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LEGAL SUPPORT FOR THE MANAGEMENT OF SOCIAL AND LABOR CONFLICTS IN THE REPUBLIC OF KAZAKHSTAN

Abstract: The relevance of the conducted research is predetermined by the problem of state security, which has recently aggravated as a result of intensification of geopolitical confrontations. The processes of globalization create danger of transformation of local conflicts on a level of the organization in large-scale collisions of regional, national and global scales. In this connection, an important factor in personnel management at all levels is the construction of dialogue as a prerequisite for the sustainable development of society and the state.

The authors note that the category of conflict in the labour legislation of the Republic of Kazakhstan is not enshrined and is revealed through the regulated mechanisms of consideration and resolution of labour disputes, which, in the authors' opinion, is not quite correct. The authors analyse paragraphs. 16 of paragraph 1 of Article 1 of the Labour Code of the Republic of Kazakhstan and propose to make an addition to the rule.

The authors express confidence that the system of management of social and labor conflicts should be developed at the level of local rule-making adapted, on the one hand, to modern realities and, on the other hand, to corporate culture of each organization.

Keywords: conflict, dispute, ombudsman, mediator, employee, employer

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Правовое обеспечение управления социально - трудовыми конфликтами в РК

Аннотация: Актуальность проведенного исследования предопределена проблемой государственной безопасности, усугубившейся в последнее время в результате усиленных геополитических противостояний. Процессы глобализации создают опасность трансформации локальных конфликтов на уровне организации в крупные столкновения региональных, республиканских и мировых масштабов. В связи с этим, важным фактором в системе управления персоналом на любых уровнях выступает выстраивание диалога, как необходимое условие устойчивого развития общества и государства.

Авторы отмечают, что категория конфликта в трудовом законодательстве РК не находит своего закрепления и раскрывается через регламентированные механизмы рассмотрения и разрешения трудовых споров, что по мнению авторов не совсем верно. Авторы подвергают анализу пп.16 п.1 ст.1 ТК РК и предлагают внести в норму дополнение.

Авторы выражают уверенность, что система управления социально - трудовыми конфликтами должна развиваться на уровне локального нормотворчества, адаптированного с одной стороны к современным реалиям, с другой стороны к корпоративной культуре каждой организации.

Ключевые слова: конфликт, спор, омбудсмен, медиатор, работник, работодатель

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ҚР әлеуметтік-еңбек жанжалдарын басқаруды құқықтық қамтамасыз ету

Аннотация: жүргізілген зерттеудің өзектілігі жақында күшейтілген геосаяси қарама-қайшылықтар нәтижесінде шиеленіскен мемлекеттік қауіпсіздік мәселесімен алдын ала анықталған. Жаһандану процестері ұйым

деңгейіндегі жергілікті қақтығыстардың аймақтық, республикалық және әлемдік масштабтағы ірі қақтығыстарға айналу қаупін тудырады. Осыған байланысты кез-келген деңгейдегі персоналды басқару жүйесіндегі маңызды фактор қоғам мен мемлекеттің тұрақты дамуының қажетті шарты ретінде диалог құру болып табылады.

Авторлар ҚР еңбек заңнамасындағы жанжал категориясы өзінің бекітілуін таппайтынын және еңбек дауларын қарау мен шешудің регламенттелген тетіктері арқылы ашылатынын атап өтті, бұл авторлардың пікірінше мүлдем дұрыс емес. Авторлар ҚР ЕК 1-бабы 1-тармағының 16-тармағын құқықтық талдаудан өткізіп, осы фнормаға қосымша енгізуді ұсынады.

Авторлар әлеуметтік-еңбек қақтығыстарын басқару жүйесі, бір жағынан қазіргі шындыққа, екінші жағынан әр ұйымның корпоративтік мәдениетіне бейімделген жергілікті норма шығару деңгейінде дамуы керек деген сенім білдіреді.

Түйінді сөздер: жанжал, дау, омбудсмен, медиатор, қызметкер, жұмыс беруші

Legal support for the management of social and labor conflicts is a complex cyclical set of legal mechanisms and processes aimed at eliminating disagreements between the parties defending different points of view.

In conditions of fierce competition and unstable situation, it is wrong to focus only on economic survival. We consider it necessary to provide an in-depth analysis of management decisions in order to identify the most optimal options for legal regulation of the management system of social and labor conflicts, which will allow us to develop a strategy for the long-term sustainable development of economic entities.

The main idea of the functional theory of conflict G. Simmel is the recognition that the conflict performs an important function in social relations in the form of social relations in the collision of incompatible positions of participants in the conflict [1, p.14].

Often, the conflict is revealed as a social type of interaction, as a confrontation between the parties due to the contradiction of interests, values and goals [2].

According to Marxist theory, a contradiction should not cause a negative perception, it should be considered as a logical mistake. Contradiction is the principle of dialectical thinking, it is present in all phenomena and serves as the main cause of their movement and development [3].

In the same positive aspect, p.a. Astakhov characterizes the essence of the legal conflict, noting that it should not be understood as a legal pathology; it serves as a means of exercising the right to protection and is implemented by legal means. The constructive orientation of the legal conflict is expressed through human rights, law-restoration, mediating and control functions [4].

Interesting is the position of T.M. Abaideldinova and B.A. Kenzhekhanova, who

connect conflicts in labor relations with the competitive activity of people, with the desire of one subject to surpass the other, by defending each of its participants their opinions [5, p.151].

It follows from the above that a special level of interaction is recognized as a conflict, and the basis for such interaction is a contradiction.

It should be noted that the category of conflict in the labor legislation of the Republic of Kazakhstan does not find its consolidation and is disclosed through regulated mechanisms for considering and resolving labor disputes [6], [7].

Article 1 of the Labor Code of the Republic of Kazakhstan interprets an employment dispute as a *disagreement between an employee (employees) and an employer (employers), including those previously in labor relations, on the application of the labor legislation of the Republic of Kazakhstan, the fulfillment or amendment of the terms of agreements, labor and (or) collective agreements, acts of the employer* [6]. This approach of the legislator seems to us not quite correct.

First, disagreements are the subject of a dispute, but not the dispute itself. The dispute should be considered as a kind of legal relationship arising in the sphere of labor, expressed in the discussion of emerging disagreements, during which the parties argue their position and deny the opponent's beliefs that are incompatible with their own interests.

Secondly, the position of the legislator presented in the Labor Code of the Republic of Kazakhstan identifies the categories of "conflict" and "dispute". In our opinion, the conflict is more primary than the dispute, the first is defined as the basis of the second. Not every conflict is transformed into a dispute, but every dispute grows out of the conflict. At the moment when the existing contradictions are submitted to the competent authority or authorized person, the

conflict is modified into a dispute.

In accordance with this, we consider it reasonable to make a corresponding addition to claims¹⁶, paragraph 1 of Art.1 of the Labor Code of the Republic of Kazakhstan and state it in a new wording: "... an *employment dispute is a disagreement between an employee (employees) and an employer (employers), including those previously in labor relations, on the application of the labor legislation of the Republic of Kazakhstan, the fulfillment or amendment of the terms of agreements, labor and (or) collective agreements, acts of the employer, submitted for consideration by the competent authority or an authorized person.*"

The author is convinced that the absence in the LC of the RK of the norm on the procedures for resolving labor conflicts is quite natural. The conflict in its pure form is not subject to legal regulation, since the right has a limited set of techniques and means, unlike social regulators, which makes it difficult for it to influence the views, thoughts and beliefs of people.

Based on the peculiarities of the method of labor law, labor relations are affected by a combination of centralized and local regulation, respectively, it is possible to manage contradictions in the team both through a regulatory legal act and with the help of local acts of the employer.

Speaking about the centralized level, we note that the conflict, as a legal category, is reflected in the content of domestic legislation in a rather narrow sense. Thus, in the field of public service and public administration, as well as in entrepreneurial and corporate relations, the system of restrictive measures includes the concept of "conflict of interest" [8], [9], [10], [11]. Thus, in these areas, the conflict is considered not as a form of relationship, but as a corrupting factor in which the personal interests of a certain category of subjects can lead to improper performance of their official powers. In labor relations, as in many legal relations, the conflict is a complex relationship between its participants (opponents).

The Labor Code of the Republic of Kazakhstan contains provisions on labor conflicts, regulating in subpara.2 cl. 4, cl.3 cl. 5, cl.3 of clause 6 of Art.153 of the Labor Code of the Republic of Kazakhstan, that social partnership agreements should provide for provisions on

measures to prevent and prevent social and labor conflicts and strikes. In addition, the employer is obliged to take into account the opinion of employees in cases of disagreement when issuing acts of the employer (Art.12 of the LC of the RK), create conditions for negotiating when developing and concluding agreements and collective agreements (Art.150, Art. 156 of the Labor Code of the Republic of Kazakhstan), to consider disagreements within the framework of collective labor disputes (Art.163 of the LC of the RK), to ensure the creation of conciliation and conciliation commissions in the organization (Ch.15, ch.16 of the LC RK) [6].

These provisions provide for a procedure for considering and resolving disagreements in the labor collective, but the question remains whether the employer should manage conflicts, creating the necessary conditions for their forecasting, prevention and prevention.

We believe that the employer is obliged to provide all the necessary conditions in this direction, since the established system of strategic conflict management in the organization acts as one of the main corporate values, inspires confidence among partners, increases competitiveness, indicates the employer's orientation to the principles of corporate social responsibility. For this reason, managers should be interested in the constant search for new and original solutions in all areas of management, including in the field of conflicts.

Of course, the labor conflict is not subject to local management in all cases, since most of the daily life of the staff remains outside the law, and disagreements are often emotional.

In our opinion, social and labor contradictions can be subject to legal influence, provided that they:

- 1) arise between participants of legal relationship concerning realization of subjective rights and legal obligations;
- 2) are related to the legally significant interests of the parties;
- 3) entail formally defined legal consequences;
- 4) can be resolved through legal mechanisms.

Theoretical analysis of the literature shows that modern scientists in the field of personnel management have developed a system of methods

for influencing conflicts, among which structural methods are of particular research interest. Structural methods affect the contradictions that arise due to the illiterate organization of workers' labor [12].

Coordination and *integration mechanisms are a common structural tool for dealing with such conflicts*. They are considered as an established communication system in the organization with a clear hierarchical structure of the distribution of authority in decision-making.

An equally important mechanism is the introduction into the structure of the organization of special units or officials whose functional role is due to conflict management. In this aspect, the importance of classical institutions for the consideration of labor disputes is great - a conciliation and conciliation commission, labor arbitration. The trade union also has a role to play. At the same time, world practice is a positive example of the introduction of innovative conflict management institutions into the corporate environment, such as the labor ombudsman and the corporate mediator.

It should be noted that in Kazakhstan, the labor ombudsman received his distribution, his activities are provided for by the provisions of the model Corporate Governance Code of the Republic of Kazakhstan. The Ombudsman is a person appointed by the Board of Directors whose role is to advise employees who have applied to him and assist in resolving labor disputes, conflicts, problematic issues of a social and labor nature, as well as in observing the principles of business ethics by employees of the company [13].

Unlike the Ombudsman, the corporate mediator has not entered the practice of managing domestic business, although in Western companies it has its popularity. The idea of corporate mediation appeared in mid-2020, when there was a need to switch to remote working conditions during the coronavirus pandemic. At this time, the level of conflict reached its apogee, and mediators acted as intermediaries between the warring parties. Now in these countries, the mediator participates in conflicts, trains staff in alternative methods of resolving labor disputes, develops effective mechanisms for resolving labor disputes [14].

In our opinion, the difference between an ombudsman and a corporate mediator is that the

ombudsman is not accountable to the head of the organization and is appointed by the decision of the Board of Directors, the mediator on the contrary is a full-time employee and is under the direct control of the head.

In addition, the Ombudsman submits for consideration by the relevant bodies and officials of the organizations the problematic issues identified by him, which are systemic in nature and require appropriate decisions, puts forward constructive proposals for their solution. The mediator is not competent to draw conclusions, he enters the process of resolving conflicts by organizing negotiations to achieve a solution that would satisfy the interests of the disputing parties.

We recognize that the legal status of the mediator in this aspect contradicts the norms enshrined in the Law of the Republic of Kazakhstan dated January 28, 2011 No. 401-IV "On Mediation", according to which the mediator must be, first of all, independent and impartial (Art.4 of the Law) [15]. At the same time, we consider this practice to be an illustrative example of a managerial decision within the framework of impact on social and labor conflicts.

An important role in the legal support of conflict management in modern organizations is played by internal documents aimed at regulating corporate relations and forming a corporate culture as the basis for ethical and professional behavior. These acts are most often developed in the form of so-called "codes of ethics" and play an invaluable role in the management of personnel, since they fix such ethical categories as values, beliefs, traditions. They regulate the duties of the employee and the employer, not regulated by legal norms, but having in their content ethical and moral guidelines for the implementation of joint professional activities in the organization.

In conclusion, we note that labor relations are a deliberately conflict environment consisting of a set of different opinions, preferences, emotions. Adhering to a policy of ignoring or suppressing conflicts is a failed strategic idea. It is more reasonable to ensure a joint search for effective management decisions, to introduce innovative methods of conflict management, to use reasonable tools.

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