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Research Article

PROCEDURAL ASPECTS OF LABOR LAW: THE EXPERIENCE OF UZBEKISTAN AND KAZAKHSTAN

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ABSTRACT

This article discusses issues related to the consideration of labor disputes, which are one of the important institutions of labor law. In this regard, the labor legislation of both states is analyzed. When highlighting the procedural aspects of labor law, the opinions of scientists are taken into account. A proposal has been developed for further improvement of legislation related to the consideration of labor disputes in the labor market of Uzbekistan.

KEYWORDS

Labor disputes, Kazakhstan, Uzbekistan, labor procedural law, labor procedural code, special labor dispute courts.



INTRODUCTION

An independent, transparent, and effective judicial system is one of the cornerstones of the rule of law in practice. In this view, any interested person has the right to go to court to protect his or her violated or disputed right or legally protected interest, implying that these individuals have the right to suit in the courts in the manner prescribed by law. It should be emphasized that most of the norms connected to the institution of labor disputes in both countries' legislations are procedural in nature.

The Labor Codes of Uzbekistan and Kazakhstan, in particular, provide for a number of norms such as the establishment of a single labor dispute commission, as well as procedures for resolving disputes, implementing the commission's decision, appealing the commission's decision, appealing deadlines, and transferring labor disputes to district courts. In turn, the Code of Civil Procedure of the Republic of Uzbekistan regulates the resolution of labor disputes in court as all other civil cases.

Due to the dispersed location of procedural standards for resolving labor disputes there have been certain differences between the views of scholars on the procedure for resolving labor disputes. Many foreign scholars have questioned the need for a procedural law or a Code of Labor Procedure (a specially codified legal document) to regulate labor relations effectively in a market economy in recent years. Scholars' viewpoints in this topic are largely divided into three categories, as can be observed.

The first group of scholars believes that the collection of rules governing the resolution of labor disputes in

court should be isolated from the Labor Code and defined as its own chapter in the Code of Civil Procedure. Some experts say that the Labor Code, as one of the most important institutions, should separate the rules governing the judicial resolution of labor disputes and incorporate them into the appropriate section of the Code of Civil Procedure. They believe it is necessary to remove from the Labor Code the provisions relating to judicial review of labor issues, that is, the norms of this civil procedure law. That is, it is necessary that the norms related to the procedure for consideration and resolution of labor disputes in the Labor Disputes Commission should be regulated by the Labor Code. This is due to the fact that the commission's operation does not follow the same procedural pattern as civil proceedings [1].

The second school of researchers contends that the labor process is inextricably linked to civil procedural law, and that the consideration and resolution of labor disputes in court is a set of norms that are part of civil procedural law¹.

Another team of experts contends that the creation of a Labor Procedure Code, as well as specific labor courts, is a necessity of the times for efficient protection of labor relations matters, particularly employee rights. Proponents of this viewpoint think that the principles of civil procedural law, which are founded on substantive law, regulate the resolution of disputes originating from civil law relationships in court. That is, the objects of civil law relationships are equal and autonomous in decision-making, emphasizing that no party may administratively affect

¹ Lushnikov A.M., Lushnikova M.V. Labor Law Course: Textbook. The essence of labor law and the history of its development // [http://lib.maupfib.kg/wp-](http://lib.maupfib.kg/wp-content/uploads/2015/12/juristy/akademy/kurs%20trudovogo%20prava.pdf)

[content/uploads/2015/12/juristy/akademy/kurs%20trudovogo%20prava.pdf](http://lib.maupfib.kg/wp-content/uploads/2015/12/juristy/akademy/kurs%20trudovogo%20prava.pdf).



the other. The Labor Procedure Law should ensure the procedural rights and legitimate interests of employees and employers, as well as legal equality in resolving labor disputes, according to academicians arguing for the creation of such a code. He believes that a separate section of the code should be allocated to the resolution of specific types of labor disputes².

In addition to the views voiced by academics in favor of the creation of a labor code, it can be said that in today's market economy, new modern professions and specialties are emerging. Home-based workers, telecommuters, temporary workers, individual entrepreneurs and their staff, and domestic workers are among those who fall into this category. In relation to the cited jobs, there are set of procedural features such as working hours, rest time, payment for their job, and consideration and resolution of problems arising from the termination of their employment contract. According to M.O. Buyanova, when considering specific labor disputes, courts apply general litigation rules, such as the principle of equality of parties. This idea might apply to individuals who have gone into a family or civil relationship, but implies that the equality of the parties to the dispute in resolving labor disputes does not exist in practice. M.M. Mamasiddikov and V.I. Martynenko, both procedural scholars, have endorsed this idea. According to M.M. Mamasiddikov, the employer, as a party to the employment contract, regulates the quality and amount of labor, checks the storage and use of enterprise property or other valuables, and keeps records while managing the enterprise's production and economic operations. In

contrast to the employee, an employer with the capacity to carry out these activities, i.e., a production and management apparatus, will have sufficient knowledge regarding the damage inflicted³.

It is no secret that the introduction of a distinct labor procedure code in the legislation of Uzbekistan takes a long time and a lot of money. In this regard, we recommend that the Law "On the procedure for consideration and resolution of labor disputes in the Republic of Uzbekistan" be adopted. Most significantly, the law's norms should improve the procedural rules that govern the process of settling labor disputes outside of the courtroom. Furthermore, the major goal of enacting this law shall be further improvement of the procedural aspects of resolving labor disputes by alternative means, enhancing the procedural standards for considering and resolving labor issues in court (as the procedure for consideration and resolution of labor disputes in court is not separated by a separate section and chapter in the civil procedure legislation). In addition, it will be necessary to provide a general summary of the alternative methods for settling labor disputes that can be employed effectively.

Many CIS countries have particular legislation governing the resolution of labor disputes. In particular, in the Russian Federation - by the law "On the settlement of individual labor disputes", in the Republic of Kazakhstan - by the Law "On collective labor disputes and strikes"⁴.

² Obuhova G.N. Some problems of systematization of procedural norms in labor law // <https://cyberleninka.ru/article/n/nekotorye-problemy-sistemizatsii-protsessualnyh-norm-v-trudovom-prave/viewer>

³ Mamasiddiqov M.M. Theoretical and practical problems of recovery of labor damages in court: a dissertation for the degree of Doctor of Law. - Tashkent, 2009. p.176.

⁴ Law of the Republic of Kazakhstan No. 20-1 "On collective labor disputes and strikes" (dated July 8, 1996).



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