

Protection of the Labor Law of Workers by Labor Unions in the Republic of Kazakhstan

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Abstract: *Objective:* To determine the notion of protection of workers' rights by the labor legislation of the Republic of Kazakhstan and foreign countries. *Methods applied:* comparative and legal analysis. *Results:* Analysis of the labor legislation of the Republic of Kazakhstan and foreign countries shows the need and the importance of innovation in relation to trade unions in the Republic of Kazakhstan Law "On Trade Unions". *Scientific relevance:* The article analyzes importance of protection of the labor law of workers is caused by changes in social and economic system of the country and connected with this reforming of the labor legislation, taking place in 2007 by adoption of the Labour Code and legal acts, brought into accord to it, governing the labor relations. With transition to the market relations the number of violations of the labor law of workers has increased and unfortunately, still takes place.

Key words: Protection of labor rights • Trade union protection • legislators draft of a seasoned professional unions • workers' rights

INTRODUCTION

The importance of protection of the labor law of workers is caused by changes in social and economic system of the country and connected with this reforming of the labor legislation, taking place in 2007 by adoption of the Labour Code and legal acts, brought into accord to it, governing the labor relations. With transition to the market relations the number of violations of the labor law of workers has increased and unfortunately, still takes place.

In the process of transition to the market, a lot of challenges, related to the legal regulation of social relations have appeared. The market can not exist without the labor market and the market economy - without the use of this work. All the rest depend on the effectiveness of this application. Misunderstanding of this paves the way for social conflict in the main sphere of human activity [1-32].

Since the beginning of economic reforms, violations of workers' rights to unite, by their employers, become more frequent. In some organizations, employers attempt to create an obedient union and the workers are forced to join under the threat of dismissal. In connection with this, the activities of trade unions as organizations of workers, which are recognized to protect their rights and interests are very important.

Protection of workers' rights by unions is a complex problem and its solution requires a systematic approach to the various activities of the trade unions taking into account the diversity of forms of realization of their protective functions that can not remain unchanged. Determination of their features in a given period is essential for the protection of labor rights of workers [2-4].

It can be stated that the Government of the Republic of Kazakhstan and legislators enforce such laws and practices, in the XXI century, which are directly opposed to the idea of the Wagner Act of 1935.

Wagner's well-known law was adopted in the USA in 1935 - the Act of the national labor relations by which optimum conditions for activity of labor unions were created. It is easy to see that the act was adopted by the Congress of the USA after the Great economic depression at the end of the 20th - the beginning of the 30th on the basis of its lessons as a necessary and effective remedy for a prevention of catastrophic consequences of economic crises for workers. In particular, this law forces owners of the enterprises, their managing directors to sign collective agreements with hired workers mandatory and the party conducting negotiations on the conclusion of the collective agreement, has to be the labor union representing the majority of employees of the enterprise. The act of the national labor relations forbade

employers to put pressure upon workers not to enter labor union, or on the contrary, to force to the accession to the labor union pleasing to the employer; forbade employers to apply repressions in relation to participants of strikes; allowed such actions, as boycotts and pickets, the actions which would help hired workers to resist effectively to lock-out (mass dismissal of participants of a strike) or a strikebreaking. Lock-out and strikebreaking are the most effective remedies to make a strike almost useless [3-13].

It's obvious that the laws of the United States are not true for government circles of Kazakhstan, but it should be noted that these rulers act in the spirit of anti-union and anti-strike laws and enforcement, specific for the U.S. before the adoption of Wagner Act and even in the XIX century. We also should remember that in the United States after the entry into force of the Wagner Act, some measures and even laws complicating the activities of labor unions and strikes were taken. For example, in 1947 the Taft-Hartley Act "Act on the regulation of labor relations" was taken and it reflected mostly the interests of enterprise owners, but not the employees. The law prohibited certain types of strikes, such as solidarity strikes or strikes, containing political demands. Act allowed the U.S. president to postpone the strike for some 80 days, permitted strike-breaking. Thus, we can state that the legislation concerning trade unions and labor rights in the United States has developed in different directions, not only in favor of the rights and interests of employees. As a rule, the administration of the Republican Party has taken steps, including legislation restricting the rights of employees. Administration of the Democratic Party, on the contrary, have traditionally taken steps in favor of employees and trade unions. This situation leads to the fact that in choosing the next president of the country's trade unions, especially the AFL-CIO (American Federation of Labor-Congress of Industrial Organizations), are on the side of the candidate of the Democratic Party.

Most notably and effectively this support was manifested during the 2008 election campaign, as a result of which Barack Obama, a black candidate from Democratic Party, was elected as the U.S. president. The important role of trade unions in Obama's victory was also noted for example, by an American specialist on social and political issues Michael Walzer in his interview with the online edition of "Russian Journal" on December 16, 2008. Walzer noted that many qualified American workers, of white origin, psychologically were not ready to vote for a black candidate. But the U.S. trade unions have implemented a wide propaganda campaign in favor of Barack Obama. Why?

"Unions and their leaders simply did not believe that they can survive if the governing of the Republican Party continues for another eight years in the USA." But this does not mean that U.S. unions care only about their own existence and well-being, calling to vote for Obama. Walzer says that the problem is much more important and global. It's about protecting labor, vital rights of millions of employees because of the natural desire of the managers of the largest corporations to increase their profits at the expense of the interests of employees. Answering the questions of "Russian Journal" journalist, about the possibilities of trade unions to protect workers, "now and in the immediate historical perspective," Walzer said: "The unions can now protect workers only in those cases where they are protected by the state. Without government support, they will lose the fight against corporations, possibly on a global scale, particularly in America... In the United States in the 1930 "Wagner Act" was adopted... If Obama provides a similar support of organized labor, the unions will grow in quantity, especially in the provision of services" [4-35].

Two important conclusions can be made from Walzer's words: first - the social outlook of modern society depends on the effectiveness of trade union activities, the second - the United States in the early XXI century are in a situation of choice between two models of social order: one which was established at the beginning of the XXI century in countries such as Russia, Kazakhstan, where corporations with the state support completely suppressed the hired workers and the other one which was established in Sweden, where the trade unions, with the support of the state created a type of social organization, which can be called the most socially equitable and ensuring social stability and the highest level of life of employees. One of the most important indicators of social life in Sweden is probably the world's lowest income gap between the richest 10% and poorest 10% of families. This coefficient is equal to about 6. In Sweden, the social security system is highly developed, especially the pension system, unemployment is successfully regulated and the level of the minimum wage is high.

In our country, the term "Swedish socialism" can be found in journalism and even in the scientific literature quite often. But the political and social system in Sweden has nothing to do with socialism. Socialism is characterized by excessive restriction or even elimination of private enterprise, private economy through nationalization or confiscation of enterprises. In Sweden, the share of state-owned enterprises is less than in most other industrialized countries. The usage of the

expression «Swedish socialism» is explained by the fact that in Russia for a long time under the term “socialism” was meant the system, which ensured the social justice best of all. That is the reason of transferring the term on the Swedish model of a state system. Advantages of the Swedish social model are connected with that huge role which is played by labor unions. It is enough to tell that their members comprise 85% of the working population of the country. It may be the highest rate in the world. Thus it should be noted that in Sweden labor unions play extremely active role at the solution of the major social problems. Associations of labor unions of Sweden regularly conduct negotiations with association of employers of Sweden on labor issues, first of all concerning the regulation of a salary and other working conditions. Labor unions influence the political country leaders-especially considering that fact that in the last decades the government is mostly formed by the Social Democratic Party of Sweden which is ideologically very close to labor unions.

High level of social justice in this country will reach in many respects thanks to the heavy value-added tax. High level of social justice in this country can be attributed largely due to the high tax progressivity. The more income a person has, the greater the percentage of revenue he pays as a tax. The richest people in Sweden are required to give more than 50 % of their income as income tax. Progressive tax - is the main mechanism for the redistribution of money in favor of the poor social strata, the main mechanism for ensuring social stability and justice. Introduction and conservation of a progressive tax is largely due to the trade union movement. We can say that the most successful realization of the principle of social partnership is in Sweden. Most of the major social problems are solved at the level of negotiations between trade unions, employers and the government. But this does not mean that, such method of trade union activities as strike is excluded in this country. They are simply less common and do not reach such a size as in France. But this situation is typical for the second half of XX and the beginning of XXI century. At the beginning of XX century, the strikes were more frequent. Such social model that had been developed in Sweden by the end of the XX century was achieved largely due to strike activity of the previous years. Just as earlier in the UK and then in France, the government circles of Sweden, gradually became aware of the political and social importance of unions and guaranteed right to strike for the timely regulation of conflicts between workers and employers, in order to maintain social stability [3-16].

Thus, the Constitution of the Republic of Kazakhstan (Article 23) provides for the right of citizens of the Republic of Kazakhstan on the freedom of association. Activities of public associations governed by the law of the Republic of Kazakhstan of 31 May 1996 "On Public Associations", emphasizes the right to form trade unions to protect their interests. And this is done deliberately. The right to form trade unions, strengthening their legal status is a characteristic feature of a democratic society and the most important guarantee of labor rights. International instruments pay special attention to securing citizens' rights to organize. An example may be the ILO conventions such as the Convention number 11 on the right of association in agriculture; Convention number 87 on Freedom of Association and Protection of the Right to Organize, Convention number 98 on the Right to Organize and Collective Bargaining.

Labor Code of the Republic of Kazakhstan (hereinafter LC) examines and identifies as one of the basic rights of the employee the right to associate, including the right to form trade unions or other associations, as well as their membership, to provide and protect their labor rights (Article 22). And also, this provision of this law - as one of the basic principles of legal regulation of labor and others directly linked to them.

Protection of workers' rights by unions is a complex problem; its solution requires a systematic approach on various activities of trade unions taking into account the diversity of forms of realization of their protective functions that can not remain unchanged. Determination of their characteristics in a given period is essential for the protection of workers' rights.

Time elapsed since the entry into force of the Customs Code of the Republic of Kazakhstan, allows to draw some conclusions about the possibilities, of union workers, set forth therein, to form trade unions which are not fully realized, in my opinion and about the necessity of further improvement of the legal regulation of their activities.

One of the tasks the Custom Code is called to solve is the provision of the necessary legal conditions aimed at achieving a balance of the parties of labor relations (Paragraph 2 of Article 3). But it hasn't been solved up yet. There a son for this is the lack of standards in the Customs Code containing the order regulating the activities of trade unions. Today, the activities of trade unions are governed by rules inappropriate to modern requirements of the Law "On Trade Unions" of April 9, 1993, which shows the relevance of improving the legislation on trade unions.

Such attempt was undertaken by the Government of the Republic of Kazakhstan, which has submitted for review draft Law of the Republic of Kazakhstan "On Trade Unions" to the Majilis (Мәжіліс) of the Parliament of the Republic of Kazakhstan.

Upon review of the draft Law of the Republic of Kazakhstan "On Trade Unions" and conducted comparative legal analysis of the above draft, following comments arose:

1st: In the draft law, in my opinion, there are some contradictions. So Paragraph 1 of Article 12 states that the Republican Association of Trade Unions, which has affiliates in more than half the areas is created by branch unions on a voluntary basis in accordance with the civil legislation of the Republic of Kazakhstan. At the same time, Article 8 of the draft law states that the union created by a group of citizens at least ten people connected by their common professional and industrial interests, convening a constituent congress (conference, meeting), where the charter is approved and trade union bodies are formed. And according to Subparagraph 3 and Paragraph 1, Article 9 union project charter should include: membership in a trade union branch, the national association of unions as a member organization. It says that once you create a local union, it must be affiliated to the branch trade union (Article 15) and the branch trade union is affiliated to the national association of trade unions (Article 14 paragraph 2) and it all should be formed on the principle of "pyramid", everything should happen automatically. Otherwise, failure to comply with the requirements provided for Article 10 paragraph 2, implies the abolition of the state registration of trade unions, i.e. generally, it can not be a union. The question arises - Where is the voluntariness of start? (Clause 1 of Article 12), de jure- this is a compelling, i.e. there are inconsistencies in the rules of above mentioned draft law.

As we know, on December 30, 1999 the Republic of Kazakhstan has ratified the ILO Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize. It is clearly stated, in Article 1. Each member of the International Labour Organization for whom this Convention is in force undertakes to enforce the following provisions. Such as - Article 2 "Workers and employers, without any distinction, have the right to establish organizations of their choice without previous authorization and the right to join such organizations, subject only to the rules of the organization. According to Article 3 the Organization of the workers and employers have the right to draw up their constitutions and rules, to choose freely their representatives, organize their

administration and activities and to formulate their programs. Claim 2 of Paragraph 4 of Article 12 of the Draft Law provides that the Republican Trade Unions develops and defines the main directions, business strategy of unions affiliated to the Republican Association of Trade Unions. And also, claim 5 of the same article provides the right to republican association of trade unions to approve the standard charter of labor unions for the member organizations. The conclusion is, the Draft Law "About Labor Unions" contradicts the International norms. Besides, in the above-mentioned Convention (item 2 of Art. 8) it is told that the national legislation doesn't mention the guarantees provided by the present Convention and is applied so that not to break them. In the Constitution of the Republic of Kazakhstan (Art. 4) it is specified that the international contracts ratified by the Republic, have a priority before its law and are applied directly, except cases when from the international treaty follows that its application requires the publication of the law. Besides the above theoretical problems, contradict the Constitution of the Republic of Kazakhstan (Art. 23) which provides the right of citizens of the Republic of Kazakhstan for freedom of association. If workers having united, created local labor union, it doesn't mean that they wish to enter branch or republican labor union, therefore, the right for freedom of association is violated.

The 2nd: The draft of the Law (Art. 14 paragraph 2, paragraph 4) contradicts standards of the Labour Code (Art. 264). So in paragraph 2 of Article 14 of the Draft Law it is indicated that the industrial union is affiliated to the national association of trade unions and an authorized representative of employees in the social partnership at the sectoral level. In this article, paragraph 4 prescribes that branches and representatives of branch union are authorized employee representatives to negotiate the regional level on behalf of and within the authority of the branch trade union. Although Paragraph 3, Article 265 of the Customs Code states that authorized representatives of regional associations of employees are union of trade unions at the regional, city and district levels, (i.e., branch trade union hasn't been meant). In addition, the authorized representatives of branch trade union of employees are sectoral trade unions, which have structural subdivisions (branches and representative offices) in the regions, cities of republican significance (Paragraph 3, Article 264 of Customs Code).

In Kazakhstan there are few wishing to become the member of labor union, because of mistrust to the last. Since the beginning of carrying out economic reforms, cases of violation by employers of the right of workers on

association became frequent. In some organizations employers make attempts to create obedient to them labor union and the workers are forced to enter under the threat of dismissal. In my opinion, having adopted this bill, the given problem won't lose its relevance and at the same time can become the reason for the discontent of workers.

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