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EXTRAJUDICIAL RESOLUTION OF LABOUR DISPUTES IN THE DIGITIZED WORLD

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The labor dispute is the most pressing and important issue in the international arena and at the national level of states. The solution of any dispute takes material resources, emotional and time of the parties. Sometimes, despite a bilateral or multilateral agreement between the parties in labor law, there are disagreements and force majeure.

Labor law is a diverse set of laws applicable to issues such as employment, remuneration, working conditions, trade unions, and industrial relations. In contrast to laws on contracts, delicts or property, elements of labor law are somewhat less homogeneous than the rules governing specific legal relationships. In addition to individual contractual relations arising from the traditional employment situation, labor law concerns legal requirements and collective relations, which are becoming increasingly important in mass production societies, legal relations between organized economic interests and the state and various rights. and obligations related to certain types of social services. [1] The cause of a labor dispute in the international sphere is usually low wages, infringement of workers' rights, discrimination, etc. Especially in the developing and underdeveloped parts of the world, people receive extremely low wages even after working for several hours. While such countries also attract the majority of investors from all over the world, the cheapest labor and skilled workers are the main goal of these investors in order to get the maximum return on the smallest investment. Nevertheless, today millions of people earn as much per month as the cost of one burger in America.

Labor legislation regulates labor relations, resolves disputes between employer and employee concerning wages, pensions, insurance of employees, etc. For example, in India, the labor laws are also known as the employment laws. The history of labor law in India is naturally interwoven with the history of British colonialism. The industrial labor legislation adopted by the British was primarily intended to protect the interests of British employers. The earliest Indian law regulating the relationship between an employer and his employees was the Trade Disputes Act of 1929 (Law 7 of 1929).

Labor conflicts occur often enough, but not all of them can be called labor disputes. The labor code separates collective and individual labor disputes. Individual labor dispute is considered disagreement not only with the current employees, but also with persons who previously had an employment relationship with the employer. In cases of refusal by an employer in hiring a person who has

expressed a desire to enter into an employment contract, this may become an individual labor dispute. [2]

A labor dispute can be resolved by agreement of the parties, or by legal proceedings that may be delayed for a long time. Therefore, the parties try to use extrajudicial methods of protection of labor rights.

Labor Dispute Commission (CTS) is an extrajudicial way of resolving a dispute.

Today, in practice, the labor dispute commission works in the Russian Federation.

The conciliation commission is a special body that must be formed at most enterprises (except for small business). Its function is to resolve disputes between hired employees and the employer in the pre-court order. There is an approved procedure for the formation of such a commission, as well as a procedure for the consideration of employee requests, which must be adhered to. [3]

The practice of creating a labor dispute commission by the Republic of Kazakhstan

The Labor Code of the Republic of Kazakhstan specifically defines the mechanisms for the formation of a labor dispute commission. It should consist of representatives of the enterprise in the ratio of 50% from the employer and 50% from hired employees. Such a ratio is chosen so that none of the parties to the dispute has a formal advantage, and the decision is made on the basis of the arguments presented.

The principles of forming a conciliation commission for a particular enterprise are stipulated in a collective agreement. Further, the following data should be written there: the number of commission members - the total composition of the people included in it, with the division by administration and representatives of the workforce; term of office - most often the commission is selected for 3 years, there may be other options; The procedure for considering applications and making decisions is usually the rules prescribed here do not differ from those specified in the legislation, that is, commission members have the right to decide on any labor disputes that arise in an enterprise, and the decision is made by majority vote for one or another version of the resolution.

The initial form of the conciliation commission is formed by the order of the managers of the enterprise on the basis of agreed fees or otherwise. Further, the action of the commission can last after the expiration of the term of office or the elections are renewed if the previous composition of the commission cannot act (function) in the same composition. But the ratio of 50 to 50 is the required criterion in any case. If a company has difficulties in forming commission members, a lawyer working in the field of labor disputes, who is competent in this matter and can help form a body in accordance with the law, is involved. [2]

Mediator

When employers and workers have claims that are subject to an important regulatory source, the Labor Code (legislation) of the country is. Either party may decide to file a lawsuit in court by filing a claim for damages. Each province sets its

own rules and guidelines for reviewing such requirements. At the same time, in some countries, for example, in Canada, such requirements are not resolved directly for consideration by a judge in court. An obligatory step in the judicial process is the mediation session. This practice is used not only in Canada, but also in Europe and in the CIS countries, despite the fact that the law of the states allows to go to court to resolve labor disputes.

The mediator (mediator) is an independent third party, but not necessarily a lawyer who meets with both parties and their lawyers in an attempt to reach an agreement. Both parties may agree on the choice of a mediator, or the coordinator may appoint a mediator in the case. The mediator does not manage the situation, but provides assistance that can help the parties find a common language and, ultimately, find a mutual solution. The vast majority of cases are resolved before, during or after mediation.

When resolving a dispute with a mediator, there are a number of reasons that directly benefit the affected parties:

Mediation reduces the time required to resolve a dispute, which avoids a long process and emotional losses from going to court; a shorter legal process often leads to a reduction in legal costs, which makes it more likely that the parties will consider their labor claims in legal proceedings; mediation can resolve disputes without publicly disclosing information about a lawsuit, which may have a negative impact on both employers and employees; mediation creates less pressure on the judicial system, thereby reducing the backlog and allowing more cases to proceed to trial with less delay.

Peaceful Agreement of Parties

A peaceful agreement or deal is the cheapest and fastest way to resolve a dispute. The parties may agree and come to a consensus by proposing their terms through negotiations. Also, at the conclusion of the transaction, each of the parties makes a compromise, which is a concession to avoid a conflict situation.

In the scientific work “Before the Judicial Protection of the Labor Rights of the Workers” I. B. Kalinin, L.A. Gorbunova noted that the agreement reached in this way is, in essence, a contract. It can not be enforced (not applicable to executive documents).

- appeal to a specialized public service - to the state labor and employment service in its local territorial bodies
- appeal to the trade union organizations of the appropriate profile.

Before we take active steps to protect and restore the violated labor rights, it is necessary to determine the order and the type of body that will consider such a dispute. Trade unions do not issue binding acts, but can help come to conflicting parties - the employer and the employee (labor collective), a single solution that suits both parties, which is fixed in the form of an agreement or contract that is binding on both parties. [4]

Austrian labor dispute resolution practice

At the national level, the social partnership system is a feature of industrial relations in Austria. Based on close voluntary cooperation between employers,

employees and the state, this system is a specific Austrian version of what is known in the social sciences as corporatism. By international standards, Austria is one of the countries in which corporate structures are most developed.

Under this system, employers and employees are represented by a small circle of large organizations (the so-called "social partners"): on the side of workers, the Austrian Trade Union Federation and the Federal Chamber of Labor, as well as by employers, the Federal Economic Chamber, the Standing Committee of Presidents of Agriculture Federation of Austrian industry. The origins of social partnership lie in brutal class struggle and high unemployment for many years (between the two world wars, culminating in the civil war of 1934 and the annexation of Austria by the Nazis Germany in 1938). This experience prompted representatives of employers and workers to give common interests, cooperation, priority over class interests and conflicts. Since these initiatives have become a social partnership that has become a permanent and stable element of Austrian society. In Austria, jurisdiction in matters relating to labor and social security laws belongs to the system of ordinary courts. The competent courts of first instance are the regional courts (Landesgericht), which act as courts in labor and social welfare along with other areas of their jurisdiction (with the sole exception of Vienna, where there is a special court for labor and social security). The courts of second instance are the four regional courts of appeal (Oberlandesgerichte), and the third and last instance is the Supreme Court (Oberster Gerichtshof).

All these courts consider cases in collegiums, which, in addition to professional judges, include judges who are appointed by the Economic Chambers and Labor Chambers and have essentially the same powers as professional judges. At the first instance level, the collegium consists of one professional judge and two people's assessors (one from employers and workers), and the second - and three professional judges and two non-professionals, representing both sides of the industry, work at the third instance level. [5, c. 43]. But the resolution of labor disputes in Austria takes a lot of time and money, as well as in other developed countries of Europe. Therefore, a peace agreement or other types of out-of-court settlement of labor disputes in Austria are relevant.

Social partners play a crucial role in the prevention and settlement of collective labor disputes. Not only trade union bodies are authorized to declare and organize strikes, but also social partners are represented. In conciliation committees and national and territorial commissions for consulting and collective bargaining, as well as in employer-worker committees at the institution level. [5, p. 17-18].

Making conclusions, it can be noted that today, out-of-court labor conflict resolution has significant advantages in ensuring the efficiency and completeness of consideration of a labor dispute.

Firstly, the absence of a state entity gives labor relations a lesser formality, which corresponds to ILO Recommendation No. 130 of 1967 "On consideration of complaints at enterprises for the purpose of resolving them" [6].

Secondly, members of a body have jurisdiction to consider cases not only as outsiders, but also as subjects aware of the specifics of a particular enterprise. This

is of particular importance when dealing with disputes of a non-explosive nature - labor conflicts, when it comes not to a violation of legal norms, but to a discrepancy between the interests of the parties. Under these conditions, only persons familiar with the peculiarities of the legal relations in question are able to most objectively resolve the issue of the validity of certain claims of the parties.

Thirdly, the compulsory collegiality of extrajudicial proceedings in the procedural labor relations provides the necessary completeness of consideration and adoption of the most objective decision. Individual members of a jurisdictional body, in view of their subjective understanding, attach decisive importance to various evidence and facts. In this regard, in the sole consideration of the case it is difficult to avoid the subjectivity of the decision.

During the collective consideration of a labor dispute, a decision is made by a vote, so the majority of votes have an advantage. With the presence of several subjective opinions, the adoption of a single objective decision is achieved. [7]

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