of bodies. This difference will be also shown later – at the respective systematic places, but here a comparison will be made between their designations as separate elements of the civil society.

13. The objective of the tripartite cooperation derives from the provision of Art. 3 LC. It is involvement of the social partners in legal regulation of employment relations and the relations immediately associated with employment relations, the social insurance relations, and the living standard issues. This is achieved through preliminary discussions of draft normative acts and giving opinions and recommendations regarding the content thereof.

This is aimed at taking into account of the interests of the three parties concerned in these relations. These parties are:

The employees represented by their representative trade union organizations. Their interests are related to working in better conditions, for higher remuneration and social insurance payments substituting the latter.

The employers represented by their representative employers' organizations. The interest of this category of subjects is in more efficient use of the workforce.

The state represented by the executive. It expresses the common interest in conducting of the labor process in conditions of social peace and mutual satisfaction.

Tripartite cooperation allows reconciliation of the interests of the parties through discussions, mutual compromises, and concessions. This is a guarantee for more objective taking into account of these interests during the legislative process. And the better legislation takes into account the respective interests, the greater are the guarantees for its observance.

The issues covered by the tripartite cooperation and, accordingly, on which there is reconciliation of interests (subject-matter of the tripartite cooperation) are explicitly and exhaustively listed in Art. 3, para. 1 LC. These are:

First, employment relations. These are the relations between the employees and employers during and related to the provision of manpower (hired employment) within the meaning of Art. 1, para. 1 LC, such as: duration of the working time, labor remuneration, etc.

Second, the relations immediately associated with employment relations within the meaning of Art. 1, para. 1, LC. These are the relations, which are not occurring during the immediate performance of work, but are associated with employment relations because they are aimed at future creation of employment relations (for example, active labor market policy), or because they imply previous existence of employment relations (for example, length of service), or they accompany the employment relations and are aimed at provision of normal functioning thereof (for example, control over observance of the labor legislation).

Third, social insurance relations. These are the relations for material support of the citizens, when due to external reasons they cannot obtain resources for living on their personal work (for example, in case of temporary inability to work) or when they have to bear extraordinary for their daily life expenses (provision of medical care).

Forth, living standard issues. These are the issues of the reflection of the remuneration and social insurance payments on the standard of living of the employees. The living standard issues covered by the tripartite cooperation on the basis of Art. 3, para. 1 LC is explicitly determined by the Council of Ministers in Decision 860 of 2004. These issues are classified in 13 groups, e.g. income from employment, and social insurance relations; taxation policy; social assistance, etc.⁹

Therefore, the role of the tripartite cooperation is regard to a range of issues explicitly determined in the law and related mainly to the provision of hired employment and to the participation of the parties to the employment relationship.

14. The mission of the Economic and Social Council is laid down in Art. 2 of the Law on Economic and Social Council (LESC). It is:

“1. to provide the participation of a wide circle of representatives of the civil society in the public and economic life, strengthening the principles of the constitutional democratic and social state;

2. to serve as a permanent institutional form of the social dialogue and the consultations on the economic and social policy between the government and the structures of the civil society;

3. to answer to the legal aspirations of the social and economic groups, to the structures of the civil society express opinion, statements and proposals regarding acts of the legislative and executive authority having impact on their interests. ...”

The achievement of the objectives of the Economic and Social Council is also accomplished through discussions and expressing of opinions. Again, the idea is to take into account the interests of a wide circle of legal subjects on issues, which concern them. These are the issues of the economic and social development and of

⁹ For more details, see Мръчков, В. Обхват на въпросите на жизненото равнище в тристранното сътрудничество. – In: Трудови отношения 2005. С.: Труд и право, 2005, 353–356; the same author – In: Коментар на Кодекса на труда, 40–42.

the economic and social policy. The discussion on these issues is carried out with the participation of a wider circle of legal subjects – consumers, students, retired persons, etc.

15. The comparison shows that the tripartite cooperation is concentrated on the problems of employees and of employers as parties to the employment relations and associated with them as well as to the social insurance relations and relations in the field of living standard. The Economic and Social Council – it is aimed at involvement of wider circles of the society (as it is mentioned in Art. 2, p. 1 LESC – “wide circle of the civil society”) in the solving of the main issues of the economic and social policy. Consequently, the tripartite cooperation is related to the regulation explicitly determined range of legal relations (Art. 3, para. 1 LC) – employment relations and the relations immediately associated with employment relations, the social insurance relations and the living standard. The social dialogue within the Economic and Social Council has a wider subject-matter – the economic and social policy (Art. 2, p. 2 LESC), without any restrictions on the relations, through this policy is implemented.

2. Institutions

16. The legal status of the bodies for tripartite cooperation is provided for in the Labor Code and in the Rules for Organization and Activity of the Councils for Tripartite Cooperation, adopted by the National Council for Tripartite Cooperation, and of the Economic and Social Council – in the Law on Economic and Social Council and in the Rules for Activity of the Economic and Social Council, adopted by the Council. It is a result of long-time development (more specifically regarding the tripartite cooperation) in searching of the most appropriate legal solutions.

17. The representation in the National Council for Tripartite Cooperation and in the Economic and Social Council can be regarded from two aspects:

a. organizational, i.e. the state bodies and civil society organizations, which are represented therein.

The councils for tripartite cooperation comprise two representatives each of the Council of Ministers (the National Council), or of the relevant ministry, another central government department or municipal administration (the industry, branch or municipality councils), of the representative organizations of the employees and of the representative organizations of the employers.

Representative employers' and trade union organizations are those, which satisfy the criteria laid down in the Labor Code and are recognized as such by the Council of Ministers. According to Art. 34 LC, as representative trade union organizations are recognized those organizations, which have at least 50 000 members; at least 50 organizations with not fewer than 5 members each in more than half of the industries

designated by the Council of Ministers in accordance with the National Classifications of Economic Activities; local bodies in more than half of the municipalities in the country and a national governing body; the capacity of legal entity, acquired according to the procedure established by Art. 49 LC. By virtue of Art. 35 LC, in order to be recognized as representative employers' organizations, they must have at least 500 members with not fewer than 20 employees each; organizations with not fewer than 10 members each in more than one-fifth of the branches designated by the Council of Ministries in accordance with the National Classification of Economic Activities; local bodies in more than one-fifth of the municipalities in the country and a national governing body; the capacity of legal entity, acquired according to the procedure established by Art. 49 LC. The employers' and trade union organizations are recognized as representative upon their request with a decision of the Council of Ministers in accordance with the procedure envisaged in Art. 36 and 36a LC and in the Ordinance on Laying down the Procedure for Establishment of the Presence of the Criteria for Representativity of the Employees' and Employers' Organizations. The presence of their representativity is verified once in 3 years. Currently in Bulgaria two trade union organizations and six employers' organizations are recognized as representative. Only these organizations are entitled to participate in the councils for tripartite cooperation and in the Economic and Social Council.

Chairperson of the National Council is a Deputy Prime Minister and presidents of the industry, branch, and municipal councils are designated by the respective minister, head of another central government department or municipality. The councils have two deputy chairs – from the representative employees' and employers' organizations, which are elected on a rotation principle for a term of one year.

The representation in the Economic and Social Council is provided for in Art. 7 LESC. Its 36 members are divided in three groups: the group of the employers' organizations; the group of the employees' organizations; mixed group, comprising representatives of the organizations explicitly mentioned in Art. 7, para. 5 LESC – the organizations of the agricultural producers; the organizations of the industrial cooperatives; the organizations of the craftsmen; the professional branch organizations; the organizations of the consumers; the organizations of the women; the ecological organizations; the organizations of the disabled; the organizations of the pensioners; the organizations, supporting the socially weak, disabled or the persons needing care. This group includes also two independent academicians.

The chairperson is elected by the Parliament upon a proposal by the Council of Ministers, coordinated in advance with the groups represented in the council.

As it can be seen, the representative employers' organizations and the representative trade union organizations participate simultaneously in both social dialogue institutions. In principle, they estimate the independent role of both forms of social dialogue, albeit sometimes their activity is related to the same issues.

Both laws (the Labor Code and the Law on Economic and Social Council) lay down precisely, which social partners participate in the councils for tripartite cooperation and in the Economic and Social Council – the representative employers' and trade union organizations.¹⁰ This legislative solution is dictated by the real pluralism in the association of the employees and employers, which, on its part, entails the establishment of numerous trade union and employers' organizations. For that reason it is necessary that organizations, which express the interests of actually large communities of members, participate in the system of tripartite cooperation and in the social dialogue generally;

b. the personal representation in the national system for tripartite cooperation is settled in Art. 3a, para. 2 and in Art. 3b, para. 2 LC. The bodies of this system comprise two representatives of the Council of Ministers (or of another central government institution or municipality), two representatives of each representative employee's organization, and two representatives of each representative employer's organization. The representatives of the representative employers' and employees' organizations are designated by their managing bodies in compliance with their statutes.

Article 7 LESC lays down the representation of each of the three groups in the Economic and Social Council. First two groups have twelve representatives each, and the third consists of one representative per respective group of organizations and two independent academicians.

The representatives of the representative employers' and employees' organizations are designated by their managing bodies in compliance with their statutes. The law does not lay down how numerous organizations of one type, e.g. organizations of consumers, will designate their representative. Logically and the most frequent practice is that this is done jointly by the managing bodies of the respective organizations.

The academicians are designated by the Council of Ministers upon proposal of the Minister of Economy and the Minister of Labor and Social Policy. The state does not have representatives in the Economic and Social Council.

It is possible to have concurrence of personal membership in both institutions in regard to the representatives of representative employees' and employers' organizations. It is possible that one person represents an organization in both institutions. In case of such 'concurrence', the respective representative acts in each of the institutions according to their functions. However, there is no significant difference in their functioning – considerations and discussions. The difference is in the way of adoption of the decisions and the legal significance of the adopted decisions, which will be discussed further.¹¹

¹⁰ For more details, see Мръчков, В. – In: Коментар на Кодекса на труда, 115–133; the same author. Трудово право, 732–742, 748–753.

¹¹ On the composition of the councils for tripartite cooperation: Банова, Ем. – In: Трудови отношения 2005, 357–358; Мръчков, В. – In: Коментар на Кодекса на труда, 46–54.

18. The personal composition of the participants in the system of tripartite cooperation, respectively in the Economic and Social Council, is determined by the central bodies of the represented organizations in accordance with their statutes (Art. 3a, para. 2; Art. 3b, para. 2 LC; Art. 7, para. 3 and 4 LESC). They are not subject to approval, consent, etc., neither by the state, nor by the other social partners.

There are no specific requirements for the qualities of the representatives in the system for tripartite cooperation. Requirements for these representatives, as well as for the chairperson of the Economic and Social Council, who is appointed by the National Assembly, are laid down in Art. 9, para. 1 LESC. They must not be “persons with foreign citizenship; persons under age; persons under judicial disability; persons without higher education; deputies or municipal counselors; members of the political offices of the Prime-minister or the ministers; civil servants; judges, prosecutors or investigators; staff military men, as well as civil servants in the context of the Ministry of Interior Act; persons elected in the national bodies of political parties; persons convicted for deliberate indictable offense, unless they have been rehabilitated; persons deprived of the right to occupy managing, accountant or material liability position; persons who have been members of managing or control bodies of a commercial company terminated due to declared bankruptcy during the last two years preceding the date of the decision for declaring bankruptcy, if dissenting creditors have remained.

19. There are two categories of bodies for tripartite cooperation depending on their structure:

a. the bodies from the first category are united in the National System for Tripartite Cooperation. These are: National, industry, branch, and municipality councils. There is no subordination between them. They are established in accordance with the principle of functionality. These councils are for the consultations of the state regarding the elaboration of normative acts and they give opinions on finding solution to certain issues upon a request of some state bodies. The focus of this presentation is mainly on them.

Other bodies are outside the National System for Tripartite Cooperation. These are the governing bodies of various institutions, established on a tripartite basis. Such bodies are: the Supervisory Board of the National Social Insurance Institute (Art. 35, para. 1 of the Social Insurance Code); the National Council on Working Conditions (Art. 39 Law on Safety and Health at Work); the National Council on Employment Promotion (Art. 8 of the Employment Promotion Act); the Supervisory Board of the National Institute for Conciliation and Arbitration (Art. 4a of the Law on Settlement of Collective Labor Disputes). These bodies set the main directions and govern the activity of the respective institutions – the National Social Insurance Institute, the Ministry of Labor and Social Policy, the Employment Agency.

The Economic and Social Council is established only at national level. There are no analogous bodies at territorial or branch level.

Some bodies of institutions in the field of social policy have similar composition to the Economic and Social Council (albeit with participation of representatives of the state), but they do not have any relations with it. Such kind of bodies are: the National Advisory Council on Professional Qualification of the Workforce (Art. 59 of the Employment Promotion Act); the Assembly of the Representatives of the National Health Insurance Fund (Art. 7 of the Health Insurance Act); the Social Assistance Council (Art. 4 of the Social Assistance Act); employment commissions with the Regional councils for regional development (Art. 9, para. 3–5 of the Employment Promotion Act).

20. The legislation does not determine the term of office of the councils for tripartite cooperation. The participants in them are designated for indefinite period of time, and may be replaced by the bodies, which have designated them.

The term of office of the chairman and the members of the Economic and Social Council is 4 years. They may be replaced in the cases of resignation, permanent inability to fulfill their functions, occurrence of some circumstances of incompatibility, death. Not later than 3 months before the expiration of the mandate of the chairman the National Assembly shall elect a new chairman. The members of the Council should be designated within the deadline before the expiry of their term of office. The chairman and the members of the council continue to fulfill their functions until the election or the appointment of the new chairman and new members.

Both legal solutions have their strengths and weaknesses. The lack of term of office fixed in the law is a guarantee for continuity of the activity and functioning, but creates a risk of too prolonged participation of the same persons. Fixed term of office motivates for more efficient activity, it creates conditions for renewal of the composition, but, on the other hand, this does not necessarily guarantees gaining of experience and continuity in the forms of work.

21. The financing of the activity of the bodies for tripartite cooperation is on the account of the state or municipal bodies, which participate in the activity of the respective councils (Art. 3f, para. 2 LC). The legislation does not fix the amount of the funds due. They are part of the total amount for maintenance of the respective state or municipal body and this does not always guarantee ensuring thereof in the necessary amount. However, so far this has not impeded the normal functioning of the councils for tripartite cooperation.

The activity of the Economic and Social Council is financed by its budget which is a part of the budget of the National Assembly. It is adopted annually.

22. Most generally, the method of work of the various forms of social dialogue can be determined as cooperation and consultations.

The tripartite cooperation is expressed in joint consideration and giving of opinions by the three parties concerned for settlement of the problems of the employment

relations, the relations immediately associated with them, the social insurance relations, and the living standard issues. The consideration is expressed in discussion on the relevant issues and the giving of opinion – in assessment of, comments and proposals on the content of the relevant normative acts or concrete decisions of the respective state body. However, the solving of the problem – the adoption of the normative act, remains within the competence of the respective state body. As Prof. Mrachkov points out, it is tripartite cooperation during the regulation of the relevant relations, but not tripartite regulation of these relations.¹² The regulation of the relations remains within the competence of the state body.

Similar is the situation of the Economic and Social Council. It adopts opinions on issues falling within its competence on the basis of considerations and discussions in the council.

23. The decisions of the bodies for social dialogue are adopted on their meetings.

The decisions of the bodies for tripartite cooperation are adopted with consensus, i.e. with unanimity, of all members of the respective council, which attend the meeting. The decisions are submitted to the respective state body: the National Council for Tripartite Cooperation decisions – to the Prime-Minister or the respective minister or head of other institution; the decisions of the industrial and branch councils – to the respective minister or head of other institution; the decisions of the municipal councils – to the mayor of the municipality or to the president of the municipal council. This is related to the consideration of draft laws, draft secondary legislative acts, and draft decisions of the Council of Ministers on employment and immediately associated with them relations, social insurance relations, and living standard issues. Since the conducting of the tripartite cooperation is compulsory, the competent body must accept the decision and consider it, but the body is not obliged to comply with it.

Apart from the above mentioned cases, when the tripartite cooperation is compulsory, the bodies for tripartite cooperation express opinions upon request of the respective state body: the National Council for Tripartite Cooperation – upon request of the President of the Republic, of the President of the National Assembly, of the chairpersons of standing commissions of the National Assembly and of the Prime-Minister; the industry, branch and municipal councils – upon request of the state body dealing with the relevant issues.

The preparation of the consideration and expressing of opinions on the discussed issues is carried out in commissions with the tripartite councils. The following commissions have been established with the National Council for Tripartite Cooperation: on income and living standard; on labor legislation; on social consequences of the

¹² Мръчков, В. Социалният диалог и трудовото право в България, с. 132; the same author. – In: Трудови отношения 2006, с. 392; the same author. Трудово право, с. 762.

restructuring and privatization; on budget policy. The industrial, branch and municipal councils establish commissions and working groups. The commissions in question are auxiliary bodies of the councils for tripartite cooperation. Their task is to prepare the considerations within the tripartite councils.

The Economic and Social Council gives opinions on issues of economic and social development and on the economic and social policy upon proposal of the President of the National Assembly, of the Prime-Minister and in other cases provided for in the law. The required majority for adoption of the decisions is three-quarters of the members attending the meeting. Unlike the system for tripartite cooperation, in case of the Economic and Social Council the competent state bodies are not obliged to consider the issues falling within its competence.

The activity of the Economic and Social Council is also assisted by standing and temporary commissions.

24. Important feature of the tripartite cooperation and at the same time distinction from the Economic and Social Council is the compulsory nature of the tripartite cooperation (Art. 3 LC).¹³ The compulsory nature concerns the conducting of tripartite cooperation, but not compliance of the opinions of the respective councils. It is applied to the draft normative acts on employment relations and the relations immediately associated with employment relations, the social insurance relations, and the living standard issues. The state body competent for the issuance of the respective normative act is obliged to consider the opinion of the tripartite council, although it is not obliged to comply with it.

The existing practice so far shows that the observance of this requirement of the legal drafting process contributes significantly for creation of more objective and just normative solutions, for taking into account of the interests of the various subjects concerned in the relevant relations, for obtaining public support for adoption of the legal rules.

What are the legal consequences of the failure to comply with the obligation to conduct tripartite cooperation? These consequences depend on the type of the adopted normative act.

In case of a law, the National Assembly is fully sovereign to adopt one or another legal solution. However, such failure to comply with the requirement for preliminary consultations in the National Council for Tripartite Cooperation can receive publicity with all its preventive significance; the President of the National Assembly and the chairpersons of the standing commissions in the National Assembly may request the

¹³ For more details: Мръчков, В. Трудово право, 757–758; the same author. – In: Трудови отношения 2006, 391–394; the same author. – In: Коментар на Кодекса на труда, 44 – 45.

opinion of the National Council for Tripartite Cooperation by virtue of Art. 3c, para. 2 LC during the consideration of the draft law on the National Assembly; it is also possible to remit the draft law to body, which has submitted it. Unfortunately, these options have never been used so far.

In case of secondary normative act of the Council of Ministers, of a Minister or another competent state body, failure to comply with the requirement for preliminary consideration in the National Council for Tripartite Cooperation is ground for its contestation before the Supreme Administrative Court. Since in such case there is infringement of the procedure for adoption of these acts, the court may annul the respective act, and there is already such case-law.

The legislation does not envisage compulsory nature of the considerations in the Economic and Social Council. Probably, this is one of the main problems for the efficiency of its activity. In case of eventual amendment of the legislation, the idea for compulsory requirement of the Economic and Social Council opinion, when normative acts on issues falling within its competence, similarly to the practice in the EU, should be given a consideration.

25. The tripartite cooperation in Bulgaria already has rich history. During the 20 years of its formal existence its development has been uneven. There have been periods of upsurge and periods of stagnation, depending mainly on the attitude of the state towards the social dialogue.¹⁴ This allows outlining both the strengths and weaknesses of the system.

The main achievement of the system of tripartite cooperation is its binding nature, which was introduced in the legislation with the amendments in Art. 3 LC in 2004. The preliminary consultation of the draft normative acts as a compulsory element of the legal drafting process is the main guarantee for the mere existence of the system. In the case-law already there are examples of annulment of an act (decision) of the Council of Ministers adopted without preliminary consultation with the representative employees' and employers' organizations – § 1 of Decision № 212 of 2001, which increased the price of electricity, heating and of the natural gas for domestic purposes (Judgment № 9289/01 of 5-member composition of the Supreme Administrative Court). Important strength is also the requirement for the functioning of the councils for tripartite cooperation – attendance of representatives (irrespective of their number) of each of the parties, in order to have valid meeting, and unanimity for adoption of the respective decisions. The existence of bodies not only at national (National Council for Tripartite Cooperation), but also at production (industrial and branch councils) and territorial (municipal councils) level is also important factor for the efficient functioning of the system. As a guarantee for overcoming of the dependency on the will of the state, there have been introduced amendments in Art. 3d LC, which allow convocation of the meetings upon a request of a certain number of their

¹⁴ See Мръчков, В. Трудово право. III изд. С.: Сиби, 2001, 767 – 769.

members and not only upon request of the chairperson, who is always representative of the state. The attainment of this objective is addressed also by the possibility to hold meetings even without representatives of any party, if they have been notified.

Yet irregular functioning of the tripartite councils at branch and, especially, at municipal level is their weakness.

As it has already been mentioned, yet the history of the Economic and Social Council in Bulgaria is brief – it has been established only in 2003. The time of its functioning is insufficient for outlining of sustainable trends. Nevertheless, it can be mentioned that one of the strengths of this form of social dialogue is the wider range of issues falling within the competences of the Economic and Social Council, as well as the greater diversity of its composition. It is also important that it can express opinions not only on draft normative acts, but also on the strategy of the economic and social policy of the state (Art. 4 LESC).

The main weakness is the lack of legal guarantees for requesting the Economic and Social Council opinions and for their compulsory consideration by the state bodies, which are competent to adopt the respective decisions.

3. The role of the civil society organizations

26. In both forms of social dialogue the social partners are equal partners, together with the state in the National Council for Tripartite Cooperation and with the other public organizations in the Economic and Social Council.

Their role in the National Council for Tripartite Cooperation is especially tangible – probably due to the long-time experience in the activity of this body. They submit draft decisions, participate actively in their consideration, and fight using the specific forms and means of the trade union and employers' organizations for their adoption. A number of legislative decisions have been adopted just upon a request of one or both parties of the social partnership. It was upon request of trade union organizations (the Confederation of the Independent Trade Unions in Bulgaria and the Confederation of Labor 'Podkrepa') that the abovementioned decision of the Supreme Administrative Court has been ruled, whereby a decision of Council of Ministers on fixing the prices of the heating energy has been annulled for not being considered preliminary in the National Council for Tripartite Cooperation. The social partners are the most ardent and in most of the cases active supporters of the idea for tripartite cooperation.

The social partners are also active participants in the Economic and Social Council – probably because of the already gained experience in the tripartite cooperation. The Council has discussed on their initiative series of concrete issues of the economic and social policy, such as: income of the population, procedure for settlement of the individual labor disputes, etc.

27. The legislation does not prescribe any formally established relations between different categories of representatives (social partners and other civil society organizations) within the Economic and Social Council. They all participate on their own basis and have equal rights and obligations. For that reason, the relations between the social partners and the other participants in the Economic and Social Council are based on cooperation, mutual concessions, and respect of the interests. As it is envisaged in Art. 3 LESC, the council carries out its activity on the basis of the principles of independence and cooperation with the state bodies, equality, pluralism of the opinions and publicity. These principles are followed successfully in the existing practice of the Council.

4. Relations between the two forms of social dialogue

28. The legislation does not regulate the relations between the National Council for Tripartite Cooperation and the Economic and Social Council and, respectively, between their functions. No formal forms of interaction between them have been laid down. This is a gap in the legislation. Existence of two institutions with similar functions demands, on one hand, clear distinction of these functions and, on the other hand, forms of cooperation between the two institutions.

Also the practice has not yet established any sustained forms of relations between these two institutions.

In this situation and on the basis of the existing legal framework it can be said that the two institutions exist independently one of another. However, the legislation provides an opportunity for complementarities through the wider scope of discussions and opportunity for expressing opinions by the Economic and Social Council, as well as through the broader representation of the public in it. While the National Council for Tripartite Cooperation can express opinions on draft normative acts, the Economic and Social Council can express such opinions on all issues in the field of economic and social policy (arg. Art. 2 LESC). The problem, however, is that the competent state bodies are not legally obliged to request such opinions. It is commendable that the current composition of the Economic and Social Council has discussed number of important issues and expressed its position on them¹⁵ upon its own initiative.¹⁶ These opinions have been submitted to the President of the Republic, to the President of the National Assembly (the Parliament) and to the Prime-Minister. However, this has not entailed any substantial consequences.

¹⁵ In 2006 for instance the Economic and Social Council expressed 10 opinions: "The Lisbon strategy of the EC and the Republic of Bulgaria's policy for achievement of competitiveness and prosperous economy", "Problems of industry in the process of association of Bulgaria to the EU", "Problems in agriculture during the association of Bulgaria to the EU", "Informal economy and measures for its limitation", "A Project for a National Health Strategy 2007–2012 of the Ministry for Health (analysis, assessment, recommendations)", "The Incomes policy – a basic means for improvement of the quality of life and for decrease of the poorness in Bulgaria", "Problems of the pensions system in Bulgaria", "Improving the efficiency of the judicial mechanism for settlement of individual labor disputes".

¹⁶ In 2006 for instance the state had not asked any opinion of the Economic and Social Council. All of them have been adopted upon the own initiative of the Economic and Social Council.

Nevertheless, it must be underlined that in the conditions of co-existence of the two institutions with such close functions for several years, there is need in legal regulation of the relations between them – differentiation of their functions, possibility for issuing joint acts, etc.

5. Impact on national legislation and policies

29. As it has already been mentioned numerous times, the conducting of tripartite consultations before the adoption of normative acts on employment relations and the relations immediately associated with employment relations, the social insurance relations and the living standard issues is compulsory (Art. 3 LC). All draft normative acts on these issues have to be considered preliminary in the National Council for Tripartite Cooperation. This has already proven its importance for more just from social point of view normative solutions, which take into account more objectively the interests of all participants in the respective relations. Not always the opinions of the social partners are complied with, but their consideration itself is manifestation of civil dialogue. Undoubtedly, this experience should be continued and developed.

30. The role of the Economic and Social Council is even more modest. During its first term of office, the Council has issued a lot of opinions on important issues in the field of social policy and economic development. Some of its conclusions have been considered by the competent state bodies, but mainly as expression of opinion, without real guarantees for its compulsory consideration and even less for complying with it. Although it is rather early to make an objective assessment of its activity, I find that an amendment in the legislation in order to make the requesting of opinion of the Economic and Social Council on certain issues is necessary.

IV. Conclusions

31. The social dialogue is a new phenomenon in the modern world, including the Republic of Bulgaria. It has its achievements and weaknesses. One of the most important factors for development of the achievements and for combating the weaknesses is their discussion and sharing of experiences. The legal science may contribute to the achievement of this purpose.

Nemzeti szociális párbeszéd Bulgáriában: tripartitizmuson innen és túl

A szociális párbeszéd új jelenség a modern világban. Ahogy több európai országban – többek között Magyarországon is – a nemzeti szociális párbeszédnek két intézményesült formája létezik: egy klasszikus tripartit, valamint egy tágabb értelemben felfogott, a munkáltatói és munkavállalói oldalon túlmenően számos civil szervezetet magába foglaló szociális párbeszéd. A szociális

párbeszédnek egyaránt vannak előnyei és hátrányai. Az elért eredmények erősítésének, illetve a hiányosságok leküzdésének kiemelkedő eszköze az elemzés, a tapasztalatok cseréje. A tanulmány Bulgáriában vizsgálja a szociális párbeszéd főbb módzatait: a tripartit együttműködést, illetve a Gazdasági és Szociális Tanács szerepét. Bemutatásra kerül történetük, jogi hátterük, illetve tevékenységük, a közöttük lévő hasonlóságok és különbségek. A szociális párbeszéd e két formájának feladata, intézményrendszere, a civil szervezetek szerepe, a szociális párbeszéd formái közti kapcsolat, valamint a két intézmény nemzeti törvénykezésre, politikára gyakorolt hatása a tanulmány által elemzett fő kérdések.