Legal Analysis of Individual Labor Disputes in the Republic of Kazakhstan

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Abstract
Background/Objectives: The authors have investigated the conceptual framework of labor disputes as a whole and individual labor disputes in particular in this article. Methods: Such scientific methods as scientific research, comparative analysis and generalization were used in the course of this study. Foreign and domestic sources were used for this research, and a list of such resources can be found in the References section. Findings: Currently, legal regulation of individual labor disputes in Kazakhstan is a key matter of legal labor relations, which dictates the relevance of this matter. Provision of an effective protection of labor rights of the hired labor, establishment of adequate guarantees in the area of labor are an objective imperative of our times. Moreover, the institute of labor disputes regulates all legal disputes, arising from social and labor legal relations. Individual labor disputes associated with conclusion, validity and termination of a labor contract, indemnification by parties to the labor contract against each other are reflected primarily in such institution. A theoretical analysis of origination and development of an institute of labor disputes in the labor law science is done, and arguments to distinguish labor disputes from related concepts (labor conflict, labor violation and labor disagreement) are provided, and the most common classification of labor disputes is clarified. Certain specifics of individual labor disputes as a type of labor disputes are pointed out; their classification and causes in the modern context are provided. Application/Improvements: Reasonable application and awareness of standards of the institution of individual labor disputes should prevent any abuse on the part of the employer and an employee. At the same time, they facilitate overcoming obstacles in the exercise of right, recognition and restoration of any violated or neglected labor rights of an employee.

Keywords: Individual Labor Disputes, Labor Disputes, Labor Law, Revised Labor Code, The Republic of Kazakhstan

1. Introduction
Various parties to labor activity, including individuals and social groups - got more freedom of expressing and fulfilling their interests, since economic reforms have been performed. In particular, this is expressed in fulfillment of the principle of freedom of the labor contract, increased value of collective contracts and agreements as a method of social regulation. Certainly, free cooperation of various parties to the labor law implies not only a social compromise but disagreements as well. Such disagreements may escalate into a labor dispute and require resolution in procedural forms that are established by the law.

According to the guiding principles for improving performance that have been developed by the International Labor Organization (ILO) it states that 'production relations depend on the cooperation between employers and employees. The nature of their cooperation depends on the working environment and type of a dispute they are willing to resolve. Many disputes, but not all of them, may be resolved by the parties themselves based on a consensus, dialog and negotiations'.

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Kazakhstan has been trying to adopt the best practice of the European Union; members have established in the Treaty on EU (article 2) their joint agreement with the necessity to ‘promote throughout the Community .... a high level of employment and of social protection, equality between men and women... raising of the standard of living and quality of life ’

We would like to point out that according to paragraph 3 of Article 24 of the Constitution of Kazakhstan, the right of every person to individual and collective labor disputes, using legal ways of resolution of such disputes, including the right to strike, is recognized in our country. Formalization of this provision is necessary for objective reasons, as long labor disputes rarely unfold and resolve without any conflict, unfortunately. At the moment, issues arising in the course of considering and resolving individual labor disputes are extremely deep, which was addressed by the President of the RK Nazarbayev in his speech at the extended meeting of the Government of the Republic of Kazakhstan, while pointing out the importance of the work upon early settlement of labor disputes. We believe it is not a coincidence, as long as completely new social and labor relations have been built today under the conditions of economic transformation of the Kazakh community and aggravation of crisis. These processes are quite usually accompanied by escalating social tension, resulting in social conflicts, including individual labor disputes, and the relevance of legal regulation of such disputes is growing against the latest 2015 Labor Code of the RK (hereinafter the LC of the RK) in effect.

2. Concept Headings

This article aims at determining the meaning of labor disputes as a whole and individual labor disputes in particular, discovering the most common causes of such disputes, determining the specifics of the institute of labor disputes against the developing labor market and economic instability, and conducting a comprehensive analysis.

A lot of books were published in Soviet times, which provided wide coverage of the procedure of resolving labor disputes; however, a very few authors were deep in their discovery of individual labor disputes. This matter has not been inquired in modern Kazakhstan; most authors just mention certain aspects, while not conducting any thorough analysis. Hence, the problem of determining labor disputes as a whole and individual labor disputes in particular is almost not studied comprehensively at all at the moment against the modern labor market conditions.

We made an attempt to point out, by means of complex investigation of the conceptual framework of an individual labor dispute, existing theoretical issues, offer our own solutions, and discovered, as a result, the value of individual labor disputes, which is primarily due to building a legal consciousness in employers, other officials of an organization, and employees in order to prevent any violations of the labor law and further occurrence of labor disputes, and to exercising a common preventive effect on individuals that are not involved in resolution of individual labor disputes.

Such scientific methods as research, analysis and generalization were used in the course of this research; the topic was studied, based on works by national and Russian scientists.

3. Results

The term ‘labor disputes’ first appeared in 1971 in the third Code of Labor Laws of the Russian SFSR (CoLL), which was passed that year. The term ‘labor conflicts’ had been used previously in the former Soviet labor laws. A separate area of labor law that was developed in many Western countries, especially after the war years - it is called social law in some countries, like France, and international legal labor regulation (called international labor law by many scientists) has been going more away from the term ‘labor conflict’, and it uses the term ‘labor dispute’.

More detailed history of origin of labor disputes in the national labor law and development of laws on individual labor disputes will be discussed in further sections of this scientific research.

The term ‘conflict’ is used rather often in legal books for determination of the term ‘labor dispute’. For example, Chikanova understands a labor dispute as a conflict that has not been settled by means of direct negotiations between employees and employers.

A lot of books were published in Soviet times, which provided wide coverage of the procedure of resolving labor disputes; however, a very few authors were deep in their discovery of labor disputes.

A dispute is defined as a ‘verbal encounter, discussion of certain things with everyone to defend his opinion and his right’ in the Dictionary of the Russian Language by Ozhegov, while a conflict is a ‘collision, serious disagreement, or dispute’.
According to Lysenko¹¹, ‘if the parties that are not willing to settle by the existing condition and that could not resolve their issue by means of mutual concessions turn to special authorities for resolution, a labor conflict reaches a labor dispute stage.’

We agree with this point of view, as long as labor conflicts arise very often (for example, when remuneration or other payments due are not paid to employees in due time), however, parties to such conflict make no effort to resolve such conflict, i.e. such conflicts may simply be ignored by the parties or resolved amicably by means of negotiations. On such occasions, one may assume that conflict situations are not transformed to a stage of labor dispute. This is especially true of individual labor disputes, where an employee that depends on the employer does not seek protection of his/her labor rights at corresponding authorities of jurisdiction, while being feared of his/her employment termination. Thus, the existing conflict situation does not escalate into a labor dispute, as long as the last one is not subject to consideration at special authorities with jurisdiction. And we have concluded from this assumption that a labor conflict situation may become a labor dispute, if there is any obstacle of right execution between the parties and the parties cannot overcome such obstacle by their will, and intervention of a third party is required.

Moreover, we assume that replacement of the term ‘labor conflict’ by the term ‘labor dispute’ that occurred back than was right and scientifically justified. Thus, for example, a conflict is rather an insoluble contradiction, threatening to ‘explode’ (a strike may be an example in labor relations), from the point of view of philosophy, while labor disputes may result in reconciliation or agreement of parties (as the case may be).

Thus, the concept of ‘conflict’ or ‘conflict situation’ appears to be a rather unreasonable ground for the concept of ‘labor dispute’.

There are different views as to correlation not only between the concepts of ‘labor dispute’ and ‘labor conflict’ in the scientific literature, but also ‘labor dispute’ and ‘labor disagreements’, ‘labor dispute’ and ‘labor violations’. Thus, according to a Russian scientist⁴ it is customary to distinguish the concept of labor disputes in the theory of labor law from the preceding labor disagreements of parties and from a labor violation, serving as a direct cause for disagreements and a stage of a labor dispute.

A culpable non-fulfillment or failure to duly fulfill any labor obligation by the bound party, leading to right violation of another party to this legal relation is called a labor violation⁵. Whenever any actions of the binding party were illegal, and the other party believes such actions to be illegal, according to⁷ a labor dispute may arise in such case, even if there is not any violation. Determination of whether there is any labor violation or not is done by the authority resolving the labor dispute, and such dispute is called jurisdictional. The labor violation itself may not be considered a labor dispute, and different valuation of such violation by the parties is a disagreement that can be settled by the parties themselves.

While agreeing with such statement, we believe such disagreement of parties to the labor law may not escalate into a labor dispute, unless it has not been settled by the parties and thus turned over to a special authority with jurisdiction, i.e. the action (or failure to act) of the binding party that violated the labor right of the other party was contested. Thus, for example, if an employer terminated the labor contract with an employee that is a pregnant woman according to Sub-cl. 2 of Cl. 1 of Art. 52 of the LC of the RK², there was a labor violation and a disagreement, as long as the employee considered such termination of the labor contract with the employee to be wrong, however, she did not contest the legality of actions of the employer in court, but was employed elsewhere. It follows from this example that a labor dispute did not occur in this case, despite the fact there was a labor violation and disagreement regarding such violation.

The issue of labor violation as a generic category is addressed in the latest legal literature. One should point out that such statement is not new, on the one hand (such question was raised, more or less, in particular by Syrovatskaia, Smirnov⁶, etc.). There are several types of liability available in the area of labor law (at least, financial and disciplinary liability) vs. the criminal law with its single liability; it means that a separate legal fact underlies each type of liability¹³.

According to Tolkunova⁷, it is necessary to distinguish a ‘labor dispute’ from a ‘disagreement’, as long as this distinction was pointed out directly by the Russian legislator. ‘... Consequently, a disagreement of disputing parties to the labor law does not escalate into a labor dispute, unless it was not settled by the parties themselves and was filed at an authority with jurisdiction. This concept that we developed was recognized by the legislator now and incorporated into Art. 381 of the LC of the RF...’ This means that a theoretical construction that was justified by Smoliarchuk was incorporated into the Russian law in effect¹⁴.
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According to this concept, two items are distinguished, such as ‘unsettled disagreements’ and ‘labor disputes’. This division represents phenomena that are different in their nature, as long as there is not any dispute until a resolution at competent authorities is thought - the dispute occurs only when an unsettled disagreement is resolved by a special authority with jurisdiction\(^5\).

An attempt to draw a distinction line between disagreements that are settled by means of direct negotiations of parties and labor disputes that are resolved by special authorities inevitably leads to a conclusion that there is not any dispute outside the special authority with jurisdiction. To the extent that it is true, the legislator also does not define, in a regulatory way, any procedure for resolving a conflict by the efforts of the disputing parties, excluding establishment or turning to special authorities. This provision was also incorporated into 1971 CoLL (Art. 2004) and LC of the RF (Art. 381.) The above distinction between a labor dispute and unsettled disagreements can also be found in 1999 LC of the Republic of Belarus (Art. 377) and 2007 LC of the RF (Ar. 173)\(^19\) and also the latest LC of the RK.

We believe that a labor violation itself is not a labor dispute yet, and varying valuation of the labor violation by the parties to the legal labor relation is just a disagreement that can be settled by the parties themselves. A disagreement of parties to the labor law may not escalate into a labor dispute, unless it was not settled by the parties themselves and thus was filed at an authority with jurisdiction. For example, if an employer terminated the labor contract with an employee, while the last was on a sick leave for any grounds whatsoever, envisaged by Article 52 of the LC of the RK\(^1\) (except for winding up of the employer that is a legal entity or cessation of activity of the employer that is an individual), there was a labor violation, i.e. violation of provision of Article 52 of the LC of the RK, and also a labor disagreement, as long as the employee reasonably believes that the termination of the labor contract was illegal; however, the employee may not even appeal at the authority with jurisdiction (being a court in this case), but be employed elsewhere. There is not any labor dispute arising in these circumstances, even if there was a labor violation and labor disagreement. Thus, a labor dispute does not arise, unless a disagreement regarding any right or legal interest of an employee is turned over to an authority with jurisdiction for resolution.

A disagreement of disputing parties to the labor law does not escalate into a labor dispute, unless it was not settled by the parties themselves and was filed at an authority with jurisdiction. Production of an individual (or collective) disagreement by an employee (employees) before a corresponding authority with jurisdiction for challenging is the most important form of self-protection of their labor rights. This production is an expression of initiative of the employee (employer) of self-protection (challenging) of labor rights or their legal labor interests. There is not any labor dispute without the expression of such initiative, even if the disagreements were not self-settled.\(^5\)

Chucha\(^17\) sees things differently, and believes that ‘presence of a disagreement between parties to legal relations means presence of a dispute per se’.

Despite different views on this matter, a number of scientists believe that not every disagreement should be considered as a labor dispute in terms of law. This disagreement is not escalated, according to them, into an individual labor dispute, unless, first of all, such disagreement could not be settled by means of negotiations, and, second of all, such unsettled disagreement is turned over for consideration and resolution of a certain authority with jurisdiction.

Thus, a labor violation and further varying valuation of the violation by the parties to the disputed legal relation (disagreement), are not only synonyms to the concept of ‘labor dispute’, but also precede the last one.

4. Discussion

In the real world, the merits or otherwise of regulation cannot be settled theoretically, but only by empirical study. In general, it can be said that the liberalization of labor markets unequivocally leads to an increase in wage inequality but has an indeterminate impact on employment and on economic growth. In favorable conditions, liberalization may facilitate economic and employment growth, but in less favorable conditions it may intensify recessionary tendencies and facilitate a rise in unemployment\(^18\).

What should labor disputes mean?

Having conducted our research, we came to a conclusion that the matter of the concept of labor disputes was not investigated enough, even though attention was paid to resolving labor disputes in the science of labor law (predominantly in Soviet times). Even some authors conducted a thorough analysis of the procedure of resolving labor disputes in matters of multiple categories, they did not discuss the concept of ‘labor dispute’ or subject matter of such dispute\(^19\).
Work done by Golovanova\textsuperscript{20} that unveils the concept of labor disputes, which should imply unsettled disagreement occurring between parties to legal relations and regulated by the labor law, and associated with application of the law on labor, collective and labor contracts or establishment or amendment of labor conditions of employees and officials, which are not regulated by regulations and which are resolved according to the procedure prescribed by the law, may be cited as an example.

As commonly cited, the subject matter of a labor dispute is associated with application of the law in effect, local regulations, or establishment of new labor conditions that are not regulated by the law or other regulation\textsuperscript{16}. Meanwhile, other definitions of a labor dispute were expressed in the Soviet science of labor law. Thus, Goloshchapov\textsuperscript{21} considered labor disputes to be not only disputes arising from legal labor relations, but also disputes arising from derivatives of legal labor relations, such as: regarding employment, regarding indemnification; legal relations between trade unions and economic bodies on matters of production, labor and welfare, social insurance of employees, etc. In other words, broad interpretation of labor disputes covered labor disputes on matters of regulation of labor relations and other relations that were directly connected with labor relations (derivatives).

The following labor dispute definitions in the USSR are provided in the encyclopedic dictionary of the Soviet time:

a. disagreements that occur between employees and officials, on the one part, and administration of enterprises, on the other part, on matters associated with application of the labor law, collective contract, codes of conduct or other regulations, and with fulfillment of the labor contract (actional labor disputes);
b. disagreements between the trade union, on the one hand, and administration of enterprises, on the other part, on matters associated with establishment or amendment of labor conditions that are not regulated according to the centralized procedure, but are determined by agreement between the administration and shop or local committee (non-actional disputes)\textsuperscript{22}.

The Soviet understanding of the labor gradually required drastic changes by the end of the eighties in many areas of legal labor relations, including on matters of regulation of labor disputes, which was addressed by Yaroslavtsev\textsuperscript{23}, who pointed out that the labor law of the USSR on regulation of labor disputes is in need of appropriate changes aiming at establishment of effective legal mechanisms for provision and protection of the right to labor, and harmonization of labor relations.

Modern science of labor law follows its development path, which is different from the one before. While we were not capable of tracking the specifics of the Kazakh labor law before, as long as our country was a part of the USSR, we are going to try and compare the Russian labor law with the labor law of modern Kazakhstan now on matters of regulation of labor disputes as a whole and individual labor disputes in particular.

According to Lushnikova\textsuperscript{24}, study of the concept of ‘labor dispute’ was of great value in theoretical and practical aspect for correct selection of the way of protection of rights and interests of parties to labor relations. The study of the concept of labor dispute primarily involves a legal nature of the labor dispute.

According to a prominent Kazakh scientist Uvarov\textsuperscript{25}, labor disputes mean disagreements between an employee (employees) and employer (employers) on matters of application of the labor law, fulfillment or amendment of conditions of agreements, labor and/or collective contract and employer’s regulations. It is quite obvious that the disagreements that occur between the employee and employer may be resolved via direct negotiations by means of mutual concessions and agreements. However, if such agreement was not reached, the disagreements are referred to corresponding authorities competent to resolve labor disputes.

The definition of a labor dispute in 2015 LC of the RK is the same as was stipulated in 2007 LC of the RK. Thus, according to the latest labor law, a labor dispute is disagreements between an employee (employees) and employer (employers) on matters of application of the labor law of the RK, fulfillment or amendment of conditions of agreements, labor and/or collective contract and employer’s regulations.

There are various approaches to classifying labor disputes available in the science of labor law.

Labor disputes were divided into actional and non-actional disputes in the law that was in effect before (Soviet law - author’s note). Disputes that were associated with application of the labor law in effect, collective and labor contracts, and codes of conducts were referred to actional disputes. Actional disputes were primarily associated with restoration of violated individual labor rights
of employees. Disputes regarding establishment of new labor conditions that were not regulated by the provisions of the law or amendment of the existing labor conditions, replacement by new conditions were referred to non-actional disputes\textsuperscript{15}.

In legal books, labor disputes are also divided now into actional and non-actional disputes, according to the nature of such disputes. Thus, according to Kurennoi and Mirionov\textsuperscript{16}, ‘division of labor disputes into actional and non-actional disputes is most important. Actional disputes mean disputes regarding application of labor conditions that have been pre-stipulated by the law or other regulations and individual contracts, i.e. regarding any violated right. Non-actional disputes mean disputes regarding establishment of labor conditions or amendment of the existing conditions.

According to Geikhman and Dmitrieva\textsuperscript{26}, ‘disputes of actional nature are individual disputes. Disputes of non-actional nature have collective value and are collective labor disputes, which are resolved not by filing a claim to the LDC, or court, but according to the established conciliatory procedures.

Thus, disputes of non-actional nature are put first, which appears to be not quite reasonable, and while taking into account a reservation made by Tolkunova\textsuperscript{27} that she considers labor disputes in broad view. Two broad categories of labor law are also observed in foreign books, and these are:

- collective labor laws (covering relations between an employee, employer and trade union); and
- individual labor laws (covering relations between an employee and employer, as determined under the contract)\textsuperscript{28}.

Besides the above classification, labor disputes are believed to be divided, according to the doctrine (and doctrine of foreign countries in particular), into two types, regardless of their subject matter: (economic) conflicts of interest and (legal) conflicts of rights.

According to Balashev\textsuperscript{3}, disputes of rights, i.e. disputes regarding application of provisions of the labor law that are stipulated by such law, collective or labor contracts, agreements of rights and obligations, may arise out of all and any legal relations of the area of labor law, i.e. labor and associated relations, and any violated right of an employee or trade union, or obligation of the labor collective is protected and restored in such disputes; and disputes of legal interests, i.e. disputes regarding establishment of new or amendment of the existing social and economic labor and welfare conditions that are not regulated by the law; disputes of this kind may arise out of a labor relation-establishment of new labor conditions (new vacation duration according to the vacation schedule, new tariff category) for an employee pursuant to the local procedure and of all and any legal (social and partner) relations of collective organizational and managerial nature.

A point of view of Lushnikova and Lushnikov\textsuperscript{16} are interesting in terms of scientific explanation of the above classification of labor disputes and generalization of such disputes, and this view is presented below. Thus, according to the above scientists, actional labor disputes are disputes of right, and non-actional disputes are disputes of interest. The subject matter of a dispute on law (dispute regarding application of current social and labor laws, collective and individual contracts and agreements) lies in the fact that employees demand restoration of the right that belongs to them on the ground of the law or contract, or eliminate obstacles on the way of executing such rights. Disputes on law require judicial ways of resolution or administrative arbitration that is similar in functions, by their nature. A judicial body considered the conflict on the merits of the case on the ground of law, and the decision of such body is ensured by enforcement. These may be specialized labor courts (Brazil, Germany, Spain, Mexico, Finland, France, Sweden, etc.) or common courts. Therewith, labor courts are usually made on pari passu basis out of representatives of employers, employees, and the government, which is indicative of an expression of principles of social equality. Meanwhile, conciliatory mediatory and arbitration procedures of resolving any dispute on law are acceptable as a free alternative in many countries. Disputes on interest are usually resolved according to the conciliatory mediatory procedure. The subject matter of a dispute on interest (dispute regarding establishment of new labor conditions, conclusion or amendment of the collective contract) lies in the fact that parties to the dispute, more often employees, file a claim (request) against the employer to establish new labor conditions, and the employer has the right but is not obliged by the law to satisfy such claim. The dispute on interest implies conciliatory mediatory procedures by its nature. Conciliatory mediatory bodies consider the labor dispute according to the conciliatory procedure and principle of reasonability; therefore, a search for a general compromise solution to satisfy the conflicting parties is important.
Thus, the provision on subjective rights to be protected by the law, and legal interests to be secured by the law, means differentiation of forms of protection of labor rights and interests. Subjective labor rights are ensured according to the general rule of jurisdictional judicial protection. Any interest that is secured by the law is fulfilled by an agreement of parties to the labor law, and, in case of any conflict of interests, such interest is resolved according to the conciliatory (mediatory) procedure by efforts of the conflicting parties themselves or conciliatory mediatory authorities. Labor interests with their fulfillment breaching the limits (procedure) of their fulfillment are an exception. In this case, labor interests serve as a separate item of judicial protection to be discussed in further chapters of our research.

As compared to the previous CoLL, current LC of the RK (and preceding Law of the RK On labor and 2007 LC of the RK), envisaged the uniform procedure of resolving individual labor disputes regarding labor rights and legal interests.

From our viewpoint, a Kazakh scientist Uvarov offers the optimum classification, while assuming that labor disputes may be classified on various grounds, such as: according to their parties, nature (subject matter) of disputes, and jurisdiction of their resolution. Kazakh scientists Zelenyi and Abisheva share the same view. We tried to provide a schematic view of this classification (Figure 1).

We are interested in individual labor disputes out of other types of labor disputes on the above chart, which we will discuss now.

The LC of the RK in effect, as well as 2007 LC of the RK, does not unveil the concept of individual labor dispute; meanwhile, according to Art. 381 of the LC of the RF, an individual labor dispute means unsettled disagreements between an employer and employee on matters of application of the labor law or other regulations comprising provisions of the labor law, collective contract, agreement, local regulation, labor contract (including on establishment or amendment of individual labor conditions) that were filed at an authority for resolution of individual labor disputes.

The concept of this definition is only unveiled in the science of labor law in Kazakhstan. According to Uvarov, individual labor disputes that arise on initiative of individual employees, making their demands of employers regarding acknowledgment or restoration of violated labor rights. Labor disputes of this kind arise on the matter of application of provisions of the labor law, collective contract and agreements.

An individual labor dispute is an unsettled disagreement between an employer and employee on matters of application of laws and other regulations containing provisions of the labor law, collective agreement, contract, labor contract (including on establishment or amendment of individual labor conditions), and that were filed at an authority for resolution of individual labor disputes.

The above means that a circle of parties to an individual labor dispute has been expanded, as compared to the law in effect before. Besides an employer and employee, individuals that were previously involved in labor relations with the employer and also individuals that were not in any legal relations with the employer yet but that believe they were denied employment unreasonably are also recognized such parties.

While determining the concept of individual labor disputes, one should discover distinguishing features between individual labor disputes and collective labor disputes.

First of all, an attempt of either party to protect its personal interest that arose in the process of labor, of labor remuneration and protection always underlies an individual labor dispute. A collective dispute is primarily upholding of an overall collective interest. A distinction is also made between the above types of a labor dispute, based on their subject matter: a request of an employee to restore his/her violated right or a request of employees to establish or amend labor conditions at an organization or any division of such organization.

Second of all, one should also keep in mind that several employees may turn to authorities with jurisdiction to resolve individual labor disputes regarding violation of

Figure 1. Grounds for classifying labor disputes.
their individual labor conditions or other violations on the part of the employer. Such dispute will be an individual labor dispute, as long as the combination of individualized requirement does not make a collective labor dispute. It follows that an individual labor dispute may arise on the basis of a request of an individual or several individuals on matters regarding labor remuneration in particular. Trade unions may seek protection of rights not only a certain employee, but also any number of unspecified individuals, for example, while appealing against employer’s regulations. Such appeals (claims) should also be referred to labor disputes of individual nature. For reasons given, one should distinguish an individual labor dispute from a collective labor dispute.

Third of all, the above types of a labor disputes differ in their parties and subject matter of the dispute. As is known, an employee and an employer are always parties to an individual labor dispute. At the same time, a collective of employees or representative bodies of such collective may not be parties to such dispute. Moreover, an individual labor dispute may arise (and it arises in many cases) with regard to application of provisions of the labor law or provisions of the labor contract. The legislator associates a collective dispute exclusively with conclusion, amendment or fulfillment of the collective contract.

The above distinguishing criteria of labor disputes must be applied all at the same time, as long as application of any of them (regarding the subject matter or parties) does not allow us to define the labor dispute concretely, i.e. determine, whether such labor dispute is individual or collective.

The matter of delimitation of collective labor disputes from collective protection of individual labor rights of employees appears quite hard in practice. Failure by an employer to fulfill its obligations that arise from the labor contract and provisions of the labor law is often considered a ground for a collective labor dispute. A ‘collective’ nature of similar violations is the main argument for such valuation.

The above mentioned means that each labor dispute is individual as are labor relations that give rise to such dispute. Meanwhile, one should not forget that while collective labor disputes occur less often that individual disputes, they hold a much bigger threat not only for employers and their business stability, but also for the society as a whole. Therefore, be believe that the Kazakh legislator should introduce, at the current stage of development, into the labor law clarification of concepts ‘individual labor dispute’ and ‘collective labor dispute’, determine the procedure of resolving such disputes, which will allow, in its turn, to eliminate any inconsistencies and interpretations in enforcement of law.

Individual labor disputes are known for their own classification, and the basis for such classification may wildly differ. Thus, for example, some scientists identify a ground for classification, depending on the specifics of parties, and distinguish between the following types of individual labor disputes:

1. with view to employer’s specifics:
   - with the employer being a legal entity;
   - with the employer being an individual (the specific is that all disputes are resolved in court);

2. with view to employee’s specifics:
   - with a person willing to conclude a labor contract with the employer and denied such conclusion;
   - with an employee of this employer;
   - with a person that has no history of labor relations with this employer.

We would like to offer the following additional classification to the above types of individual labor disputes, i.e. with view to the way of resolution:

1. individual labor disputes that are resolved according to the standard procedure, i.e. when the dispute is resolved at the Conciliation Committee first and at a court next;
2. individual labor disputes that are resolved by judicial procedure, when the parties did not have any intention to turn to the Conciliation Committee;

Discovery of the main causes of individual labor disputes should not be ignored in determination of the conceptual framework of such individual labor disputes. They believed in the Soviet times that ‘labor disputes are not caused by the order itself, socialist production or intrinsic reasons, but mostly by purely subjective reasons that usually depend on subjective qualities of individual parties to the labor process only. Vestiges of capitalism that are still available in the conscience of individual people are the basic and main reason for labor disputes in our country’.

An individual labor dispute does not occur from the beginning. The dynamic of its development starts with an
action (or failure to act) of a party to the labor law on the matter of application of a provision of the labor law. Then, varying valuation of such action (or failure to act) by the parties occurs in this dynamic. These actions may be legal (according to one party) or illegal, i.e. labor violations (according to the other party). The parties make an attempt at the next stage to settle the disagreements that occurred by themselves by means of direct negotiations. If they are not successful, such disagreements are turned over to an authority with jurisdiction, and a labor dispute arises. It was believed in the Soviet times that negligence of provisions of the law by the administrative personnel, misperception of the subject matter of such provision, and obvious violation of requirements of the law, etc. are sometimes the reasons for violating the labor law and grounds for labor disputes arising. Labor dispute also occur sporadically as a result of unjustified demands of individual employees or officials. Certain facts when an employee violated labor discipline crudely: was late for work, took unauthorized leaves and was fired on this ground, however, the employee still believes he/she is right and demands employment restoration, are encountered.

Labor disputes may arise for various reasons. Objective causes may include those primarily associated with the socioeconomic situation in the republic caused by the transition to the market economy, downtime of enterprises, etc. Factors of subjective nature may be sources of labor disputes in other cases. Settlements of this kind are associated with errors and non-competency of members of the administration and management that manage production, joint activity of employees in the process of labor regardless of their interests. According to Zelenyi and Abisheva, these should be supplemented by insufficient legal training of management of enterprises (establishments, organizations), including in the area of labor law. On the other hand, lack of legal consciousness is also typical for the hired labor. This is often expressed in unjustified claims of employees against their employer, based on their misapprehension of their labor rights and obligations.

Failure to fulfill or undue fulfillment of labor obligations by either party to the legal labor relation is the ground for labor disputes. Individual labor disputes usually arise on initiative of individual employees, making their demands of employers regarding acknowledgment or restoration of violated rights. Individual labor disputes may arise in cases, when the employer does not guarantee and indemnify an employee against other matters of application of the labor law by the employer, fulfillment of obligations taken with regard to the employee by the labor, collective agreements and employer's regulations.

The reasons for such labor disputes are usually adverse factors that lead to different evaluation by the parties to such dispute of execution of the subjective labor law or fulfillment of labor obligations. We believe two adverse factors of the parties to the dispute to be the reasons for labor disputes, leading to varying evaluation of actual circumstances and actions:

1. An individual conscience lagging behind the social conscience, deviation from the established rules of morality. This reason for labor disputes may appear not only on the part of the employer, but also individual workers that violate labor and production discipline, neglect any property they have been entrusted with by the employer and demand any unfair remuneration or benefits. Many employees have now lost skills of fair, highly professional labor, besides low performance.

2. Failure to learn or poor knowledge of the labor laws by individual employers and also many employees, i.e. low legal culture. The level of legal conscience and legal culture of many employees is in need of significant improvement. When the employer is not familiar with rights of employees, labor collectives, such employer breaches his/her obligations to fulfill such rights.

Failure to fulfill or undue fulfillment of labor obligations by either party to the legal labor relation is the ground for labor disputes nowadays.

State of economic affairs in the country and at a certain organization may be referred to reasons for labor disputes. The transition from the old administrative planned economy to market relations made conditions at many organizations worse, and aggravated the reasons for labor disputes. Financial difficulties of organizations lead to delays and shortages in payroll payments and failure to provide guarantees and benefits to employees. Due to production, organizational and economic reasons, the employer has to make personnel changes, cut the number of employees or staff, and change the subject matter of employee’s labor function. Violations of employee’s rights
under such circumstances lead to the employee seeking resolution of a labor dispute and protection of his/her rights at certain authorities.

Despite the majority of causes of labor disputes, they can be resolved. Thus, Gladston points out that a compromise may be reached in many disputes of rights, associated, for example, with interpretation of any provisions of the collective agreement. We believe that proper discovery of causes of occurrence of individual disputes will facilitate prevention of such disputes and effective application of corresponding measures, in case the latter do happen in reality.

5. Conclusion

Our research allows for the conclusion that interests of an employer and employee rarely coincide under the market economic conditions; therefore, a labor dispute with illegal employment termination, failure to pay remuneration, failure to satisfy claims to compensate for moral harm due to the illegal termination, etc. as its possible sources and the progress of such dispute and resolution are in need of more detailed regulation. Hence, we discovered the following:

a. the analysis of specifics of the labor dispute concept allowed to discover the dynamics of development of the labor dispute by phases, which will contribute to distinction between the labor dispute and synonymous definitions, as long as labor dispute stages appear to be the following:

- a labor violation (actual or implied by a qualified party);
- varying evaluation of the labor dispute by the parties to the legal relation (disagreement);
- an attempt to settle such disagreements by the parties themselves via direct negotiations, i.e. self-regulation of disagreements;
- turning to an authority with jurisdiction to resolve disagreements - a labor dispute.

b. the Kazakh legislator is required to introduce the concept of ‘individual labor dispute’ into the labor law to meet the requirements of market economy, thus eliminating ambiguity in interpretation; we would like to offer the following definition to be included in the LC of the Republic of Kazakhstan. ‘An individual labor dispute is a dispute between an employer and employee on matters of application of laws and other regulations containing provisions of the labor law, collective agreement, contract, labor contract, and which has been addressed to an authority with the competency to resolve individual labor disputes.’

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