

LABOUR LAW OF THE MODERN KAZAKHSTAN

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ABSTRACT

The article contains the complex analysis of questions of the labour law of the Republic of Kazakhstan. In work problems of a subject, a method, system of the labour law are investigated; the substance and the maintenance of sources of the labour law in the modern conditions of the Republic of Kazakhstan is considered; the system of the principles of the labour law is analysed; the system of the legal relationship developing in the sphere of wage labour is proved; the organization is studied and specifics of institute of social partnership are defined; problems of legal regulation of employment and employment. Relevance of subject is caused by interests of the state and society in high-quality fixing and a regulation of labour rights of the person in the modern legal system and the public relations. Author's interpretation of the concept of legal support of labour rights of the person is as a result formulated and proved. In work the conclusions and offers directed to perfecting of standards of the current labour legislation of the Republic of Kazakhstan and law-enforcement practice are formulated.

Keywords: Labour Law, Wage Labour, Employment, Social Partnership.

INTRODUCTION

The modern labour law is not imaginable without inclusion of the guarantees in it providing the rights of the employer in the organization of work. The norms regulating the rights of the employer on the organization of production, labour processes belong to such guarantees; engaging of workers to disciplinary responsibility; indemnification put to the employer with the worker, etc. Thus, the modern labour law has to be considered in two main aspects: As the branch is right, providing guarantees of exercise of work of the worker and application of wage labour by the employer, and also as the branch of the right regulating all extensive sphere of existence of the market of wage labour.

So, the main role of the labour law is that it aligns interests of society, the states, and also workers and employers in scope of wage labour, regulates in this sphere behavior of people taking into account their interests, promotes improvement of working conditions and its results (Gorman & Finkin, 2004; Cox, 1960; Summers, 1988).

The labour law is based on standards of constitutional right which establishes the fundamental principles of the national right, including defines original positions of the labour law. So, the Constitution of the Republic of Kazakhstan in Art. 24 establishes the right to freedom of work, the free choice of a kind of activity and profession, the right for the working conditions meeting safety requirements and hygiene, the right for individual and collective labour disputes with use of the ways of their permission established by the law including the right for a strike, the right for remuneration for work without any discrimination, right to rest, the right for social protection from unemployment. Besides, the Constitution guarantees to workers' duration of operating time established by the law, days off and holidays, the paid annual vacation, the minimum size of the salary. It is important to note that standards of the labour law should not contradict the constitutional norms.

The complex nature of studying of problems of legal regulation of labour rights of the person was based on a research of works of experts in the field of branch jurisprudence, especially in the constitutional, labour law, the right of social security: Atleson, Compa, Rittich, Sharpe & Weiss, 2008; Gorman, Finkin, 2004; Scott, Cafaggi & Senden, 2011; Gregory, 1950; Fudge, 2007. The practical base of a research was made by statistical data, jurisprudence, and also on the declared problem results of the scientific investigations which are carried out by other authors were studied (Seidman, 2007; Kolben, 2009; Compa, 2008).

METHODOLOGICAL FRAMEWORK

The method receives the expression in receptions, tools, ways by means of which influence regarding a research is carried out. The originality of the public relations which are governed by the modern labour law of the Republic of Kazakhstan demands a special method of a legal research. The research technique of the labour law taking place in the modern economic relations of Kazakhstan can be characterized the following signs: A combination of peremptory and dispositive norms in regulation of the labour relations and relations which are immediately connected with labour; a combination of the centralized, local and contractual methods in establishment of working conditions; wide use in regulation of the public relations of social and partner agreements, the collective agreement with engaging of agents of the parties of social partnership; participation of workers in establishment, change of working conditions; unity and differentiation of regulation of application of wage labour; establishment of a special order of permission of labour disputes.

In the modern conditions of the Republic of Kazakhstan, since the moment of exercise of market reforms, a gradual withdrawal from the centralized labour market regulation was carried out, but any state is not dependent on the level of its economic development, a political system, public system cannot refuse the centralized regulation of application of wage labour as it is necessary in any social and economic conditions to guarantee to the worker labour rights, to fix the minimum requirements to realization of the labour relations by the parties of the employment contract. Now, by means of the centralized regulations features of labour process which are not settled by the Labour code of RK are established: A work procedure in dangerous, harmful conditions features of rationing of work, definition of qualification of the worker, etc.

RESULTS AND DISCUSSION

The subject of labour law has a complex structure and represents a combination of social labour relations and relations directly related to labour. The main relation of the subject of labour law is the employment relationship, another, a fairly significant part of the relations are directly related to labour, organization and management of labour, employment, training, retraining and advanced training of employees, social partnership, the conclusion of collective agreements and agreements, participation of employees (representatives of employees) in the establishment of working conditions in the cases envisaged by the LC of the RK, resolution of labour disputes, control over observance of the labour legislation of the Republic of Kazakhstan.

Along with the established position in the legal science on the independence and material nature of the labour law branch, there is an opposite position in Kazakhstan's legal science, which denies the independence and isolation of labour law, according to which this branch is viewed as a sub-sector of civil law. In accordance with this view, any private law treaty, including labour, is civil law, respectively, labour relations are a form of civil law and in addition, relations directly deriving from the employment contract also refer to civil law. Actually refuses to the labour law in independence; it is positioned as a sub-sector of civil law. We cannot agree with this position: Labour law is an independent branch of law; this quality is conditioned by the specifics of the subject matter: Labour relations and relations directly related to labour, and also the fundamental differences between the employment contract and the civil transaction. The principle of social protection of an employee in the process of employing wage labour by the employer lies in the basis of isolation of the subject of labour law: The employee is initially a weak party in the employment relationship with respect to the employer's position, the employee obeys the employer's will, fulfilling his instructions, observing labour discipline, fulfilling employer's acts. At the same time, the worker risks his health, and sometimes his life, in labour relations, the employee "transfers" his personal abilities to work, skills, skills, qualifications to the employer. Subject of the employment contract wage labour is not subject to return in kind when the employment contract is declared invalid, in contrast to the remuneration for labour. The foregoing basic characteristics of labour relations determine their special content and the social nature of labour legislation, which fundamentally distinguishes these categories from the corresponding civil law.

The predominant opinion in the public consciousness of Kazakhstanis about the insufficiency of the rights of trade unions that allow to influence the implementation of social and labour relations, to protect the rights and interests of its members, and, in general, influence the formation of social policy is unreasonable. In our opinion, the loss of influence of trade unions in this area has been associated with the loss of funds for the financing of social activities and, in some cases, the poor use of their rights by trade unions.

Kazakhstan is the state with one of the highest indicators in the world of self-employed population to economically active. So, according to the Statistics Committee of the Republic of Kazakhstan on statistics (<http://stat.gov.kz>) in Kazakhstan in 2016, the percentage of self-employed population was more than 31 percent, which is comparable to the level of countries

such as Mexico, Turkey. However, in the countries of Western Europe this figure is 10-15 percent, in Russia 6 percent.

State policy and a set of legal and organizational measures to be taken should be aimed at achieving productive and freely chosen employment of citizens. The state is focused on providing equal opportunities to citizens of the Republic of Kazakhstan, foreigners and stateless persons permanently residing in the Republic of Kazakhstan, to freely choose the kind of activity and profession, fair and favorable working conditions, social protection against unemployment; ensuring productive employment, reducing unemployment, creating jobs.

The "American" concept is based on the doctrine of confrontation between workers and the employer and is characterized by giving the parties of labour relations as much freedom as possible in regulating the relations arising from the employment contract. This doctrine is based on the inviolability of free competition, autonomy in the conditions of the free market of subjects of labour relations. The logical consequence of this is the minimization of state interference in the regulation of labour relations, and accordingly the main role in regulating labour relations is played by the organization itself, mainly through the conclusion of a collective agreement. Judicial practice, which in fact creates the rule of law, is of great importance in the regulation, which, however, reflects the peculiarities of the Anglo-American legal family (Atleson, 1983; Friedman, 1994).

European systems of labour relations regulation, based on the "continental" doctrine, are much more socially oriented and the extent to which the state interferes in labour relations. Recognizing and protecting the independence of the parties to labour relations, the primacy of collective agreements and other forms of their regulation directly in the organization and in the industry, European countries (especially France) make extensive use of legislative regulation of labour based on the definition of social priorities in the activities of the state, In the framework recommended by the state (Lenhoff, 1950; Barnard & Deakin, 2002; Forde, 1983).

The normative legal acts on labour extend to all workers and employers, regardless of the organizational and legal form of the employer, as well as the form of ownership on the basis of which the process of employing wage labour functions. Attraction of foreign labour is carried out on the basis of the quota, annually established by the Government of the Republic of Kazakhstan for professional and qualifying categories. The quota for attracting foreign labour is determined as a percentage of the number of economically active population and/or is set in absolute terms for priority projects and/or by country of outcome in accordance with the forecast of the labour market demand for the coming year.

The emergence of Kazakhstan as a legal state, the core of which is the regime of constitutional legality, determines the need to build a stable and optimal legislative basis for the life of society and the state. According to Article 1 of the Constitution of the country, the Republic of Kazakhstan claims to be a social state whose highest values are the person, his life, rights and freedoms. The provision that the Republic of Kazakhstan approves itself as a social state presupposes the development of the social and labour sphere of Kazakhstan in accordance with generally recognized social standards, the activities of the entire state apparatus in accordance with the purpose of building a social state, creating conditions for the citizens to exercise their social and labour rights, Implementation of public administration and

implementation of national policies in accordance with the priority of the social sphere over other areas of social and economic life.

Article 24 of the Constitution contains the most important provisions of labour law – the right to freedom of labour, free choice of occupation, profession, work conditions that meet safety and hygiene requirements, remuneration for work without discrimination, and social protection against unemployment, Recognizes the right to individual and collective labour disputes, as well as the right to rest.

TK fixes state guarantees in the field of labour remuneration of employees, which include:

- The minimum monthly wage;
- The minimum amount of hourly wages;
- Minimum wage standards;
- Payment for work in overtime;
- Payment for work on holidays and weekends;
- Payment for work at night;
- Limiting the amount of deductions from the employee's salary;
- State control over the full and timely payment of wages and the implementation of state guarantees in the field of labour remuneration;
- Procedure and terms of payment of wages.

Labour relations have their characteristics, which make it possible to distinguish them from related civil legal relations in the sphere of employing hired labour. The subject of the employment relationship is the labour process, in which the employer organizes and provides protection, and the employee complies with the rules of internal labour regulations established by the employer, as a rule, included in the work collective. Labour relationship is based on the personal nature of the worker's work activities, with the submission of labour rules. The compensatory nature of the employment relationship is manifested in the main duty of the employer in the payment of wages, in cash in a timely manner.

The modern composition of legal relations directly related to labour us is defined in the following order:

- Legal relationship on employment and employment;
- Organizational and management legal relations;
- Social and partnership legal relations;
- Legal relationship on training and professional development of the work;
- Legal relationship on the liability of the parties to the employment contract;
- Legal relationship to resolve labour disputes;
- Legal relationship monitoring the compliance with labour legislation of the Republic of Kazakhstan.

Article 23 of the Constitution establishes the right of all citizens to freedom of association and establishes that the activities of public associations are regulated by law. Trade unions in the Republic of Kazakhstan are one of the types of public associations of citizens established on a voluntary basis to achieve common goals that do not contradict the law. Trade unions are non-profit organizations.

Trade unions in the Republic of Kazakhstan (trade unions) are independent associations with voluntary membership that are voluntarily created by citizens on the basis of the commonality of their professional interests for the representation and protection of labour, as well as other socioeconomic rights and interests of their members, protection and improvement of conditions Labour. Everyone who carries out his work (professional) activity has the right, at his choice, to form trade unions to protect his interests, join them, engage in trade union activities and leave trade unions. This right is exercised freely, without prior permission. At the same time, membership in trade unions does not entail any restriction on labour, socio-economic, political, personal rights and freedoms of citizens guaranteed by law. It is forbidden to determine employment, promotion, or termination of an employment contract on the initiative of the employer because of the employee's membership of a particular trade union, entry or exit from it.

At the republican level, between the Government of the Republic of Kazakhstan, the republican associations of employers and the republican unions of employees within their competence, a general agreement is concluded a legal act that establishes general principles for the regulation of social, labour and related economic relations in the republic as a whole. Therefore, the provisions of the general agreement are necessarily taught when concluding agreements at lower levels: Regional, sectoral agreements and collective agreements.

The number of unemployed in Kazakhstan is steadily declining, according to the Committee of Statistics, if in 2000 there were 906, 4 thousand unemployed; in 2004 the unemployed population was 658.8 thousand people, in 2008-554.5 thousand, in 2012-474.8 thousand, in 2016-445.5 thousand people. Unemployed citizens are allocated from the economically active population, that is, people of working age, economically active population (labour) a part of the population at the age set for measuring the economic activity of the population, providing labour supply for the production of goods, works and services (employed in the economy and unemployed). The economically inactive population is individuals who are not employed or unemployed.

As the economic development of the Republic develops, the problem of unemployment must be weakened, but complete elimination is not possible with the existence of the labour market. Such conclusions allow us to make the experience of foreign countries that have come to a high level of economic development, but have not eradicated this problem in their society. The unemployment rate is published in the US, usually on the first Friday of each month, in the Eurozone data on the unemployment rate go out in the first ten days of each month, in Japan at the end of the month. So, officially registered unemployment rate as a percentage of the economically active population was at the end in 2016 in the US-4.6%, in Kazakhstan-5%, in Russia-5.4%, Germany-3.9%, Great Britain-4.8% (<https://www.bls.gov/bls/unemployment.htm>).

CONCLUSION

The basic principle of the wage labour market in Kazakhstan is the freedom of labour. Freedom of labour, first of all, is expressed in the free choice of a man by occupation and profession. This can be hired labour, and entrepreneurial activities, as well as all possible forms of independent employment. A person has the right to choose where, how, in what way, in which sphere to realize his knowledge and skills, abilities for work, received professional skills within the framework established by law. No one can be forced to work, forced labour is prohibited. You cannot force a person to work outside his will, except in cases stipulated by law (in the form of execution of the court certificate of punishment), contrary to his desire, ability or profession. At the same time, labour freedom provides for the provision of employment of the population as an activity of citizens connected with the satisfaction of personal needs that do not contradict the Constitution, laws and other normative legal acts of the Republic of Kazakhstan, and bring their earnings or income. The state pursues a policy of employment of the population by taking measures to reduce unemployment, create new jobs, support labour and entrepreneurial initiatives of citizens, state regulation of the education system, etc.

One can meet the point of view that Kazakhstan requires the constitutional fixing of the right to work, which, according to the researchers, will correspond not only to the republic's fundamental goal of building a social state, but also to its international obligations, in particular, the international pact ratified by Kazakhstan in 2006 Economic, social and cultural rights of 1966. However, in our view, the right to freedom of labour is broader than the right to work, absorbs it in its content. We believe that the right to freedom of labour presupposes the right to work, which is understood as the creation of conditions for the performance of labour activity in accordance with the capabilities and needs of man. The provision of these conditions for work is, first of all, the duty of the state, through the implementation of a set of legal, organizational economic measures, legislative support for the existence of labour relations and relations derived from them.

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