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CURRENT ISSUES OF RESOLVING INDIVIDUAL LABOR DISPUTES

This article discusses the specifics of the jurisdiction of individual labor disputes in the Republic of Kazakhstan. Today in Kazakhstan, the legal regulation of individual labor disputes is one of the key issues in the field of labor relations.

At the present stage, there is a tendency to expand the judicial settlement of labor conflicts in the current legislation. However, it should be borne in mind that the judicial procedure for resolving individual labor disputes is expensive, lengthy and not too formal, and the court cannot equally satisfy the interests of both parties. All this negatively affects the relationship between the employee and the employer, which contributes to the growth of social tension. The occurrence of labor disputes usually precedes labor offenses in the field of Labor, which are the direct cause of the dispute. A labor offense is a non-performance or improper performance of labor duties in the field of labor, as well as separation, and therefore violation of the rights of another subject of this legal relationship.

The methodological and theoretical basis of the work is the general scientific dialectical method of cognition, the empirical method, and the formal and logical method.

Key words: labor law, labor code, individual labor disputes, jurisdiction of individual labor disputes, court, conciliation Commission.

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Жеке еңбек дауларын шешудің өзекті мәселелері

Бұл мақалада жеке еңбек дауларының ведомстволық бағыныстылығының ерекшеліктері қарастырылады. Қазақстанда қазіргі таңда жеке еңбек дауларының құқықтық реттелуі еңбек құқыққатынастарының маңызды мәселелерінің бірі болып табылады.

Қазіргі кезеңде қолданыстағы заңнамада еңбек дауларын сот арқылы реттеуді кеңейту үрдісі кең ауқымды қолданысы байқалады. Алайда, жеке еңбек дауларын шешудің сотта қаралу процессі ақылы, ұзақ және тым ресми емес екенін және сот екі тараптың мүдделерін бірдей қанағаттандыра алмайтындығын есте ұстаған жөн. Мұның бәрі қызметкер мен жұмыс берушінің арасындағы қарым-қатынасқа теріс әсерін беретіні айқын, бұл әлеуметтік шиеленістің өсуіне ықпал жасайды. Еңбек дауларының пайда болуы, әдетте, даудың тікелей себебі болып табылатын еңбек саласындағы еңбек құқық бұзушылықтарынан бұрын болады. Еңбек ету құқық бұзушылық – бұл еңбек саласындағы еңбек міндеттерін орындамау немесе тиісінше орындамау, сондай-ақ жұмыстан босату, демек, осы құқықтық қатынастардың басқа субъектісінің жеке құқықтарын бұзу болып саналады.

Зерттеу жұмысын жазудың әдіснамалық, сонымен қатар теориялық негізі жалпы ғылыми әдістер, атап айтқанда танымның диалектикалық әдісі, эмпирикалық әдіс және формальды-логикалық әдіс болып табылады.

Түйін сөздер: еңбек құқығы, еңбек кодексі, жеке еңбек даулары, жеке еңбек дауларының ведомстволық бағыныстылығы, сот, келісу комиссиясы.

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Актуальные вопросы разрешения индивидуальных трудовых споров

В данной статье рассматриваются особенности подведомственности индивидуальных трудовых споров в Республике Казахстан. На сегодняшний день в Казахстане правовое регулирование индивидуальных трудовых споров является одной из ключевых вопросов в сфере трудовых правоотношений.

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На современном этапе наблюдается тенденция к расширению судебного урегулирования трудовых конфликтов в действующем законодательстве. Однако следует иметь в виду, что судебная процедура разрешения индивидуальных трудовых споров является дорогостоящей, длительной и не слишком формальной, и суд не может в равной степени удовлетворить интересы обеих сторон. Все это негативно сказывается на отношениях между работником и работодателем, что способствует росту социальной напряженности. Возникновению трудовых споров обычно предшествуют трудовые правонарушения в сфере труда, которые являются непосредственной причиной спора. Трудовое правонарушение – это неисполнение или ненадлежащее исполнение трудовых обязанностей в сфере труда, а также увольнение, а следовательно, и нарушение прав другого субъекта данного правоотношения.

Методологической, а также теоретической основой написания исследоваельской работы являются общенаучные методы, а именно диалектический метод познания, эмпирический метод и формально-логический метод.

Ключевые слова: трудовое право, трудовой кодекс, индивидуальные трудовые споры, подведомственность индивидуальных трудовых споров, суд, согласительная комиссия.

Introduction

Market transformations have significantly changed the nature of industrial relations, in a complex complex of which social and labor relations arise and develop.

Kazakhstan's process of reforming the political and socio-economic conditions has a profound impact on labor relations and determines fundamental changes in their legal regulation (Toleuhanova 2006: 5).

The labor force becomes a commodity, an object of purchase and sale in the labor market, where labor relations are formed. The sale of labour occurs on the condition that the worker as a free person is free to dispose of his ability to work, i.e. the labor force, but is economically forced to sell his work, because he has nothing else to do with the existence of his and his family. Remaining the owner of his abilities to work, the employee sells his work for temporary use to the buyer-owner, who has the opportunity to pay for his work. Moreover, in these conditions, the field of labor organization needs such techniques and ways of legal regulation of labor relations, which would strengthen the role of the employee in increasing productivity while meeting his material needs.

Materials and methods

Nursultan Nazarbayev in his Message to the People of Kazakhstan «Kazakhstan Way-2050: A Single Goal, Common Interests, a United Future» notes that strategy is a program of concrete practical affairs, which day after day will make the country and life better for a better year after year Kazakhstan. Nevertheless, everyone should understand and know that in market conditions it is not necessary to wait for manna from heaven, but to work effectively. The task of the state is to create all conditions for this (www.akorda.kz.). Therefore, to date, one of the conditions for the creation of the Universal Labor Society in order to ensure a decent future of our motherland is to reduce the number of violations of labor laws, to create an appropriate legal basis for the regulation of labor disputes, which will contribute to the correct and rapid resolution of the latter.

To date, the Institute of Labour Disputes, as one of the most important institutions of labor law, regulates all legal disputes arising from social labor relations. First of all, it reflects individual labor disputes related to the conclusion, operation and termination of an employment contract, reparation spree of harm caused by the parties to the employment contract to each other.

According to L.A. Syrovatskaya, labor law does not regulate all relations on labor disputes. Part of them relating to individual labour disputes fall within the scope of civil procedural law (between each of the disputed parties and the judiciary). At the same time, the jurisdiction and the manner in which it is dealt with is due to the nature and nature of the disputes (Syrovatskaıa 1998: 106).

One of the most pressing issues in the science of labor law remains the question of the concept of "individual labor dispute". Although scientists have different opinions, there is no universal approach to defining this concept.

After analyzing the proposed legal literature, the definition of a dispute and conflict can be given several more examples common approaches. According to the definition of V.I. Dal, there is a dispute «an oral, oral or written discussion in which each side defends itself by denying the opponent's opinion» (Dal' 1995: 265). The definition of" dispute " is based on the competition of the parties.

In the” dictionary of the modern Russian language “ by S. I. Ozhegov, the word “dispute” is interpreted as” oral competition, discussion something that everyone defends their opinion this is correct; a mutual requirement to own what the court decides.” So, O. A. Vinogradova in her scientific article “Problems of individual labor dispute terminology: historical and legal aspect,” writes E. F. Anderson, these are “ labor conflicts-these are the disputes of workers and employees employers on the basis of Labor application. In labor disputes, “conflicts”, no matter how different the conflicts of workers and employers are, the latter were divided by content there are two types: conflicts based on law and conflicts of interest” (Vynogradova 2013: 213). There should be a difference here between the concepts of” conflict “and” dispute “ and, respectively the concepts of “labor conflict”and “labor dispute”.

According to A. N. Asadov,”...not in labor disputes there is a conflict of forces, only a “psychological tension”, through which disagreements turn into conflicts” (Asadov 1994).

Such psychological stress, of course, can indicate – this is the cause of the conflict, but the reverse option is also possible when there is a conflict that is not related to Labor Relations, the cause of a labor dispute will be. Terminological difficulties they arise not only because of the similarity of concepts, but also because disputes and conflicts often go hand in hand there may even be reasons for each other.

Discussion and results

Currently, the term” conflict “ is used for a wide range of phenomena and has many types of manifestations studied in the interdisciplinary section. So, more than two decades ago, American Scientists R. Mack and R. Snyder, analyze several concepts related to conflicts and ask the question: “What is conflict?” it is often a rubber-like concept that can be stretched and used for its own purposes.” (Trunin 2011: 48). So there is a dispute about how the disagreement over the concept of “labor conflict” in modern Russian science is correct define a term that combines a conflict of interest between the labor collective (part of it or the entire collective) with the tenant.

The main features of an individual labor dispute: they could not be adjusted;on the application of labor legislation and other requirements normative legal acts containing labor law norms; about them to the body for consideration of individual labor disputes (for the settlement of labor disputes).

The subject of individual labor disputes – some scientists it is believed that the pregnancy and the tenant. Other scientists determine the subject of individual labor disputes by individual elements of Labor Relations related to various legal institutions, for example, payment working hours, rest periods, material or disciplinary responsibility.

The subject of individual labor disputes can be various aspects of labor activity: salary (salary work on weekends or holidays); establishment or change of working conditions; legality of applying disciplinary liability measures, etc.

Scientist I. O. Snigireva believes that» the subject of an individual labor dispute is a creature declared by an employee requirements, such as violated recovery requirements protection of legitimate interests or recognition of subjective interests the rights that the employee believes belong to him. Thus, the subject of an individual labor dispute may be employee’s claim for payment of wages, removal of disciplinary penalties, reinstatement to work, payment of forced free time, recognition of unjustified refusal conclusion of an employment contract» (Smirnova 2007a: 514).

According to T. A. Soshnikova, “ the subject of the occurrence of individual labor disputes is the requirements of employees on the restoration of subjective rights violated by the administration in the course of applying the norms of labor legislation and regulatory provisions of collective agreements, as well as other local regulations acts, agreements and terms of Employment Contracts “ (Smirnova 1991b: 338).

In conclusion, from the above point of view, this the subject of a dispute should be understood as the entire set of tangible and intangible objects related to them and related to them individual disputes arise in cases of unjustified violation by the employer of the current norms of labor legislation, the terms of a collective or employment contract, depriving the employee of the right to receive them or trampling on legal entities the interests of the employee, ultimately, as well as tangible or intangible.

In the legal literature, there are different approaches to identifying individual labor disputes.

In the doctrine of labor law there are methods of definition “individual labor dispute” through its elements: subjects object of an individual labor dispute; disagreements that are not resolved through preliminary negotiations; dynamics of the occurrence of an individual labor dispute.

As a result of consideration of the elements of an individual labor dispute, a comprehensive concept

of an individual labor dispute is formulated, taking into account modern concepts and legal doctrines.

Thus, N. S. Pilipenko, based on the analysis of the elements of an individual labor dispute, proposes the following definition of an individual labor dispute in labor legislation – fixing the actions of subjects of labor law (employer) regulation of Labor Relations (disagreements) occurrence of offenses in the process of applying norms in connection with the establishment of labor legislation or and by changing the existing working conditions this is a competent jurisdiction (Pilipenko 2016).

Legal analysis of the term" individual labor dispute" by dividing its elements (subjects, object of an individual labor dispute, preliminary negotiations as a way to resolve disputes; moment of occurrence of an individual labor dispute; filing an individual labor dispute submission of the dispute to the competent authority for consideration-consideration of dissent as a material category and individual labor disputes as legal relations arising from labor disputes.

Responsibility is the determination in which body should initially resolve this dispute over the properties and contents of an employment dispute. In our view, such a pointer in individual disputes is not only the nature of the dispute, but also the legal relationship from which the dispute, including the subject and the object of the dispute, emerges. Therefore, determining the jurisdiction of a separate individual labor dispute, it is necessary to first find out what kind of dispute, i.e. individual or collective, despite the fact that each collective dispute is based on individual.

At the same time, the jurisdiction of labor disputes should be have distinguished from the right of citizens to complain to a higher authority in relation to the one they complain about. The established procedure for dealing with labor disputes, including their jurisdiction, does not deprive the employee of the right to complain to a higher authority or administration about the actions (inaction) of a particular leader.

Jurisdiction, in our opinion, is an external indicator of the competence of a particular jurisdictional body to resolve individual labor disputes; legal consolidation of the range of issues that constitute the subject of an individual labor dispute, for consideration of which a certain procedure and bodies that can most effectively resolve the dispute have been established.

The order of consideration of individual labor disputes in the Republic of Kazakhstan (hereinafter RK) are regulated by the Labor code of the Republic of Kazakhstan (hereinafter – RK LC) (https://online.zakon.kz/Document/?doc_id=38910832) and other laws and the procedure of consideration of cases on labor disputes in the courts is defined, in addition, the civil procedure legislation of Kazakhstan. Laws establish the specifics of consideration of individual labor disputes of certain categories of employees.

Article 170 of the labor code of the Republic of Kazakhstan establishes bodies that consider individual labor disputes arising mainly from labor relations. It specifies two jurisdictional bodies that are competent to consider labor disputes between an employee and an employer: the labor dispute conciliation Commission and (or) the court. Individual disputes can be have considered by the conciliation Commission regardless of whether the employee is a full-time, temporary, part-time employee, regardless of membership in a trade Union (Nurgalieva 2012: 422).

The labor legislation of our country does not determine individual labor disputes are considered directly by the court, without considering them in the conciliation Commission, while the Labor code of the Russian Federation (hereinafter RF LC) provides categories of individual labor disputes, the consideration of which is carried out only in the courts. So, according to article 391 of the labor code, the courts are dealing with individual labor disputes by the statements of the employee, employer or trade Union protecting the interests of the employee when they do not agree with the decision of the Commission on labor disputes or when the worker goes to court, bypassing the Commission on labor disputes and application of the Prosecutor, if the decision of the Commission on labor disputes does not correspond to the labor legislation and other acts containing norms of labor law.

According to Russian law, individual labor disputes on applications are have considered directly in the courts:

1) employee on reinstatement regardless of the grounds of termination of the employment contract, on change of date and formulation of reasons for dismissal, the transfer to another job, payment for the period of forced absence or payment of difference in wages for lower-paid work, about illegal actions (inaction) of the employer in the processing and protection of personal data of the employee;

2) the employer – for compensation by the employee for damage caused to the employer, unless otherwise provided by Federal laws.

Individual labor disputes are also considered directly in the courts: on the refusal to hire persons working under an employment contract with

employers-individuals who are not individual entrepreneurs, and employees of religious organizations; persons who believe that they have been discriminated against (Strogovich 2009: 709-710).

In our opinion, at the current stage of development, it would be appropriate, based on the experience of Russian legislation, to provide for this provision in the labor code of the Republic of Kazakhstan, which, in turn, would reduce the number of cases in courts related to individual labor disputes.

According to the guidelines for improving productivity developed by the International Labor Organization (ILO), «industrial relations depend on the interaction between employees and employers. The nature of their interaction depends on the environment in which they work as well as the type of dispute they seek to resolve. Many disputes, but not all, can be resolved by the parties themselves on the basis of consensus, dialogue and negotiations» (https://www.ilo.org/ifpdial/information-resources/publications/WCMS_211468/lang--en/index.htm: 22).

At the same time, it is not necessary to assign a secondary role to the courts, since there is a very positive practice of judicial settlement of labor disputes in the world.

The right to judicial protection is the most important constitutional guarantee of workers ' labor rights. The court performs a protective function in the process of resolving labor disputes and restoring illegally violated rights (Stavtseva 1998: 93).

The activities of specialized labour justice institutions have proved in practice their necessity and usefulness as one of the institutions of social and legal infrastructure that contribute to the effective resolution of labour conflicts with maximum consideration for the interests of the disputing parties and the entire society, and thus ensure social peace.

The important role of specialized labor justice institutions in the development of labor law, increasing its authority, consolidation in achieving internal consistency, eliminating gaps in law enforcement practice, and improving it is generally recognized. In many countries, decisions of labor courts are the source of labor law (Orobets 2003).

In Kazakhstan, there are currently no labor courts, which is why labor disputes are, have considered in courts of General jurisdiction in civil proceedings, whereas in most European countries, the jurisdiction of courts of General jurisdiction includes only individual labor disputes, less often – collective.

For example, in Switzerland, the vast majority of employment cases are have handled by courts of General jurisdiction. Special courts for the settlement of labor disputes exist only in certain cantons (Berdyachevski 2004: 205).

The peculiarity of labor disputes in Switzerland is that there are two levels: district courts (first instance) and cantonal courts of appeal (second, or cassation instance). The highest judicial authority is the Federal Court.

In the Federal Court, labor cases are have handled only in individual cases. As an example, the parties have concluded an agreement to refer the dispute to the first instance court, when the amount of the claim exceeds the amount stipulated by law.

The Federal Court has chambers for civil, criminal and insolvency and bankruptcy cases, etc.

The peculiarity of the proceedings in Switzerland is that the burden of proof is have shared between the parties. This means that the court is not has bound by claims and may go beyond them when making a decision.

Only court decisions with a high claim amount are subject to review or cancellation. There is a simplified special appeal procedure. It is have applied in cases where the court considers a complaint against a decision of a lower court to be «clearly justified» or, on the contrary, «clearly unfounded». On such complaints, decisions are have made in closed session by the court in three people (but only if it is adopted unanimously) (Scobelkin 2002: 480).

As an example, we can consider the Swedish legislation. Thus, the peculiarity of labor disputes in Sweden is has expressed in the fact that individual labor disputes of employees who are not members of trade unions are considered in courts of General jurisdiction. If the employee is not satisfied with how the Union protects those interests, or if the Union refused to file a claim on behalf of the employee in the labor court, it also has the right to apply to the ordinary court. The decision of an ordinary civil court can be have appealed to the labor court (Scobelkin 2002: 481).

Creation and functioning of labor justice bodies in many countries in countries with developed market economies; it shows the regularity of this process, the expediency and effectiveness of labor courts in ensuring the rule of law in labor relations (Scobelkin 2002: 488).

Conclusion

Analyzing the above, it can be concluded that in some countries the usual rules of civil procedure

are used for the consideration of labor disputes, in others – a simplified procedure, because of which the process of resolving the case by a judge specializing in labor law is significantly accelerated.

At the same time, the correct determination of the jurisdiction of a specific labor dispute is of no small practical importance, since the decision of the dispute by an unauthorized body has no legal force and cannot be have enforced.

It should be noted that the dispute arises between the subjects of material legal relations and does not arise as a phenomenon of material order, regardless of which body is considered.

The dispute will not become a procedural phenomenon, but it will be only the essence of procedural relations.

It differs from dissent and causes even more conflict heavy burden: in addition to different legal assessments of the situation, disagreements, points of view are still present in the conflict and contradictions that can be regulated and irreconcilable. Usually a constant contradiction depends on the existence of a conflict.

In the legal literature, the opinion prevails, according to which the disagreement “corresponds” to an individual labor dispute, if it is transferred to the relevant decision jurisdiction authority.

In this article, we have tried to consider only some issues of jurisdiction of individual labor disputes. Making conclusions that ensuring effective protection of labor rights of employees, establishing a decent level of legal guarantees in the field of labor objectively requires studying foreign experience, both far and near abroad, since the norms of the current labor code of the Republic of Kazakhstan are not fully correlated with the generally recognized principles of international labor law and require improvement.

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