

LABOR DISPUTES IN KAZAKHSTAN: RESULTS OF LEGAL REGULATION AND FUTURE PROSPECTS

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ABSTRACT

The article analyzes the system settlement of labor disputes in Kazakhstan, its specific regulatory features and problems arising in the practice of resolving labor conflicts. The manuscript reviews and assesses the new model of the system for resolving an individual labor dispute, which has been in effect since January 1, 2016, with an emphasis on the existing legal regulation of the institution of labor disputes and, as a result, summarizing and formulating proposals for its improvement. The recommendations of the research are aimed at optimizing the mechanism for resolving labor disputes in Kazakhstan, ensuring decision-making on labor disputes by experts in this field, reducing the time for consideration and resolution of disputes, and relieving social tensions by introducing alternative conciliation procedures. This article argues that there is a need to rethink mechanisms for resolving individual disputes in order to increase their effectiveness. This happens in three stages. Firstly, we look at the current state of labor regulations in Kazakhstan's legislation in terms of legal form and practice and assert that the current mechanisms are poorly equipped to promote labor standards. Second, we are exploring ways to improve dispute resolution. Based on a review of current practice, we argue that the elements of mandatory pre-trial settlement of disputes are not enough to effectively enforce labor rights. We argue that in order for labor relations to be effective, the existing dispute resolution model must be complemented by new alternative dispute resolution methods. Thirdly, we are discussing options for creating special labor courts.

Keywords: Labor Law, Kazakhstan, Labor Code, Labor Dispute, Conciliation Procedures, Labor Justice.

INTRODUCTION

The absolute majority of national legal systems include a certain set of ways to protect the labor rights of workers and employers. Kazakhstan is not an exception, where the main law of the country-the Constitution¹ contains a provision that a person, his rights and freedoms are the highest value, and therefore the right of everyone to judicial protection of his rights and freedoms is guaranteed, and the Labor Code of Kazakhstan² (hereinafter text-LC) not only

enshrines the provisions governing the procedure for the consideration and resolution of labor disputes, but also provides for the protection of labor rights as the main goal and principle of labor law.

The level of social well-being, employment, and public satisfaction with the quality of social services provided depends on the correct, competent construction of a system for the consideration and resolution of labor disputes. One of the causes of poverty is the lack of real measures to protect the labor, social and economic rights of people. The lack of a systematic approach to teaching the protection of their rights by all categories of the population leads to the fact that the ranks of the poor are replenished by those who cannot defend their legal rights to employers, in conciliation commissions, courts (Khamzina et al., 2015). Protection of labor rights of employees is the main function of the branch of labor law. Its essence lies in the protection of labor rights, freedoms and legitimate interests of the employee as the economically weaker side of labor relations. Protecting the labor rights of workers in the narrow sense means ensuring compliance with labor rights, protecting them from violations, including prevention, restoring violated labor rights, bringing employers and their representatives to liability for violating labor laws.

Theoretical and practical issues of consideration and resolution of labor disputes was the subject of research in special works (Bužinskis, 2017; Colvin, 2007; Ury et al., 1988; Mahony & Klaas, 2008). Many studies have concluded that:

“Informal mediation is a much more appropriate and effective method of resolving labor disputes than labor arbitration and courts (Bingham et al., 2008; Van-Gramberg et al., 2017; Caputo et al., 2019), as well as non-governmental organizations may be more successful in mediation in labor disputes than government officials (Halegua, 2008).”

Special scientific studies are being conducted to examine trends towards a wider use of alternative dispute resolution in the workplace (Lewicki, 2003; Bollen & Euwema, 2013; Feng & Xie, 2019; Zhang et al., 2018).

A scientific study of the problems of the effectiveness of resolving individual labor disputes is in the area of attention of individual representatives of the Kazakhstani science of labor law. However, there are no systematic study and submission of specific recommendations, proposals that provide legislative initiative in this area, consistent with modern practice and legal regulation.

The relevance of the research for the Kazakhstan labor market and the legal system are due to the following theses and facts.

1. A large number of labor disputes, the lack of real mechanisms to prevent labor conflicts that generate dangerous social confrontations; the ongoing transformation of wage labor from collective to individual, which requires a completely new approach to regulating the protection of workers' interests;
2. Since the beginning of 2016, the practice of considering individual labor disputes has dramatically changed as a result of the introduction of the legislative imperative-pre-trial settlement of disputes in the conciliation commission. However, a real reduction in labor conflicts did not occur.

The social request for study is that:

1. The scientific substantiation of modern approaches to countering confrontation and social clashes is in demand;

2. There is a search for new opportunities for harmonizing the interests of workers, employers and the state in the labor market.

The economic interest of society and the state in scientific research of the model for resolving labor conflicts is determined by the ultimate goal of research-suggest ways to transform modern ineffective dispute resolution mechanisms, modernize labor laws in the context of ensuring the protection of social and labor rights of an individual.

In the research, we substantiated the erroneous introduction in Kazakhstan of the mandatory pre-trial consideration of an individual labor dispute in the conciliation commission. The obligation of this stage of dispute resolution in the conciliation commissions deprived the disputing parties of the right to choose other alternative methods of settling disagreements and contradicts the right to judicial protection guaranteed by the constitution. In the course of the analysis of the practice of applying labor legislation governing the procedure for considering appeals to conciliation commissions and civil courts, circumstances that impede the full consideration and resolution of individual labor disputes were identified, which led to the conclusion about the need to reform the process of pre-trial dispute resolution. In particular, it was proposed to reform the procedure for applying for an employee to the conciliation commissions, to introduce new ways of alternative dispute resolution (Goerke & Neugart, 2015).

METHOD

The study analyzed the system of labor disputes, the features of its regulation and the problems that arise in judicial practice and law enforcement. The manuscript considers and evaluates a new model of the system for resolving individual labor disputes, which has been in force since 2016, summarizes and formulates proposals for its improvement. The authors proceed from the need to rethink the mechanisms for resolving individual disputes in order to increase their effectiveness.

When conducting the research methodologically, we proceeded from the following theses that we developed.

We have studied the current state of the legal regulation of the resolution of labor conflicts, conducted an analysis of recent reforms. We examined labor legislation in terms of the consequences of law enforcement and proved that the existing mechanisms for resolving labor conflicts are unsatisfactory.

Based on a review of current practice, we have shown that the elements of mandatory pre-trial settlement of disputes are insufficient for strict observance of labor rights.

Based on the statistics of lawsuits, as well as the work of conciliation commissions, conclusions were drawn on the appropriateness of changing the dispute resolution model.

We have analyzed and presented the author's position on the creation of special labor courts. Based on the results of studying various options for the functioning of courts of general jurisdiction and specialized courts in Kazakhstan, we justified the feasibility of a phased reform of the existing system for the consideration and resolution of labor disputes.

A theoretical substantiation was given of the nature and prospects for the further development of guarantees of constitutional law on individual labor disputes.

Some recommendations were formulated to solve existing problems, to eliminate gaps in the legislation caused by poor-quality regulation of labor disputes in Kazakhstan.

The Current State of Judicial Practice in the Consideration of Individual Labor Disputes

Since the beginning of 2016, the practice of consideration of individual labor disputes (hereinafter referred to as LD) has changed dramatically in Kazakhstan as a result of the introduction of the legislative imperative-pretrial settlement of the LD in the conciliation commission. The action of the novelties for more than three years makes it possible to draw separate generalizations and conclusions using the data of official statistics of the judiciary³. Table 1 presents data on the number of LD reviewed by the courts for the period from 2012-2018.

Name	2012	2013	2014	2015	2016	2017	2018
Total received applications to the courts for the period	8822	9492	10033	10120	8498	8445	8047
The court was started	6830	7526	8141	7026	7083	7720	7177
Court proceedings with the decision	4778	5286	5465	5464	4266	4011	3712
Court decisions in which the claim was granted	2655	2907	3200	3170	2755	2600	2302
Judgments denial of plaintiff's claims	Information is absent	Information is absent	Information is absent	Information is absent	1511	1411	1410
Courts with the termination of the proceedings	Information is absent	Information is absent	Information is absent	Information is absent	1624	2185	1772

The cited official statistics and their analysis allow us to formulate the following conclusions.

First

The number of appeals to LD in the courts in the period from 2016 to 2018 decreased by 20%. The number of claims for LD decreased significantly in the first year of the introduction of the pre-trial dispute settlement procedure, in the following years there was a slight decrease in the claims in the courts.

Second

The reduction in the number of applications to the courts did not lead to an increase in the quality, reasonableness and legitimacy of claims for LD.

So, in the period of 2012-2015, the courts considered on the merits, with a decision being made, on average, only 55% of the claims. In the period 2016-2018 this figure decreased and averaged 45%. If in 2012-2015 courts satisfied 31% of claims for LD, in the period 2016-2018 this parameter averaged the same 31% of the total number of applications received.

In our opinion, mandatory pre-trial settlement of labor disputes should solve several problems. First, the pre-trial settlement of a dispute allows you to avoid legal proceedings and the time and legal costs associated with it, as well as relieve the courts from the claims filed in this category of cases. This aspect, the introduction of compulsory pre-trial settlement of the LD allowed reducing the number of appeals to the courts by twenty percent. On the other hand, for the disputing parties, in most cases, the time and material costs for resolving LD were increased due to the need to comply with pre-trial procedures. That is, the order of resolving the LD by the conciliation commissions does not lead to a more rapid and mutually beneficial resolution of the arising differences and contradictions.

The purpose of the institution of pre-trial settlement of a dispute in Kazakhstan is to resolve the conflict in the conciliation commission. At the same time, the still significant number of LD by the courts testifies to the low efficiency of this institution in the realities of Kazakhstan. The number of applications for LD received by the courts in 2016-2017 is comparable in figures to the 2012 statistic. The data indicate a formal appeal to the conciliation commissions, in order to overcome the bureaucratic legal obstacles to the resolution of the dispute on the merits.

In addition, the pre-trial dispute resolution procedure should have become a kind of filter that would allow bringing to court exactly those cases that have a judicial perspective. It should be noted that this problem was the least solved. If up to the period 2012-2015, the courts satisfied 31% of claims for LD, and then in the period 2016-2018 this parameter averaged also 31% of the total number of received claims. That is, only thirty percent of substantiated and motivated statements of claim about LDs go to the courts stably. Accordingly, the introduction of the institution of conciliation commissions and the mandatory pre-trial settlement of the LD did not in any way affect the percentage of reasonable/unreasonable court claims. Conciliation commissions do not hinder or contribute to the effectiveness of the administration of justice in LDs.

The widespread use of pre-trial consideration of the LDs in conciliation commissions was intended to speed up and reduce the cost of justice for the state, and, most importantly, for the parties, for citizens, legal entities. The task of accelerating justice in LDs is not realizable due to the peculiarities of the status of conciliation commissions. Even though according to paragraph 2 of Art. 159 LC, the commission is a permanent body established in the organization, in practice, conciliation commissions are not created by employers and employee representatives until the first real LD connected with the employee's appeal to court. In fact, a red tape is created, an additional inconvenience for an employee who is forced to incur temporary losses on appeal to the court. And in case of the employer's evasion from the creation of a commission, the employee is forced to appeal to the local labor inspectorate for the application of measures of influence. The situation is aggravated by the lack of real measures of administrative responsibility for not creating, violation of the requirements for the work of the conciliation commissions.

Cost reduction for justice procedures does not occur due to the introduction of the mandatory pre-trial settlement of LD. This consequence is applicable to the characteristics of only cases of resolving disputes on the merits in commissions without subsequent judicial appeal

and consideration. But such LDs are an insignificant amount in the total, in practice an application to the conciliation commission is submitted only in order to subsequently have the opportunity to appeal to the court, which does not reduce the price, but significantly increases the final cost of justice for LD⁴.

Table 2 presents data on the most typical labor disputes considered by the courts in the period 2012-2018.

Table 2 PERIODS OF CONSIDERATION OF CASES BY COURTS OF LABOR DISPUTES							
	2012	2013	2014	2015	2016	2017	2018
Total received applications to the courts for the period	8822	9492	10033	10120	8498	8445	8047
About reinstatement of dismissed	2450	2477	2322	2007	1927	1698	1500
On collecting from the employer wages and other payments	3497	3712	4293	4429	4108	4683	4191

The analysis of these indicators allows us to draw the following conclusions. The introduction of mandatory pre-trial settlement of LD in conciliation commissions led to a gradual steady reduction in the number of applications for reinstatement brought to the courts, from 2007 claims in 2015 to 1500 claims filed in 2018.

The introduction of a new institute of conciliation commissions did not affect the number of lawsuits filed in the courts for the recovery of wages, on the contrary, the number of such statements increased from 3497 in 2012 to 4683 claims in 2017. The foregoing allows us to state the low efficiency of the work of the commissions precisely in the consideration of applications for the payment of wages and other payments.

Summarizing the foregoing, we make generalizations. Analysis of the official statistics of the courts on the consideration of labor disputes in the period 2016-2018 shows that:

1. A decrease in the number of lawsuits filed in the courts did not lead to an increase in the quality, validity and legality of claims for labor disputes;
2. The existence of a formalism of appeal to conciliation commissions, which means the need to overcome an unfortunate legislative obstacle to the consideration of a dispute in court;
3. Conciliation commissions do not impede and do not facilitate the administration of justice to labor disputes;
4. The use of pre-trial settlement of disputes in conciliation commissions did not solve the task of expediting and cheapening justice for the state, citizens and legal entities.

The listed and other aspects of the functioning of the mechanism for resolving individual labor disputes are undoubtedly painful points of social policy and the functioning of the justice

system. The modern request of society and the state is that methods to reduce social tension in society be found and scientifically substantiated, an effective system is created to resolve individual social and labor conflicts, so that they do not turn into large-scale collective disputes, strikes and public speaking.

The Constitutional Right to Judicial Protection and the Duty of Preliminary Appeal to the Conciliation Commission for Consideration of a Labor Dispute

The need to search for other methods-more simple, economical, fast and efficient - led to the creation of "*informal justice*" to resolve legal conflicts. The development of non-judicial forms is currently a global trend (Schmidt, 2013; Bollen & Euwema, 2013; Tisserand, 2018). Kazakhstan in this direction follows this generally accepted practice. The Labor Code of 2016 introduced a mandatory pre-trial LD review procedure.

However, we have shown in the previous part of the study, based on statistical data, that the introduction of mandatory pre-trial settlement of labor disputes in conciliation commissions is an ineffective practice in the realities of Kazakhstan.

In addition, it is necessary to consider the most important fact that the compulsory pretrial settlement of LD violates the constitutional right of everyone to judicial protection. The Constitution of Kazakhstan in paragraph 2 of Article 13 guarantees the right of everyone to judicial protection of their rights and freedoms, including social and labor rights and freedoms. Paragraph 3 of Article 39 of the Constitution states that in no case shall the rights and freedoms provided for by Article 13 of the Constitution is restricted. We think that the introduction of mandatory pre-trial settlement limits the right to judicial protection to additional procedures that have nothing to do with the procedural judicial form of protection of the right.

Since 2016, labor legislation has narrowed the competence of labor dispute resolution courts, erecting an artificial obstacle in the form of a mandatory preliminary review of LD to a conciliation commission. The consolidation in the Constitution of the right to judicial protection means, we think, the securing of guarantees for the unobstructed implementation by everyone of a free judicial form of protection of his rights and freedoms.

The right to judicial protection implies both the right to an unimpeded appeal to the judicial authorities, and the right guaranteed by law for the restoration of violated rights and compensation for damage. The judicial form of protection of social and labor rights is the most important guarantee of subjective rights. At the same time, it is justice administered by the court that is recognized by the Constitution as the most effective and efficient way of protecting the violated subjective right.

Conciliation commissions that consider individual labor disputes can be recognized as entities help, assisting employees and employers in implementing their subjective social and labor rights, but not as bodies ensuring the right to judicial protection. Protection of the social and labor rights of an individual should be guaranteed only by the court, its competence and authority. The creation and functioning on the basis of the law of special bodies that essentially resolve labor disputes arising from the violation of the social and labor rights of individuals is a violation of constitutional guarantees. Mandatory pre-trial appeal to the conciliation commission is an unreasonable obstacle to access to justice in labor disputes. Alternative dispute resolution can enhance workplace justice; however, justice can be denied when employers institute

mandatory systems and require employees waive their right to pursue claims through the courts (Mahony & Klaas, 2008).

We believe that the guarantees of the realization of the right to judicial protection by everyone of their social and labor rights and freedoms require improvement in terms of the correction of the existing provisions of the Labor Code in order to adequately reflect the provisions of the Constitution of Kazakhstan.

The interpretation by the Labor Code of the right to judicial protection of social and labor rights should proceed from the inalienability of these rights; guarantees of freedom of the citizen in the possibility to resort to judicial protection in order to defend their rights and freedoms. The right to judicial protection of social and labor rights, according to Article 39 of the Constitution, shall not be restricted under any conditions and circumstances. An obstacle to the realization of this right is its dependence on prior appeal to the conciliation commission, a body that does not have any specific status or effective authorities⁵.

Prospects for the Development of Alternative Ways to Resolve Labor Disputes

The expansion of employment arbitration and other employment dispute resolution mechanisms, such as peer review and mediation, have established a new system of workplace dispute resolution. However, the incidence, structure, and due process protections of these procedures vary widely (Colvin, 2012). We adhere to the position on the need to preserve in the legislation and the development of alternative ways of resolving labor disputes, both directly by the parties to the dispute, and with the participation of intermediaries in the periods before, during or outside the trial process.

Table 1 provides evidence of the effective application of mediation agreements in resolving labor disputes in the courts. In 2016, 14% of the total number of begun civil cases on LD was completed due to the conclusion of an agreement on mediation dispute settlement, in 2017-20%, in 2018-16%. In 2016, only 0.11% of cases were terminated due to the conclusion of an agreement to resolve the dispute in the order of the participatory procedure, in 2017-0.36%, 2018-0.35%. The latter alternative way of resolving the LDs is relatively new and rarely used, which requires a wider propaganda of its advantages, a study of the problems of application and the elimination of possible obstacles.

State guarantees in the field of employment is an obligation of the state to its citizens related to the provision of tangible or intangible benefits in accordance with national standards and generally accepted norms of international law. In addition, state guarantees should be supported by legislative guarantees of a ban on unjustified termination of an employment contract, as well as guaranteed effective mechanisms for resolving labor disputes (Khamzin et al., 2016). The practice of the functioning of the conciliation commissions shows their low efficiency, which requires consideration of the question of the transformation of the commissions. One of the promising areas we see is the overlapping of the functions of the commissions and mediators in the negotiations and reconciliation of the LD parties. The transfer to the mediators of functions for resolving the LD will ensure the availability of an alternative method of reconciliation, independence, professionalism of the mediator. It is possible that the question of applying judicial mediation while ensuring that this procedure is free for the parties to a labor dispute through its financing from state budget funds will require consideration. We recommend including maintaining a list of recommended mediators resolving labor rights

disputes directly in the list of functions of the Ministry of Labor and Social Protection, as well as drawing up a manual for resolving labor disputes as part of extrajudicial procedures.

The findings from other studies highlight the influential role of external representatives in either restoring relationships or escalating disputes. The nature of that influence is associated with three critical attributes of the representative:

1. Their current relationships with others involved in the dispute;
2. The extent to which they seek to maintain relationships into the future;
3. Their competency in dispute-handling.

While these attributes are largely related to individuals rather than roles, unions have unique potential for functioning as relationship managers and preserving employment relationships. The decline of unions, however, heightens the need for organizations to seek other improved ways of resolving disputes (Walker & Hamilton, 2012).

In recent decades, the state has been advancing the idea of forming structures for the pre-trial consideration of individual labor disputes. In studies alternative dispute resolution processes are seen as a way of avoiding costly and time-consuming litigation and in some circumstances can improve access to justice for individuals (MacDermott & Riley, 2011). The main forms of alternative dispute resolution (hereinafter-ADR) in Kazakhstan are currently conciliation commissions for individual labor disputes, and for collective labor disputes, ADR forms are reconciliatory commission, labor arbitration and mediation. It also provides for the possibility of resolving the arisen collective labor dispute through direct negotiations. However, due to the classification of labor disputes into individual and collective enshrined in the LC, a situation arises where out-of-court resolution of individual labor disputes is possible only in conciliation commissions and through mediation, and a closed list of ways to resolve them is established for collective labor disputes. According to the co-authors of this study, for all labor disputes, it is necessary to provide a single and at the same time open list of ways to resolve them.

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

The cumulative analysis allows us to identify conditions in Kazakhstan, which currently do not allow expanding the application of the mediation procedure to labor disputes.

Firstly

Due to the fact that the parties to a labor dispute are granted the right to determine whether a mediator will make any decision on the dispute under consideration, as well as the degree of compulsory execution of such a decision, the employer can always ignore the inappropriate result for him, and the employee will have to contact to court.

Secondly

At present, the costs associated with conducting a mediation procedure are several times higher than the costs associated with going to court for the protection of the violated right.

Thirdly

The legislator has established insufficient requirements for the qualifications of mediators.

Mediation is called to thrive as the right of the parties to the employment contract to have disputes solved through an appropriate and informal procedural choice. Yet rhetoric outruns reality: our current legal process and practice is heavily weighted in favor of a single adversarial structure, adjudication, although judicial proceedings are not always the most effective way of addressing legal concerns (Álvarez, 2015).

Prospects for the Creation in Kazakhstan of Special Labor Courts

The study analyzed the possibility of creating a labor justice in Kazakhstan. Judicial protection is the most common way to protect labor rights and the most effective, in the opinion of many, in terms of consequences. But it should be noted that a large number of appeals to the court for the protection of labor rights testifies, first of all, to the unsatisfactory resolution of the dispute by other means, the closest to the employee.

Currently, labor disputes are fully subject to the courts of general jurisdiction. The system of judicial review and resolution of a labor dispute in Kazakhstan has all the makings of a differentiation of judicial boards depending on the nature of the dispute, as is done in some foreign countries. It should be noted that such proposals involve compulsory arbitration. The mere fact that the third-party function is performed by a court does not relieve the process of its compulsory character, nor remove the basic objection in contract negotiation disputes that a non-contractual solution is imposed upon the parties (Sanders, 1947).

Based on the considered options for the organization and functioning of both ordinary and specialized courts in European countries⁶, as well as due to such negative features inherent in the system of judicial review and settlement of labor disputes in Kazakhstan, such as a large number of simultaneously considered claims by one judge, non-compliance with established in the LC and in the Civil Procedure Code of the Republic of Kazakhstan (hereinafter referred to as CPC⁷) terms of consideration and resolution of labor disputes, co-authors now consider it more appropriate to have a phased reformation of the existing labor dispute resolution system.

At the first stage, it is necessary to legally provide for the separation of labor dispute resolution boards in both district courts and regional courts, which will ensure the unity of judicial practice. The second stage should be the direct creation of labor courts-the first and appellate instances.

The proposed separation of special labor courts from courts of general jurisdiction will make it possible to legitimize the already practiced specialization of judges of general jurisdiction-some judges usually deal only with family matters, others only with civil and third labor disputes. Such specialization is quite effective due to the need to take into account the important specifics of a particular category of cases, the need for the judge to have deep specialized knowledge, which is quite difficult to achieve in all areas at the same time. In addition, specialization within the courts of general jurisdiction and the allocation of special judges for labor disputes will significantly relieve the remaining judges involved in the consideration of other types of disputes, which is important, given the tremendous burden on

judges of general jurisdiction in our country. The consequence of this will be the reduction of the time limits for the consideration of cases in court.

We think that the specialization of the courts is due to a number of reasons: first, their creation will help strengthen the judicial system; secondly, consideration and resolution of a specific category of cases ensures a higher professionalism of judges, since the lack of specialization of judges does not allow the courts to take into account the specifics of the dispute; thirdly, the courts of special jurisdiction will ensure the speed of judicial proceedings.

Labor disputes have several features that can influence the legal process of resolving them, which requires a more thorough, more professional approach to them. As noted above, according to the CPC, at present labor disputes are under the jurisdiction of civil courts, namely district (city) courts. In addition to labor disputes, the competence of the courts of general jurisdiction includes cases arising from civil, family, housing, and land, environmental and other legal relations. This does not allow the courts to focus on cases of labor disputes; priority is given to civil, family and housing matters. If a labor dispute comes to court, then, as a rule, it represents a significant complexity, both from the actual and from the legal point of view. At the same time, an indisputable advantage is the possibility of taking into account the specifics of this category of cases when they are considered in courts: when introducing labor specialization, it is expected that the quality and effectiveness of labor dispute resolution will increase.

Specialization of labor courts is not a panacea for the effective resolution and prevention of labor disputes. The studies make fair conclusions that litigation provides employees with a new source of bargaining power in the workplace, akin to the strike power in traditional industrial relations. However, although the potential for sizable damage awards creates a substantial threat for management, the actual number of employment law disputes that reach trial and result in verdicts is relatively small, weakening the ability of any particular group of employees to utilize this weapon. The expansion of employment arbitration and other employment dispute resolution mechanisms, such as peer review and mediation, have established a new system of workplace dispute resolution (Colvin, 2012).

CONCLUSION

The study substantiates new approaches to solving existing problems, filling gaps in legislation caused by poor quality regulation of labor disputes in Kazakhstan. It was established that the introduction of compulsory pre-trial examination of LD in the conciliation commissions led to a decrease in the number of lawsuits brought to the courts, but did not increase the validity and legitimacy of the claims on LD. The statistics processed in the study indicate a formal appeal to the conciliation commissions, as a way of overcoming the bureaucratic legal obstacles to resolving the dispute on the merits. The application of pre-trial consideration of LD in conciliation commissions did not solve the task of speeding up and cheapening justice for LD.

The paper proposes a system of extrajudicial, pre-trial and judicial procedures and bodies, allowing effectively protecting and restoring the violated labor rights of workers.

The main characteristics, criteria and advantages of using alternative ways of resolving labor disputes, as well as trends regarding the development and application of these methods in Kazakhstan are identified. In connection with the relative novelty and rarity of the application of ADRs, it seems expedient when reforming labor legislation to include in the Labor Code a provision fixing an open list of ADR methods.

The necessity of fixing the primary use by the parties of a labor dispute of conciliation procedures through direct negotiations between the employee and the employer or a single negotiation and conciliation procedure in the permanent body of the organization, in which an intermediary elected from the list drawn up by the Ministry of Labor and social protection of the population of the Republic of Kazakhstan.

The success of the mediation procedure depends on whether it is possible to recognize their real interests behind the formal legal position of the parties, and the mediator helps them with this. In addition, it may caution parties to the conflict from using funds that can only aggravate the dispute. As a result of the study, we distinguish several categories of labor conflicts for which mediation may be the best way to reach agreement:

1. Situations not regulated by law.
2. Situations in which the employee and the employer expect a continuation of the relationship in the future.
3. The desire of the parties to maintain confidentiality.
4. Reputational risks.
5. Difficult, unpredictable and case situations.

Based on statistical data, as well as on the analysis of legislation, it is proposed to establish in the Labor Code the provisions governing the procedure for conducting a mediation procedure for resolving labor disputes, namely the norms:

1. On the application of judicial mediation with the provision of free of charge for carrying out this procedure for the parties to a labor dispute through its financing from budget funds. This does not exclude the possibility of the parties to the labor dispute to apply the method of ADR out of court at its own expense, too;
2. On the inclusion of mediation in the corporate culture of the organization. Inclusion of condition of the mediation dispute resolution in individual labor and collective bargaining agreements, as well as social partnership agreements.

Based on the results of a study of various options for the functioning of courts of general jurisdiction and specialized courts in Kazakhstan, the expediency of a phased reform of the existing system for the consideration and resolution of labor disputes is substantiated. At the first stage, it is proposed to legislatively provide for the separation of labor dispute resolution boards both in district courts, regional courts, and in the Supreme Court of Kazakhstan, which will ensure the unity of judicial practice and lead the further development of the judicial system towards the final goal-the creation of labor courts.

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ENDNOTE

1. The Constitution of the Republic of Kazakhstan was adopted at a republican referendum on August 30, 1995.
2. The Labor Code of the Republic of Kazakhstan dated November 23, 2015 No. 414-V 3PK, entered into force on 01/01/2016.
3. Reports on the consideration of civil cases by the courts of first instance. Statistical data on the consideration of civil cases by the Supreme Court of the Republic of Kazakhstan

- <http://sud.gov.kz/rus/content/statisticheskie-dannye-o-rassmotrenii-grazhdanskih-del>; Reports on the work of the courts of first instance for the consideration of civil cases in the Information Service of the Committee on the legal statistics and special accounts of the state office of Public prosecutor of Republic of Kazakhstan // <https://qamqor.gov.kz>
4. Reports on the consideration of civil cases by the courts of first instance. Statistical data on the consideration of civil cases by the Supreme Court of the Republic of Kazakhstan <http://sud.gov.kz/rus/content/statisticheskie-dannye-o-rassmotrenii-grazhdanskih-del>; Reports on the work of the courts of first instance for the consideration of civil cases in the Information Service of the Committee on the legal statistics and special accounts of the state office of Public prosecutor of Republic of Kazakhstan // <https://qamqor.gov.kz>
 5. See in detail about the problems of the status of conciliation commissions: Zh.A. Khamzina Labor disputes: legal construction for consideration // <https://www.zakon.kz/4832056-trudovye-spory-pravovaja-konstrukcija.html>
 6. One argument in favor of creating a system of labor courts is, in our opinion, the fact that such courts exist and function successfully in many countries of the world, which proves the viability of this idea. In particular, specialized labor courts exist in Germany, Finland, Great Britain, France, Austria, Belgium, Denmark, Luxembourg, Spain, Portugal, Switzerland (in certain cantons), Sweden, Norway, Canada (in Quebec), New Zealand, Israel. In the United States, Japan, there are specialized administrative bodies that perform judicial functions. As a part of such a labor court, as a rule, there are both a professional judge and two assessors, one each from entrepreneurs and from workers. This procedure provides a parity representation of the interests of the disputing parties with the figure of a judge as an impartial arbiter in the process of resolving a labor conflict.
 7. The Civil Procedure Code of the Republic of Kazakhstan dated October 31, 2015 No. 377-V LRK, entered into force on 01/01/2016.

REFERENCES

- Álvarez, R.G. (2015). *The role of mediation in the resolution of employment disputes*.
- Bingham, L.B., Lipsky, D.B., Seeber, R.L., & Fincher, R.D. (2008). Emerging systems for managing workplace conflict: lessons from American corporations for managers and dispute resolution professionals. *Industrial and Labor Relations Review*, 57(4), 615-617.
- Bollen, K., & Euwema, M. (2013). Workplace mediation: An underdeveloped research area. *Negotiation Journal*, 29(3), 329-353.
- Bužinskas, G. (2017). *Labour rights defence: The experience of the Baltic States*. Labour law reforms in eastern and Western Europe.
- Caputo, A., Marzi, G., Maley, J., & Silic, M. (2019). Ten years of conflict management research 2007-2017: An update on themes, concepts and relationships. *International Journal of Conflict Management*, 30(1), 87-110.
- Colvin, A.J. (2007). Institutional pressures, human resource strategies, and the rise of nonunion dispute resolution procedures. *Industrial and Labor Relations Review*, 56(3), 375-392.
- Colvin, A.J. (2012). American workplace dispute resolution in the individual rights era. *The International Journal of Human Resource Management*, 23(3), 459-475.
- Feng, J., & Xie, P. (2019). Is mediation the preferred procedure in labour dispute resolution systems? Evidence from employer-employee matched data in china. *Journal of Industrial Relations*, 62(1), 81-103.
- Goerke, L., & Neugart, M. (2015). Lobbying and dismissal dispute resolution systems. *International Review of Law and Economics*, 41(1), 50-62.
- Halegua, A. (2008). *Getting paid: Processing the labor disputes of China's migrant workers*.
- Khamzin, A.S., Aldashev, S., Tileubergenov, Y.M., Kussainova, A.K., Khamzina, Z.A., & Buribayev, Y.A. (2016). Legal regulation of employment in Kazakhstan. *International Journal of Environmental and Science Education*, 11(18), 11907-11916.
- Khamzina, Z.A., Buribayev, Y.A., Oryntayev, Z.K., & Kuttygalieva, A. (2015). Problems of overcoming poverty in the republic of Kazakhstan. *Mediterranean Journal of Social Sciences*, 6(3), 169-176.
- Lewicki, R. (2003). *Managing conflict and negotiation effectively in the workplace*. Australian Journal of Psychology. Wiley-Blackwell. Retrieved from

- <http://lcweb.senecac.on.ca:2048/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=11893278&site=ehost-live&scope=site>
- 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.
- Mahony, D.M., & Klaas, B.S. (2008). Comparative dispute resolution in the workplace. *Journal of Labor Research*, 29(3), 251-271.
- Sanders, P.H. (1947). Types of labor disputes and approaches to their settlement. *Law and Contemporary Problems*, 12(2), 211-219.
- Schmidt, J.P. (2013). Mediation in Portugal: Growing Up in a Sheltered Home. In K.J. Hopt, & F. Steffek (Eds.), *Mediation: Principles and Regulation in Comparative Perspective* (pp. 809-837). Oxford: Oxford University Press.
- Tisserand, J.C. (2018). Labor disputes and pretrial settlements: The French case. In *Healthcare Antitrust, Settlements, and the Federal Trade Commission* (pp. 345-373). Emerald Publishing Limited.
- Ury, W.L., Brett, J.M., & Goldberg, S.B. (1988). *Getting disputes resolved: Designing systems to cut the costs of conflict*. Program on Negotiation at Harvard Law School.
- Van-Gramberg, B., Teicher, J., Banber, G.J., & Cooper, B.K. (2017). A changing world of workplace conflict resolution and employee voice: An Australian perspective. *Conflict and Its Resolution in the Changing World of Work: A Conference and Special Issue Honoring David B. Linsky*. Retrieved from <http://digitalcommons.ilr.cornell.edu/lipskyconference>
- Walker, B., & Hamilton, R.T. (2012). Representatives and employment rights disputes: What works and what doesn't? *Journal of Industrial Relations*, 54(5), 596-611.
- Zhang, X., Bollen, K., Pei, R., & Euwema, M.C. (2018). Peacemaking at the workplace: A systematic review. *Negotiation and Conflict Management Research*, 11(3), 204-224.