

Legal Regulation of Employment in Kazakhstan

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ABSTRACT

In the context of the ongoing financial and economic crisis which had begun in 2014 the main prerequisite for employment in Kazakhstan acts unemployment which is accompanied by various social, economic and psychological problems. Analysis of the current state of labor market in Kazakhstan needs urgent actions in prevention and reducing unemployment, including creation and consolidation of the relevant legal provisions specific employment system which guarantees realization of citizens' rights in the field of labor and employment and meets modern economic realities. The main purpose of the work is a comprehensive study of theoretical and practical issues of employment, as well as formation of a science-based concepts of its legal regulation that can help in creation of the most effective and appropriate for the current situation in the employment system of Kazakhstan. The main conclusions and practical suggestions: the mechanism of legal regulation of employment is revealed; the features of this mechanism are highlighted; the content of state guarantees in this area and measures for their implementation is analyzed; the proposals in improving of legislation on employment are formulated; some options for improving the treatment of the self-employed citizens are offered. The novelty of the study lies in the fact that it was proposed to solve the matter of division of powers of central government authorities and local authorities in order to develop and implement the measures ensuring employment of the population, including measures ensuring employment of citizens at risk of dismissal, as well as the citizens who are in need for social protection; different classifications of legal forms in employment security are investigated. The main theoretical and practical conclusions and recommendations can be used in a rule-making process and enforcement. The materials can be used in further research in this area, in teaching of labor law.

KEYWORDS

Employment, labor market, public administration, socio-economic categories, self-employment

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Introduction

In the context of the global financial crisis we can observe an intense reduction of workplaces. According to forecasts of the International Labour Organisation, the situation in unemployment will be unfavorable: the number of unemployed in the world increased by 3.4 million in 2016-2017. Global economic downturn that occurred in 2015 is likely to have a delayed impact on labour markets in 2016 that

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will lead to an increase in unemployment, especially in emerging economies. On the basis of the world's most recent forecasts, unemployment rate is expected to grow by almost 2.3 million in 2016 and additional 1.1 million in 2017.

Emerging economies are expected to see an increase in unemployment of 2.4 million in 2016. This largely reflects the worsening labour market outlook in emerging Asian economies, in Latin America and in commodity-producing economies, notably in the Arab States region and Africa. 2 World Employment and Social Outlook – Trends 2016 In developed economies, the number of unemployed is expected to decline slightly, but this will only marginally offset the increase expected in emerging economies. In a number of European countries, unemployment rates will remain close to historical peaks. In the United States and some other developed economies, unemployment will decline to pre-crisis rates, but the outlook is for continuing or increasing underemployment. Depending on the economy, this takes the form of involuntary temporary or part-time work and lower participation rates, especially among women and youth. ... and for slower progress in reducing vulnerable employment, which could reach 1.5 billion by 2016... In the coming years, the share of vulnerable employment is expected to remain at around 46 per cent globally. The challenge will be particularly acute in emerging economies, where the number of vulnerable workers is projected to grow by some 25 million over the next three years (Vries, 2016; Semet, 2016; Pizzoferrato, 2015; Janssen, 2016; Bonete, 2015).

In emerging economies, the size of the middle class (with daily consumption levels ranging between US\$5 and US\$13, in purchasing power parity (PPP) terms) rose from 36 per cent of the total population in 2011 to just under 40 per cent in 2015. In the coming years, the present trend of an increase in the size of the middle class is projected to slow or even end. Among developing economies, the share of the middle class is expected to continue to increase, but more slowly than in recent years. This report points to renewed risks of social unrest associated with slower growth in emerging and developing economies. In these countries, slower growth and disappointing access to middle class living standards may fuel social discontent. The improvement in the labour market situation in developed economies is limited and uneven, and in some countries the middle class has been shrinking, according to various measures. Income inequality, as measured by the Gini index, has risen significantly in most advanced G20 countries. Since the start of the global crisis, top incomes have continued to increase while the poorest 40 per cent of households have tended to fall behind.

Thus, the prolonged crisis in employment carries significant risks to social and political stability. Governmental policy in Kazakhstan in 2014-2016 years was increasingly focused on alleviating of crisis effects on citizens and economy. The government assumes that achieving of the goals and objectives in long-term socio-economic development of Kazakhstan requires development and adoption of measures aimed at modernization and innovation of industrial building, human resource development and improvement of workforce quality.

In accordance with Art. 24 of the Constitution of the Republic of Kazakhstan, everyone has the right for freedom of labour, free choice of occupation and profession. Everyone has the right for working conditions that meet safety and hygiene requirements, for labor remuneration without any discrimination and social protection against unemployment.

RK Constitution in Art. 1 proclaimed Kazakhstan as a social state. However, the current legislation governing the employment and protection of population against unemployment is not fully consistent with the objective of a social state. Enshrined in the Constitution of Kazakhstan citizens' right for social protection against unemployment (para. 2, Art. 24) and provided for in the Law of RK on April 6, 2016 № 482-V "On Employment" social guarantees for the unemployed are mainly declarative. The current practice requires analysis and specific recommendations to improve legislation and other acts in regard with employment provision.

The issues of employment legal regulation have already been the subject individual scientists' consideration. In the works of N.G. Aleksandrov (2008), A.S. Pashkov (1994), S.F. Befort (2001), S.F. Deakin and G.S. Morris (2012), C. Barnard (2012), P.C. Weiler (1990) and others laid methodological and theoretical foundations of legal regulation of production, distribution and use of labor staff. Issues of population self-employment were studied in the works of M.R. Freedland (2003), K.V. Stone (2006); problem of employment discrimination were investigated by B. Lindemann and D.D. Kadue (2003), R. Belton (2004), E. Ellis (1998), B.A. Babcock (1975); researches of A. Harel, Y. Procaccia and I. Ritov (2015), S.R. Bagenstos (2013) are devoted to the social consequences of unemployment. There are works of Kazakh researchers on issues of social and labor rights of the individual employment and employment: A.Sh. Khamzin, Zh.A. Khamzina (2015, 2016), Y.A. Buribayev (2015, 2016).

However, most of these works are devoted, as a rule, to the previous period and did not take into account the situation in the global financial crisis. This work is characterized by novelty and makes some innovations in the theoretical understanding of labor employment provision in Kazakhstan.

Methods

The study is based on a general scientific dialectical method of cognition and its variants: historical, logical analysis method. The paper also applies such special investigation methods as technical and legal, the prediction method. Usage of the method based on the reasoning from general to particular contributed to identification of rules' features governing the employment and employability issues in the system of labor law. The research is based on the tools of the International Labour Organization, the Republic of Kazakhstan Constitution, the Labor Code of the RK, laws and regulations of Kazakhstan. Information fundamentals of the research are relevant statistical and analytical data of the RK Statistics Committee, the International Labour Organization (ILO), the data expert communities in improving the employment of population control based on the transitivity of the national economy and development of traditional and innovative forms of individuals' work organization (Kahn-Freund, 1979; Supiot, 2000).

Results

The State in Kazakhstan takes measures to promote employment based on freedom for choice of occupation and work; protection against all forms of discrimination and equality of opportunity in obtaining profession and employment, the choice of employment and working conditions; social protection against unemployment. Public policy in the sphere of employment aimed at ensuring full, productive and freely chosen employment and marketed by:

- 1) development of labour staff, increasing its mobility;
- 2) ensuring equal opportunities regardless of nationality, gender, age, social status, political opinion, religion or any other circumstances in realization of the right for freedom of labour and free choice of occupation and profession;
- 3) support of employment and entrepreneurial initiative of citizens, promotion development of their capacities for productive and creative work;
- 4) orientation of the educational system for training according to the needs of the labour market and the prospects for its development;
- 5) implementation of activities to promote employment of persons experiencing difficulties in finding work;
- 6) prevention the mass unemployment and reducing long-term unemployment;
- 7) compulsory social insurance in case of loss of employment and social protection against unemployment;
- 8) bringing together labour market participants and consistency of their actions in implementation of measures to promote employment;
- 9) organization of labour intermediation through public employment centers and private employment agencies;
- 10) protection of the domestic labour market through positive action to attract foreign labour staff;
- 11) coordination of national measures on employment with measures taken by local executive authorities;
- 12) financial, fiscal and investment policies consistent with the state policy in the sphere of employment, stimulating creation of working places and special working places for persons with disabilities.

State guarantees in the sphere of employment and employment are the obligation of the state to its citizens, involving the provision of tangible or intangible goods, in accordance with national standards and the generally recognized norms of international law. The state guarantees provision of measures to promote employment of target groups. Guarantees are the matter of these individuals' right for participation in employment and employment programs, participation in training, professional development, as well as assistance in finding employment. In addition, we believe that the state guarantees should be backed by legislative guarantees of the prohibition on termination of an employment contract with these categories of citizens, excluding cases of termination of the contract due to the employee guilty of actions which require amendment of labour legislation.

Public administration in employment sphere is based on the general principles of public authorities which are common to all areas of public relations in the framework of cooperation and the functioning of the system established mechanisms and elements of governmental authority. The abovementioned is combined with participation in the system of state management in the sphere of employment and employment of special entities performing functions of public administration; with creation of a wide number of special social institutions main purpose of which is to provide services for employment and employability; combination of measures in state coercion with the principle of social partnership; usage of non-governmental sector opportunities in the task of managing the area of employment relations and employment. In addition, despite the importance and effectiveness of non-state mechanisms usage in the sphere of social management

system, paramount governance mechanisms take essential place including activities of the authorities aimed at the progressive embodiment in life of constitutional proclamation of the Republic of Kazakhstan as a social state. It is required in Kazakhstan while providing state policy on self-employed population inclusion in the legal labour market to develop a technique of reference of the working population in the group of self-employed citizens, which must be adequate to the real situation and employment prospects of the sphere; to improve the methods for determining the rate of unemployment according to new methodology for the determination of the self-employed citizens.

Public authorities engaged in the matters of employment and local executive authorities should work together to develop measures of social protection against unemployment and employment of the population on the basis of forecasts for economic and social development of the country and the regions, including establishment of quotas for employment of certain categories of citizens. Such categories of citizens with quotas in employment should include: people with disabilities who do not have medical contraindications for employment; first time job-seekers who are graduates of educational institutions; persons released from prisons; persons who are registered probation service, persons with family responsibilities (having the care of children under seven years of age or disabled children).

Discussion

Unemployment is a social and economic phenomenon due to lack of demand in the labour market of the economically active population. The number of unemployed has been steadily declining in Kazakhstan. Thus, according to the Statistics Agency of Kazakhstan while in 2000 was 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 2013 – 469.2 thousand, in 2014 – 458.1 thousand in the third quarter of 2016 – 444.7 thousand people.

One of the negative consequences of such a situation has become a drop in production, sales, services, inflation and general overall decline in the economy. One of the negative consequences of such a situation has become a drop in production, sales, services, inflation and general overall decline in the economy. In the prevailing economic conditions employers seeking ways to optimize their costs reduce them by reducing the costs in staff and carrying out measures to reduce the number or employees, therefore the inescapable reality of the labour market and labour relations became increasing number of termination of the employment contract on the initiative of the employer. Thus, the number of unemployed in January 2016 amounted to 457.6 thousand people, the unemployment rate became 5.1%. The employment agencies officially registered 66.3 thousand persons at the end of January. It is almost two times more than in the previous month.

During its formation economic development of the unemployment problem should subside but its complete elimination is impossible with labour market existence. Such conclusion can be made taking into account the experience of foreign countries who came to the high level of economic development but do not eradicate the problem in their society. Unemployment rate is published in the United States usually on the first Friday of every month, Eurozone data on the unemployment rate come out in the first ten days of each month, Japan shows such information at the end of each month. Thus, officially registered unemployment rate as a

percentage of the economically active population was on average in 2012 in the United States – 7.8; in Japan – 4.2; France – 10.8; Spain – 25.8; in Kazakhstan – 5.3, in Russia – 5.2. The unemployment rate is an important measure of a country or region's economic health, and despite unemployment levels in the European Union falling slightly from a peak in early 2013, they remain high, especially in comparison to what the rates were before the worldwide recession started in 2008. This confirms the continuing stagnation in European markets, which hits young job seekers particularly hard as they struggle to compete against older, more experienced workers for a job, suffering under jobless rates twice as high as general unemployment. Worldwide unemployment also remains high, with the rates being worst in the Middle East and North Africa. Estimates by the International Labour Organization predict that the problem will stabilize in coming years, but not improve until at least 2017. In the USA National Unemployment Rate 4.9 Percent in October 2016.

Unemployment can be enforced when an employee is able and willing to work at a given wage but cannot find a job: the number of applicants for a limited number of jobs increases and decreases the likelihood of real employment that impacts increasing unemployment. Unemployment can be voluntary, linked to the reluctance of people to work. For example, in a reduction in wages due to the assumption of the duties of family and domestic character and for other reasons. Unemployment and employment are opposite and interdependent socio-economic categories. The employed population in Kazakhstan include:

- 1) working under an employment contract, including the payment for performing work on a full or part-time work or have other paid work (labour function);
- 2) self-employed citizens;
- 3) the persons elected, appointed or approved at a paid position;
- 4) the citizens who serve in the Armed Forces, other troops and military formations, law enforcement and special state authorities of the Republic of Kazakhstan.

It should be noted that Kazakhstan is a country with one of the greatest figures in the world including the self-employed persons among the economically active population. Thus, according to the Statistics Committee of the Republic of Kazakhstan, the percentage of self-employed persons in 2012 in Kazakhstan accounted for more than 31 percent, in 2016 – about 30 percent, which is comparable to the level of countries such as Mexico, Turkey. However, in Western Europe this figure is 10-15 percent, Russia – 6 percent.

Universally recognized standards of content and implementation of the rights of citizens for employment are regulated by a number of international acts recognized by the Republic of Kazakhstan. ILO Convention № 122 "On employment policy", ratified by the Law of the Republic of Kazakhstan from November 9, 1998 states that in order to stimulate economic growth and development, raising living standards, meeting manpower requirements and underemployment States that have ratified the Convention, declare and carried out as a major goal, an active policy designed to promote full, productive and freely chosen employment. Ratified by the Republic of Kazakhstan in accordance with the Law dated 14.12.2000, the ILO Convention № 88 "On Employment Service" requires the republic maintain and content of a free public employment service, whose main duty is to ensure that, if

necessary, in cooperation with other relevant public and private institutions - the best possible organization of the employment market as an integral part of the national program for the achievement and maintenance of full employment and the development and use of productive forces. State employment policy is implemented comprehensively, the interaction of all stakeholders: the Government of the Republic of Kazakhstan, the Ministry of Health and Social Development of the Republic of Kazakhstan, its local authorized bodies, local authorities, employers.

1/3 of the employed population are so-called "self-employed persons". However, the methods estimating their number is relative enough. In this category includes the owners of private holdings with cattle (in fact, small farmers), private cabs on their own vehicles, the owners of several apartments who rent them out. A significant part of the self-employed account for able-bodied people who have unstable jobs. Therefore, it is important to implement measures to ensure the inclusion of self-employed in the real economy. These measures should take into account the prospects of development of infrastructure, objects of industrialization. The government should solve the problems of industrial facilities creation and innovative economy in the regions with excessive number of self-employed population. Unemployed persons may be deemed under 16 years of age but have not yet reached the age for receiving pensions legislation of the Republic of Kazakhstan which are not engaged in any activity that brings them income. An important feature is the fact that a person must look for work and be ready to work.

The authorized body on employment and local executive bodies on the basis of forecasts for economic and social development of the country and the regions are developing the measures of social protection against unemployment and to provide employment for the following:

- 1) carrying out social vocational guidance;
- 2) labour mediation;
- 3) active measures of employment promotion;
- 4) provision of social assistance to the unemployed;
- 5) establishment of quotas of employment for certain categories of citizens.

Active employment promotion measures include: referral to vocational training; promotion of entrepreneurial initiative of citizens; direction of the youth practice; organization of social jobs; promotion of voluntary resettlement to improve labour mobility; organization of special jobs for persons with disabilities; public works. Social assistance includes: social benefits in the event of loss of employment to the unemployed, the provision of targeted social assistance under the conditions and in the amount stipulated by the Law of the Republic of Kazakhstan "On state social assistance"; the provision of medical assistance to the unemployed, are parties to the compulsory social health insurance system, under the conditions and in the manner stipulated by the Law of the Republic of Kazakhstan "On compulsory social health insurance".

In 2001 the state address social assistance, which has become a form of material support for people (families) with the lowest income, financed by local budgets, appointed by the local executive bodies after full examination of all aspects of the quality of life of the applicants has been introduced into the national social security system. State targeted social assistance is payment in cash, provided by the State party (families) with a monthly per capita income below the poverty line

established in the regions, the cities of Astana and Almaty. Social assistance is a means to combat poverty by raising incomes to the subsistence minimum.

In order to improve this type of financial assistance deemed necessary amount of targeted social assistance in proportion to assign minimum subsistence level of the corresponding administrative-territorial unit, but not least, established by the Law on republican budget for the calendar period. Such assistance is assigned as the difference between the per capita income and established in the regions (city of republican status, capital) below the poverty line is based on each family member. The size of the poverty line is determined on a quarterly basis as a percentage of the subsistence level by the Ministry of Social Development depending on economic opportunities, and to date does not exceed 40 per cent of the subsistence minimum. Thus, the amount of assignable aid is the amount that is the difference between 40 percent of the subsistence minimum and the actual income of the person (family), which is unacceptable from the point of view of generally accepted social standards: the state provides assistance to the poorest families only at the level of 40% of the subsistence minimum.

We believe that assistance in monetary terms should match the level of the living wage established in the respective administrative-territorial unit and not be lower than national importance. Social protection of the unemployed persons and their families by means of the state social assistance in the form of surcharges on the income level of the subsistence minimum, as we believe, is unacceptable, contrary to the essence of the welfare state.

Overall coordination in this area of the control system carries out the Government of Kazakhstan. The Government ensures development and implementation of public policy strategies in the social sphere, its legislative consolidation, other organizational and legal registration. Specialized authority of public administration employment and employment is the Ministry of Health and Social Development of the RK, the state functions in the field of employment by local executive bodies and local authorities on the issues of employment, employment centres.

Market relations themselves do not involve fulfilment of social functions by their subjects. Only under conditions of sustained economic growth has been a tendency to spread the social responsibility of the business community with the use of mechanisms of social partnership, in terms of financial and economic crisis could be seen widespread decline previously targeted social programs funded by private actors.

Despite the fact that only the state is able to objectively control mechanism to guarantee the fulfilment of a state's social obligations in the framework of the constitutional human and civil rights and the fulfilment of social functions in employment in the non-state actors is assigned a number of functions for the employment and employability. State control system acts as a regulator of non-state actors of employment relations and employment: private employment agencies, employers, co-ordinating and monitoring their activities within the framework of generally established rules.

Conclusion

The issues of employment must be in focus of any modern civil society and the social and legal state. Their solution is not only in the sphere of legal regulation, it requires a holistic formation of the state mechanism, combining employment policy,

financial, economic, information, personnel, and other components. The absence of such a mechanism will lead to an increase in hidden forms of employment, growing social tensions, the spread of mass poverty and other negative consequences. In conditions of economic crisis reducing number of jobs, reducing demand for labor staff, while the formation of the labor market mechanisms job becomes more difficult. Even with the favorable economic situation in the labor market there are categories of citizens whose employment cannot be achieved without support of the state legislature. Therefore, government policies aimed at solving the problems with employment shall consist not only in the improvement of the labor market as a whole, but also in support of people with special needs. It is primarily a matter of categories such as persons with family responsibilities and persons with disabilities and persons released from prison.

The paper substantiates the idea that the labor market is still in need of state regulation as exposed to a number of specific factors that have a negative impact on employment which could be eliminated both by economic methods and tools of legal regulation including the means of labor law. Those categories of citizens who are in any economic situation have difficulties in finding a job especially need state protection. Measures ensuring employment of citizens experiencing difficulties in finding work are of great importance since even a partial inclusion of these citizens in the number of employees enables them to grow their own financially, therefore material costs for them as dependents on society are reduced.

Conclusions and suggestions made on the basis of the study may contribute to a better and deeper understanding of the problems of employment and can be used for improvement of normative legal acts on labour and law enforcement. The study can be used for educational purposes, in particular in labour law teaching.

Disclosure statement

No potential conflict of interest was reported by the authors.

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