

Ensure the Right of Citizens to Work: Problems of Domestic and International Regulation

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ABSTRACT

The purpose of this research is to examine the legal problems of ensuring the right to work of citizens in the Republic of Kazakhstan and to find the conformity of labor laws in the Republic of Kazakhstan to international standards. Using the method of comparison analysis of the legislation of the Republic of Kazakhstan and norms of international treaties and agreements, the authors determine that in order to improve the labor legislation of the Republic of Kazakhstan and to prevent labor and social conflicts, it is necessary to 1) amend and supplement the Constitution of the Republic of Kazakhstan dated August 30, 1995, with a view to ensuring the right to work of citizens of the Republic of Kazakhstan; 2) similarly amend the Labor Code of the Republic of Kazakhstan and the Law "On Employment" of the Republic of Kazakhstan. Thus, the submissions may be practically important for the improvement of the labor legislation of the Republic of Kazakhstan, prevention of labor and other social conflicts.

KEYWORDS

the Republic of Kazakhstan, citizens' right to work, freedom of labor, regulation of unemployment, discrimination against workers

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Introduction

Nowadays, the issues related to the right to work of citizens in the Republic of Kazakhstan are especially relevant. Article 1 of the Constitution of the Republic of Kazakhstan states: "The Republic of Kazakhstan proclaims itself as a democratic, secular, legal, and social state whose highest values are an individual, his life, rights, and freedoms" (Constitution of the Republic of Kazakhstan, 1995).

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Based on this postulate, it is possible to conclude that Kazakhstan committed itself to carrying out social policies consistent with generally accepted international standards of social statehood (Karin & Chebotarev, 2002; Nazarbayeva & Kazakhstan, 1997). Consequently, the Constitution and domestic legislation of Kazakhstan should reflect the fundamental principles of international law sources (Kendirbaeva, 1997). However, the Constitution of the Republic of Kazakhstan lacks a regulation that would secure the right to work. Instead, Article 24 of the Constitution secures everyone's right to freedom of labor, free choice of occupation and profession.

In addition, the importance of studying the issues of citizens' labor rights is determined by the rising tensions in the Kazakh society, as shown by a number of labor conflicts that were caused in part by an illegal dismissal of workers, disproportionate wages, and an inefficient system of remuneration (Beissenova et al., 2013). Another reason for the need to study the legal issues of the right to work is unemployment. Despite a decrease in the unemployment rate in recent years, it still poses a threat (Furuoka, 2015).

Literature Review

Citizens' right to work belongs to the group of social and economic rights of humans and citizens (Nadyarnih, 2011). Social and economic rights of humans and citizens were determined in accordance with the classification of K. Vasak (1977), based on the so-called generation basis. This approach distinguishes several generations of human rights, each of which emerges and develops in a certain period and gains legal mediation (Human Rights in the World Community, 1989).

Scientists in the field of labor law interpret this right differently. Some authors consider the right to work a national law, i.e. they identify it with the labor rights that are formally established by the legislation (Beymler, 2012; Hicks, 2012; Clasen & Clegg, 2011; Shutes, 2016). Thus, the Constitution of the Republic of Kazakhstan and the constitutions of some CIS countries, such as the Constitution of the Russian Federation, instead of the right to work enshrine the right to freedom of labor, free choice of occupation and profession, the right to working conditions that meet safety and hygiene requirements, the right to remuneration for labor without any discrimination, the right to social protection against unemployment, etc.

Therefore, some authors' definitions of the citizens' rights to work fail to trace the basic idea of the right to work, which is the state's duty to accept as one of its primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment. For instance, Russian scientist D. Yaroshenko (2014) noted, "the right to work is a statutory or positive law that is enshrined in the legislation. The right to work as a subjective right is an opportunity to work in conditions that are established by the legislation, in accordance with one's vocation, abilities, skills, and education, taking into account the social needs, without any discrimination, which ensures decent living for the worker and his/her family".

Some scientists formulate the definition of citizens' rights to work as a norm of international law. Thus, Russian scholar G. Vdovits (2009) suggests the following definition of the right to work: work is a fundamental, inalienable, and vital inborn opportunity for the transformation of nature and oneself, which develops one's abilities and satisfies the needs that are recognized, guaranteed, and protected by the state and the international community, and are fixed in universally recognized international instruments, as well as in the constitutions of states.

This definition, on the one hand, reflects the essence of the right to work, as it indicates the State's duty to recognize and protect this right and even ensure the provision of such opportunities. On the other hand, it is vague and imprecise, as there is no clear definition of work. The use of the phrase "the transformation of nature and oneself" does not give insight into work as a legal category (Moore, Newman & Thomas, 1974).

P. Beymler (2012) clearly described the right to work as a state-guaranteed right to realize one's capability to work in accordance with one's abilities and vocation. E. Nadyarnih (2011) also considers the right to work in accordance with international standards. He writes, "work is a personal inalienable benefit of a person that requires legal state protection of labor rights. The right to work is a respective obligation of the state to provide citizens with work and ensure their employment".

The analysis of international law and scientific literature allows formulating a definition of the citizens' rights to work in accordance with international standards: they are legally secured, guaranteed, and state-protected opportunities for citizens to earn their living in an occupation freely entered upon (Garland, 1963).

Aim of the Study

The aim of the study is to analyze the legal problems of ensuring the right to work of citizens in the Republic of Kazakhstan in order to find the conformity of labor laws in the Republic of Kazakhstan to international standards.

Research questions

What are the main omissions in the legislation of Kazakhstan concerning citizens' right to work regulation?

Methods

The research was based on statistical data of the Committee for Governmental Statistics of the Republic of Kazakhstan, on the comparison analysis of the legislation of the Republic of Kazakhstan and norms of international treaties and agreements.

Data, Analysis, and Results

The Mechanism of International Law that Guarantees the Citizens' Right to Work

The right to work is a recognized international standard.

The right to work was first proclaimed in Article 23 (1) of the Universal Declaration of Human Rights, which states, “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment” (The Universal Declaration of Human Rights, 1948).

The International Covenant on Economic, Social and Cultural Rights further clarifies the right to work. Thus, article 6 of the Covenant states:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies, and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual (UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 1966).

This document refers to the need to recognize the right to work by each state that signed the Covenant, but it does not mention the state’s duty to seek full employment.

This duty is written more clearly in the European Social Charter, adopted on May 3, 1996 in Strasbourg. Article 1 states:

With a view to ensuring the effective realization of the right to work, the Parties undertake: to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment; to protect effectively the right of the worker to earn his living in an occupation freely entered upon; to establish or maintain free employment services for all workers; to provide or promote appropriate vocational guidance, training and rehabilitation.

Another source of international legal regulation of the right to work is the legal instruments of the International Labor Organization. Among them, one can specify such documents as the ILO Convention No. 138 concerning the Minimum Age for Admission to Employment, ILO Recommendation No. 119 concerning the termination of employment at the initiative of the employer, and others.

Legal Support of Citizens’ Rights to Work in Kazakhstan: the Historical Aspect

Surprisingly, citizens’ right to work was enshrined in the Constitution of Kazakhstan for many years. It should be noted that historically, the history of Kazakhstan was closely connected with the history of Russia and other former Soviet states, therefore, some regulations were adopted primarily in Soviet Russia.

After the October Revolution of 1917, the right to work was not immediately guaranteed by the state. Initially, all able-bodied citizens with the right to

employment were legally consolidated according to their vocation and a wage that was established for this type of work. Labor conscription was established. The right to work was ensured by direct participation of trade unions and institutions. The People's Commissariat of Labor voluntarily recruited workers. The right to work was provided by the implementation of safeguards and protection. Thus, the employer was responsible for failure to perform employment liabilities (Carr, 1985).

Citizens' right to work was first enshrined in the constitution in 1936. The state ensured workers' eligibility to any work as an opportunity for guaranteed employment and wages according to its quantity and quality. Work was declared a duty and a matter of honor for every able-bodied citizen (Botagarin, 2016).

In the 1977 Constitution of the USSR, the right to work was supplemented by a choice of profession, occupation, and work in accordance with one's vocation, abilities, training, and education, taking into account the social needs. Labor duty of able-bodied citizens still existed. Additional guarantees of the right to work were introduced. For example, unjustified employment rejection was prohibited (Osakwe, 1979).

As one can see, in Soviet times, the citizens' right to work was enshrined in the Constitution of the USSR and, consequently, in the Constitution of the Kazakh SSR of 1978.

Due to work guarantee, employment rate of the working population in the Soviet Union reached 94-95%. Moreover, to maintain full employment, the USSR actively used the administrative and penal system of forced prison labor and labor service conscripts, who provided a steady flow of labor to the most menial jobs. This was complemented with free voluntary off-the-job assistance of workers, employees, students, and pupils. There were such forms of free labor as "Subbotniks". The Criminal Code featured an article that established imprisonment for parasitism. Thus, in the Soviet Union, there was no such concept as "unemployment", as every able-bodied citizen who did not work had to be identified and punished in the form of either public censure or administrative and criminal penalties.

The Soviet Union was a prototype of a welfare state, as a citizen of the USSR was guaranteed the rights to work, free education and medical care. Nevertheless, the USSR cannot be considered a social state, because the standard of living of its citizens did not match the standard of living of many progressive states' citizens.

In Soviet times, Kazakhstan provided jobs for almost all of its citizens, but these times were accompanied by low wages and low standards of social services. All citizens of Kazakhstan were under the auspices of state power. This led to the citizens' relying heavily on the government in terms of employment and poorly understanding their independence in these matters.

At the initial stage of the transition of the Republic of Kazakhstan to a market economy, the right to work was maintained by the Constitution. A citizen of the Republic shall have the right to work, which shall include the right of everyone to the opportunity to work freely as an independent producer or

under an employment contract in accordance with one's wishes, abilities, and special training. Employment contract freedom shall be guaranteed. A citizen of the Republic shall have the right to working conditions that meet safety and hygiene requirement, as well as the right to social protection against unemployment. Remuneration for labor shall not be less than the statutory minimum. Forced labor shall be prohibited except for cases of execution of a court verdict or operation of the Emergency Law (Constitution of the Republic of Kazakhstan, 1993; Klugman & Scott, 1997).

Later, during the economic crisis, artificially maintaining employment became impossible, so the government changed its attitude to the right to work, which ultimately led to the deletion of the previously secured right to work from the text of the Constitution.

Problems of Domestic Regulation of the Citizens' Right to Work

It is pertinent to point out that social and economic rights of humans and citizens are the foundation of the social state in the Republic of Kazakhstan.

The Constitution of the Republic of Kazakhstan dated August 30, 1995 establishes a minimum protection standard for social and economic rights of citizens. The Constitution guarantees a minimum wage, which employers have to pay their employees. The legislation of the Republic of Kazakhstan introduces the principle of contractual regulation of the level of wages, which is performed by workers, employers, and trade unions through collective agreements in a market economy, and regulates wages of public sector employees. Citizens of the Republic of Kazakhstan have the right to a constitutionally guaranteed minimal pension and social security in case of illness, disability, and loss of a breadwinner.

The main problem of the domestic regulation of the citizens' right to work is that according to the Constitution in the Republic of Kazakhstan, there is no right to work as a guaranteed opportunity for employment. Article 24 establishes the right to freedom of labor, free choice of occupation, and profession. Thus, the realization of the right to work becomes the task of the citizen, while the state only guarantees protection against unemployment by putting citizens on record and paying benefits, while people want the help from the state in finding jobs. However, the state is unable to do so under the conditions of private ownership of most means of production.

However, since Kazakhstan positions itself as a social state, its Constitution secures the right to work according to international standards.

Another problem is that the Constitution of the Republic of Kazakhstan does not regulate in detail exactly what powers are derived from the constitutional right to protection against unemployment, whereas the European Social Charter specifically establishes the right to vocational guidance and training. The authors believe that the lack of such regulations in the Constitution of the Republic of Kazakhstan impedes the guarantee of labor rights.

The problem is that the list of labor rights in the Constitution of the Republic of Kazakhstan does not correspond to the list of labor rights enshrined in the sources of international law, and, most importantly, does not match the priorities of labor rights. Thus, a literal interpretation of Article 24 of the Constitution of the Republic of Kazakhstan establishes the main priority of ensuring the freedom of labor, rather than the provision of employment. The position of the European Social Charter, on the contrary, is that the priority task of the state is to guarantee employment.

The right to work should be fixed not only at the constitutional level, but also in the labor legislation of Kazakhstan. Similarly, this right is reflected in the Labor Code of Kazakhstan.

The Labor Code of the Republic of Kazakhstan dated May 15, 2007 is a fundamental regulatory legal act in the field of work. However, it does not legally register the State's intention to achieve and maintain as high and stable a level of employment as possible, with a view to attaining full employment.

Article 145 "State guarantees of job placement" states:

The state shall guarantee its citizens in the field of population employment:

- 1) protection against any forms of discrimination and provision of equal opportunities in obtaining a profession and a job;
- 2) vocational training, re-training, advanced training, and organization of public work for the unemployed;
- 3) assistance in developing entrepreneurship;
- 4) organization of employment agency services via authorized state employment agency and private employment agencies;
- 5) provision of professionally orientated services and information on available positions and vacancies;
- 6) orientation of the vocational training system on training specialists in demand on the labor market;
- 7) inter-regional distribution of the work force in accordance with state programs;
- 8) development and implementation of measures to disclose and legalize labor relations;
- 9) establishment in investment contracts of investors' liabilities to provide vocational training, create new and maintain existing jobs;
- 10) creation of conditions for the development of vocational training, re-training, and advanced training directly within the organization;
- 11) interaction between authorized bodies and employers on matters of employment;
- 12) provision of conditions for job placement of persons belonging to target groups (Labor Code of the Republic of Kazakhstan, 2007).

On January 23, 2001, the Republic of Kazakhstan adopted a special law "On Employment". Although this law is directly aimed at solving the problem of employment opportunities, it is missing 10 out of 12 state guarantees of job

placement. Article 5 listed only two guarantees, which are 1) social protection against unemployment and assistance in finding work and 2) employment via employment agency services (Law “On Employment” of the Republic of Kazakhstan, 2001).

Thus, it is possible to state that there is an unsolved problem, which indicates a lack of legal provision related to the rights of citizens of the Republic of Kazakhstan.

Discussion and Conclusion

After analyzing the content of the European Social Charter, it is possible to conclude that the right to work is interpreted not as an individual right, but as a set of labor rights; hence, this fact should be taken into account when determining the right to work (Harris & Darcy, 2001).

We have already mentioned that out of the set of rights that embodies the citizens' right to work, the state guarantees only such rights as the right to free employment services for all workers, the right to services in the vocational guidance system, vocational training, vocational rehabilitation, and the right to protection of the worker's rights to earn his living in an occupation freely entered upon. However, the state does not guarantee the right of every citizen to work.

In his work G. Vdovits (2009) compared these trends with the state law on labor in modern Russia. Thus, it confirms our thesis about the impact of USSR policy on labor rights regulation.

So, the study suggests it is necessary to implement international labor standards in the labor legislation of the Republic of Kazakhstan.

To do so, it is necessary:

- To implement the rules of the European Social Charter in the Constitution of the Republic of Kazakhstan and to amend Part 1 of Article 24 of the Constitution. It is suggested that Part 1 of Article 24 Constitution of Kazakhstan state the following:

1. Every individual shall have the right to work, to freedom of labor, to free choice of vocation and profession. Forced labor shall be permitted only under a court verdict or in a state of emergency or martial law.

In summary, it is suggested to amend and supplement the Constitution of the Republic of Kazakhstan, and to provide an independent article, dealing with the basics of social statehood, which will reflect the essence of Article 1 of the European Social Charter, which establishes one of the main goals of a modern social state – to achieve and maintain as high and stable a level of employment as possible, with a view to attaining full employment – as well as some of the responsibilities of the state.

This paper suggests an author's edition of the new article of the Constitution:

1. The Republic of Kazakhstan is a social state, whose policy is aimed at creating conditions for a dignified life and free human development.

2. The state shall be the guarantor of stability in the society, wherefore it shall seek to minimize the inequality of income, shall not allow the concentration of wealth and means of production in the hands of private owners to the detriment of common interests, and shall provide equal conditions and opportunities for every citizen to realize his/her interests and to create decent working conditions, equal access to material, spiritual, and other goods.

3. The Republic of Kazakhstan shall protect the labor and health of people, establish a guaranteed minimum wage, provide state support for families, motherhood, fatherhood, childhood, people with disabilities and senior citizens, develop a system of social services, establish government pensions, benefits, and other social security guarantees.

4. The State shall guarantee every citizen a living wage, a minimum wage that ensures a satisfactory standard of living, and shall be committed to establishing social standards and quality of living in line with international standards.

5. Duties of the government shall be:

- To create conditions, in which a citizen is able to earn a living
- To protect effectively the rights of the worker to earn his/her living in an occupation freely entered upon
- To organize and provide free employment services for all workers
- To provide governmental support for the system of vocational guidance, vocational training, and vocational rehabilitation.

Implications and Recommendations

It is suggested to make amendments to the Labor Code of the Republic of Kazakhstan dated May 15, 2007.

Firstly, Article 3 “The purpose and objectives of the labor legislation of the Republic of Kazakhstan” should state the following:

“1. The purpose of the labor legislation of the Republic of Kazakhstan shall be the legal regulation of labor relations and other relations directly related to labor, with a view to protecting the rights and interests of the parties in labor relations, and establishing guarantees of rights and freedoms at work in accordance with international standards.

2. The objectives of the labor legislation of the Republic of Kazakhstan shall be the creation of necessary legal conditions to achieve the balance of interests of parties in labor relations, economic growth, increase of production efficiency and well-being, and the maintenance of a high and stable level of employment.

Secondly, it is necessary to add a new principle to Article 4 of the “Principles of labor legislation of the Republic of Kazakhstan” – the guarantee of the right to work.

Thirdly, Article 145 “State guarantees for employment” of the Labor Code of Kazakhstan should be supplemented with part 1 as follows:

1. The government shall look to achieve and maintain as high and stable a level of employment as possible, with a view to attaining full employment.

Appropriate amendments should be made in the Law of the Republic of Kazakhstan “On population employment” dated January 23, 2001:

Part 1 of Article 4 “Basic principles and directions of the state policy in the field of employment” should state the following:

The State shall ensure the carrying out of a policy that is conducive to the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment.

Article 5 – “Governmental guarantees in the field of employment” – should be brought in line with Article 145 “State guarantees for employment” of the Labor Code of Kazakhstan and provide a complete list of state guarantees.

Disclosure statement

No potential conflict of interest was reported by the authors.

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