

# The social dialogue in Ukraine

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## Abstract

*The article aims to answer the question of why social market economy in Ukraine, as well as in number of post-Soviet states, has not met the expectations. It uses social dialogue as a telling example. In 1990s Ukrainian society became subjected to a multidimensional process of forming labour relations. On the one hand, the process was typical for an immature stage of capitalism, and thus could hardly be expected to lead to the emergence of a social market economy, and on the other it reproduced the worst traditions of socialist labour relations, replacing state paternalism with patron-client relationships. Establishing institutional market infrastructure was supported by social partners' organisations and legitimized by the law. A system of market relations has been created but proved incapable of performing functions essential for sustaining standards and values of economic democracy. 'Social partnership' as an ideology of labour relations was substituted by a new form – 'social dialogue'. Social dialogue has been distorted to a simulation of contemporary labour relations. Formalization of social dialogue has become a way for pro-oligarch, social partners' organisations to gradually monopolize the market, with passive acceptance from dependent, poorly organized and unprotected employees.*

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## Introduction

The breakdown of 'state socialism' released post-Soviet Eastern European states from authoritarianism. Most of them confidently stepped onto the road to democracy and liberalization of social relations, but the journey proved not to be painless. However, the transformation of society and the economy that took place in Central Eastern European countries of 'late communism' at the end of 20<sup>th</sup> century, basically ensured the transition from socialism to social market economy.

For post-Soviet states which, except for short periods of independence, had been a part of the Russian Empire and later the Soviet Union for centuries, the road to democracy was longer and more difficult.

The institutionalization of market (capitalist) relations in the Russian Empire had begun in the 1861 and in all subsequent years always depended on the state authoritarianism. The imperial, authoritarian mentality of state control, deeply rooted in societies of post-Soviet space was the main reason for hindrance of social reforms in 1990s. Reformers considered that 'the logic of the market will send communism to the dumpster of history, erase it after discovering the future with all blessings of capitalism'. Instead, however, the market economy in Russia, imbued with the past, submitted to communism. As a result, at the beginning of the 21st century Russia experiences a 'transition without transformation' – involution to the early stages of capitalism (Buravoy 2009: 6). This conclusion, with some reservations, may be extended to contemporary Ukraine.

Transitional position of Ukraine (as well as other post-Soviet states), resulted in undermining the ability of traditional social institutions to maintain stable social bonds and relations, which triggered the process of social disintegration. This destruction resulted from the early attempts of implementing the market economy by means of monetary policy, accelerated privatization, quasi-democratic changes in society and transformation of economic relations that were moving away from the social market economy towards neo-feudal relations (Zhukov 2005: 118).

Social changes produced new social groups: first members of cooperative societies, then entrepreneurs, alternative trade unions, employers' organisations and non-governmental (non-commercial) organisations. Those groups should become a foundation for a new social structure and a fertile ground for building the social market economy and the social state of law.

An empirically proven specificity of transformation in post-Socialist states is explained by their complex, non-linear character. For that reason one should agree with conclusion that modernization cannot be considered as a steady progress. 'Changes always take place unevenly and the conflict between forces of tradition and modernization is unavoidable' (Smelser 1994: 624).

During the early years of post-Soviet independence, 'residual' members of administrative and bureaucratic nomenclature played the part of such forces of tradition. Those remaining groups of the old social order underwent a successful 'socialisation' to the new order and evolved into a viable actor of social relations, and subsequently started to act upon interests of oligarchic groups.

Having managed to retain power, the bureaucracy representatives became a substantial social group with outstanding influence, and at the same time the least interested in market reforms and developing democracy. That is why instead of implementation of market mechanisms, their imitation has been taken place. It has been possible because of creation of the formal infrastructure of quasi-market mechanisms and the revival of a state paternalism in its worst form – 'patron-client' relationship.

That is why involutional theory of 'development dependent on past experience' (*path dependency* – David Stark, Mark Granovetter), keeping the meaning of past structures and up-to-date values and spreading them with the help of social networks, deserves special attention. According to that particular conceptualisation, a characteristic feature of the post-socialism relies on concurrent emergence of the new class of owners and the new emancipated social groups that were granted significant political rights. In this context the question arises: 'how to restructure the economy when the political power belongs exactly to those who believe their interests will be hurt the most as a result of the economic changes?' (Stark 2002: 60)

Business structures should act to strengthen the capacity of modernizing forces, however the initial stage of capital accumulation, at the beginning of transformation, gave rise to the oligarchic business groups. Those groups proved to be the most efficient in dealing with the peculiarities of the economy in transformation thanks to the fusion of different levels of the bureaucracy, law enforcement agencies and the criminal structures.

## Prerequisite concepts of dialogue and partner relations

The 'dive' into market economy that took place at the beginning of the 1990s, was a new and unprecedented experience for Ukraine and all countries of Commonwealth of Independent States. For that reason, former Soviet 'publicly endorsed' ideology of class conflict needed to change rapidly.

The key to understand the specificity of the institutional development of modern Ukraine is that by renouncing the past social relations of the Soviet Union and state socialism, the society had to endure 'multiple transition and multidimensional social transformation in conditions of strong cultural and historic dependency'. Transition and formation of the new social relations were connected not only to:

- implementation and development of the market,
- liberalization and democratization of public sphere that in the past was under the strict control of the party and the government,
- but also to the necessity of building civil society with the social partners and the social institutions able to fill and compensate for arising failures of the system of public institutions and
- to the necessity of creating the nation being a political and social organism within the new territorial borders.

From the beginning of 1990s Ukrainian society has been forced to learn how to function in conditions of an independent state and how to cope with established formal democratic institutions and market opportunities, while lacking civil society and corresponding culture (Kutsenko 2009: 21).

That 'new ideology' which could ensure not only the order, thanks to the new social consensus, but also legitimize the results of the primitive capital accumulation, was essential to the government, that needed it to modernize labour relations, which for over 70 years had been based on the administrative-command methods, planned economy and state paternalism.

The government's fear, fuelled by the labour movement's rise from the end of 1980s (miners' strikes in Donetsk Basin), was the reason for acknowledging the necessity for changes that would bring labour movement into a 'civilized form'. That is why, the new ideology of labour relations within the context of emerging market was devised: the so called 'social partnership', which in time would be redefined into 'social dialogue'.

Adapting this ideology to the peculiarity of Ukrainian ‘post-totalitarian’ society, in which transformation, directed towards bringing growing labour movement into the ‘civilized’ form, was superficial and did not change authoritarian methods of administration – resulted in fact in a ‘imitation’ of partner relations and social dialogue.

Lack of effective ‘social cushions’ such as trade unions or civil society, resulted in creation of quasi-partnership in labour relations, which – thanks to its institutional and legal form – while formally meeting standards of democratic law state – actually facilitated the primitive capital accumulation, with application of administrative-command methods of governance in a brutal form of patron-client relationship. At the same time the government withdrew from fulfilling its traditional function of providing social security. Workers, who were used to state paternalism in the form of social protection were deprived of that shelter and left facing with a ‘new’ employer – entrepreneur.

## New employers

*Perestroika* in the second half of the 1980s initiated institutionalization of the market relations: it laid foundations for legal mechanisms, cooperative undertakings and, accordingly, ‘co-operators’ as first entrepreneurs and new employers. They started to establish organisations (absence of law on non-governmental organisations in the sphere of labour relations prompted entrepreneurs towards establishing trade unions, the only form of legal organisation at that time) and meanwhile, criminal structures were coming out of shadows<sup>1</sup>.

Entrepreneurship in Ukraine was revived once again (the first episode lasted from 1917 to 1918 – during the Ukrainian People’s Republic, while the second – from 1920 to 1928 – during The New Economic Policy in USSR). Passing laws on Individual Labour Activity and Cooperation in USSR in the late 1980s allowed citizens to gain certain degree of economic independence, albeit within narrow boundaries imposed

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<sup>1</sup> One of the sources of private enterprises closer to our times were existing in 1960s forms of shadow economy in USSR – ‘guilds’, forms of underground unskilled labour, production of goods of special demand, i.e. plastic bags. Existence of guilds had restricted local character. Guilds’ activity received support from criminal underworld.

by the Soviet administrative and legal framework. Enactment of Labour Code (1972) and Law on Trade Unions (1990) paved the way for legalisation of entrepreneurship.

New entrepreneurs ('co-operators') faced number of difficulties: economic – where to acquire capital from, how to achieve stimulating tax and pricing; legal – insufficient legal support of market transformation; political – instability resulting from government's swinging between communism and capitalism; psychological – nation's mentality (the belief that businessman 'is a profiteer and a thief'); social – lack of social security coverage.

Cooperatives turned out to be as the first forms of cooperate associations, mostly within party-state organisations, Komsomol (Centres for Scientific and Technical Creativity of the Youth) and industrial organisations.

Fairly rapid growth of entrepreneurs' movement and their need for social security forced Soviet trade unions to adopt a number of resolutions regarding the establishment of basic trade union organisations in cooperatives, as well as new separate independent trade union of cooperative members .

However, the restrictive nature of administrative regulations regarding cooperatives undermined their ability to compete against state companies. And because competing against monopolistic state structures was impossible, cooperatives failed from winning strong position in the national economy. Mainly for that reason majority of cooperatives focused on those areas of economy which, according to socialist state principles, were neglected: manufacturing of consumer goods, commerce and consumer services, which in turn triggered an emergence of commerce capital.

With a rising wave of entrepreneurship, directors of state industrial enterprises, which subdivisions were reorganized into cooperatives and in time into small businesses, employed there their most qualified staff to product the very same goods as the enterprise. Production in industrial enterprises (small businesses) used mainly state-owned resources (materials, equipment) and at retail prices, which state enterprises could not officially afford.

At the same time has taken place depreciation of fixed assets during recession and breakdown of consumer market, while 'directors-entrepreneurs' of state-owned companies were selling raw materials at wholesale prices and accessories and then equipment to cooperatives and small businesses at the book value. In consequence, such schemes became a foundation for the model of 'people's privatisation', in which assets were sold to private owners at the book value.

As a result of these processes the economy did not experience either neoliberal revolution or institutional evolution but the economic involution – when the market drains resources out of production (Buravoy 2000: 6).

Thus in Ukraine in the early 1990s a powerful group of state-owned industrial companies' directors emerged, running their own private business at the expense of state-owned resources. Those directors were nicknamed 'krasnye directora' – 'red directors', similarly to what was taking place in agriculture where directors of state-owned farms (Sovkhoz) and collective farms, not without reason, became known as 'red barons'.

With the breakdown of a socialist economy and transfer of power from *nomenklatura* to financial and commerce bourgeoisie, concentrated around banks, commerce, mafia and exploitation of natural resources, the industry collapsed and working class has become the last remainder of the past (Buravoy 2000: 10).

State economic *nomenklatura* replaced the Communist party representatives in government structures and became foundation of budding business elite, whose interests were lobbied by employers' organisations. On 15 February 1992 Ukrainian Union of Industrialists and Entrepreneurs (UUIE – УЦПІІ) was founded. Its distinctive features were pro-government orientation and relatively high status in administration. It was led by high rank officials (of not lower rank than Deputy Prime Minister). Therefore it was natural that in 1998 this organisation acted as one of the founders of Confederation of Employers of Ukraine and, following its reorganisation in 2002 – as a co-founder of Federation of Employers of Ukraine.

Arguably the most noteworthy feature of the process in which employers' organisations were forming in the middle of 1990s was identified by one of the chairmen and creators of the National Council of Social Partnership at the first national tripartite conference<sup>2</sup> '... they speak about them (employers' organisations – V.Z.) as if those structures were supported by significant number of jobs – for now it's ahead of time. We emphasize "jobs" because it's what an employers' organisation should do – create jobs for workers. Behind loud adjectives like "national", "all-Ukrainian", "global", "international", unfortunately, stand very little workers and jobs, and as a social partner those organisations have little importance' (Avgustimov 1996: 43). In 1996 with the Ministry of Justice of Ukraine were registered 13 nationwide employers' organisations.

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<sup>2</sup> In April 1996 in Kiev, thanks to promotion of the International Labour Organisation, took place the first national tripartite conference 'Social dialogue and tripartism in Ukraine: challenges and tasks'.

By late 1999 more than 90 national-level entrepreneurs' associations were registered with the Ministry of Justice of Ukraine. However, the number of their members did not correspond at the time to their national status. The overwhelming majority of employers did not see a need to join any Ukrainian association, mostly because of fear of losing independence, associations with politics, and lack of representativeness lack of protection offered to their members.

These observations are also confirmed by research studies. In a survey study conducted in Ukraine in 2003<sup>3</sup> a very low response rate (only 58%) to the number of questions regarding legal and business environment of employers is striking. The high level of indefinite answers (hard to say) of 23% of respondents and many answers suggesting the respondents' lack of faith in gaining benefits from membership in employers' organisations (28%). The responses suggested the low effectiveness of employers' organisations at the time. In general, the results confirmed a hypothesis that business owners would in the first place join employers' organisations in order to secure their interests as entrepreneurs, while securing their interests as employers was a factor of secondary importance from their perspective (Nechitalo 2003: 145).

In the same study, the issue of small and medium businesses' self-organisation and formation of employers' lobby in Ukraine was addressed. While inquired about the main purpose of joining an employers' organisation, 47% of employers answered 'To protect employers' rights and interests'; 24% – 'To overcome corruption and unlawful actions of authorities', 28% – 'to bring together employers' and workers' interests', whereas only 18% chose answer 'to establish social dialogue with social partners'. To the question 'What functions should employers' organisations perform?', 45% respondents answered: 'protecting', only 36% – 'establishing partnership', and only slightly more – 38% – 'reforming'. Vast part of employers treated employers' organisations as an institutional shield, which should help entrepreneurs 'defend' themselves from the pressure of regulatory bodies, competitors and other stakeholders. Furthermore, that point of view was shared by other social partners as well: 49% of respondents from the authorities and 30% from trade unions, when only 16% of the former and 30% of the latter mentioned 'partnership' (Hmyl'ovs'kiï , Il'chenko 2003: 180).

The results of the study revealed government's lack of understanding for a necessity and often unwillingness for developing constructive dialogue with business community as an equal partner within the framework of implementation social and

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<sup>3</sup> The study was conducted in 2002 as a part of ILO technical cooperation project 'Ukraine: facilitating the implementation of fundamental principles and rights in the world of work'.



economic reforms. Nonetheless, it was not the only reason. In fact just a little more than one third (36%) of employers acknowledged the necessity of such constructive dialogue with government and trade unions (Hmyl'ovs'kiï, Il'chenko 2003: 181).

At the time Ukrainian employers did not comprise a single category and employers' interests were very much heterogenic and often even contradictory. On the stage of primitive capital accumulation business owners strived to amass capital as fast as possible and often by any means necessary. Issues such as social security; the lack of consensual culture in solving social and economic problems; ongoing criminalization of economic activities did not occupy the minds of emerging business community. Yet all those phenomena only reinforced the dictate of strong over weak (Kolot 2002: 20).

Several years have passed but nowadays the position of Ukrainian employers remains virtually unchanged. In the eyes of one of the pioneers of the employers' movement in Ukraine, such a deadlock may be explained by the fact that there is hardly any representative organisation which could act as a legitimate agent for majority of business in negotiations with the government. Those who assume responsibility of the employers', in fact do not represent the interest of not only interests all but even a majority of employers and entrepreneurs, which further complicates the process of party structuration, especially among employers, and results in the process of coordinating employers' interest becoming opaque and undemocratic. Those corporate associations with administrative resources can block any initiative that threatens their interests. In general, up until 2006 from only 10 to 15% of entrepreneurs-employers belonged to any organisation registered with the Ministry of Justice of Ukraine (Hmyl'ovs'kiï 2006: 2).

At the end of 2006 in line with Law on Employers' Organisations of 2002, nine associations of nationwide employers' organisations were registered with the Ministry of Justice of Ukraine, whereas as of 29 November 2010 there were already 21 such organisations registered<sup>4</sup>.

In June 2009 the General Representative Body of employers at the national level (GRB – ЦПО) was created as a superior representative body of all employers' organisations. The body includes three all-Ukrainian associations of employers' organisations:

Federation of Employers of Ukraine (FEU – ФПУ) – established in 2002, representing interests of employers at local level, mostly represents large structures of private business and state-owned enterprises;

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<sup>4</sup> Information from the website of Ministry of Justice of Ukraine <http://www.minjust.gov.ua/0/18501>.

Ukrainian Association of Employers (UAE – BAP) – established in 2004, covers small and medium enterprises;

Confederation of Employers of Ukraine (CEU – KPY) – established in 2006, in which mainly East Ukrainian business is associated.

UAE, having rather limited number of members from their target group, in the SPO is likely to play the decorative part as a symbolic representation of the remnants of economic democracy in the country. As of two other associations, their management, even if it is not directly involved with the ruling party (the Party of Regions), at least supports its interests.

Thus presently it should be noted that as a result of abovementioned organisational changes, the employers' structures achieved stability. The possible explanation behind that stability may be coming to power by representatives of big business', with all of its political and territorial affiliation, and monopolizing not only power structures but also organisations representing interests of all sides of labour relations.

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Entrepreneurs' movement in Ukraine formed around political-industrial groups synonymous to oligarchy serves as an example of inventing, in post-Soviet conditions, a form of economic transformation from state-owned and centrally planned economy into private, capitalistic one.

Furthermore, it must be emphasized that institutionalization of entrepreneurs' movement in Ukraine which would eventually become embodied in the form of employers' organisations, took place. Sufficiently stable structure of associations representing interests of big industrial capital stemming from the Eastern Ukraine, was created at the nationwide scale.

## Trade unions

Modern trade union movement in Ukraine is a complex social phenomenon which, in course of transition became even more dependent and, thus should only be discussed within the specific political, social and economic context of the country. Ambiguous nature of the trade union movement, and its uncertain prospects result

from the impact of external and internal factors, and objective and subjective drivers of social change, which accompany the transitional state of the society.

Ukrainian trade unions never paid too much of attention to academic expertise produced (albeit in quite unsystematic manner) by variety of (mostly international) organisations, over past 15 years. Lack of tradition of cooperation between the organised labour and the world of academia in the post-Soviet society should be pointed to as one of the major reasons for the labour movement crisis. Another significant reason behind the crisis, was political and economic (in the 'materialistic' meaning) engagement of trade union officials.

Formal and informal part of Ukrainian trade union movement occupies one side of the coin, known as labour relations. On the other side, there are employers, both private and state ones.

Who benefits from internal conflicts within each side of the labour relations? As history of labour relations, mainly in the 19<sup>th</sup> century, during primitive capital accumulation, there are two actors of labour relations who usually benefit from the fragmentation of the labour movement: state – which in the reality of Ukraine transition was not the state of law and was not likely to become a social state in a foreseeable future, and the entrepreneurs-employers, who seemed to pursue one specific goal: monopolization of workforce and maximization of profit. The Oligarchic state, which Ukraine was, tied those two actors to each other.

Modern labour relations in Ukraine more or less correspond to a transition from the primitive capital accumulation to the stage of capital distribution and, continuous monopolization of capital. That is also why labour relations are built in accordance to the principle monopolization of their spheres of influence by both trade unions' and employer's organisations'. Success of the process of monopolisation is determined by two factors: first, loyalty trade unions and employers' organisations to the government and second, observance of their narrow, corporatist interests.

Social research confirms that the government's interests in labour relation prevail. The results of another sociological survey indicate that the government recognizes trade unions as a social partner only formally. The survey provides possible explanations to that phenomenon, which may be determined by inertia of the past experience of the state-controlled trade unions on one side, and by the fact that the government remains one of the biggest employers and as such tries to re-orientate trade unions towards protecting state's interests rather than workers' on the other (CSE IS NASU 2003: 209).

Process of transformation predetermines structural instability experienced by actors of labour relations. However, despite observable decline of trade unions, the

number of unions and their associations officially registered has been constantly increasing. Only from September 2009 to November 2010 number of all-Ukrainian trade unions registered with the Ministry of Justice of Ukraine increased from 134 to 143<sup>5</sup>.

It is explained by political and legal transformation, which results in trade unions' identity being in the large part determined by the political factor. That transformation also has impact on: first, bilateral relations between trade unions and state, political parties and employer's organizations and, second, on internal relations within trade union movement. As a result, trade unions develop specific strategy and tactics in which workers' interest play only a minor part. Ultimately, trade unions cease to play a role of employee representation. The weight of dependency on political circumstances and 'self-determination' of trade unions influences the shape of relations of trade unions between the government, political parties and employer's organisations, and secondly – relations within trade union movement and is, ultimately, reflected in strategy and tactics by trade unions. One can hardly find evidence of protecting workers' interests in those activities, which at least partially explains the union decline.

In Ukraine, from the first years of the country's independence, the principle of trade unions pluralism has been followed, and, as a result, three basic types of trade unions have emerged:

- 'traditional', preserving specific features of Soviet trade unions such as mixed membership, emphasis put on cultural and leisure events, and living conditions of workers instead of protecting their interests, defending the primacy of government's (in fact, the state administration's of all levels) interests over workers' interests;
- 'independent'<sup>6</sup> ('free'), which first appeared in the late 1980s, protecting interests and rights of their sole members – workers;
- 'quasi-independent', founded by entrepreneurs and other structures with a view of gaining political, economic and other types of benefits.

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<sup>5</sup> Information from website of Ministry of Justice of Ukraine <http://www.minjust.gov.ua/0/18501>.

<sup>6</sup> Information from website of Ministry of Justice of Ukraine <http://www.minjust.gov.ua/0/18501>.

## Traditional trade unions

The majority of trade unions in post-Soviet Ukraine are still ‘Soviet’ in their nature. The main functions of these trade unions were defined by the Communist party from 1933 on<sup>7</sup> and imposed by the government at the enterprise-level in order to mobilize labour resources and secure fulfilment of economic purposes defined by the government.

Fighting for workers’ economic interests in the state which is nominally ruled by working class put trade unions at conflict with the dominant ideological logic of society of workers in the USSR. For that reason, trade unions were granted the following rights: legislative initiative, the management of state social security benefits, organisation of competitions in enterprises, carry out *subbotniks* (voluntary works on Saturdays), promote innovations’ in work environment, organizing cultural and sport events, participation in distributing quarters, health improvement, providing for some consumer needs, organizing workers’ leisure time. Diverse membership (workers and administrative staff) guaranteed control over not only trade unions but also workers. If only selected (i.e. loyal to the regime, mainly workers and peasants) people could become party members, then practically any worker could be a trade union member. Unions softened pressure of authoritarian style of industrial management with touch of paternalism, improving social and living conditions of their members, while not being able to protect their working conditions. Membership in Soviet trade unions was formal: with landing a job (or with entering specialized secondary school or university) worker would automatically become a member of a trade union. Soviet trade unions performed a function of a transmission belt; they were ‘schools of communism’, dutifully instilling all decisions of the ruling party into working life.

Soviet trade unions never supported workers’ movement in the USSR. Social and ethnic conflicts of 1950s and 1960s led to bloodshed with active participation of government and law enforcement agencies. The most acute and painful conflicts took place in regions of mass migration and industry and in the North Caucasus and Transcaucasia, but unrest or at least its echoes would frequently reach central regions of the country, large cities, and capitals of united and autonomic republics (Kozlov 2006).

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<sup>7</sup> By the 1933 Stalin’s government destroyed the last opposition in USSR – trade unions.

Soviet trade unions provided no support to miners' strike at the end of 1980s (neither in Ukraine nor in Russia); their passive stance being evidence of their dependence on the government and the ruling party.

Prior to 1990 trade unions retained one organisational structure: Ukrsovprof (Ukrainian Republican Council of Trade Unions), which operated on principles and norms of democratic centralism. In 1990 trade unions had 25,6 million members (after Dvirna 2002: 516), over 99,5% of all workers and students of higher and specialized upper secondary schools. In October 1990 during the Constituent Trade Unions Congress, the Federation of Independent Trade Unions of Ukraine was founded on the basis of Ukrsovprof. In 1992 during the second extraordinary congress, it was renamed to Federation of Trade Unions of Ukraine (FTU).

Practically until 2001 the main source of financing for member organisations of FTU, was social insurance funds managed by trade unions unlike independent trade unions. Considerable share of those funds was used to cover the costs of staff salaries, upkeep of facilities and acquiring unions' equipment. Incomplete data indicate that trade unions of the FTU and the federation itself were using social insurance funds to cover from 60% to 70% of their administrative expenses (But 2001).

With the lack of real protection of workers, and ongoing economic crisis in Ukraine, decline of trade unions proceeded swiftly. According to one of the directors of the Federation of Trade Unions of Ukraine (FTU), during 1990s FTU was losing up to 1 million members per year, and at the beginning of 2001 it had 17,3 million members (Trade unions movement in Ukraine: conditions, problems, prospects (2001: 8). Even though in 2010, according to FTU chairman's estimations, 90% of working population still belonged to one of the FTU member organisations.

There are no reliable official statistics of internal work migration in Ukraine. According to the various sources, from 2 to 5 million Ukrainians currently work abroad, which would translate to 10%–23% of the employed in the national economy (Wages and salaries in Ukraine: towards economic development and well-being (2010: 59) Nevertheless, the optimism displayed by the pro-government union's officials is counterbalanced by survey data coming from a study conducted by the Razumkov Centre in August of the same year. Merely 27% of citizens confirmed their membership in trade union (in response to the question: 'Are you a member of trade union?'), which means that approximately 10 million people identified themselves as union members, when the entire working population is around 20 million. Thus one

may safely assume trade union membership rate to be about 50% (Shangina 2010: 63). In addition, it should be noted that the question concerned trade unions in general, and did not differentiate among various trade union organisations.

FPU was the legal successor to Soviet trade unions' property, although according to law it is public property<sup>8</sup>. For the first time, the problem of trade unions' property appeared on the agenda in all-Ukrainian debate in 2002, following a research regarding the current state and prospects for trade union movement in Ukraine. A representative of FTU mentioned property as the main reason for the compromise between the two parties.

Until 2006 FTU reportedly possessed from 55% to 60% of assets which remained in the hands of trade unions' after 24 of August 1991, while in February 1990 it had 957 objects of total value of 171, 3 billion rubles, not yet depreciated by hyperinflation of the early 1990s. FTU controlled 18 enterprises and 6 joint stock companies, including 'Ukrprofzdravnitsa', JSC and 'Ukrproftur'. Total value of FTU's shares in those enterprises amounted to 1,1 billion UAH (about \$200 million). However, according to independent experts' estimates, around \$3, 8 billion, as the book value of objects was often lower than the potential market one. FTU owned every fourth sanatorium in Crimea, and their further asset included: constructing board, design institutes, higher and specialized upper secondary schools, industrial complexes, printing houses, supplying infrastructure (Dubrovsky, Dubrovsky 2011: 134).

Property of trade unions (FTU) could only be used by the member organisations of FTU and their members. Vast part of the property was rented out to business structures.

To be fair, it should be mentioned that, following the 'Orange Revolution' of 2004, which brought Ukrainian society to the verge of democratic reforms, FTU made effort to alter its policy. In the 'Concept of development of FTU' adopted in 2005, there is a following passage: 'Trade unions passively resist massive violation of workers' rights, domination of interests of the capital over the public interests, which causes dissatisfaction of common union members with the activities of elected bodies of trade unions and their directors and undermines the authority of trade unions in the society' (FTU 2005: 1).

Representatives of FTU not only managed to diagnose their position in the society, but also stepped forward with a remedy. Whereas the 'Orange Revolution'

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<sup>8</sup> Resolution of the Supreme Council of Ukraine No. 24 from 4<sup>th</sup> February 1994 'On property of all public organisations of the former Soviet Union'.

strengthened somehow confidence with the FTU, the federation would still require immediate treatment to cure the organization of:

- the chronic ‘homemade’ authoritarianism of a large part of those elected by working people, who endlessly flirt with the powers that be;
- inability and reluctance of trade unions to truly and effectively fight for rights and interests of their members, more so to risk their peace for the sake of solidarity;
- demagoguery about trade unions’ independence and autonomy, masking fear of exposing the true state of affairs in trade unions, or disguising sabotage of higher bodies’ decisions;
- inability and fear of trade unions’ leadership to lead millions of members to a strike, to court or under walls of offices of those who breach their rights – and ultimately win the confrontation;
- ‘ostrich policy’ and inability to see not only the day after tomorrow but also tomorrow of the trade union movement and its role in the society, economy and at work, which dynamically changes (Kondryuk 2005: 7).

However, under the new leadership<sup>9</sup>, which did not share the values of Party of Regions and represent interests of big business, FTU (in their form and content) soon returned to the model of traditional, pro-government trade unions of the 1990s.

Dependence of traditional trade unions on government at all levels, guarantees their loyalty for three reasons:

1. Joint membership of ordinary workers and administration in a trade union;
2. Dismissal of the enterprise’s administration of the by trade union<sup>10</sup>;
3. Opportunity for trade unions to be national.

As a result in Ukraine, during 20 years of independence, despite widespread incidence of non-payment of wages and leaves, no single strike (regional or nationwide) supported by the traditional trade unions, i.e. FTU occurred.

Abandonment of an active protection of workers’ interest is one of the reasons explaining the low level of trust manifested by the workers towards trade unions. According to the results of a survey study conducted by the Olexander Razumkov Ukrainian Centre for Economic and Political Studies, only about one third of expressed trust in trade unions, while between 40% and 50% did not trust them at all. The level of trust increased slightly, following the outbreak of the current financial

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<sup>9</sup> Chairman of FPU Vasyl Khara was elected to Supreme Council of Ukraine from Communist Party of Ukraine, subsequently joining the Party of Regions.

<sup>10</sup> Resolution of the Supreme Council of Ukraine No. 24 from 4<sup>th</sup> February 1994 ‘On property of all public organisations of the former Soviet Union’.



and economic crisis, and calls made by various trade unions for introducing measures for protection of workers. At the same time the dynamic of level of trust/distrust during the crisis (December 2009 – August 2010) was negative, which could indicate certain public disappointment for results of the above mentioned requirements (Shangina 2010: 63).

Traditional trade unions in Ukraine are often referred to as artificial trade unions by Ukrainian authors (Vishnevs'ky et al. 1997: 125). Nonetheless, bearing in mind that those unions belong to the legacy of totalitarian society, one has to admit that the model of 'Soviet unions' has found its place in the modern Ukrainian society.

## Independent, free trade unions

Independent, free (alternative) trade union movement stem from the dissident and independent labour movement in Soviet Union in 1950–1970s. In the late 1970s, first underground workers' groups became active in Donetsk (Rusnachenko 2000: 29). Single strikes which took place in Ukraine in 1960–1970s did not accelerate the growth of worker's organisations. However, the small groups of workers addressing demands to uphold labour law, improve working conditions, safety and valuation of work to administration appeared. They assessed social order in USSR as 'pseudo-socialism', representing peculiar form of restoration of capitalism (after: Dvirna 2002: 563).

Modern researchers of Ukrainian unions believe that the true fathers of independent union organisations in Ukraine were Donbas workers and technicians, who under the V.A. Klebanov's leadership created Free Trade Union in 1978 (Rusnachenko 2000: 38; Dvirna 2002: 565) At the same time one of the most important factors influencing the birth of independent trade union movement in Ukraine were events in Hungary (1956), Czechoslovakia (1968) and Poland (1970, 1980s).

Next stage of development of the free trade union movement in Ukraine was marked by establishment of the Ukrainian Association of Air Traffic Controllers on 25 July 1989 (Vishnevsky 1997: 87). The development of independent trade union movement was triggered by a nationwide miners' strike in June 1989. Strike committees which were established during that strike, would become a foundation for future independent trade unions, both in Ukraine and in Russia.

Thus strike committees of miners' movement in Donets Basin (Donbas) and the experience of the Independent Trade Union of Miners USSR (ITUM – HИИГ) should be considered cornerstones in the rise of the independent trade union movement in Ukraine. It was organized after Donbas' ITUM and with time Ukraine's ITUM (UITUM – HИИГ ).

Chronologically speaking, the first free, independent trade unions in Ukraine emerged as a result of labour conflicts in mining and transportation, areas with most dangerous working conditions. Building of unions was natural workers' reaction for the lack of real protection of their labour and social rights and interests by the pro-government trade unions. In December 1998, at the Extraordinary Congress of Association of Independent Trade Unions of Ukraine, the association was re-organised into the Federation of Independent Trade Unions of Ukraine (FITUU – KBИИГ)<sup>11</sup>.

It is noteworthy that the independent unions were appearing on the wave of growing dissatisfaction of workers with their economic situation and traditional trade unions, utterly incapable of protecting effectively economic interests of employees. New unions were formed as a result of conflicts with the administration and had to cope with resistance of government and economic decision-makers, who were not their members (as they belonged to FTU).

Characteristic features of new trade unions distinguishing them from the traditional ones are as follows:

- more thorough protection of workers' rights and interests;
- permanent fight: with administration, employers, state bodies that would constantly oppose them (from ignoring to overt pressure) on one hand; with their colleagues, i.e. structures of FTU, which consider them as a threat to their monopoly - on the other hand;
- not owning their own property: premises, buildings necessary to ensure their statutory activities (funds to lease, upkeep and buy equipment), which generates inequality, contrary to article 36 of Ukrainian Constitution which establishes equal rights for all trade unions (But 2001).

Despite the fact that 'independent' unions are disorganized, weak and lacking resources (in particular they do not have strike funds), according to the survey data they covered

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<sup>11</sup> In accordance to the article 44 Ukrainian law 'On the Trade Unions, Their Rights and Guarantees' (1999) employers are to deduct means for primary trade unions to be spent on culture, sport and health improvement in the amount agreed upon in collective agreements but no less than 0,3% of the wage fund, with comparing those amounts to gross expenditure and in the public sector – at the expense of additional budget allocations.

almost 4 million workers, mainly from the private sector of economy, at the beginning of 2000s, (Vishnevsky 2000: 251).

## **‘Quasi-independent’ trade unions**

Discrimination of independent trade unions by the government, frequently reported by the ILO, creates unequal conditions for trade union activities; unlike FTU, independent unions are often forced to seek alternative sources of funding from business structures, various funds, political parties and other organisations, which, in return, puts them at risk of falling into dependency on their new allies. For instance, establishment of one of new national trade unions’ associations was accompanied by the promotion campaign during which information about the organisation’s leader appeared on banners across the country.

Thus, ‘quasi-independent’ trade unions emerged, established by business structures or other organisations in hope of gaining political, economic and other benefits. They imitate methods of the functioning independent unions and join them for protection of workers’ interests resembling infamous ‘Zubatovs’ trade unions’<sup>12</sup>, active in the Russian Empire at the beginning of 20<sup>th</sup> century.

## **Collective and contractual regulations**

Soviet state, acting as a ruler and employer, has always been restricting rights of enterprises’ management. Trade unions’ rights had also been gradually limited from 1933 onwards (including stripping them off their rights to collective bargaining), which were restored in 1947 by the Decree of the USSR Council of Ministers ‘On collective bargaining in enterprises’. Despite Ukraine’s admittance to ILO in 1954, collective agreements in their content differed very little from the provisions of law; in most cases they only dealt with issues of little social importance, and, as a whole, were formal in nature.

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<sup>12</sup> FITUU website <http://kvpu.org.ua/KVPU/History/Pages/P2.aspx>.

Adoption of the Declaration on State Sovereignty of the RSFSR in Ukraine, and acceptance of priority of universally recognized norms of international law over internal law opened a new stage in the development of collective and contractual regulations in labour relations. The old mechanisms of regulation not meeting expectations of the new economy were revoked. The unity of workers' and government's interests, which was an ideologically endorsed concept in the USSR, a state exercising nearly total control of economy, at the beginning of denationalization lost its meaning, but received new form.

The law 'On collective Agreements and Contracts' enacted in 1993, despite some reservations expressed by ILO, was generally regarded as quite progressive, and a foundation for the development of new collective and contractual regulations of labour relations.

It should be noted that numerous regulations in place still require significant amendments, in order to make them comply with international norms of civil rights and duties, as in their current shape they can be described as a 'chimera', a symbiosis of contents from socialist past and capitalist presence.

Collective and contractual regulations in Ukraine vertically correspond to executive on four levels: national, branch, local and producing. The main topic for of collective bargaining at the national level is nominal wage, the lowest limit of which is equal to minimal wage, established by the Law On State Budget of Ukraine. Aside from nominal wage, collective agreements can regulate various social and economic problems, national system of social protection and working conditions.

In Ukraine collective bargaining on national level started in 1991, when 10 General Collective Agreements were concluded, varying considerably in their form and contents. However, the substantial number of collective agreements (around 20%) concerning mainly the most important topics: employment, wage, or working conditions are not being recorded in the official statistics are not observed traditionally revolves around 20%.

The closer look at the practice regarding General Agreements allows seeing that the processes of establishing and executing their provisions are formal in nature. At the stage of negotiation variety of conditions which are either impossible to fulfil or contradict the law are frequently implemented regardless. At the stage of execution, where the parties examine fulfilment of conditions set by agreements, they mostly rely on quantity – and not quality – indicators. In case of not observing the agreements' provisions, the responsibility is rather symbolic (as legal sanctions in case of lack of fulfilment of General Agreement's provisions has not been established) (Wages and salaries in Ukraine: towards economic development and well-being 2010)

The process of negotiating General Agreement by the Councils of Ministers, national association of employers and entrepreneurs and national association of trade unions in 2008–2009 took three years, an event without previous precedent.

The process of developing collective and contractual agreements is influenced firstly by economic and legal determinants – especially tax system and corporate law, with all its shortcomings: imperfection of judicial system, instability, obsolete legal norms, inadequate to present economic conditions, low legal culture, or lack of knowledge of social partners on legal foundations for social and labour relations (Mel'nik 2009: 327).

In 2009 the trade unions established two representative bodies responsible for collective bargaining and social dialogue at national level in Ukraine. National General Representative Body of Trade Unions and their Associations (HCPIO) was established on 8 September 2009 by three trade unions' associations:

- National Forum of Trade Unions of Ukraine,
- National Confederation of Trade Unions of Ukraine,
- Confederations of Independent Trade Unions of Ukraine.

According to information released by these associations, they altogether encompass 62 unions and union associations (with total of over 4 million members).

General Representative Body of All-Ukrainian Trade Unions and Unions' Associations (CPIO) was established on 24 September 2009 at the FTU initiative. As of October 2009 SPO consisted of 55 national trade unions and two unions associations (with total of 10,1 million members, according to SPO) and considered possibility of admitting further 25 national unions and two union associations (with total of 556 thousand members) (*Wages and salaries in Ukraine...* 2010).

In November 2010, the General Agreement on basic principles and norms of implementation of socio-economic policy and labour relations in Ukraine for 2010–2012 was signed.

An interesting feature of General Agreements at the national level is that they are not mandatory for trade unions and employers that did not delegate their representatives to take part in negotiations.

Attitude of Ukrainian society towards such agreements and the process of bargaining indicate their formal character. According to results of a survey study<sup>13</sup>, only 8% of citizens knew about negotiations on General Agreement taking place at the time when the study was carried out (16.3% of whom were union members).

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<sup>13</sup> Sergey Zubatov (1864–1917), member of the Department for Protecting the Public Security and Order (*okhrana*), creator of 'police socialism'.

Accordingly, 66.5% (67.9% union members) did not know about the agreement. Last but not least, 21% (13.2% union members) did not know what a General Agreement was.

Despite all difficulties encountered in collective bargaining, trade unions believe that there is no alternative to that process in the market economy. Nearly twenty years of experience in collective bargaining allows to keep faith in the process as the only means for not only breaking away from shady schemes of primitive capitalism but also creating the basis for social market economy in the country, provided the process is not an imitation in nature and is not conducted by 'social partners' only *pro forma*.

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According to the results of surveys carried out in Ukraine from 1999 on collective agreements (Zhukov, Mimandusova, Privalov 1998; Zhukov, Osovoy, Privalov 1999; Zhukov 2003a; *Wages and salaries in Ukraine...* 2010), the following reasons that negatively influence that process can be named:

- legal regulations concerning collective agreements which are outdated and needs urgent improvement, as well as taking employers' and employees' present interests into account;
- underdevelopment of social dialogue at the national level, which is systematically manifested by the government's ignorance of unions' proposals to include proposals concerning issues important from the workers perspective in General Agreement. Practically trade unions have no role in developing the economic and social strategies that directly affect labour relations;
- organisations of both employers and employees are rather passive in protecting their members, as they always seem to be waiting for their partners' instructions. That attitude may be explained by the administrative (vertical) methods of establishing those organisations;
- as the research suggest, the notion of legal nihilism is fairly widespread among representatives of all the parties of labour relations;
- content of General Agreement and measures applied by the government to execute them are far from providing assistance in optimizing labour relations to improve situation of all parties;
- passive behaviour of workers (majority of which continues to live by the past) when collective bargaining were conducted by the administration and union's committee negatively affected unions' effectiveness;
- imperfect means of control over the process of collective bargaining;

- formal nature and low efficiency of collective agreements;
- lack of knowledge among society on labour relations at all levels .

## The State

Unlike in Western Europe, in the 1990s Ukraine there were no institutions that could secure national development on the basis of separation of powers between politics and business . During the term of President Leonid Kravchuk (1992–1994), specific formations, labelled as ‘political and economic groups’ and resembling infamous ‘rent-seeking’ groups, started to appear across the country.

From the economic point of view, ‘rent-seeking’ is one of the types of business activity distinguished by its influence on the society’s welfare. The influence affects those areas of the economy, and consumption of valuable resources which, in different circumstances, could be used to produce new goods and services. Those rent-orientated activities have destructive effects on the provision of the conventional public goods, and may be even considered parasitic as it aims at exploiting resources produced by someone else.

In the middle of 1990s first legal forms of political and economic groups emerged, were financial and industrial groups that turned out to be the ‘instrument of merging large capital with big politics’. ‘Ukrainian political and economic groups until 2004 were established in semi-closed economy where the key role belonged to the government as a source of privileges, preferences, special tax regimes, steady income etc.’ (Lisnichuk, Sushko 2005: 15).

As a result, the ‘rent-seeking state’ was established in Ukraine (Aslund 2003: 25), founded at first on quite large quantity of political and economical groups (rent-seeking groups) (Lisnichuk, Sushko 2005: 11), the number of which decreased each year as a result of government’s political and economic monopoly.

Ukraine a long-lasting ‘forge’ of Soviet administrative (bureaucratic) cadres received new, legitimate status, as a result of situational coincidence of the nation’s and the ruling elite’s interests at the beginning of 1990s, which ensured that the process of bureaucratization would continue. Thus economic and social changes taking place in Ukraine have conformed to interests of bureaucracy and social groups

close to it. They are easily traceable in the government structures, manufacturing sector, private capital and, accordingly, in the course of the ongoing reforms.

As both Russia and Ukraine had almost the same starting conditions (political, social and economic) it seems permissible to extrapolate a description of Russia by M. Buravoy to Ukraine: 'the market opened for commerce, barter, bank system, and at the same time learned new meaning of 'mafia' – shadow power securing transactions in place of inefficient government. The industry was shrinking, its debts were increasing and salaries weren't paid or were paid in goods. It is 'pre-bourgeois' way of gaining profit. It is what Weber called speculative, adventurous, predatory capitalism, form of mercantilism and not 'rational organisation of (formally) free labour' and dynamic accumulation. Economic involution was increasing; exchange was taking place of production' (Buravoy 2009: 7). Buravoy's idea that 'great transformation' did not take place in Russia could be applied to Ukraine as well.

During the whole transition period the process of monopolization of the most profitable Ukrainian markets has been taking place with the use of such means as establishment of relevant movement and quasi-private structures and mandatory channels of supply, with direct restriction of access to the market. In a similar manner, such structures were not only granted artificial economic monopoly on specific markets (differentiated in sectoral or territorial terms) but quite often informally assumed certain regulatory functions – monopolistic in essence – from the government (Paskhaver 2000: 34).

Regular interference with the social partners' activities by the state is possible because of one the fundamental reason: inherited authoritarian mentality of the present leaders both in the government and social partners organisations. The former can take decisions only in one way, according to no longer applicable Soviet experience, while the latter are afraid of losing what they have amassed, which scenario might happen, if they switched to democratic mode of management. That is why social partners, especially at the national level, almost completely miss the fact that genuine social dialogue is possible only when all parties involved are independent. There is not much experience in cooperation between the sides which have incompatible, opposite and often clashing interests. Why seek compromise in long negotiations<sup>14</sup>, if dependent position of parties (most often, their leaders) in financial or property terms ensures that all decisions will be in favour of the strongest one?

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<sup>14</sup> Ukrainian Centre for Economic and Political Studies named after Olexander Razumkov in August 2010 conducted a survey 'Wages in Ukraine: on the path to economic growth and welfare'.



In the event of high degree of government control and tendencies to abuse power, the process of selection between various types of private capital is activated. The capital linked to the government bureaucracy can survive thanks to previously accumulated privileges and if criminal sanctions for shadow business activities are either lifted or not exercised. There is an open resistance against large private capital that is independent from the government. At the early stages of privatisation, that goal could be achieved through the establishment of closed joint-stock companies (or similar business associations) on the basis of employee privatisation, which scheme was subsequently replaced with a more sophisticated one, that is introduction of numerous institutional barriers for ownership transfer (restrictions on sales of large packages of shares to the external investors). Government reforms at the microeconomic level may be described with one sentence: 'From constant correction of details to distortion of the whole'. By any means, such attitude on the part of the government cannot be mistaken for ideological resistance to liberal reforms. On the contrary, bureaucracy benefits from extending the process of reforms, and maintaining the transitional state of the economy drifting between total administrative control and the market coordination, which is arguably the most favourable environment for illegal business practices. Microeconomic reforms carried out presently follow the same pattern. They are implemented in order to provide favourable industrial and investment climate, in particular, with respect to de-regulation, implementing judicial procedures for bankruptcy, liberalize taxation, increase protection of corporate law and so on. The process of creating bureaucratic capitalism in Ukraine continues. Bureaucracy determines growth rate, proportions and quality of production and increase of private capital (Paskhaver 2000: 35).

Noteworthy characteristics of the present government in Ukraine (such as vagueness and incompleteness of property rights, overregulation of business, artificial monopolization of markets, soft budgetary policy aiming at gaining political support from regions and enterprises, reluctance in the process of law enforcement in case of entities linked to the government, policy of weakening private capital independent from the government, selective application of criminal measures) have not been invented to satisfy the needs of bureaucracy but they, nevertheless, appear to be transformed features of the Soviet management system (Paskhaver 2000: 35).

A wide gap between expectations of social partners towards the role of the government in the social dialogue and its actual performance is confirmed by the survey data regarding the functions of the state administration as expressed by the social partners several years ago. All the three parties (the labour force was in that survey further divided into two categories of trade unions and employees), considered the law enforcement to be the most important function of government administration

(employers – 73%, government representatives – 72%, trade unions leaders – 66% and employees – 63% respectively). The second most important function indicated was the reformative one (unions – 41%, employers – 45%, government representatives – 45%, employees – 38%) . On the third place protection was named (32%, 29%, 28%, 33%, respectively), and partnership ranked the fourth (32%, 25%, 25%, 19%, respectively) (CSE IS NASU 2003: 210).

The abovementioned assessment of the government responsibilities is still valid today. The fact that ‘providing partnership’ ranked fourth in the survey, may serve as evidence of a persisting authoritarian mentality among the social partners in Ukraine.

## Re-institutionalization of social dialogue

Social transformation in societies with market economy that had taken place over the centuries under influence of socio-economic and cultural factors, only in the second half of the 20<sup>th</sup> century allowed for building a stable infrastructure that helped to establish social economy.

Transition from socialist economy to market one in Ukraine should have been accompanied by deep transformation of both social and labour relations. Those changes could not have taken place without necessary infrastructure (organisations and institutions of market economy) existing not only formally, like an empty shell, but one animated by direct actions of market actors (employers, workers and their organisations) and filled with a social content.

The intention was to replace the old Soviet cultural norms (‘normative collectivism’, ‘state paternalism’ and others) with new ones (‘social partnership’, ‘social dialogue’). Combination of market relations, as more efficient and based on economic activity, individualism and rationalism, with such democratic values as, for instance, workers’ solidarity, should have led to economic democracy and to transforming Ukraine into as post-Soviet state of universal welfare.

The irony is that in majority of post-Soviet countries at the beginning of 1990s the very same members of ruling elite came to power who during the 1960s–1980s conducted critical theoretical research on social partnership as ‘peculiarity of bourgeois ideology directed at deceiving workers to increase profits by way of increasing their further exploitation’.

'New' Ukrainian government chose the doctrine of social partnership as official ideology, which, however, was only to serve during the transition stage. Despite a known case of a 'bottom-up' initiative<sup>15</sup> aiming to introduce 'social partnership system' in Ukraine, an actual model of 'social partnership' which eventually prevailed would be implemented in a 'top-down' manner, using well known administrative-commanding methods, in a way similar to other states of CIS (Belarus, Moldova and Russia).

In contrast to Belarus or Russia, in Ukraine social partnership did not become a constitutional norm. However, when the government came to realisation of potential benefits to be gained from achieving a consensus in labour relations (e.g. smooth running of business, without conflict), it eagerly embraced that new ideology of 'social partnership'.

In the late 1990s actors of labour relations habitually used the notion of 'social partnership'; the representatives of the government used it in a ritual way. One could hardly imagine any event in labour relations at the time without the term being mentioned at least once.

By the end of 1990s regional branches of the National Council of Social Partnership operated in each region of the country. FTU frequently published reports on meetings of regional councils for social partnership, headed by regional administration leaders, and with participation of unions and employers.

Mode of operation of those councils during 1990s appeared to be similar to their Russian counterparts and bore close resemblance to the meetings of former Communist-party officials (*partykhozaktiovov*, existing on local level during Soviet times) (Borisov 2001: 60). However, it would be unrealistic to expect those gatherings to take any other forms; considering that almost all head officials in the local administration during President Kutchma's tenure also served as leaders of local structures of the Communist party.

Local government administration played a decisive role in the process of building of a local model of social partnership. It was effectuated by the use of old, well-known channels of communication between the government and trade unions. For instance, local unions, in order to minimize 'transaction costs', instead of negotiating with employers (which sometimes took a long time), would rather appeal straight to the government, which possessed direct means of influencing employers behaviour

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<sup>15</sup> Representatives of 8 trade union associations initiated a meeting with the president of Ukraine in 1992 concerning necessity of establishing a consulting and advising body for coordination of interest of sides of labour relations.

(e.g. using local law enforcement structures). Such vertical communication with the government would provide the unions a greater probability of success in addressing their demands than direct actions or negotiations with employers.

Until 2010 absence of legislation regarding the issue of representativeness of social partners seriously hampered the process of social partnership building at the local level. National Council of Social Partnership (NCSP – HCCII), being a consulting and advisory body, had practically no influence on local politics. Correspondingly, vague status of local branches of NCSP and ambiguity of their statutory rights, (especially the lack of legal rights to interfere with the processes of labour relations) determined a negative assessment of the body in the eyes of numerous local leaders.

Among respondents 70% emphasized insufficient involvement of NCSP in development of policy regarding labour and social security on local level. The following reasons for such insufficient involvement were named:

- the lack of mechanisms structuring interaction between NCSP, the government and President’s administration;
- government’s monopoly in the field of social and labour relations;
- the lack of government’s support for social partnership at all levels of administration (Zhukov 2003: 95).

Nevertheless, circles promoting the concept of social partnership, including representatives of traditional trade unions, hoped that actors of social dialogue at the local level would cooperate with local administration. Monitoring of socio-economic conditions in the region was expected to prevent increase of industrial conflicts and helped in achieving the balance of interests and means among all parties of labour relations.

In a manner similar to countries with social market economy, tripartite bodies were established in Ukraine: Ukrainian Committee for Employment Promotion (UCEP – УКЦЗНУ) (1992), and NCSP (1993). By 1998 there was a local council of social partnership in every region of the country. Moreover, four state social insurance funds on the basis of tripartism started to operate (2002).

Apart from implementation of law and regulation of relations between parties, the government should also oversee fulfilment of mutual obligations. The government, as a party in negotiations did not duly secure workers’ social and economic rights. Furthermore, it often violated those rights itself. It led to increasing distrust towards public authorities, demonstrating their inability to act as an intermediary in conflict resolution in labour relations.

Workers, depending either on the state, or enterprise administration or private owners (whomever pays their wages), tend to believe that it is better to quietly perform their duties than to use legal measures to protect their rights. For that reason, majority of unions' activities is not truly supported by employees. Yet, Ukraine is a country, whose economy – according to various research – is mainly hidden in the shadows and workers are often not paid. As of 1 August 2010 the total volume of wages in arrears amounted to 1,6 billion UHA (\$196 million), and over 61% in active enterprises is indebted with their staff (*Wages and salaries in Ukraine...* 2010: 70).

It could be claimed that during 1990s a new, from the Ukrainians' point of view, multidimensional process of labour relations emergence in a form typical for primitive capital accumulation (not corresponding to social market economy) continued. However, the government promoted social partnership hoping it would become a basic source of legitimizing social effects of that phase of market economy development. For that reason, the government took every chance to establish new institutions of labour relations, which met with enthusiastic support of trade unions and employers' organisations, seeing those institutions as a source of legitimization.

Following the 'Orange Revolution', in an attempt to replicate European patterns of social dialogue, National Tripartite Social and Economic Council was established as a consultant and advisory body to the President of Ukraine by a presidential decree in 2005<sup>16</sup>. National-level trade unions, employers' associations and the Cabinet of Ministers supported the decision. Despite establishment of a new social dialogue body, no major changes in activities of social partners occurred, and the strongest ones continued to monopolize societal space.

Paradoxically, from institutional perspective, it seems obvious that a status of tripartite social dialogue body was granted to a system of institutions essentially incapable of providing support to implementation of norms and values of democratic society. Ruling elite was not ready for a dialogue with opposition and the other partners; judicial system was dependant on the executive power, entrepreneurs perceived their property not as 'sacred' but as stolen from the state... (Golovakha, Panina 2006: 37).

Research conducted in August 2010 indicates that the following processes were taking place in the Ukrainian society:

- central public authorities (first and foremost, government administration) methodically ignores the mandatory consultations which should proceed the

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<sup>16</sup> Representatives of 8 trade union associations initiated a meeting with the president of Ukraine in 1992 concerning necessity of establishing a consulting and advising body for coordination of interest of sides of labour relations.

process of preparation the legal acts and their implementation if the concern social and labour relations;

- ignoring trade unions' and employers' proposals, in particular those concerning: synchronization collective bargaining with budget-setting process<sup>17</sup>; yearly conducting of General Agreement, employers' proposals on unchanging tariff and price policies of natural resources monopolies throughout the year (or even advance information for businesses about planned changes); trade unions' proposals on review of consumer price index (CPI) and subsistence level;
- arbitrary appointment of the participants of collective bargaining by Minister of Labour and Social Policy (*Wages and salaries in Ukraine...* 2010: 69).

The law 'On social dialogue', which came to force on 18 January 2011, while legalizing activity of 'social partners', do not legitimize context of their activity.

Dialogue between social partners, that has been taking place in Ukraine for almost twenty years, still has not reached a level on which it could facilitate social integration of society, its consolidation, implementation of principles of transparency of and working conditions and wage-setting in Ukraine. Neither the government nor employers (owners) or majority of unions take real responsibility for lowering wages and poor social standards in Ukraine (*Wages and salaries in Ukraine...* 2010: 70).

In Ukraine at the end of first decade of the 21st century the process of constructing of institutional infrastructure formally analogical to Western social market economy has come to a conclusion. However, in reality Ukrainian society resembles neo-feudal structure with a shape of a hierarchical pyramid, with a patron at the top, his liegemen (business clients) underneath and general population at the bottom of the pyramid, being the main economic resource of such system that is much more close to traditional rather than even industrial society.

## Conclusions

The main reason explaining the current state of Ukrainian labour relations is 'development dependant on past experience' (*path dependency*), defined as retaining the content of past structures keeping the meaning of past structures and values

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<sup>17</sup> Presidential decree from 29 December 2005 No. 1871 'On development of social dialogue in Ukraine'.

up-to-date and reiterating them spreading them with help of 'new' social networks. Post-communist institutions are established on the ruins of state socialism. Transition takes place not 'from a plan to the market but from the plan to the clan'.

The state transformed old structures (trade unions) and assisted in establishing new ones (employers' organisations). Both types of organizations became centres of social networks with patron-client relations prevailing.

Independent ('free') trade unions, as well as political opposition, remain weak and isolated. They exist in a parallel social space, and at the same time, creates an illusion of democratic reforms being completed.

Entrepreneurship institutions in Ukraine are tied to widespread 'rent-seeking' (or oligarchic) groups; in the post-Soviet reality it seems an optimal way for transforming a state-controlled economy into one based on private capital.

Social dialogue has become a distorted form of labour relations and a disguise for a steady monopolization of the market by pro-oligarchic social partners' organisations, to which process poorly organized and unprotected employees have been merely a passive witness.

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