

ABSTRACT

**dissertations for the degree of Doctor of Philosophy
(PhD) in the specialty 6D030100 "Jurisprudence»**

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**on the topic "Procedural features of consideration of labor
disputes in court»**

General characteristics of the work. This thesis is devoted to identifying the causes of labor disputes as a social phenomenon in accordance with the labor and civil procedural legislation of the Republic of Kazakhstan and the study of procedural peculiarities of judicial review of labor disputes arising in connection with the performance of employment, collective agreements between employers and employees, the workforce.

Relevance of the topic of the dissertation research. XXI century-the era of knowledge and skills. Everyone can increase their competitiveness only by continuously improving themselves, mastering new professions and constantly adapting to the passage of time. Education and technology, high labor productivity should become the main driving force of the country's development. The article of the President of the Republic of Kazakhstan Kassym-Jomart Tokayev "independence is the most important thing" stated "that on this path we must continue the political and economic reforms and the process of modernization of consciousness, to form a new reality of the nation, adapted to the challenges of the time". However, the ongoing reform and diversification of the country's economy was hindered by the COVID-19 outbreak, and the World Health Organization declared a pandemic. It is known that some unscrupulous employers, trying to take advantage of such a situation, "withhold" employees from wages, late payment of wages leads to a deterioration in the welfare and financial situation of employees by inducing them to dismiss at their own request or otherwise reduce their expenses.

This has led to the fact that many countries have closed their borders, reduced the number of mass events, suspended the work of enterprises, temporarily suspended or restricted the work of small and medium-sized businesses. Employers faced problems with continuing work, transferring employees to remote work, reducing the staff or number of employees, the size of wages, and many others. At the same time, the answers to these questions depend not only on the will and desire of the employer, but also on the position of state bodies on these issues. At the first session of the Parliament of the Republic of Kazakhstan of the VII convocation, President of the Republic of Kazakhstan Kassym-Jomart Tokayev noted "that in the current conditions, the main task facing Kazakhstan is to preserve socio-economic stability, jobs and incomes of the population", identifying several priorities for the deputies, noting that" without proper protection of the rights of citizens, socio-economic development is impossible, it is necessary to clearly and persistently start more active and thoughtful work".

It is obvious that the formation of the labor legislation of Kazakhstan was influenced by the Conventions and Agreements of the International Labor Organization. Currently, international acts that have established the obligations and various approaches of States and individual entities to protect human rights, including labor rights, have been adopted and approved at a sufficient level in Kazakhstan. The ratification by the Republic of Kazakhstan of the main acts devoted to the protection of human labor rights, such as the "Universal Declaration of Human Rights", the "International Covenant on Economic, Social and Cultural Rights", the "Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms", etc. Almost all national legal systems have certain ways of protecting the labor rights of employees and employers, including in Kazakhstan. In the Constitution of the Republic of Kazakhstan, a person and his rights and freedoms are enshrined as the most valuable asset, according to which the protection of human freedom in labor rights, the right to free choice of profession, profession is guaranteed. Labor code of Kazakhstan, adopted in 2015, not only establishes the rules governing the consideration and resolution of labor disputes, but also provides for the protection of labor rights as the primary objective and principle of labor law, according to which set minimum standards and safeguards.

According to published statistics, 92% of the working-age population of Kazakhstan entered into labor relations in 2020. Given the current economic situation during the pandemic, the growth of democratic trends and the expansion of the non-state sector of production in Kazakhstan's society, the complete lack of understanding by employees of the protection of their rights, it is not difficult to assume that labor disputes will continue to grow. Accordingly, it is easy to see that employers and employees are the future users of the judicial system. According to the Supreme Court of the Republic of Kazakhstan, labor disputes were the main category of cases considered by civil courts, accounting for 5.8% of their total volume. The lack of specialized courts, the different interpretations and even the existence of contradictions in the provisions of labor legislation creates difficulties for the bodies dealing with labor disputes.

In addition to the above, the problem of applying alternative approaches to resolving labor disputes also needs to be addressed. On the one hand, although legal proceedings have been improved and the law enforcement procedure has been specified, having studied the practice of widespread use of alternative forms of labor dispute resolution abroad due to the length and complexity of legal proceedings, in our country there is a need to introduce this practice.

The legislation does not specifically address the issues of judicial review of labor disputes, the practice of resolving them is debatable and requires a positive settlement. These difficulties also arise in connection with the lack of a judicial form of protection of subjects of labor law. In this regard, the lack of special research in legal science related to the procedural features of judicial consideration of labor disputes, including in connection with reinstatement, employee remuneration, material liability, as well as a separate procedural procedure for the consideration of collective labor disputes, determines the relevance of the topic of this dissertation research.

The degree of development of the topic. The analysis of scientific studies of foreign and domestic scientists and lawyers on labor law, in particular, studies on the procedural features of judicial consideration of labor disputes, showed that so far no research has been conducted on this topic, no special comprehensive studies have been conducted.

The procedural features of the consideration of labor disputes in court in accordance with the current labor and civil procedure legislation were not the subject of a special study of either the science of labor law or the science of civil procedure law. Issues of labor disputes, including individual disputes, were considered from the point of view of the science of labor law, and the search was largely devoted to the definition of the concept of labor dispute, general issues of legal regulation of labor disputes, improvement of labor liability, etc. The study of the consideration in civil proceedings of individual labor and collective labor disputes arising in connection with the restoration of employment, payment of employee wages, material liability, allows you to study foreign experience, to develop scientifically based and worthy judgments conclusions and conclusions. Also, in our opinion, updating the mechanisms of protection in civil proceedings of the rights and freedoms provided for by the labor law of the Republic of Kazakhstan will help to eliminate legislative gaps.

As mentioned above, among Russian legal scholars there are works devoted to the concept of labor disputes, the general procedure for the legal regulation of labor disputes, labor and legal liability, as well as certain forms and methods of protecting labor rights. Domestic scientists who conducted research in this direction are N. A. Abuzyarova, T. M. Abaydeldinov, D. Azhinurina, S. M. Aldashev, Zh.S.Berdiyarova, E. A. Buribaev, G. G. Galiakbarova, S. A. Dimitrova, Zh.B.Ermagambetova, Zh. M. Narikbaeva, E. N. Nurgalieva, A.M. Nurmagambetov, E. B. Omarova, K. A. Mamiev, A. K. Mambetov, G. A. Suragan, Zh. B.Raziev, B. A. Seriev, K. A. Uvarova, Zh. A. Khamzina, K. A. Shaibekov, N. P. Shaikhutdinova, G. H. Shafikova, M. H. Khasenova, etc.

The first scientific dissertation research in this area is devoted to the study of the concept of individual labor disputes. In this research work can be called a monograph of Ermagambetova J. B., E. N. Her, have been shown the "Individual labour disputes." There are also works devoted to the general order of legal regulation and protection of human freedom to work: D. Azhinurina "Issues of freedom and labor protection", Zh. S. Berdiyarova "Constitutional and legal regulation of labor freedom in the Republic of Kazakhstan".

As a comprehensive scientific work aimed at studying the theoretical and practical problems of resolving individual labor disputes, we can call the scientific dissertation of Galiakbarova G. G. on the topic: "Legal regulation of individual labor disputes: theory and practice of their resolution".The main feature of this scientific work is that it was the first search designed to determine the general characteristics of individual labor disputes, the specifics of determining the jurisdiction and jurisdiction of individual labor disputes, theoretical and legal issues of improving the labor process, to analyze the consideration of individual labor disputes in the order of pre-trial resolution and mediation, and also consider the basis for the consideration of

these individual labor disputes in court. However, analyzing thesis, we see that its main course is devoted to the definition of the General procedure for the settlement of individual labour disputes, pre-trial dispute resolution and mediation in the consideration of individual labour disputes, improve the mechanisms of pre-trial settlement of individual labour disputes, put into action now.

When writing the dissertation work, the works of foreign scientists in the field of labor law and civil procedure law were studied. In particular, R. M. Agapov, A. Buğra Aydın, P. S. Baryshnikov, A. I. Balashov, S. Erdoğan, A. A. Sapphire, Z. Sukhbaatar, S. Kaşka, I. A. bone, A. M. Kurennoi, V. I. Martynenko, A. G. mostovshikov, I. A. Prasolov, A. N. Slyusar, O., Tezcan, R. K. Taizhanov, G. Toksöz, T. E. Khanukaev, Z. Şişli etc.

The theoretical basis of the dissertation research is taken from the scientific works of the above and other authors, after analyzing and analyzing them, it should be noted that the changing role of the state in regulating labor and related relations, the development of social partnership, and the accumulated law enforcement practice require a change in scientific approaches to the problem of legal regulation of the process of resolving labor disputes. Application of a new scientific approach the absence of a legal definition of individual and collective labor disputes in solving specific issues of legal regulation of labor disputes – analyzed the inefficiency of the concept of "dynamics of the emergence of a labor dispute", the lack of legal approval of the principles of consideration and resolution of labor disputes, the mismatch of labour law and Civil procedural law, imperfection of legal technique, the invalidity of some concepts of the classification of labor disputes, recommendations for improving procedures and streamlining to improve the judicial consideration of labor disputes.

Methodological basis of the study. In the course of the dissertation research work, general and particular methods of scientific research were used: dialectical, historical, formal-logical, comparative-legal, linguistic, concrete-social.

When considering legislative development and continued improvement of labor disputes in court was used dialectical method General knowledge, formal logic, analysis, synthesis and historical methods in the study of the relationship of legal rules regarding consideration of individual and collective labor disputes in court, comparative-legal methods in the study of foreign law and practice relating to judicial review of labor disputes, linguistic methods with a deeper consideration of the terms "labor disputes", "employee".

The purpose and objectives of the dissertation research. The purpose of the research work is a comprehensive study of theoretical and practical issues of consideration and resolution of labor disputes, analysis of the current procedure and features of their consideration and resolution, development of draft proposals and recommendations to labor and Civil procedure legislation for theoretical justification and development of an independent chapter on the features of consideration and resolution of labor disputes in the Labor Code and Civil Procedure Code of the Republic of Kazakhstan.

To achieve these goals, the dissertation research work sets itself the following tasks::

1) analyze the general concept of labor disputes, determine the types and subject of labor disputes, and classify the theoretical and practical aspects of cause-and-effect relationships;

2) consider the general procedural procedure for judicial review of labor disputes and determine the specifics of their judicial review for certain types of labor disputes arising from them;

3) to reveal the content of the concept of individual and collective labor disputes, to analyze the legislative definition of this legal social phenomenon, to determine its connection with the procedure for considering and resolving labor disputes;

4) determine the range of main provisions that have a greater impact on the procedure for considering a labor dispute, and, ultimately, create a certain procedural form that allows for the effective application of labor legislation;

5) show, in any procedural forms of apparent features of labor disputes, as these forms provide the accurate and timely resolution to the labour dispute, what are the prospects for their development and improvement;

6) develop theoretically sound and practical recommendations for improving the current legislation concerning the regulation of the procedure for consideration and resolution of labor disputes.

The object of the dissertation research is social relations arising in the course of judicial review of labor disputes in accordance with labor and civil procedure legislation.

The subject of the dissertation research is a doctoral scientific-theoretical insights of Kazakhstan and foreign scientists studying the theoretical foundations of judicial review and resolution of labor disputes as well as regulatory legal acts of the Republic of Kazakhstan and foreign countries, regulating the procedure of trial of labor disputes, litigation, norms regulating this sphere of an international character.

The normative basis of the study. The Constitution, the Labor code of the RK, Civil procedure code of Kazakhstan the Law "On trade unions", the Law "On law enforcement service", the Law "About public service", as well as the tax legislation of the Republic of Kazakhstan, regulating social relations that arise in judicial review of employment disputes, the legislation of Kazakhstan On administrative offenses and the criminal, corruption relating to the responsibility of the employee and the employer, other decrees of the government of Kazakhstan and regulatory legal decisions of the Supreme court and other legal acts.

Scientific novelty of the dissertation work. The scientific novelty of the thesis is that it is a comprehensive monographic study in the science of civil procedural law of the Republic of Kazakhstan devoted to the problem of identifying and addressing procedural specifics of trial of labor disputes in the framework of the Labour code and the Civil procedure code of the Republic of Kazakhstan.

A comprehensive study of the labor dispute as a socio-legal and material-procedural phenomenon is conducted, which defines the theoretical and practical problems of legal regulation of labor disputes in the new socio-economic and labor conditions on the basis of the Labor Code and the Civil Procedure Code of the Republic of Kazakhstan.

Given that labor disputes have a special specificity that distinguishes them from other civil cases, recently in the scientific literature there are questions about the need to improve the procedure for considering labor disputes, the need for the adoption of a special law is noted. Although he agrees that such a law is necessary, it will take him a long time to pass a new law. The special chapter of the Civil Procedure Code of the Republic of Kazakhstan proposed in this paper, dedicated to the specifics of labor dispute resolution, will help to resolve many issues related to the procedure for considering labor disputes in the shortest possible time, thereby preparing the legal basis for further improvement of legislation in this area.

At the same time, the current legislation was studied from the point of view of its development prospects, as a result of which some negative features of the legal norms regulating labor disputes were identified. In particular, the agreement formulates that the activities of the commission for the settlement of labor disputes should have a procedural and procedural significance. Developing Model regulations of the conciliation Commission on labor disputes, establishing the functions of the conciliation Commission, the rules, it is tested on the basis of the Ministry of labor and social protection of population of Kazakhstan and the Federation of trade unions of Kazakhstan.

Conclusions of the dissertation research submitted for defense:

1. In paragraph 1 of Article 1 of the Labor Code of the Republic of Kazakhstan, a separate subparagraph should include the interpretation of the concepts of "individual labor dispute" and "collective labor dispute". This, in turn, does not exclude various types of teaching and discussion in the application of law, and also contributes to the choice of an effective way to protect the rights and legitimate interests of the subjects of labor relations, allowing you to correctly identify the parties to the labor dispute, interested parties. The legislative definition of individual and collective labor disputes helps to reveal the procedural features of this category of civil cases, to distinguish them from other cases of legal proceedings.

2. In connection with the transfer of the employer and the employee to remote work, the employee undertakes to perform work in his position outside the location of the stationary workplace, and further interaction is carried out by the employer via the Internet. The agreement may lead to various negative legal consequences for both parties as a result of the oral conclusion. Therefore, in all cases, employees and employers need to properly formalize the agreements reached on remote work.

3. For the proper and timely dispute resolution and protection of the rights and interests of participants in the labor relations requires approval independent of the Civil procedure code of the RK "production on applications arising from the employment relationship". At the same time, it is indicated that cases arising from labor relations are considered according to the general rules of claim proceedings with the features established by this chapter of the Civil Procedure Code.

4. CPC RK should include the obligatory participation of the Prosecutor and the state bodies and local self-government at the court of individual labour disputes about the denial of employment, discrimination in employment, change of employment contract, including the transfer to another job. His participation will help the court to make legal and reasonable decisions on individual labor disputes.

5. Taking into account the growth of statistics on labor disputes and the workload of judges, it is necessary to create labor judicial boards at higher and regional courts, as a result of which both the quality and efficiency of labor dispute resolution should increase.

6. For pre-trial consideration of labor disputes, those who have applied to the court must indicate the effectiveness of applying to mediation as an alternative form of dispute resolution to the conciliation commission.

Theoretical and practical significance of the dissertation research. The findings in this thesis complement conducted to date doctrinal insights on the basis of which is complemented by a categorical system of science of labour law in the consideration and resolution of labor disputes. Improvement and simplification of judicial review of labor disputes, the formation of a general theory of concepts and concepts in this regard, it is expected to improve its mechanisms.

The conclusions and results of the dissertation research are aimed at optimizing the mechanisms for consideration of labor disputes, creating an effective system of mechanisms for consideration and resolution of labor disputes, fair and correct decision-making on labor disputes, reducing the time for consideration of labor disputes. The results of the work can be used in the practical activities of state bodies, judicial bodies of the Republic of Kazakhstan, as well as when conducting the discipline "Labor Law" by universities, as well as as a special course on the topic "labor disputes".

Approbation of the research results. Scientific recommendations and conclusions, the provisions identified during the writing of the dissertation work, were published and tested in the collections of international, national scientific and practical conferences, journals recommended by the quality assurance committee for Education and Science.

Published in the study of a research paper the study is published in 14, including 1 in the international peer-reviewed journal on the basis of Scopus, 5 scientific publications recommended by the Ministry of education and science of the Republic of Kazakhstan, the Committee for quality assurance for education and science, 3 international scientific conferences in the CIS and other foreign countries, 5 international scientific conferences in Kazakhstan. Also we used the results of the study and recommendations of the Ministry of labor and social protection of population of Kazakhstan jointly with the Committee of labor, social protection and migration, Federation of trade unions of Kazakhstan in the development of the "model Provisions on conciliation Commission in a labor dispute".

Results, findings and conclusions identified in the study of the thesis were discussed at the meeting of the Department "civil law disciplines" Zhetysu University named after I. Zhansugurov and passed the examination for advanced scientific seminar of the Department "Civil law and civil procedure, labor law," Kazakh national University named after al-Farabi.

Structure and scope of the dissertation. The work consists of an introduction, three chapters, a conclusion and a list of references and an appendix.