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RESOLVING INDIVIDUAL LABOR DISPUTES IN KAZAKHSTAN IN THE ERA OF HUMAN RIGHTS

The main role of labor law is that it harmonizes the interests of society, the state, as well as workers and employers in the field of employment. One of the mechanisms for ensuring such a reconciliation of interests is an effective judicial system, which must be "tuned" to the special subject composition of labor relations; should differentiate the principles of civil and labor contracts; to provide a special approach to the settlement of labor disputes, taking into account the vital necessity for citizens to participate in hired labor, to receive remuneration; take into account the risk for citizens of loss of life and health in labor relations if the employer does not comply with labor protection measures; take into account the impossibility of restoring the original position of the parties (bring the parties to their original position) when terminating the employment contract. The study is aimed at developing the theoretical and methodological foundations of the judicial form for resolving labor disputes. The scientific and practical significance of the work lies in the substantiation of proposals for further improving the procedures for resolving labor disputes. Methodologically, the study was carried out using traditional methods inherent in legal science: formal legal (dogmatic), sociological and legal, the method of legal modeling, as well as the critical legal method of legal knowledge. The main results are aimed at improving the current practice of implementing the judicial form of protecting social and labor human rights.

Key words: individual labor dispute, mediator, labor conflict, justice, labor law.

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Қазақстандағы адам құқығы дәуіріндегі жеке еңбек дауларын шешу

Еңбек құқығының басты рөлі – бұл қоғамның, мемлекеттің, сондай-ақ жұмыспен қамту саласындағы жұмысшылар мен жұмыс берушілердің мүдделерін үйлестіру. Мүдделердің осындай үйлесуін қамтамасыз ететін тетіктердің бірі тиімді сот жүйесі болып табылады, ол еңбек қатынастарының арнайы пәндік құрамына «сәйкестендірілуі» керек; азаматтық және еңбек шартын жасасу принциптерін ажырату қажет; азаматтардың жалдамалы еңбекке қатысуының, сыйақы алуының өмірлік қажеттілігін ескере отырып, еңбек дауларын шешуге ерекше көзқарасты қамтамасыз ету; егер жұмыс беруші еңбекті қорғау шараларын сақтамаса, еңбек қатынастарында азаматтардың өмірі мен денсаулығын жоғалту қаупін ескеру; еңбек шарты тоқтатылған кезде тараптардың бастапқы жағдайын қалпына келтірудің мүмкін еместігін ескеру (тараптарды олардың бастапқы орнына келтіру). Зерттеу еңбек дауларын шешудің сот нысанының теориялық және әдістемелік негіздерін дамытуға бағытталған. Жұмыстың ғылыми және практикалық маңыздылығы еңбек дауларын шешу тәртібін одан әрі жетілдіру бойынша ұсыныстарды негіздеуде. Әдістемелік тұрғыдан зерттеу заң ғылымына тән дәстүрлі әдістерді қолданумен жүргізілді: ресми құқықтық (догматикалық), социологиялық және құқықтық, құқықтық модельдеу әдісі, сонымен қатар құқықтық білімнің критикалық құқықтық әдісі. Негізгі нәтижелер адамның әлеуметтік және еңбек құқықтарын қорғаудың сот нысанын енгізудің қолданыстағы тәжірибесін жетілдіруге бағытталған.

Түйін сөздер: жеке еңбек дауы, медиатор, еңбек жанжалы, әділеттілік, еңбек құқығы.

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Разрешение индивидуальных трудовых споров в Казахстане в эпоху прав человека

Основная роль трудового права заключается в том, что оно гармонизирует интересы общества, государства, а также работников и работодателей в сфере занятости. Одним из механизмов обеспечения такого согласования интересов является эффективная судебная система, которая должна быть «настроена» на особый субъектный состав трудовых отношений;

следует различать принципы заключения гражданско-правовых и трудовых договоров; обеспечить особый подход к разрешению трудовых споров с учетом жизненной необходимости участия граждан в наемном труде, получения вознаграждения; учитывать риск потери жизни и здоровья граждан в трудовых отношениях при несоблюдении работодателем мер по охране труда; учитывать невозможность восстановления исходного положения сторон (приведения сторон в исходное положение) при расторжении трудового договора. Исследование направлено на разработку теоретико-методологических основ судебной формы разрешения трудовых споров. Научная и практическая значимость работы заключается в обосновании предложений по дальнейшему совершенствованию порядка разрешения трудовых споров. Методологически исследование проводилось с использованием традиционных методов, присущих юридической науке: формально-правового (догматического), социологического и правового, метода правового моделирования, а также критического правового метода правового познания. Основные результаты направлены на совершенствование существующей практики реализации судебной формы защиты социальных и трудовых прав человека.

Ключевые слова: индивидуальный трудовой спор, посредник, трудовой конфликт, справедливость, трудовое право.

Introduction

The reforms of the Kazakhstani labor market that have taken place over the past five years were initiated to solve the problems of defining the boundaries of state interference in the sphere of labor relations between the employer and employees, the distribution of their roles and responsibilities, as well as the introduction of the principle of self-regulation in labor relations, with the strengthening of the potential of collective bargaining and agreements, in areas such as recruitment, relocation and dismissal of workers, working hours, conditions and remuneration for their work. Liberalization was intended to find a new balance between the flexibility desired by business and the required social protection of workers and to bring the law in line with modern changes in the field of labor. Kazakhstan's 2016 Labor Code was meant to modernize labor relations from a much broader perspective – to revive the spirit of cooperation at both the individual and collective levels, to strengthen judicial protection of workers in order to ensure wider recognition of the importance of investment in human capital and respect for the individual employee, his family obligations. Despite the liberalization carried out, improving the quality of legal support for labor human rights, regulation in this area is not devoid of a number of shortcomings: the percentage of labor disputes is still high, and real mechanisms for preventing labor conflicts that give rise to dangerous social confrontations have not been created.

Issues of the practice of resolving labor disputes were not the object of comprehensive study of the Kazakhstani legal science. If the judicial procedure for resolving labor conflicts in the domestic science of labor law, social security law has been studied in limited publications (Issayeva, 2020; Galiakbarova, 2016; Khamzina, 2020), then in foreign science the possibilities of alternative methods of resolving labor disputes (Brown, 2012; Fox, 2005; Johnson, 2010), assessing the effectiveness of the judicial form of protection of labor rights (Sugeno, 2006; Radoja, 2019; Chipea, 2013), dispute resolution systems on social security (Yanyuan, 2005; Langford, 2008; Ramcharan, 2005; Arango, 2016) have been studied extensively, but mainly concerning national legal conditions and institutions.

In Kazakhstani legal science, there are no special studies, the subject of which would be materials of judicial practice on labor disputes. From this position, the co-authors of this article obtained from official open information databases extensive data on labor conflicts considered by the courts, which were critically analyzed and systematized to form a reliable baseline for research. In Kazakhstan, information on litigation (for the most part) is freely available.

Method

Methodologically, the study built from the position of identifying significant shortcomings of the judicial form of protecting the labor rights of an individual, including from the point of view of assessing the accessibility of judicial procedures, ensuring effective mechanisms for protecting the rights of workers. The adversarial form of the civil procedure subjected to critical analysis, which does not take into account the employee's limited ability to provide evidence in a dispute with the employer, as well as fundamentally different opportunities for employers in access to qualified legal assistance, and therefore in access to justice.

Methodologically, the research was carried out using traditional methods inherent in legal science:

formal legal (dogmatic), sociological and legal, legal modeling method, as well as the critical legal method of legal knowledge.

A formal legal method that allow, exclusively within the framework of sources of law, without distraction to other social objects, to analyze the current state of legal regulation of the judicial form of protection of labor rights, determine the quality of legal norms, and formulate conclusions.

The use of the sociological and legal method allows collecting and processing court decisions on labor disputes, identifying common claims, typical mistakes in law enforcement, generalizing judicial practice in courts of all instances.

The critical legal method of legal knowledge applied when justifying the required changes in the material and procedural legislation, as when analyzing RR as the most important source of regulation of labor relations. Naturally, RR does not directly regulate individual or collective labor relations, however, the provisions of RR are a kind of benchmark, a standard for the development of labor and relations directly related to them, the lawful behavior of their subjects. And the most important function of the RR is to provide clarifications on the issues of judicial practice to resolve labor disputes in conciliation commissions and courts. RR acquires particular significance in the context of instability of labor legislation, the presence of many gaps and contradictions in it, as well as in the circumstances of a decrease in the role of normative regulation of hired labor, when the liberalization of legal regulation of employment that took place five years ago was not supported by an increase in the level of legal culture, strengthening of the principle of sustainability and the legality of contractual regulation of labor relations.

The critical legal method ensures the identification of the shortcomings of the current edition of the RR: the lack of a proper structure, which would in fact reflect the clarification of issues of judicial practice in various categories of labor disputes. The content of the RR's clarifications is not sufficient for the correct resolution of typical labor disputes; some conclusions of the RR are in conflict with the provisions of the Labor Code.

Methodology for collecting primary (initial) information:

- desk research: law enforcement practice, reports related to the functioning in Kazakhstan of the judicial form of protection of labor rights of the individual, analysis of documents and statistical data of courts, generalization of examples from judicial practice using the monitoring method, as well as examples of best foreign practice in the work of specialized courts, international universal standards of access to justice in labor disputes;

- content analysis of publications in special groups created on the social network Facebook by judges, lawyers, judicial representatives on improving the organization of the judicial system, expanding access to justice, discussing practical and theoretical problems of considering and resolving labor disputes; as well as comments and publications on the Taldau forum specially created by the Supreme Court (https://office.sud.kz/forumTaldau/index.xhtml).

We have identified, but not limited to, the following sources of collection of primary information:

- special electronic services of the Supreme Court of the Republic of Kazakhstan (Judicial Office https://office.sud.kz/, Bank of Judicial Acts https://sud.gov.kz/rus/court-acts), which provide an opportunity to remotely search for court documents and cases; information on the results of sociological surveys and assessments of the activities of the courts of the Republic of Kazakhstan;

- statistical data on the consideration of civil cases by the Supreme Court (http://sud.gov.kz/rus/content/statisticheskie-dannye-o-rassmotrenii-grazhdanskih-del); reports on the work of the courts of the first instance for the consideration of civil cases, presented on the information service of the Committee on Legal Statistics and Special Records of the General Prosecutor's Office of Kazakhstan (qamqor.gov.kz);

- materials and recommendations of conferences and other dispute platforms organized by the Supreme Court, as well as materials from special editions of the Supreme Court;

- the results of previous studies on related issues related to the subject of this article, including those published in peer-reviewed scientific journals, a generalization of the foreign practice of the functioning of special courts considering labor disputes; ILO instruments, OECD special reviews.

Review of judicial practice in labor disputes

The generalization of judicial practice made it possible to distinguish the following types of labor disputes in legal relations, from which they arise:

- labor disputes arising from the violation of labor relations;

- arising from the violation of employment relations with this employer;

- arising from the violation of social-partnering relations;

- arising from the violation of relations on the participation of employees (their representative bodies) in the management of the organization;
- arising from the violation of relations on vocational training, retraining and advanced training with this employer;
- arising from a violation of relations on material responsibility of the parties to the employment contract;
- arising from the violation of relations for supervision and control over the observance of labor legislation;
- arising from the violation of relations for the resolution of labor disputes;
- arising from the violation of relations on compulsory social insurance, social security.

In accordance with the Labor Code, the main ways to protect labor rights are:
- self-protection by employees of labor rights;
- protection of the labor rights of workers by their representatives (trade unions);
- state supervision and control over the observance of labor legislation (local labor inspection body, prosecutor's office);
- appeal to special bodies considering labor disputes;
- judicial protection. Since the judicial form has a priority in relation to other forms of restoration of violated rights, which is due to the constitutional right of everyone to judicial protection of their rights and freedoms, then in determining various forms of protection of rights, the judicial form plays a leading role as a universal, historically established, thoroughly regulated by the norms of civil procedural law. It provides reliable guarantees for the correct application of the law. Despite the introduction in Kazakhstan since 2016 of the practice of mandatory pre-trial settlement of individual disputes by conciliation commissions created at workplaces, the number of appeals to the court has not fundamentally decreased. In the period from 2016 to 2019 an average of 8400-8200 claims on labor disputes was received by the courts annually, civil proceedings were initiated on average in 7200 claims, and about 4000-4400 claims were considered and adjudicated annually (Khamzina et al., 2020; Kazakhstan, 2020a).

The global COVID – 19 pandemic did not affect the number of appeals to the courts for the consideration of labor disputes. In 2020, Kazakhstani courts received about 7,200 claims for violations of labor rights, of which about 30% are claims for the payment of wages, 10% are claims for reinstatement at work (Kazakhstan, 2020a).

An analysis of judicial practice shows that, in general, disputes of this category are resolved correctly. The decisions made mainly meet the requirements of civil procedural legislation, the courts correctly apply the substantive law, take into account the explanations of the Supreme Court of Kazakhstan, the Labor Code, the legal position on specific disputes expressed by the Supreme Court in reviews of judicial practice.

At the same time, there are also mistakes; in 2019, the appellate courts canceled and changed about 30% of the total number of appealed decisions. It should be noted that some mistakes are made from year to year, which indicates that judges do not carefully follow the established judicial practice. The subject of proof is not always correctly determined, the circumstances that are important for the case are not fully established. Errors are also allowed in the application and interpretation of substantive law. The analysis showed that cases have appeared in judicial practice, when considering which it is necessary to be guided by special legislation, since, by virtue of a direct indication contained in the law, the norms of labor law are not subject to application when considering arisen disputes. In resolving these disputes, judges are guided by the Labor Code of Kazakhstan.

Speaking about the quality of court decisions rendered by judges of first instance, it should be said that often court acts are "cluttered" with a listing of case materials, and explanations of the parties and witnesses, the text of the statement of claim are fully provided. At the same time, as a rule, in such decisions there is practically no reasoning, the conclusions of the court on the stated requirements. And this is not only a problem of decisions made in labor disputes. Errors are allowed when determining the jurisdiction of labor disputes: when exercising the plaintiff's right to choose a jurisdiction at his own discretion, as well as when applying the statute of limitations for going to court.

Courts rarely use the provisions of ratified international acts guaranteeing the labor rights of the individual when motivating their decisions. So, in 2019, courts issued 179 decisions using the International Covenant on Economic, Social and Cultural Rights, 22 – using the International Convention on Rights of Persons with Disabilities (Kazakhstan, 2020a). At same time, the courts are the final link in the implementation of international standards for the protection of human rights (Sarsembayev, 2016).

The shortcomings of the judicial system that hinder the effective protection of labor rights

The question of the effectiveness of mechanisms for the protection of labor rights is closely related to ensuring access to justice. Access to justice is at the heart of inclusive growth and plays a central role in ensuring the well-being and sustainable development. Effective access to justice helps resolve disputes that are at the heart of people's lives, promotes government accountability, and gives people and businesses confidence to enter into and enforce contracts. Access to justice refers to the ability of people to seek a fair solution to judicial problems (an issue that raises legal questions) and to protect their rights in accordance with the human rights standards; if necessary, through impartial formal or informal institutions and with appropriate legal support (OECD/Open Society Foundations, 2019).

A reliable system of justice also supports the rule of law, good governance, and efforts to address issues of inequality and problems of development. There is growing evidence of a complex relationship between unequal access to justice and broader socio-economic gaps. Failure to access justice can be both a result and a cause of disadvantage and poverty. Unmet needs for justice can lead to social, physical and mental problems, reduced productivity, and reduced access to economic opportunities, education, and employment. Unresolved legal problems do not allow people, businesses and society as a whole to reach their full potential (OECD, 2019).

The general shortcomings of the judicial system that hinder the effective protection of labor rights of citizens: high workload of courts, restrictions on access to justice. However, this general argument, which applies to all areas of the administration of justice, is "superimposed" on the following facts.

Labor law are little developed from the standpoint of the legal science of Kazakhstan. A review of dissertations defended for academic degrees in Kazakhstan for the period from 1992 to 2020 (Kazakhstan, 2020b) allows us to draw the following conclusions. In total, in all branches of science, 26915 dissertations were defended at the beginning of April 2020, of which on the legal problems of the sphere of wage labor, employment, about 40 dissertations were defended during this period. In turn, about 30 of them are candidate dissertations on labor law, 5 are doctoral studies; as well as 5 PhD dissertations – on the problems of employment, hired labor. That is, the scientific and legal support for the problems of hired labor in Kazakhstan is at a minimum level.

The fact that representatives of legal science do not show interest in subject of legislative regulation of employment directly affects the quality of educational process, is confirmed by absence, with some exceptions, of special literature and reviews. At same time, the branch of labor law have a very complex specifics, this area is one of most "sensitive" for a person, it is common here that most vulnerable groups of population that have neither material nor physical resources fall into the orbit of legal proceedings. The above aspects require the state to pay more attention to this area of justice, create special mechanisms for restoring violated rights, and protect vital interests. The following factor follows from the above circumstances.

The mechanism for ensuring a reconciliation of interests is an effective judicial system, which must be "tuned" to the special subject composition of labor legal relations, should differentiate the principles of civil and labor contracts, provide a special approach to the settlement of labor disputes, taking into account the vital necessity for citizens to participate in hired labor, receive remuneration, take into account the risk for citizens of loss of life and health in labor relations if the employer does not comply with labor protection measures, take into account the impossibility of restoring the original position of the parties when terminating the employment contract.

Wage labor is characterized by the fact that a person "sells, transfers" to the employer the most expensive thing that he/she has: knowledge, skills, and time. We are dealing with an animate subject of wage labor – labor force, which determines the specifics of the branch of labor law, its meaning and content, since wage labor requires a special approach to legal regulation, considering that the health and life of the employee must be fully protected in labor relations. Wage labor is a non-recoverable category that cannot be returned in kind when terminating the employment contract, if the employment contract is declared invalid or illegal, it is impossible to bring the parties to the employment contract to their original position. The sphere of wage labor and the legal norms regulating it are not limited only to labor relations, it also includes such areas of public life as employment, professional training and professional development, social partnership, and control activities in the sphere of employment carried out by specialized competent officials and bodies.

The Supreme Court does not have specialists in labor and social security law who can prepare and provide high-quality explanations of legislation and

law enforcement in this area of public relations. This conclusion is based on the analysis of the results of generalization of legislation's application practice by courts, presented by the Supreme Court of the Republic of Kazakhstan (SC) in the regulatory Resolution No. 9 "On Particular Issues of Legislation's Application by Courts in resolving Labor Disputes" dated October 6, 2017 (hereinafter – RR). The RR is the most important source of regulation of labor relations in terms of the content of Paragraph 1, Article 2 of the LC, which stipulates that the labor legislation of the Republic of Kazakhstan is based on the Constitution and consists of the LC, laws and other regulatory legal acts, which means that the national labor legislation includes the considered RR. Naturally, the RR does not directly regulate individual or collective labor relations, but the provisions of the RR are a kind of reference point, a standard for the development of labor and directly related relations, and the lawful behavior of their subjects. And the most important function of the RR is to provide explanations on the issues of judicial practice for the settlement of labor disputes in conciliation committees and the courts. The RR is particularly important in conditions of instability of labor legislation, the presence of many gaps and contradictions in it, as well as in circumstances where the role of normative regulation of wage labor has been reduced, when the past liberalization of legal regulation of employment has not been supported by an increase in the level of legal culture, strengthening the principle of stability and legality of contractual regulation of labor relations.

The analysis of the RR content allows you to verify its insufficient elaboration, many contradictions and outdated provisions, a large volume of citations of the LC rules, and the limitations and futility of the wording of certain paragraphs. Also, the inventory item has the following disadvantages:

- limited explanation of the procedural procedure for applying to the court and considering cases arising from employment and directly concerned relations;
- in fact, there is no explanation of the most important aspects of labor disputes;

The inventory item does not have a coherent structure that reflects the dynamics of labor relations. The current version of the RR does not meet the requirements for the quality level of the normative legal act and does not have a proper structure that would actually reflect explanations of judicial practice in various categories of labor disputes. The content of the RR explanations is not sufficient for the correct resolution of typical labor disputes, and some of the RR conclusions contradict the provisions of the LC (Khamzina, 2019).

Besides, the research highlights the following disadvantages of labor disputes in Kazakhstan courts: lack of a clear hierarchy of the labor law-sources: the law, social partnership agreement, collective contract, labor contract, non-recognition of CPC agreements as normative sources of law; and contradictions of court decisions to labor legislation (Khasenov, 2020).

In aggregate, we believe that the above theses should be considered in the establishment of specialized labor courts in Kazakhstan that ensure the protection and restoration of the most important rights of individuals to work and social protection, providing for living conditions that ensure human dignity, equality, and a minimum level of social guarantees. The creation of labor courts in the system of general jurisdiction would bring the consideration of disputes arising from labor, directly related to them, as well as social and security relations to a qualitatively new level, increase its effectiveness, and contribute to achieving uniformity of law enforcement in these areas throughout the country.

Recommendations for improving the efficiency of the non-judicial form of protection of labor rights

The creation of courts for labor disputes, in our opinion, is not the only approach to solving the problems of effective resolution and prevention of relevant conflicts. At the same time, this direction requires in-depth scientific and practical analysis and assessment from the standpoint of alternative ways of protecting the labor rights of the individual.

In recent decades, the state has promoted the idea of forming structures for pre-trial consideration of individual labor disputes. Research considers alternative dispute resolution processes as a way to avoid costly and lengthy litigation and in some circumstances may improve access to justice for individuals (MacDermott and Riley, 2011). The main forms of alternative dispute resolution (hereinafter – ADR) in Kazakhstan are currently conciliation commissions for individual labor disputes, while for collective labor disputes ADR forms are conciliation commission, labor arbitration, and mediation. It is also possible to resolve a collective labor dispute by conducting direct negotiations. However, due to the LC classification of labor disputes into individual and collective, there is a situation when out-of-court settlement of individual labor disputes is possible only in conciliation commissions and through me-

diation, while for collective labor disputes a closed list of ways to resolve them is established. According to the co-authors of this study, a single and at the same time open list of ways to resolve labor disputes should be provided for all.

Another way to resolve labor disputes with the participation of an intermediary is the mediation procedure, the regulation of which currently requires changes.

The combined analysis allows us to identify conditions in Kazakhstan that currently do not allow expanding the application of mediation to labor disputes.

First, since the parties to the labor dispute have the right to determine whether a mediator imposed any decision on the dispute, and the degree of compulsory execution of such decisions, the employer can always ignore the result, which is inappropriate for him/her, and the employee will have to apply to court.

Second, the costs associated with conducting mediation procedures are currently several times higher than the costs associated with applying to the court for protection of the violated right. Third, the legislator has established insufficient requirements for the qualification of mediators in the field of labor law. Fourthly, there are general problems with the work of mediators without industry affiliation such as: low awareness of the population about mediation procedures, low confidence in them; as well as the lack of state control over the quality of training of professional mediators by relevant organizations; standards of appropriate training; state coordination and regulation of many different organizations of mediators that do not have a common center and conditions for interaction. It may be necessary to consider the use of judicial mediation to ensure that this procedure is free of charge for the parties to the labor dispute by financing it from the state budget. We recommend that the Ministry of Labor and Social Protection include in its functions maintaining a list of recommended mediators, resolving labor disputes directly on the law as well as the guidelines for the resolution of labor disputes through extrajudicial procedures.

Mediation is designed to qualitatively improve the implementation of the right of the parties to an employment contract to resolve the conflict through appropriate and informal procedural choices. However, the rhetoric is ahead of the reality: our current legal process and practice are largely weighted in favor of a single adversarial structure-litigation, although judicial procedures are not always the most effective way to solve legal problems (Álvarez, 2015). The mediation method of settlement of labor disputes has some advantages compared to state proceedings, such as: no problems with jurisdiction and missing the deadline for applying for a dispute resolution; speed in resolving the conflict (unlike the court, the mediator does not need to obtain evidence in the case, appoint expertise, call witnesses to testify, etc.); reducing the risks of non-compliance with the decision agreed by the parties, since it is made voluntarily and does not contain elements of coercion; confidentiality of information that appears in the negotiation process; maintaining positive relations between the disputants, restoring a favorable microclimate in the labor group; reaching a compromise without forceful pressure on the subjects of labor relations; reducing the costs of the parties to the dispute and the state (Golovina, 2013).

In general, alternative resolution of labor disputes in Kazakhstan needs to improve coherence and adapt various mechanisms used to the needs of participants in the relevant dispute relations. There is a need to develop a comprehensive strategy for additional forms of dispute resolution through mediation, pre-trial reconciliation, ombudsmen, arbitration, and other mechanisms. It is necessary to expand mediation in all areas of the labor sphere, to strengthen the potential and status of subjects of the alternative dispute resolution system, and to increase the awareness of citizens and legal entities about their potential. The issue of improving the efficiency of courts in labor disputes due to greater clarity of jurisdiction and meritocracy of decision-making is relevant.

Summarizing the experience of conducting pre-trial settlement of individual labor disputes in individual member states of the OECD (Lithuania, Estonia, Latvian, Ireland, Czech Republic, Italy), we can state that we have not identified in the legislation of any country the shortcomings that the activities of the conciliation commission in Kazakhstan have. These defects are as follows: the lack of professionalism in the composition and work of the Kazakhstan conciliation commission; in OECD states, the relevant entities act exclusively on a professional basis, including with the requirements for the qualifications of members of various commissions, tribunals and their presidents. Second, in all the OECD states where pre-trial conciliation bodies operate, there are no possibilities for them to depend on the employer in any way, the Kazakhstan conciliation commission is organizationally, morally and materially subordinate to the will of the employer. Third, in Kazakhstan, the conciliation commission is not a permanent body, which does not correspond

to the conditions of the reviewed OECD states; if the conciliation entities are not permanent, then in the OECD states the right to directly file a claim to the court is provided, bypassing the pre-trial procedure. Fourth is non-involvement of Kazakhstani state bodies in the procedures of functioning of the conciliation commissions, which operate on their own; The State Labor Inspectorate and the Ministry of Labor and Social Protection of the RK population do not interfere in the work of commissions, do not control their work, the decisions made, the composition and professionalism of the members.

Conclusion

The study promotes legal dialogue between representatives of theoretical legal science and representatives of the justice system, practicing lawyers interested in improving domestic judicial practice. The recommendations and conclusions drawn from the study stimulate discussion on ways to improve a justice system that operates in line with universal human rights standards at work.

The theoretical results of the study make it possible to generalize and supplement the existing knowledge with forms and means of protecting labor rights. The practical application of the research results consists in the development of proposals for amendments and additions to the Labor Code, the Civil Procedure Code and other regulatory legal acts, as well as in the preparation of proposals for clarification by the Supreme Court of the Russian Federation. Kazakhstan on the introduction of restorative justice in judicial practice in the field of individual labor rights.

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References

Álvarez, R. G. (2015). The role of mediation in the resolution of employment disputes. [El papel de la mediación en la resolución del conflicto individual de trabajo] Trabajo y Derecho, (2).

Arango, R. (2016). Realizing Constitutional Social Rights Through Judicial Protection.

Chipea, L. (2013). The Courts Competent to Deal with Individual Labor Disputes; Proposals to Reform the System. AGORA Int'l J. Jurid. Sci., 145.

Galiakbarova, G. G., Zharkenova, S. B., Kulmakhanova, L. S. (2016). Revisiting jurisdiction of individual labour disputes in the Republic of Kazakhstan: Comparative legal analysis of the labour law application in countries near and far abroad. Journal of Advanced Research in Law and Economics, 7(1), 64-74. doi:10.14505/jarle.v7.1(15).08.

Golovina, S. Yu. (2013). Problems of using mediation in resolving labor disputes. Russian Law Journal, (6), 119-126.

Issayeva, A. Z., Aitimov, B. Z., Issayeva, Z. A., Zhussupbekova, M. K., Tinistanova, S. S., Madaliyeva, A. A. (2020). Features of legal regulation of the procedure for the consideration of labor disputes in Kazakhstan. Journal of Advanced Research in Law and Economics, 11(1), 1-73. doi:10.14505/jarle.v11.1(47).09.

Kazakhstan (2020a). Reports on the consideration of civil cases by the courts of first instance. Statistical data on the consideration of civil cases of the Supreme Court of the Republic of Kazakhstan. URL: http://sud.gov.kz/rus/content/statisticheskie-dannye-o-rassmotrenii-grazhdanskih-del; Reports on the work of the courts of first instance in civil cases, information service of the Committee for Legal Statistics and Special Accounting of the General Prosecutor's Office of the Republic of Kazakhstan. URL: https: // qamqor.gov.kz.

Kazakhstan (2020b). National Center for State Scientific and Technical Expertise. National resources. Dissertation. URL: http:// nauka.kz/page.php?page_id=107&lang=1.

Khamzina, Z., Buribayev, Y., Almaganbetov, P., Tazhmagambet, A., Samaldykova, Z., Apakhayev, N. (2020). Labor disputes in Kazakhstan: Results of legal regulation and future prospects. Journal of Legal, Ethical and Regulatory Issues, 23(1), 1-14.

Khamzina, Zh. A. (2019). Questions to the quality of the regulatory resolution "On some issues of the application of legislation by the courts in resolving labor disputes". URL: https://online.zakon.kz/Document/?doc_id=37456619#pos=5;-106.

Khassenov, M. Kh. (2020). What is wrong with judicial practice in labor disputes?. URL: https://www.zakon.kz/5010181-chto-ne-tak-s-sudebnoy-praktikoy-po.html.

Langford, M. (2008). The justiciability of social rights: From practice to theory. Social rights jurisprudence: emerging trends in international and comparative law, 3, 43-45.

MacDermott, T., & Riley, J. (2011). Alternative dispute resolution and individual workplace rights: The evolving role of Fair Work Australia. Journal of Industrial Relations, 53(5), 718-732.

OECD (2019), Equal Access to Justice for Inclusive Growth: Putting People at the Centre, OECD Publishing, Paris, https://doi.org/10.1787/597f5b7f-en.

OECD/Open Society Foundations (2019), Legal Needs Surveys and Access to Justice, OECD Publishing, Paris, https://doi.org/10.1787/g2g9a36c-en.

Radoja, K. K. (2019). The Right of Access to the Court in Individual Labor Disputes. Balkan Social Science Review, 13(13), 7-25.

Ramcharan, B. G. (Ed.). (2005). Judicial protection of economic, social and cultural rights: cases and materials. M. Nijhoff Publishers.

Sarsembayev, M. A. (2016). International standards for the protection of human rights and their implementation in court decisions. Astana. 142 p. URL: https://www.gcedclearinghouse.org/sites/default/files/resources/190256rus.pdf

Sugeno, K., Kezuka, K., Doko, T., Sugino, I., Murayama, M. (2006). Labor Dispute Resolution System. Japan Labor Review, 3(1).

Yanyuan, C., Darimont, B. (2005). Comparative Research on Social Security Dispute Disposal System between Germany and China [J]. Journal of Beijing Administrative College, 2.