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Research Article

PROVIDING A BALANCE BETWEEN EMPLOYER AND EMPLOYEE INTERESTS THROUGH THE DEVELOPMENT OF A PROCEDURAL MECHANISM FOR PROTECTING THEIR RIGHTS

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ABSTRACT

Background: *This article presents a study of the theoretical and practical aspects of balancing the interests of employers and employees in the context of Kazakhstan and the United States. The core purpose was to develop such mechanisms that can aid in balanced employer-employee relations in Kazakhstan. The article analyses the role of legal codes and frameworks for the elimination of imbalance in disputed employment relations.*

Methods: *A qualitative study was conducted and the relevant legislation, codes and extant literature related to the rights of employees and employers were explored, which included ILO documents and relevant research articles. The article investigates Kazakhstan's and United States' labour code and legislation to determine the applicable procedural mechanisms for balancing the interests of employers and employees.*

Results and Conclusions: *On the basis of this study, a number of recommendations have been developed, aimed at protecting the interests of both employers and employees. In particular, the article presents a procedural developed mechanism based on three aspects of employment relations: social dialogue, collective bargaining and dispute resolution aimed at securing the rights and interests of both parties. The developed mechanisms not only facilitate mutually beneficial decisions appealing to the interests of employees and employers via social dialogue and collective bargaining agreements but also aim to reduce the number of labour disputes in the courts in the future with alternative resolution mechanisms.*

1 INTRODUCTION

The employment relationship is a widely discussed phenomenon in organisational and human resources management that entails a set of mutual rights, responsibilities, and obligations between the main parties within the relationship of employer and employee.[1] The employment relationship stresses the crucial need to ensure that all employees have access to their employment-related rights and benefits in the field of labour law and social security. In turn, the relationships mandate the employees to work for the interests of the employer. This reciprocal nature of the relationship between the employee and the employer is the central criterion for determining the degree and nature of the rights and interests that are underpinned by formal and legal structures and ethical values related to fairness.[2] Regardless of the circumstances, all employees and employers possess some fundamental interests that they seek to pursue and achieve via their employment relationships. In this regard, to ensure a balance between the interests of the employers and the employees, the employment relationship is governed and mediated by the labour market and the State, all instances of which are governed by some contract that ranges from both generic to union contracts and

1 Paul Sparrow and Cary L Cooper, *The Employment Relationship: Key Challenges for HR* (Routledge 2003) doi: 10.4324/9780080474571.

2 Cecilie Bingham, E*mployment Relations: Fairness and Trust in the Workplace* (SAGE Publications Ltd 2016).

rules for public service regarding implied expectations and agreements.[3] It is commonly believed that the employment relationship has a highly complex nature that includes varying influences and ideologies.[4] Moreover, the relationship is oftentimes contradictory, raising conflicts of interest and potential for cooperation and disagreement, which calls for the incorporation of mechanisms to balance the interests of the participants.[5]

The study of employment relations has recently evolved to be more diverse and multidisciplinary, integrating perspectives from sociology, psychology, economics, law, and political science. One of the key trends in scholarly research on employment relations is the increasing attention given to the influence of the macro-level factors such as government policies, and legal frameworks on employment relations at the micro-level of organisations.[6] Another trend is the emphasis on understanding the complexities of employment relationships, especially the balance of power between employers and employees and the role of intermediaries like trade unions in mediating conflicts.

The employment relationship has a direct impact on the achievement of many Sustainable Development Goals (SDGs). SDG 8, which aims to promote inclusive and sustainable economic growth, decent work for all, and decent work and economic growth is particularly relevant to employment relations.[7] Strong and positive employment relations can help contribute to achieving SDG 8 by promoting decent work, reducing the incidence of labour conflicts, and creating a supportive environment for workers and employers. The improvement of workers' rights and their protection can play an important role in achieving SDG 8. Moreover, the achievement of SDG 8 also has positive impacts on the other SDGs, such as reducing poverty and promoting gender equality.

One of the major challenges in the field of employment relations is the increasing trend of non-standard forms of employment, such as part-time work, temporary work, and self-employment, which can negatively impact the employment relationship and the protection of workers' rights.[8] Additionally, the rise of globalisation and the global labour market has increased the complexity of employment relations, making it more difficult to ensure that workers' rights are protected. The limited capacity of trade unions in many countries to effectively represent the interests of workers is another challenge. Furthermore, the unequal distribution of power between employers and employees can lead to imbalanced negotiations and unfair treatment of workers, particularly in contexts where workers have limited bargaining power. Finally, the

3 Adrian Wilkinson and others (eds), *The Sage Handbook of Human Resource Management* (2nd edn, SAGE Publications Ltd 2019).

4 Wolfgang Sassin, 'War of Ideology vs a Sober View: Sustainable vs Resilient?' (2020) 4 (2) The Beacon: Journal for Studying Ideologies and Mental Dimensions 020440211 <https://doi.org/10.5281/zenodo.4401296> accessed 24 January 2023.

5 Bingham (n 5).

6 Fang Lee Cooke, Jiuping Xu and Huimin Bian, 'The Prospect of Decent Work, Decent Industrial Relations and Decent Social Relations in China: Towards a Multi-Level and Multi-Disciplinary Approach' (2019) 30 (1) The International Journal of Human Resource Management 122, doi: 10.1080/09585192.2018.1521461.

7 'Employment, decent work for all and social protection: Related SDGS Goal 8 Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all' (*UN Department of Economic and Social Affairs Sustainable Development,* 2015) <https://sdgs.un.org/topics/employment-decent-work-all-and-social-protection> accessed 24 January 2023; 'Relevant SDG Targets related to National Employment Policies' (*International Labour Organization (ILO)*, 2015) <https://www.ilo.org/global/topics/dw4sd/themes/n-e-policies/WCMS_558579/lang--ru/index.htm> accessed 24 January 2023.
Shirin M Rai, Benjamin D Brown and Kanchana N Ruwanpura, 'SDG 8: Decent Work and Economic Growth – A Gendered Analysis' (2019) 113 World Development 368, doi: 10.1016/j.worlddev.2018.09.006.

8 Arne L Kalleberg, 'Nonstandard Employment Relations: Part-time, Temporary and Contract Work' (2000) 26 (1) Annual Review of Sociology 341, doi: 10.1146/annurev.soc.26.1.341.

lack of effective dispute resolution mechanisms at the workplace can lead to the escalation of conflicts, resulting in negative outcomes for both employers and employees.

1.1 Employment Relations

Employee relationships at work are increasingly known to comprise both interpersonal and collective ties. Rising individualisation of the working relationship can be seen as a result of the increase of individual workplace rights. Individual channels can be supplemented and strengthened by collective channels, which provide workers with a collective voice through the employment of union and/or non-union representatives. Every organisation should prioritise informing and consulting its employees since this is a core tenet of people management. If done successfully, it provides a valuable foundation for dialogue between management and employees, who are frequently represented by their chosen representatives. Senior management may utilise this as an opportunity to discuss critical information or plans with employees and get their support. Employees can utilise their collective voice to share ideas, ask questions, or voice concerns through their representatives. Hence, through strong employment relations, employers and employees can mutually benefit, which both enhances business and earns rewards for their efforts.

Trade unions, states, organisations, and employees are important stakeholders in employment relations. Although the direct relationship is between the organisations and employees, trade unions and the state act as intermediaries. It is important for a country and its industries to have positive and strong employment relations as it enables employees to work with high motivation and dedication. The rise of conflict between employees and employers can be detrimental to the organisation as well as to the national economy.[9] Due to this, it is important that the state ensures employment laws protect the rights of both employers and employees. Similarly, trade unions present a collective and strong voice for employee issues to the state or business organisations. This is the main reason that a lot of people in various countries prefer being a part of labour unions rather than raising their issues individually. Nonetheless, all these factors that affect employment relations also have a direct impact on industrial performance and the economy. Hence, state and business organisations usually aim to ensure that there is no conflict with workers so that there are no protests, absences, or strikes. These activities can cause major harm to economic performance. Therefore, it is important that employment relations that benefit all are adequately focused on by the stakeholders to avoid any negative outcomes.

1.2 Clashing Interests of Employers and Employees in the Context of Kazakhstan

International human rights organisations such as the International Labor Organization (ILO) and Human Rights Watch (HRW) consider Kazakhstan an institutionally weak and fragile country, especially in the context of workers' rights protection.[10] We also see an alarming trend related to the occurrence of labour conflicts is present, which is leading to unsolvable socio-economic problems. Local labour unions in Kazakhstan show weak performance

9 Lucio Baccaro and Valeria Pulignano, 'Employment Relations in Italy' in Greg J Bamber and others (eds), *International and Comparative Employment Relations: National regulation, global changes* (6th edn, Routledge 2020) 126, doi: 10.4324/9781003116158.

10 Shatlyk Amanov, 'Kazakhstan's Foreign Policy and Human Rights' in Aizada Nuriddenova and Gaukhar Baltabayeva (eds), *Post-Soviet Dynamics in the Central Asian Region: Textbook* (Suleyman Demirel University 2020).

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and lack of independence while protecting the rights of employees.[11] For example, it was highlighted that the International Confederation of Labour Unions excluded the Federation of Labour Unions of Kazakhstan because the local government deeply influence it.[9]

The Kazakhstan government does not guarantee the rights of employees and fails to protect workers' interests and freedom of association. Workers have to face many types of challenges and hurdles to work properly. For example, workers faced poor working conditions like long working hours, inadequate safety measures, low pay, and in some cases harassment and discrimination as well. Workers also face challenges to defend their interests and have restricted rights to collective bargaining, strike, and freedom of association. The management of companies also exerts pressure on the workers that participate in labour activism. In addition to this, recent changes in legislation have made it problematic for employees to freely form unions and bargain collectively. This is because criminal sanctions are imposed by the Kazakhstan government if employees participate in illegal strikes. Workers and trade leaders involved in labour activism have to face surveillance and harassment, as well as termination of their employment.[12]

The Kazakhstani authorities are very strict - they do not tolerate criticism related to the government and show aggression towards the defenders of employees' rights in the country.[13] Control over civil society groups and trade unions has been tightened, which is evidenced by the awful conditions of workers in the country. For example, in December 2011, violent clashes occurred in Zhanaozen, where workers were on strike for months - resulting in the government opening fire and killing approximately twelve people.[14] The reason behind the strike was to demand an increase in salary, timely payment of wages, and improved working conditions. Thus, the negative feelings of the employees led to protests and violent clashes because no institutionalised mechanism was present in the country to negotiate the conflict. Instead of accommodating the requests of employees, the government of Kazakhstan chose to use force against them. Without considering recommendations from labour unions, employment regulations were revised by the government - a new trade law was adopted in 2014 and a Labor Code in 2015.[15]

1.3 Assessing the Legislation

Every country develops and passes different rules, laws, acts, and legislation for employees based on which employer-employee relations are built. Legislation in each country differs but international laws are also enacted to induce a global code of conduct.[16] Labour relations in Kazakhstan are regulated by an individual contract of employment, regulatory legal instruments, as well as a collective labour agreement.[17] The roots of labour regulations and laws in Kazakhstan are embedded in the Constitution of the Republic of Kazakhstan.[18]

11 Slyamzhar Akhmetzharov and Serik Orazgaliyev, 'Labor Unions and Institutional Corruption: The Case of Kazakhstan' (2021) 12 (2) Journal of Eurasian Studies 133, doi: 10.1177/187936652110411.

12 Sean P Roberts and Arkady Moshes, 'The Eurasian Economic Union: a Case of Reproductive Integration?' (2016) 32 (6) Post-Soviet Affairs 542, doi: 10.1080/1060586X.2015.1115198.

13 Akhmetzharov and Orazgaliyev (n 14).

14 Gulzhan N Mukhamadiyeva and others, 'Evolution of Labor Law in Kazakhstan: Overview and Commentary on Regulatory Objectives and Development' (2018) 9 (8) Journal of Advanced Research in Law and Economics 2664, doi: 10.14505//jarle.v9.8(38).16.

15 ibid.

16 Michele Ford, From Migrant to the Worker: *Global Unions and Temporary Labor Migration in Asia* (ILR Press 2019).

17 Mukhamadiyeva and others (n 17).

18 Amanov (n 13).

Moreover, government agencies and Parliament passed and adopted labour relations for different categories of employment. As per the Labour Law of Kazakhstan (Art. No. 3), all employees have to work under the regulations related to the labour law and maintain relations with the employers based on these regulations. Working hours for employees have been restricted to 40 hours per week and employers are not allowed to ask employees to work beyond this limit. However, the employer can pay overtime wages for employees working in excess of 40 hours per week. The regulation also provides a restriction for people who are under 18 and are employed by organisations. Employees aged 14 to 16 cannot work more than 24 hours per week, and those aged 16 to 18 cannot work more than 36 hours per week. Kazakhstan's labour law has officially regulated and legitimised child labour in the country, which is considered to be an unethical practice as per international regulations. This is a weak area of the labour law that creates various challenges for the country as there are international firms that do not trade or do business with organisations hiring children. Hence, this part of the law has a negative effect on the economy of Kazakhstan.[19]

The most significant legal act through which labour relations are regulated in the country is the Labour Law, 1999.[20] This labour law, which includes 108 articles and 12 chapters, was implemented in 2000 and the old Labour Code from 1972 was amended. Contracts, labour relations, compensation, leave, working hours, and various other factors are regulated by this law. The means of social protection for unemployed people in the country and public employment are provided for by the Law on Employment issued in 1998. The minimum wage rate, monthly payment indicator, allowances, taxes, legal benefits, and compensation are included in the Law on Republican Budget 2002. Security issues, reduction in hazards, and prevention of accidents on the work site are regulated by the Law on Protection of Labour 1993.[21]

Kazakhstan's labour law provides employers and employees with significant protection of rights. For example, data protection and ownership rights are a strong part of labour laws that keep the interests of employees and employers safe. The law asserts that the employees should not breach the data privacy of the employers by leaking them to third-party. Similarly, the employers are also responsible for keeping the data of their employees safe. Besides this, the law also protects employers with ownership rights and trade secrets. The employees are obligated to not share any confidential or secret information about the employer or its business. In case of damage, the employee is liable to compensate for the losses incurred. Therefore, the labour laws of Kazakhstan provide great protection to employers from any unfair or unethical practices of the employees.

The labour laws in the country also protect the social interests of the employees. The Kazakhstan Constitution largely forbids discrimination based on nationality, race, social group, gender, occupation, or financial position - or on any other grounds, including place of residence, language, religion, or opinion. This is also communicated in the labour laws for the country as they state that the employees shall not be discriminated against due to any social factors.[22] Hence, a strong encouragement of equality is present in the labour laws.

It is significant that the regulations related to labour law in Kazakhstan are not only implemented and applicable to local employees but also to foreign employees working in the

19 ibid.

20 Larisa Zaitseva and Kubanychbek Ramankulov, 'SCO and Convergence of Member States Labour Legislation: Foundation, Opportunities, and Prospects' in Sergey Marochkin and Yury Bezborodov (eds), *The Shanghai Cooperation Organization: Exploring New Horizons* (Routledge 2022) ch 8, doi: 10.4324/9781003170617-10.

21 ibid.

22 Aziz Burkhanov, 'Kazakhstan's National Identity-Building Policy: Soviet Legacy, State Efforts, and Societal Reactions' (2017) 50 (1) Cornell International Law Journal 1 <https://scholarship.law.cornell.edu/cilj/vol50/iss1/1> accessed 24 January 2023.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

country until and unless any other international treaty or federal law is provided.[23] As per Labour Law (Art. No. 2), in Kazakhstan, the international treaties that are approved by Kazakhstan exist over the regulatory legal instrument and Labour Law. Kazakhstan's labour law also provides employees with an international level of protection by avoiding unfair terminations. An employer cannot terminate the employee without any valid reason. Any employee that is working according to the requirements of the job and showing good performance cannot be terminated based on disputes with the employers. The law provides a separate section for the termination of employees and disputes between employers and employees. The employer is obligated to provide a strong reason for the termination of an employee. Similarly, the employee is obligated to perform as per the expected criteria to be fit for a particular position. The labour law in the country has ensured the development of a two-way relationship between employers and employees so that the business sector can benefit and the entire economy is enhanced. The law also provides for the employees to have a private arbitrator in case of a dispute with the employer.[24] This means that if an employee has a complaint or disagreement with their employer, they have the right to take their case to an independent arbitrator for resolution, rather than having to go through the court system. This can be a more efficient and cost-effective way of resolving disputes and can help to protect the rights of employees. The private arbitrator ensures that common ground is reached between the employer and employee so that the dispute can end. This term of the labour law aims to provide employers and employees with a chance to develop a positive relationship in case a dispute arises so that the rights of neither are violated.

The role of Kazakhstan's labour law is critical in the development of effective employment relations between employers and employees. The law, as discussed, has provided significant protection for the rights of employers and employees. However, the implementation of these laws in the country remains a controversial aspect. It has been noted that despite the presence of labour laws, they are not adequately followed by employers in the country. Due to this, employment relations have been complex, leading to various labour and economic issues. Therefore, there is a need for an effective upgrade of the employment authority to enhance the implementation of labour laws in the country so that the rights of employees are protected and a trend toward the development of positive employment relations can be initiated.

The Kazakh authorities have also revised different parts of the legislation and added clauses that workers are required to follow. Criminal Code Art. No. 174 was revised and amended by the government, which states that provocation against different nationalities, social groups, races, clans, and classes, or calling labourers to take part in a strike that has been considered illegal by the Kazakh courts are not compatible with employees' right to strike, right to organise, and freedom of association.[25]

It is important to highlight that there are various other legal acts through which industrial and labour relations are regulated in Kazakhstan which are not included in the labour law. These include the Law on Collective Labour Disputes and Strikes (8 July 1996), the Law on the Occupation of the Population (1998), the Law on Collective Agreements (4 July 1992),

23 Diana T Kudaibergenova and Boram Shin, 'Authors and authoritarianism in Central Asia: Failed agency and nationalising authoritarianism in Uzbekistan and Kazakhstan' (2018) 42 (2) Asian Studies Review 304, doi: 10.1080/10357823.2018.1447549.

24 'Labour Laws' (*The Prime Minister of the Republic of Kazakhstan*, 2023) <http://www.government.kz> accessed 24 January 2023.

25 Sergey Sayapin, 'The Implementation of Crimes against the Peace and Security of Mankind in the Penal Legislation of the Republic of Kazakhstan' (2020) 10 (1) Asian Journal of International Law 1, doi: 10.1017/S2044251319000110.

the Law on Employment of Population (23 January 2001), and the Edict on Approving a Position on Qualification Classes of State Employees.[26]

1.4 Theoretical Framework

The field of industrial relations is focused on studying the relationship between employees, trade unions, and employers.[27] Industrial relations as we understand them today have much of their origin in the industrial revolution, when workers demanded improved working conditions and advocated their working rights. There are three main industrial relations theories: the radical or critical school, pluralism, and unitarism.

In 1996, sociologist Alan Fox proposed these three theories as the framework for resolving conflict in the workplace.[28] The unitarist approach to industrial relations refers to a homogenous relationship where all the members share the same interest. In unitarism, third parties are considered to be irrelevant as employers and employees are said to have a mutual corporation. The shared goal in the unitarist approach is loyalty towards the organisation, and the theory depends on a strong sense of cooperation.[29] However, Wood and Elliot[30] argued against the unitarist approach and stated that the theory denies the legitimacy of conflict and is not based on a realistic ideology. From an employee's viewpoint, unitarism can be understood as an organisation with flexible working practices where individuals are expected to both participate and be multi-skilled.[31] The staffing policies adopted in the unitarist approach must be focused on unifying the efforts of employees, along with motivating and inspiring them.[32] Conflicts in such an approach are said to occur due to the absence of information and inadequate presentation of management policies.

The second approach in industrial relations is the pluralist approach. The central idea of the pluralist theory is that it suggests that there is more than one source of power in the relationship between an employer and an employee. The theory considers unions as the central component that is responsible for balancing power between employers and employees.[33] The principal assumption of the pluralist theory is that organisations consist of groups that have their own interests, aims and leaders. These interests and aims often lead to competition and conflict that gives rise to tension in management.[34] The pluralist perspective believes that conflicts between employees and employers are inevitable and rational. This is why the involvement of a third

26 Yaraslau Kryvoi, 'National Labour Law Profile: Kazakhstan' (*International Labour Organization* (ILO), November 2006) <https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158909/lang--en/index.htm> accessed 24 January 2023.

27 Tuğba Özden Bayar, 'Industrial Relations Theory' (*The Wiley-Blackwell Encyclopedia of Social Theory*, 4 December 2017) <https://doi.org/10.1002/9781118430873.est0180> accessed 24 January 2023.

28 ibid.

29 Niall Cullinane and Tony Dundon, 'Unitarism and Employer Resistance to Trade Unionism' (2014) 25 (18) The International Journal of Human Resource Management 2573, doi: 10.1080/09585192.2012.667428.

30 Stephen J Wood and Ruth Elliott, 'A Critical Evaluation of Fox's Radicalisation of Industrial Relations Theory' (1997) 11 Sociology 105, doi: 10.1177/003803857701100106.

31 Matthias Gavrilov, 'Employment Relations as Seen from the Pluralist and Neo Pluralist Perspectives' (*linkedIn*, 30 March 2021) <https://www.linkedin.com/pulse/employment-relations-seen-from-pluralist-neo-matthias-gavrilov> accessed 24 January 2023.

32 Alan Fox, 'Industrial Relations: A Social Critique of Pluralist Ideology' in John Child (ed), *Man and Organization: The Search for Explanation and Social Relevance* (Routledge 2012) ch 7, doi: 10.4324/9780203815601-15.

33 Bruce E Kaufman, 'Rethinking Industrial Relations, or at Least the British Radical Frame' (2018) 39 (4) Economic and Industrial Democracy 577, doi: 10.1177/0143831X187776.

34 Wolfgang Sassin, 'Deja Vue?' (2019) 2 (2) The Beacon: Journal for Studying Ideologies and Mental Dimensions 020210216 <https://doi.org/10.5281/zenodo.3733442> accessed 24 January 2023.

Access to Justice in Eastern Europe
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party in the shape of unions is considered legitimate. Trade unions allow employees to have a voice in management decisions which are considered to be the main reason for the conflict - as compared to the unitarist approach, which considers unions as intruders in the employment relationship.[35] Thus, the trade unions in pluralist industrial relations are considered to be instrumental in providing employees with the freedom to organise, associate, and collectively bargain to avoid conflicts between employees and employers.

The third theory in industrial relations is the radical theory. The radical perspective reveals the nature of a capitalist society and operates on the idea that workplace relations are against history. The perspective incorporates the inequalities in power, employment relationships, and wider society as a whole. The theory argues that the purpose of capitalism is to foster monopolies while the focus remains on the division of interest between the labour and capital thus viewing the workplace against a similar background.[36] The principal idea of radical theory, which emphasises the existence of the organisation within a capitalist society, assumes that the means of production is privately owned and profit remains the key influence of company policy. Conflicts in a radical perspective arise not because of competing interests within organisations (between employer and employee) but because of the divisions within society, and among those who manage the means of production and those who have only labour to offer. Industrial conflicts in such a scenario are viewed as being synonymous with social and political unrest.[37] Trade unions are sometimes seen as a tool to bring about revolutionary change by those who believe that workers are being exploited by capitalists. Additionally, trade unions are viewed as a response from workers to protect themselves from exploitation by capitalists. Therefore, the use of the right to organise and bargain, representation, and workplace mediation are all critical for conflict management.

2 METHODOLOGY

Considering the main focus of the research, the use of a qualitative approach was deemed suitable for collecting relevant data for the study. This approach is helpful in terms of gathering non-numerical data to carry out an in-depth and comprehensive analysis of the research problem. With the help of this approach, a qualitative review of the relevant legislation related to the rights of employees was conducted. However, in this case, the selection of the quantitative approach was unwanted as this approach relies on providing statistical evidence of the research problem using numerical and computational techniques, and focuses on observing, measuring and testing of hypothesis, which was not needed for this research.[38] Hence, the qualitative approach was suitable and appropriate for this study.

An exploratory design was used as this method tries to investigate questions which have not been previously examined in detail. Although the research exists on employers' and employees' rights and the balance between the two, in the context of procedural mechanisms for protecting their rights, limited work is available. Therefore, considering the dearth of investigation in this area, the use of exploratory design was meaningful in providing comprehensive findings.

In terms of data collection, authentic and reliable sources were used, mainly: articles,

35 Kaufman (n 36).

36 R Swayambika, *Approaches to Industrial Relations* (*Economics Discussion*, 2022) <https://www.economicsdiscussion.net/industries/approaches-to-industrial-relations/31776> accessed 24 January 2023.

37 Kaufman (n 36).

38 Mark NK Saunders, Philip Lewis and Adrian Thornhill, *Research Methods for Business Students* (8th edn, Pearson 2019).

journals, government reports and publications, constitutional law on the rights of employers and employees, and reliable online sources published by reputable professionals related to the field of law and employee rights. Largely, published and authentic sources relevant to the case of the study were considered, therefore in this reference the inclusion criteria were to include data sources published from 2010 to 2022 only, available in English, while sources before 2010 were all excluded. The rationale behind this was to ensure that only updated information was gained. To analyse the collected data during literature search, a qualitative review of the research was performed, which was suitable and appropriate for analysing the data with the support of previous relevant literature. The qualitative review was useful for the systematic search for evidence from primary sources and for drawing findings together. Although this process of collecting and analysing data may be exhausting for the research, nevertheless, it was deemed suitable in bringing findings linked to the balance between the interest of employers and employees, and a procedural mechanism for protecting their rights.

3 THE PROCEDURAL MECHANISM FOR BALANCED EMPLOYMENT/ INDUSTRIAL RELATIONS IN KAZAKHSTAN

In the context of the industrial development of a country, the importance of a positive and balanced employment relationship cannot be overemphasised or underestimated. This is because industrial relations issues cover important areas such as employee-employer relations, collective bargaining, performance, compensation management, and employee engagement - all of which help determine the nature of an organisation's commitment and performance, and their contribution towards industrial development. A good, mutually beneficial employment relationship increases motivation that ultimately results in the increase of productivity and profitability.[39] Thus, good employment/industrial relations are crucial for the industrial development of Kazakhstan. In this regard, the following procedural mechanisms are suggested for the development of balanced and mutually beneficial employment relationships in Kazakhstan (see parts 3.1, 3.2 and 3.3).

3.1 Social Dialogue as the Foremost Step

The starting point for the achievement of balance between the interests of employers and employees is the development and promotion of social dialogue. As per ILO studies, when the scope of collective bargaining is restricted, the outcome has a detrimental effect on industrial relations as the employees become more defensive of their rights, which impedes cooperation.[40] Social dialogue entails all kinds of negotiations and consultations between representatives of the employees, as well as the employers, on matters of common interest pertinent to various policies. A major consideration here is that industrial or organisation reforms and initiatives can only work if they are developed through cooperation and consultation with the employees and all other relevant stakeholders, such as the government.[41] In the context of social dialogue, it is worth noting that in Kazakhstan, the labour code

39 Steve Williams and Derek Adam-Smith, *Contemporary Employment Relations: A Critical Introduction* (OUP 2010).

40 Igor Guardiancich and Oscar Molina, 'The Effectiveness of National Social Dialogue Institutions: From Theory to Evidence' (*International Labour Organization (ILO) Working Papers*, 26 November 2020) <https://www.ilo.org/legacy/english/intserv/working-papers/wp016/index.html> accessed 24 January 2023.

41 Simon Jäger, Shakked Noy and Benjamin Schoefer, 'What Does Codetermination Do?' (2021) 75 (4) Industrial and Labor Relations Review 857, doi: 10.1177/001979392110657.

emphasises the inclusion of "social partnership", which refers to a system of partnership among the employers, employees, labour representatives, and the state government.[42] This implies that despite the increased labour conflicts in Kazakhstan, there exist legal codes and guidelines that the organisation can incorporate to balance the interests of their employees with that of their own.

In this regard, it is worth noting that Art. 10 of the Kazakhstan labour code stresses the "agreement of all the parties (employer and employees and their representatives) to demonstrate agreement with the social partnership and collective contracts."[43] Thus, all employers must ensure a social dialogue in terms of consultation with the employees in all decision making. In particular, it is important to ensure employee involvement in decisions regarding the development and enactment of new policies or reforms in order to ensure that they are not in conflict with their interests. With the increased emphasis of the Kazakhstan labour code on social partnership, the following social dialogue triangle proposed by ILO appears to be relevant for Kazakh employers.

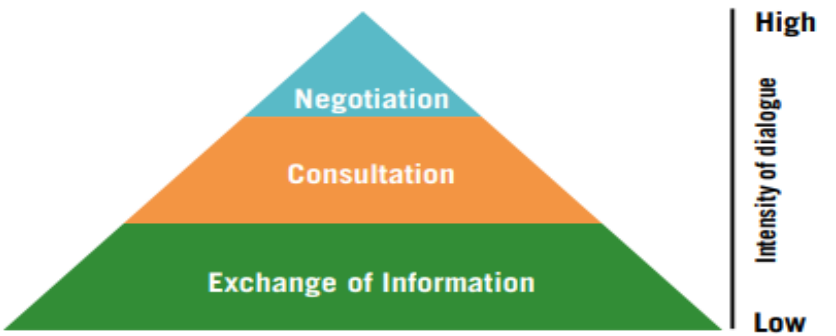

Figure 1. Social dialogue triangle for social partnership[44]

The foremost stage of social dialogue is the exchange of information, which is concerned with any discussions or actions on any employee problem (Figure 1). It entails active information sharing with the employees in the organisation to ensure that they remain informed about organisational practices.[45] Art. 22 of the Kazakhstan Labour Code declares that it is one of the fundamental rights of employees to be able to obtain all the information pertinent to working conditions.[46] This implies that employers should keep all employees informed in order to avoid any kind of conflict. The second stage of social dialogue is consultation, which entails consulting employees when there is any change in any policy, the introduction of any reform, any organisational change that may affect them, or when any organisational issue is raised.[47] This emphasises the need for actively listening to the employees, allowing

42 'Social Partnership' (*Federation of Trade Unions of the Republic of Kazakhstan*, 2022) <https://kasipodaq.kz/strategy-2/social-partnership> accessed 24 January 2023.

43 ibid.

44 Zachary Kilhoffer, Karolien Lenaerts and Miroslav Beblavý, 'The Platform Economy and Industrial Relations: Applying the Old Framework to the New Reality' (*Centre for European Policy Studies (CEPS)*, 7 August 2017) <https://www.ceps.eu/ceps-publications/platform-economy-and-industrial-relations-applying-old-framework-new-reality> accessed 24 January 2023.

45 ibid.

46 Labour Code of the Republic of Kazakhstan No 414-V of 23 November 2015 <https://adilet.zan.kz/eng/docs/K1500000414> accessed 24 January 2023.

47 Kilhoffer, Lenaerts and Beblavý (n 47).

them to have a voice in the decision making process, and taking their input in organisational decisions in order to ensure that no change, policy or reform goes against the interests of the employees. Rather, their interests shall be reflected in all the changes and initiatives enacted by the employer. Furthermore, it is important to develop proper consultation mechanisms whereby employees are provided with sufficient information pertaining to the standard followed for consultation in the organisation. This is again supported by Art. 22 spelling the rights and obligations of the employee, which suggests that the rights and legitimate interests of the employee will be protected. Also, all changes, terminations, or any kind of addition to the employment contract shall proceed via consultation with the employees.

The last stage of social dialogue is the establishment of negotiation, which entails collective bargaining and political cooperation between the employer and employees. Employees shall be given a right to be able to negotiate on various employee issues, such as working conditions, wages and employee benefits etc.[48] Art. 22 of the Kazakhstan Labour Code also supports this idea and gives collective bargaining rights to the employees. Thus, employers are required to allow employees to participate via collective bargaining and negotiate various terms to reach a mutually beneficial decision.

3.2 Right to Organise and Bargaining Representation

Allowing employees to organise and elect representatives is a good mechanism for them to have social security. Employees will feel that their voices are heard and their rights are protected via collective bargaining agreements between their employee organisation (union) and their employers. Collective bargaining is the strongest form of social dialogue between social partners (employees and employers) to facilitate the negotiation between them.[49] It has been asserted that the facilitation of collective bargaining paves the way for the development of mutual trust and respect between employees and employers. This would ultimately contribute to the development of consistent, stable and productive industrial relations in the country. Concurrently, inefficiency or lack of collective bargaining systems can accelerate labour disputes and increase the dissatisfaction of employees with employment conditions.[50] The Labour Code of Kazakhstan also allows employees to organise for the achievement of collective bargaining power. In fact, the labour code suggests the development of a collective bargaining agreement commission with an equal representation of both the employees and the employers that can negotiate on various employment issues and reach mutual agreements.[51] This implies that both the interests of the employees and employers can be included in collective agreements ensuring that the interests of none of the parties would be compromised in pursuit of the interests of any one party. The development of the collective bargaining agreement commission also supports the pluralist approach as per which diverse and often contradictory interests and rights of employees and employers can be achieved with the development of a "union".[52]

In this regard, the idea of social partnership is gaining momentum in Kazakhstan, with the number of collective bargaining agreements increasing at a steady pace. However, the

48 ibid.

49 ibid.

50 Clive Jenkins and Barrie Sherman, *Collective Bargaining: What you always wanted to know about Trade Unions and Never Dared to Ask* (Routledge 2022), doi: 10.4324/9781003349273.

51 Aset A Shyngyssov, Asem B Bakenova and Aida Akhmetova, Labour & Employment 2022: Kazakhstan (Matthew Howse and others eds, Morgan Lewis & Bockius LLP 2022) <https://www.morganlewis.com/-/media/files/special-topics/gtdt/2022/getting-the-deal-through-labour-employment-2022-kazakhstan.pdf> accessed 24 January 2023.

52 Fox (n 35).

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
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overall coverage still remains low, with an estimate of only 5 to 7 per cent of government employees covered - while the private sector in the country has an even smaller number of such agreements between employees and employers,[53] suggesting it is unlikely to close the gap. This is evident from the rise in employee conflicts and the weak performance of worker unions in Kazakhstan.[54] In this regard, in light of the aforementioned suggestions of the labour codes of Kazakhstan, it is suggested that organisations develop a collective bargaining agreement commission to balance the interests of employees and employers. In this context, it is worth noting that it has been suggested that collective bargaining can strengthen legal compliance by both employees and employers as both parties try to respect the interests of one another to fulfil all their legal obligations towards one another.[55] It is also asserted that the development of collective bargaining systems can provide employees with a mechanism for solving problems pertaining to employee rights by ensuring that employees are able to negotiate for their rights while they oblige the interests of the employers in return for their rights.[56] This would benefit both sides by ensuring that employees get their fair share of benefits, rights, and productivity gains without compromising employer profitability. The agreements can include the terms from both parties that must be obliged by the other party. This way, both parties would be given social security for their rights.

In terms of collective bargaining, two models are widely used across organisations: centralised collective bargaining and decentralised collective bargaining agreements. The former entrusts all the power to labour unions with little or no scope for the employer to adjust or make amendments to the agreement. On the other hand, in the case of the latter, the bargaining can only proceed at the firm level, diminishing the power of the employees over the agreement.[57] Be that as it may, since the emphasis of the present study is on the act of "balancing" the interests of both employers and employees, there is an intention to develop a mediating point between the two to ensure that both parties are given equal power and voice in organisation and employment matters. In this regard, it is suggested that a more mutually agreed collective bargaining commission be formed with equal power granted to both parties via equal representation.

3.3 Dispute Resolution and Prevention Mechanisms

The last major aspect of a balanced employer-employee relationship is the effective management of disputes. Labour disputes are mostly regulated by legal bodies and regulations. However, the employer should have mechanisms in place to attempt to prevent or mitigate the dispute at the company level before proceeding to arbitration.[58] In this regard, mediation and conciliation are considered better alternatives that precede arbitration when there is any conflict between the employer and employee.[59] Taking the suggestion of the

53 'Collective Bargaining Coverage Rate (%)' (*Knoema*, 3 May 2022) <https://knoema.com/ILR_CBCT_NOC_RT_R/collective-bargaining-coverage-rate> accessed 24 January 2023.

54 Akhmetzharov and Orazgaliyev (n 14).

55 Adrian Wilkinson and others (eds), *Handbook of Research on Employee Voice* (2nd edn, Edward Elgar Publishing 2020) doi: 10.4337/9781788971188.

56 Jenkins and Sherman (n 53).

57 Ruth Barton and others, 'Understanding the Dynamics of Inequity in Collective Bargaining: Evidence from Australia, Canada, Denmark and France' (2021) 27 (1) Transfer: European Review of Labour and Research 113, doi: 10.1177/1024258920981827.

58 Jiaojiao Feng and Pengxin Xie, 'Is Mediation the Preferred Procedure in Labour Dispute Resolution Systems? Evidence from Employer–Employee Matched Data in China' (2020) 62 (1) Journal of Industrial Relations 81, doi: 10.1177/0022185619834971.

59 Samuel Chisa Dike, Boma Geoffrey Toby and Dorcas F Elekima, 'Transforming Mediation and Conciliation Practices for Effective Dispute Resolution in Nigeria' (2020) 12 (1) Journal of Property Law and Contemporary Issues 230.

labour code of Kazakhstan into account,[60] it is suggested that a conciliation commission be developed to resolve employment disputes. The commission would consist of equal numbers of employer and employee representatives that would advise on possible solutions to arrive at reconciliation. The conciliation commission would be able to view and analyse the dispute in relation to the interests of both employers and employees to ensure that the possible solution to resolve the dispute does not contradict with the rights and interests of any of them.

The conciliation commitment may, however, fail to meet the interests of both parties due to their inherent biases as the employer representatives may favour the interests of the employers - and the same goes for the employee representatives. In this regard, as suggested by the labour code of Kazakhstan, an ad hoc mediation commission can be developed, or a mediator hired.[61] The mediation would entail the involvement of an unbiased third party who would be able to develop a mutual point for resolution by developing solutions that ensure the interests of both employees and employers. The development of such a mechanism would ensure both the employees' and employers' interests would not be compromised during the conflict resolution process; rather, both the parties would reach a mutually beneficial decision. This will increase the trust of employees in their employers as they will know that their employer has incorporated such mechanisms in order to ensure their rights - and made efforts to prevent and mitigate the disputes. It has been asserted that workplaces that are underpinned by trust and respect between the employers and employees are characterised by greater productivity and higher performance.[62] Thus, this mechanism will ensure the achievement of a balance between the interests of employees and employers.

4 CLASHING INTERESTS OF EMPLOYERS AND EMPLOYEES IN THE CONTEXT OF THE U.S.

Conflict of interest is a common issue in the workplace. Conflicts of interest occur when an individual's personal interest could compromise their judgements or decisions in the workplace. Some of the common causes of conflict in the workplace include poor communication, clashes between personality and values, resource scarcity, overwhelming workloads, and lack of clarity on designated roles and responsibilities.[63] The problems between employers and employees is nothing new, yet there has been a rapid increase in legal allegations and litigation. An active search of media sources also reveals a rise in retaliation lawsuits in the United States. Retaliation by managers can be classified into two different general types:[64] first, in the form of negative actions directed towards the job of the employee, that is, demotion, poor evaluation, pay cut, termination and the like; and the second in the form of antisocial actions like harassment, blame, name calling or silent treatment.

As per 2008 statistics, employees in the United States spend approximately 2.8 hours every week in conflict. This means that around 359 billion dollars in hours is spent in conflict rather than on positive productivity. The figure is equivalent to 385 million days on the job spent arguing instead of collaborating. In the year 2021, around 61,331 workplace discrimination charges were

60 Shyngyssov, Bakenova and Akhmetova (n 54).

61 ibid.

62 Williams and Adam-Smith (n 42).

63 Kristin Brownstone and Barbara Fagan-Smith, '4 Causes of Workplace Conflict' (*ROI Communication*, 8 April 2021) <https://roico.com/2021/04/08/4-causes-of-workplace-conflict> accessed 24 January 2023.

64 Lulu Zhou and others, 'Labor Relations Conflict in the Workplace: Scale Development, Consequences and Solutions' (*eCommons: Cornell's Digital Repository*, 1 November 2017) <https://ecommons.cornell.edu/handle/1813/74243> accessed 24 January 2023.

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ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
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reported in the United States. This resulted in 34 million dollars in damages for victims in the federal court. Hiscox[65] stated that US companies face a 10.5 percent chance of being hit by an employment lawsuit and that the average cost of settlement amounts to 160,000 dollars.

As the workplace becomes more competitive, practitioners are extending efforts to understand the job stressors of employees for the purpose of improving work life. An important source of stress in the US workforce is interpersonal conflict between employers and employees. These interpersonal conflicts range from minor disagreements to intense arguments, which can lead to fights. Employees' negative reactions to job stressors are often due to physical strains like headaches, stomach problems or the like, psychological strain like anxiety or anger, or behavioural strain such as absence or lateness. An examination of the research literature reveals that workplace conflict in both eastern and western societies, including the United States, is mainly due to psychological and physical strains.[66] Similarly, a study investigating the potential predictors of absence and lateness at work in the US organisations reveals that employee lateness has cost these same US organisations more than 3 billion dollars a year. Employee absenteeism accounts for 15 percent of the payroll in US firms, whereas job withdrawal behaviour costs over 16.5 percent.

Research also reveals that work-family conflict is much higher in the United States than in any other developed region. One of the reasons is the longer working hours of Americans, where the average middle income family in the country spent an average of 11 hours working. Apart from longer working hours, there is also a scarcity of laws supporting working families. For instance, in 2010, the US was the only one among the industrialised democracies that lacked paid maternity leave. Approximately 90 percent of American working mothers and 95 percent of working American fathers report work family conflict in the US.[67]

One significant theme in workplace conflict has been observed since the pandemic. The increased number of conflicts reported during the pandemic was related to pandemic driven changes in the working lives of employees. For instance, Apple employees voiced their concerns regarding the rigid hybrid working rules imposed by the company and made headlines coming out against them. The rise in the number of conflicts after the pandemic can be attributed to the fact that it has forced people to change their priorities, putting their dreams and lives first.[68] Also, the treatment many employees received from their employer during the pandemic also impacted their view of the employer, prompting what is known as 'the great resignation' by economists. The gender pay gap also remains a problem and a source of conflict between employer and employee. Another surprising finding regarding the clash between employee and employer is that one in five American workers report some type of hostility in the workplace, either in the form of harassment or violence. Although the US government has created over 2 million new jobs, wage growth has still been low, which has been a major point of conflict between employees and organisations.[69]

65 Patrick Mitchell, *The 2017 Hiscox Guide to Employee Lawsuits™* (Hiscox Inc 2017) <https://www.hiscox.com/documents/2017-Hiscox-Guide-to-Employee-Lawsuits.pdf> accessed 24 January 2023.

66 Cong Liu and others, 'Workplace conflict and absence/lateness: The moderating effect of core self-evaluation in China and the United States' (2015) 22 (3) International Journal of Stress Management 243, doi: 10.1037/a0039163.

67 Heather Boushey and Joan C Williams, 'The Three Faces of Work-Family Conflict: The Poor, the Professionals, and the Missing Middle' (*Center for American Progress (CAP)*, 25 January 2010) <https://www.americanprogress.org/article/the-three-faces-of-work-family-conflict> accessed 24 January 2023.

68 Anna Shields, 'The Impact of Covid on Workplace Conflict' (*Forbes*, 28 July 2021) <https://www.forbes.com/sites/annashields/2021/07/28/the-impact-of-covid-on-workplace-conflict/?sh=7634b2b67ccb> accessed 24 January 2023.

69 Warren Robak, 'Exploring the Challenges Facing American Workers' (*RAND*, 15 September 2017) <https://www.rand.org/blog/2017/09/exploring-the-challenges-facing-american-workers.html> accessed 24 January 2023.

4.1 Assessing the Legislation of the U.S.

Retaliation laws in the US fall under the EEOC, Section 704 (a). The gist of the law states that it is unlawful for an employer to discriminate against employees, applicants for employment, employment agency workers, or joint labour management committees.[70]

Moreover, the law also prohibits employers from retaliating against individuals participating in the EEO process. This means that an employer cannot punish an employee for, for instance, filing an EEO complaint, serving as a witness, or in any way participating in the EEO matter. Moreover, retaliation in the form of silent treatment, demotion, violence, or undesirable assignments are also among the list of wrongdoings in the EEOC Section 704 (a) title VII's anti retaliation provision.

The main sources of employment law in the United States can be bifurcated into state, federal and local employment laws. Among the primary federal employment laws include Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in employment Act, the Equal Pay Act, the Fair Labour Standards Act, the National Labour Relations Act (NLRA), the Occupational Safety and Health Act etc. Under these acts employees are protected on the basis of their religion, sex, colour, disability, genetic information, union activity, and the like.[71]

The United States is shaped by its experience with mass immigration. According to the United Nations, 14 percent of the United States' population is immigrants, which is four times more than any other country. The International Labour Organization states that the average American works 10 more weeks each year in comparison to their European counterparts.[72] Wrongful termination in the US varies from state to state. There are some states of the US where an 'employment at will' law persists. This means that in the absence of an employment contract or collective bargaining agreement, the employer is free to let employee go for no reason and with or without notice, as long as the discharge does not violate a law. The US department of Labour's Wage and Hour Division (WHD) enforces some of the nation's most comprehensive labour laws.[73] The minimum wage in the US is 7.25 dollars per hour for non-exempted employees. Moreover, the Fair Labour Standards Act restricts companies from paying overtime to employees working more than 40 hours per week.

Collective bargaining can be understood as the process by which workers negotiate their contracts of employment through unions, including safety policies, pay, leave, benefits, job health, work life balance and more. In America, collective bargaining is considered to be an effective means of raising wages and around two thirds of private sector and two thirds of public sector employees enjoy the right to collective bargaining. However, the right of collective bargaining came to US employees through a series of laws. For instance, in 1926, the Railway Labour act granted collective bargaining to railroad workers, which now covers most transportation employees, including those employed in Airlines. Similarly, in 1935 the NLRA extended collective bargaining rights of private sector employees, which is now also

70 Harika Suklun, 'Retaliation against Employees in the USA: An Analysis in Terms of Organizational Behavior' (2020) 7 (4) Research Journal of Business and Management 228, doi: 10.17261/Pressacademia.2020.1320.

71 Ned Bassen and Catelyn Stark, 'Employment & Labour Laws and Regulations USA 2022-2023' (*International Comparative Legal Guides (ICLG)*, 25 March 2022) <https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/usa> accessed 24 January 2023.

72 Ronald C Brown, 'United States: Industrial relations profile' (*Eurofound*, 29 May 2014) <https://www.eurofound.europa.eu/publications/report/2014/industrial-relations/united-states-industrial-relations-profile> accessed 24 January 2023.

73 'Labor Laws and Issues' (*USAGov*, 18 January 2023) <https://www.usa.gov/labor-laws> accessed 24 January 2023.

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ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
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recognised by international human rights conventions.[74] Thus, the freedom to form a union is the core of the UN Universal Declaration on Human Rights. It extends fundamental rights to employees, ensuring their protection at the workplace. As a result, millions of Americans negotiate and renegotiate their bargained contracts - and unions continue to fight for the intrinsic rights of people and to restore economic power in the country through collective bargaining agreements.

5 THE PROCEDURAL MECHANISM FOR BALANCED EMPLOYMENT/ INDUSTRIAL RELATIONS IN U.S. COLLABORATIVE PROCESSES

Collaborative processes have permeated throughout American organisations for over thirty years. These processes are effective in managing, as well as resolving, conflicts in the workplace. In all three types of organisation, leaders are actively using collaborative processes to reduce any relational or financial cost of unresolved conflict. Among these include ADR, or alternative dispute resolution. Specialist coaches are among those that actively use the ADR technique to manage the relationship between employee and employer. Conflict management through coaching can be defined as a one-on-one process, where a trained coach helps an employee gain increased competence as well as confidence to effectively manage and engage their interpersonal disputes and conflicts.[75] Conflict management coaching is a future-focused and result oriented process that focuses on assisting employees and employers to reach a specific conflict management objective.

The right to organize and bargain collectively is a fundamental human right recognised by the International Labour Organization (ILO). This right allows employees to join a union of their choice and negotiate with their employer for better working conditions, including wages, hours, and benefits. The ability to collectively bargain gives employees a stronger voice and greater bargaining power, enabling them to negotiate for improved working conditions and resolve workplace conflicts in a more effective manner.

Workplace mediation is another important tool for conflict management at the workplace. Mediation provides a neutral, third-party perspective to help employees and employers resolve disputes in a cooperative and respectful manner. Unlike other forms of dispute resolution, such as litigation or arbitration, mediation allows the parties involved to maintain control over the outcome and find a mutually acceptable solution. Mediation can be an effective means of resolving workplace conflicts, as it helps reduce tensions and foster a more positive work environment.

5.1 Workplace Mediation

As previously outlined, one of the major aspects of a balanced employer-employee relationship is the effective management of disputes. Labour disputes are mostly regulated by legal bodies and regulations. However, the employer should have mechanisms in place to attempt to prevent or mitigate the conflict at the company level before proceeding to arbitration. In this regard, mediation and conciliation shall be considered as better alternatives

74 'Collective Bargaining' (*American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)*, 2023) <https://aflcio.org/what-unions-do/empower-workers/collective-bargaining> accessed 24 January 2023.

75 David Brubaker and others, 'Conflict Resolution in the Workplace: What Will the Future Bring?' (2014) 31 (4) Conflict Resolution Quarterly 357, doi: 10.1002/crq.21104.

that precede arbitration when there is any conflict between the employer and employee. Workplace mediation is also among the balanced employment mechanism used in the United States. Workplace mediation is an efficient and fair process that helps organisations resolve employment issues and disputes to reach an agreement between employee and employer. The process involves the hiring of a neutral mediator who assists organisations reach a voluntary yet negotiated agreement. Workplace mediation yields several benefits in balancing employer and employee needs and ensures resolution of discrimination while also promoting a better work environment.[76] Mediation also reduces the costs and labour of both employer and employee. There exists a strong public policy favouring workplace mediation in the United States. The process of mediation is voluntary however, courts do often order parties to mediate their dispute. The courts in the United States also support mediation through the interpretation of mediation clauses. The process does not result in any adverse cost or consequences if parties fail to mediate.[77] Moreover, mediation agreements are confidential.

5.2 Right to Organise and Bargaining Representation

The NLRA supports the collective bargaining rights of employees in the United States. The act allows the employees to negotiate, with the help of the union, hours, wages and other terms and conditions of employment.[78] If negotiations reach an impasse the Act allows the employer to impose the terms and conditions. Collective rights are necessary in protecting the individual rights of the employees and take into consideration economic reality, allowing employees to meaningfully stand for their rights. Unions, through collective bargaining, enhance the ability of members to exercise core civil liberties such as the First Amendment rights of association, petition and speech. The First Amendment right to association protects the rights of individuals to come together over issues related to mutual interest. Similarly, the right to communicate about workplace concerns between employer or employee or among co-workers comes from the statutory right of individuals to join a union and bargain in a collective manner. Nevertheless, the First Amendment right does not protect private sector employees from their employers' efforts to censor speech, and public sector employees only have limited protections. Lastly, as long as petitions are concerned, unions defend the rights of its members, including government lobbying, to defend the interests of individual members. The NLRA is a federal statute that extends most private sector employees the right to join a union and engage in collective bargaining[79] but local or state government employees only enjoy collective bargaining rights if their state legislatures grant them. Thus, allowing employees to organise and elect representatives is a good mechanism for employees to have social security. Employees may feel that their voices are heard and their rights are protected via collective bargaining agreements between their employee organisation (union) and their employers.

6 CONCLUDING REMARKS

In conclusion, the study aimed to examine employment relations in Kazakhstan and the United States and develop a procedural mechanism for balancing the interests of employers

76 'Mediation' (*US Equal Employment Opportunity Commission*, 2 December 2003) <https://www.eeoc.gov/mediation-0> accessed 24 January 2023.

77 James Warnot 'Commercial Mediation in the US' (*Linklaters*, 24 May 2022) <https://www.linklaters.com/en/insights/publications/commercial-mediation-a-global-review/commercial-mediation-a-global-review/us> accessed 24 January 2023.

78 Mediation (n 79).

79 'Defend the Rights of All People Nationwide' (*American Civil Liberties Union*, 2023) <https://www.aclu.org> accessed 24 January 2023.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
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and employees. Kazakhstan's labor code and legislation were explored to determine the applicable procedural mechanism for the country. The study found that the protection of employees' rights is weak in Kazakhstan, and the development of effective procedural mechanisms is needed to balance the interests of employers and employees. On the other hand, the protection of employees' rights is strong in the United States, with a legally embedded system ensuring fair treatment of employees and employers.

The study developed mechanisms for employment relations in Kazakhstan including social dialogue, collective bargaining, and dispute resolution. In the context of the United States, workplace mediation, collaborative processes, and collective bargaining were discussed as mechanisms for employment relations. The study observed that the employment law of 1998 in Kazakhstan ensured social protection for unemployed people, while other laws such as the law of protection of labour ensured the reduction in hazards, security issues, and the prevention of accidents on the work site. Besides, the study discussed that the effective employment relations between employers and employees in Kazakhstan heavily rely on the country's labor law. As previously mentioned, this law has established substantial protection for the rights of both employers and employees. Nevertheless, there is ongoing debate surrounding the enforcement of these laws within the country.

The study proposed that a collective bargaining commission can be established through mutual agreement, with both employers and employees having equal power and representation. Collective bargaining is viewed as an effective method of increasing wages in the United States, with approximately two-thirds of private and public sector employees having the right to engage in collective bargaining. Similarly, it is found that the mediation process requires the intervention of an impartial third party, who could work towards finding a common ground for resolution by devising solutions that address the interests of both employers and employees. The establishment of such a mechanism would ensure that neither party's interests are compromised during conflict resolution and that a mutually beneficial agreement is reached. The courts in the United States also endorse mediation by interpreting mediation clauses.

Besides, it is important to acknowledge the limitations of the study, including its narrowed scope of only focusing on Kazakhstan and the United States. Future research can take a broader perspective and develop procedural mechanisms based on international labor codes and best practices implemented globally. Overall, the study highlights the potential of labor codes in protecting the rights of employees and balancing the interests of employers and employees. If implemented effectively, these codes can aid in the development of effective procedural mechanisms.

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