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WAGE REGULATORY ISSUES IN KAZAKHSTAN

The purpose of this work is to study the problems of wages legal regulation in the Republic of Kazakhstan and the identification of its compliance with the international standards. It has been proved that improper wages distribution can lead to labor conflicts and other dangerous social consequences.

Keywords: wages; the Labor Code of the Republic of Kazakhstan; discrimination of employees; the International Labor Organization.

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ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ ОПЛАТИ ПРАЦІ В РЕСПУБЛІЦІ КАЗАХСТАН

У статті досліджено проблеми правового регулювання оплати праці в Республіці Казахстан і оцінено відповідність норм трудового законодавства Республіки Казахстан міжнародним стандартам. Доведено, що неправильний розподіл заробітної плати може призвести до трудових конфліктів та інших небезпечних соціальних наслідків.

Ключові слова: заробітна плата; Трудовий кодекс Республіки Казахстан; дискримінація працівників; Міжнародна організація праці.

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ПРОБЛЕМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ ОПЛАТЫ ТРУДА В РЕСПУБЛИКЕ КАЗАХСТАН

В статье изучены проблемы правового регулирования оплаты труда в Республике Казахстан и оценено соответствие норм трудового законодательства Республики Казахстан международным стандартам. Доказано, что неправильное распределение заработной платы может привести к трудовым конфликтам и иным опасным социальным последствиям.

Ключевые слова: заработная плата; Трудовой кодекс Республики Казахстан; дискриминация работников; Международная организация труда.

Problem statement. The purpose of this research is to explore the problems of wages legal regulation in Kazakhstan. The main problem is to adjust labor legislation of the Republic of Kazakhstan to international standards. Unfair distribution of wages can lead to labor conflicts and other dangerous social consequences.

Methodology. The study was based on the statistical data of the Committee of the Republic of Kazakhstan on State Statistics, analysis and comparison of Kazakhstani legislation and the provision of international treaties and agreements.

Key research findings. The study shows that in order to improve labor legislation of the Republic of Kazakhstan and to prevent labor and social conflicts the following is needed: 1) to amend the definition of wages, as it is stated in the Labor Code of the Republic of Kazakhstan, in order to conform it to the definition which is in the Convention the International Labor Organization as of 07/01/1949 #95 "On the Protection of Wages" (Geneva, 1996); 2) to make some amendments to the Labor

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Code of the Republic of Kazakhstan and to include in its content the ban on workers discrimination in compensation for work.

Practical implications. The findings of this study have practical significance for the improvement of labor legislation in Kazakhstan, to prevent labor and other social conflicts, to manage interpersonal relationships in the workplace.

Value. The issues examined in this paper have not been previously studied. A number of Kazakh scientists studied the concept of wages, wage system, the rule of law on wages, but the conclusions that have been developed by the author have not been made before.

Introduction. Today the issues on paying wages to employees have great relevance. The new President's Message to the people of Kazakhstan "Kazakhstan's Way – 2050: The main goal, the main interests, common future" determines the policy of our state for today, it focuses on the regulation of labor relations. N.A. Nazarbayev gives to the government of Kazakhstan a new task – "employment benefits" for people who work in education, health and social security should be reconsidered. The Government is to develop and implement from July, 1st, 2015, a new model of wages for civil servants. It should provide a salaries increase in healthcare – up to 28%, education – up to 29%, social protection – up to 40% (Nazarbayev, 2014).

The solution of this problem is necessary. Namely, the imbalance in labor has led to serious labor conflicts at enterprises in Kazakhstan. Protests in Kazakhstan have taken place in 3 sectors: oil, mining and construction.

Since 2008, the workers in the oil industry went for strikes several times a year. Many protests were unnoticed to the public, as not all media broadcasted them. The most significant protests were in the news:

- Strike of "Burgylau" workers' in March 2009.
- Labor unrest "Cruz" and "Zhondeu" in 2008.
- The riot of workers of transport structures "Ozenmunaigas" in 2008.
- Workers' strike at "Ozenmunaigas" in January-March 2010.
- The most famous strike of JSC "Karazhanbasmunay" employees, LLP "ERSAI KaspianKontraktor" in May and December 2011, which ended in a tragedy.

It's necessary to provide a detailed information about this strike, because it sparked the public outcry. The employees of JSC "Karazhanbasmunay" (MSC) – a joint venture of Kazakhstan's national oil and gas corporation JSC "KazMunaiGas" (KMG EP) and Chinese state CITIC Group; LLP "ERSAI KaspianKontraktor" (ERSAI) – an oilfield service company that was partially owned by Italian Saipem S.p.A., a member of the group Eni; "Ozenmunaigas" (OMG) – KMG EP production branch began a protest in May 11, 2011 demanding from the government of Kazakhstan: 1) to allow the independent trade union "Karakiyak"; 2) to revise the collective agreement so that the interests and rights of workers were accounted for on the basis of the principle of parties equality; 3) to overview the salaries of 100% of workers, since the present ones do not provide real living wage; 4) to overview wages and conditions in accordance with international labor standards.

Employees of all 3 companies have repeatedly tried to engage in talks with management to resolve disputes on wages and other aspects of contracts, but they faced indifference or open oppression. Thus, according to workers, management and MSC ERSAI union leaders refused access to the territory of the company to communicate

with employees and holding union meetings. In ERSAl officials harassed and threatened workers for participating in legitimate union meetings. This was manifested in the form of interrogation, sometimes with police involvement.

Faced with the ineffectiveness of their attempts to resolve disputes through negotiations, the employees of these 3 companies in May 2011 began a hunger strike and at certain moment it covered up to a few thousand people. In total, during the strikes in 3 companies more than 2 ths employees were dismissed. The International Labor Organization (ILO) believes this dismissal was based unlawful discrimination in employment.

At the end of June 2011 ERSAl strike came to an end by the authorities. In early July, police officers violently dispersed the strikers "OMG", one of whom was beaten with a baton on his legs. Despite this intervention, employees of "OMG" and "MSC" continued to strike peacefully until December, 16th, when there were more clashes between police and people gathered in the central square of Zhanaozen.

On that day, unidentified people in uniform of oil companies began to destroy the scene, set in the square to celebrate the Independence Day of Kazakhstan. The unknown set fire to several buildings and began looting stores. Police and government forces, opened fire and killed, according to official figures, 12 people wounding several dozens. During clashes 3 more people were killed, 35 police officers were injured (HRW oil sector..., 2012).

Strike over wages and their delayed payment were also at other enterprises in 2012–2013. The workers of JSC "Kazakhmys" got 100% salary increase and the employees of JSC "ArcelorMittal" in Karaganda demanded 30% increase to their salaries.

Such actions were seen as the most effective tool for solving the existing problems, but there are many ways to resolve labor disputes in a more peaceful manner. Therefore, it is very important to ensure stability and the absence of labor conflicts in the workplace. This can be achieved by creating decent working conditions and remuneration, motivating and encouraging staff to work and encourage good results.

With the "right" salary employees will use a more creative approach in accomplishing their duties and will finally improve the results of their activity. Remuneration or compensation to employees plays a crucial role in attracting, motivating and retaining necessary expertise in the organization and management of employees. To keep staff without material reward is impossible. Inefficient system of remuneration can cause unsatisfactory results, reduction in productivity, decrease in labor quality etc.

On the other hand, an effective compensation system encourages employees' productivity, directs their activities in the right direction that is the efficient use of human resources.

Therefore, the relevance of the topic is of no doubt and sufficiently justified.

Wage concept. A wage can be treated in economic and legal senses. The economic aspect of remuneration is a converted form of labor costs, in other words, the price. But current methods of determining prices are different. If one owner dominates (in terms of non-market economy, as it was in the Soviet Union, when the only owner of production means was the state) – it is the only subject of wages valuation. In this case, the wage is largely dependent on the discretion of the owner of production means, although it is associated with results's quality.

Under the market economy the formation of the contents of the category "wages" takes place directly at the labor market when two owners are the owner of the labor force and the owner of production means necessary to implement the ability to work. Arising relationship between these subjects is the relationship of hiring a citizen for his/her labor in exchange for a sum of money and other social and material benefits. This value determines the amount of money (the cost of labor) that exists prior to a specific production process, and the cost of labor determines the amount ensuring its full reproduction of life benefits. Thus, wage is the monetary form of labor costs, i.e. the price of labor.

Salary of each employee depends on a personal labor input and labor quality. In accordance with the Labor Code of the Republic of Kazakhstan any sort of reduction in worker's pay based on gender, race, nationality is prohibited. However, in practice this is not always observed (e.g., labor of women is sometimes paid less than male labor).

As a legal category wages disclose certain rights and duties of employment relationship subjects. The first and foremost, one of the conditions of employment are determined by an agreement between parties on employment relationship. Subjects of these relationships are: the employer on the one hand and the employee on the other.

Salary, which is paid for a hired labor, directly influences the contract of hiring. Work is to be paid as a function of labor; therefore, the result of work has implications for determining the amount of payment, but not the right to pay for itself. Therefore, an employer is entitled to pay, when the worker has not fulfilled the necessary labor for any reason beyond his control.

We should also mention that the parties in an employment contract in advance determine the amount of wages in money terms. Here the parties act in their own interests, but there are certain restrictions in legislation.

The definition of "wages" is given in paragraph 1. Article 41 of the Labor Code of the Republic of Kazakhstan as of May ,15, 2007: "wage is the remuneration depending on employee's qualifications, complexity, quantity, quality, and work conditions, as well as the compensation and incentive-based payments" (Labor Code..., 2007). As we can see, this definition differs from the international standard – from the definition by the International Labor Organization Convention # 95 (Article 1) which states that "wages are any fees or any earnings, calculated in money and established by agreement or the national law which by virtue of a written or oral contract of employment entrepreneur pays to the worker for work that is either executed or to be executed, or for services rendered" (Report on the Convention..., 2011).

First, in the definition of wages in the labor legislation of the Republic of Kazakhstan, there is no indication that monthly salary is calculated in money, and this is very important. For example, in the period of market relations formation in Kazakhstan, many enterprises paid employees in food, consumer goods, or even worse, the products of own company, which were not marketable. Although Article 134 "Procedure and terms of payment of wages" of the Labor Code of the RK has an indication that "wages are paid in cash in the national currency of the Republic of Kazakhstan, at least once a month, not later than the first decade of the next month", we believe that in wage determination there should be an indication of the money form of wages.

Secondly, in this definition there is no indication that wage is established by an agreement or by national law. It is also very important, since wages should not be installed individually by employers.

Third, wage determination, given in the Labor Code of the Republic of Kazakhstan, does not inform about who pays wages.

Hence, the definition of wages in the national legislation differs significantly from the recommended by the International Labor Organization, so there is a need to amend this definition.

The problem of work compensation and discrimination against workers. The problem of gender discrimination. In Kazakhstan, there are 3 aspects of this problem: 1) gender discrimination, i.e. lower wages for women as compared with men; 2) discrimination of the citizens of the Republic of Kazakhstan payment for work of equal value in comparison with foreign experts from developed countries (China, Turkey, Italy, India, Korea, United Kingdom); 3) discrimination against migrant workers from developing countries (Uzbekistan, Tajikistan, Kyrgyzstan) to pay for work of equal value in comparison with the citizens of the Republic of Kazakhstan.

Latest research and publications analysis. Discrimination by gender is one of the central problems of employment. This problem draws much attention by foreign scholars P. England (1984), R. Pierce-Brown (1998), F. Vella (1994), R.M. Wentling (1992), A. Zabalza and J. Arrufat (1985).

Article 1 of the UN Convention states that discrimination against women is "any distinction, exclusion or restriction made on the basis of sex, which is aimed at weakening or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field" (Convention on the Elimination..., 1979).

Accordingly, "discrimination in the labor market when employees having the same characteristics on the basis of performance, are treated differently because they belong to different demographic groups" (Erenberg and Smith, 2011).

According to the United Nations data, women represent 50% of the world's adult population and one third of the registered workforce, and spend about two-thirds of all working hours, receiving only one-third of the world's income and are owning less than 1% of the world's property (Shum, 1997).

In November 2005, Kazakhstan acceded to the International Covenant on Economic, Social and Cultural Rights, under which Kazakhstan is to ensure equal rights of men and women in all economic, social, and cultural fields. Declaration of Philadelphia obliges to pursue all the goals of the organization by using all means at disposal and with full regards to their features. ILO's principles developed in the form of specific rights and obligations in Conventions are recognized as fundamental both in the ILO and beyond. Kazakhstan ratified many ILO conventions concerning the protection of women's labor rights. For example, the Convention "On Equal Remuneration for Men and Women Workers for Work of Equal Value" as of June 6, 1951 #100 (Law of the RK, 14.12.2000), the Convention "On Discrimination in Respect of Employment and Occupation" as of June, 25, 1958 (Law of the RK as of July, 20, 1999) and others.

Furthermore, the Republic of Kazakhstan signed "Equal elimination of all Forms of discrimination against Women" (on June, 29, 1998) and its optional protocol (of July, 4, 2001). Convention on the elimination of all forms of discrimination against women recognizes the principle of equality for women and men with regard to the enjoyment of all economic, social, cultural, civil and political rights, including the fields of labor and employment. In accordance with the Article 2 of the convention, the participating states are required to take general legislative measures aimed at: strengthening national constitutions or other legislation of the principle of equality between men and women, a ban on any form of discrimination against women, including providing sanctions for violations; refraining from taking any discriminatory acts against women, create opportunities for legal protection of women rights to enable them effectively defend against any act of discrimination; modify or abolish the existing laws, regulations, customs and practices which constitute discrimination against women, the abolition of penal provisions which constitute discrimination against women.

Despite the desire of the Republic of Kazakhstan to meet the international standards, the problem of discrimination in payment for women is still not solved. In the whole country the average wage for women is 66% of men's wages. This is due to the fact that women work mostly in education, health, social services, that is mainly in the public sector (Report on the Convention..., 2011).

It is no secret that in Kazakhstan there is evidence of discrimination against workers in labor relations. Absence of specific rules in the Labor Code prohibiting discrimination of citizens in remuneration for work, does not allow the state labor inspectors take actions to stop this. Consequently, Kazakhstani people in their homeland are subjected by foreign employers' explicit discrimination and work in unequal and disadvantaged conditions as compared to foreigners. The Republic of Kazakhstan employs hundreds of foreign specialists, invited from other countries. Most foreign workers are hired in the construction industry – 44.3%, mining – 16.3%, services – 11.3%, manufacturing – 9.8%.

The number of foreigners attracted in a large portion of specialists, including a leadership function – 79.5%, blue-collar occupations – 20.5% (In Kazakhstan..., 2013).

Employers pay foreign workers often tens of times more than Kazakh specialists who have same qualifications for the same amount of work.

For example, at the JSC "Petro Kazakhstan KumkolResorsiz" the income of masters, including salaries and recurrent costs for travel, cost up to 30 mln KZT. In the same period income of Kazakh masters performing same work was 2.2 mln KZT (The National Plan for Human..., 2009–2012).

According to the employment contract of JSC "CNPC-Ai Dan Munay" for Chinese professionals in the Republic of Kazakhstan who have the annual paid leave for the period of 90 calendar days, excluding travel time, and Kazakh workers have holidays for 24 calendar days, an additional paid leave in the amount of 9 calendar days for living in environmentally disadvantaged areas, and 6 days for working under harmful and/or hazardous working conditions.

At the same enterprise the wage of foreign specialists is 351.2 ths KZT, while wages for equivalent positions under Kazakh employment contract is 82.4 ths KZT.

As a result, the gap in payment is more than 4 times (The National Plan for Human..., 2009–2012). Unfair wages for foreign and domestic experts are presents at almost all other companies.

Some wages at foreign companies differ in size between domestic and foreign specialists up to 11 times. In Atyrau branch "Expertise SRL" Kazakh engineer's salary is 170,674 tenge, and the salary of his foreign colleague is 1,908,550 KZT. These are not isolated cases of discrimination at foreign companies in the cities of Almaty, Aktobe, Almaty, Atyrau, West Kazakhstan and Mangistau areas. So, in 2013 the Ministry of Labor and Social Protection of the Republic of Kazakhstan revealed 136 facts of wage discrimination between local and foreign specialists. The analysis of causes and conditions of such violations showed that despite the fact that Articles 14 and 24 of the Constitution of the Republic of Kazakhstan prohibit all forms of discrimination, the Labor Code of the Republic of Kazakhstan contains no explicit prohibition of discrimination of workers in compensation for work.

At the same time, such provisions are contained and regulated in international treaties ratified by the Republic not only in Kazakhstan, but also by the states which companies are operating in our country.

Thus, according to the Article 1 of the International Labor Organization Convention #111 "On discrimination in respect of employment and occupation" discrimination is any distinction, exclusion or preference made on the basis of the foreign origin, the effect of nullifying or impairing equality of opportunity or treatment in employment and occupation (Convention ILO..., 1958).

It should be noted that such social inequality causes conflict environment that can grow into massive on controlled collision on ethnic grounds and therefore destabilize society and general political situation in a certain region and in the whole country.

Discrimination against migrant workers from developing countries in paying for work in comparison with the citizens of Kazakhstan. Kazakhstan, as a dynamically developing country, is attractive for citizens of neighboring countries who are looking for work outside their country. Labor migrants come mostly from Kyrgyzstan, Uzbekistan and Tajikistan. The global financial crisis has somewhat reduced the flow of migrant workers, but their total number remains high, especially its latent part. The most common violations by Kazakhstan employers in relation to these categories of migrant workers is hiring without a contract, without appropriate conditions and safety, as well as partial payment, or even non-payment for labor, sometimes there is a use of certain forms of forced work etc. Meanwhile, all of the ILO, including Kazakhstan, have an obligation arising from the very membership in this organization, even if they have not ratified a convention, including in relation to migrant workers. The fundamental principles are: freedom of association and effective recognition of the right to collective bargaining; elimination of all forms of forced labor or compulsory labor; child labor elimination of discrimination in respect of employment and occupation. All these norms are universal and must be applied by all ILO member states regardless the level of their economic development. Government of the Republic of Kazakhstan ratified the Convention on the Legal Status of Migrant Workers and Members of their Families of the Commonwealth of Independent States.

Requirements on wages and working conditions for illegal immigrants are significantly understated. Despite the existence of domestic unemployed, employers prefer to take such workers. According to experts, the difference in the level of payment for local and foreign workforce is from 10 to 50 (Sidorov, 2007).

The use of illegal labor is migrants mainly extended to small and medium-sized enterprises, for which the size of payroll affects the results of operations. However, apart from medium and small enterprises the use of illegal labor is also common at large enterprises engaged in highly profitable industries. So, on one of the construction sites of Astana was once found a group of 21 Turkish citizens, which were not registered. Violations of Kazakhstan laws and import of foreign labor from Indonesia, Pakistan and other Asian countries are also recorded in the oil sector and the satellite subsectors (Zabalza and Arrufat, 1985).

We believe that it is necessary to adopt a law on labor migration. This law should explicitly state the basis for state regulation of labor migration. In addition, it is important to establish principles on labor migration regulation. The law on labor migration should take into account the peculiarities of legal regulation of labor migrants entering the country legally and timely departing to, provide a legal mechanism for restricting illegal migration etc.

Conclusions and implications for strategic diversity initiatives. The study suggests the implementation of international labor standards in the labor legislation of the Republic of Kazakhstan. In order to implement this the following tasks are to be accomplished:

- To implement the provision of the Convention of the International Labor Organization 01/07/49 #95 "On the Protection of Wages" (Geneva) of the Labor Code of the Republic of Kazakhstan as of May 15, 2007 and to amend the definition of wages in the Labor Code of the Republic of Kazakhstan. It should be read as follows: "Wages are remuneration in cash, established by an agreement or legislation of the Republic of Kazakhstan, which by virtue of a written or oral contract of employment the employer pays for labor depending on employee's qualifications, complexity, quantity, quality, and conditions of work, as well as payments of compensation and incentive-based".

- To prevent labor and social conflicts amendments are needed to the Labor Code of the Republic of Kazakhstan as of May 15, 2007 and included in employers' obligations set by Article 23 "Basic rights and obligations of the employer" an outright ban on discrimination of workers in work compensation basing on race, color, sex, religion, political opinion, national or social origin.

- It is necessary to adopt the Law of the Republic of Kazakhstan on labor migration, which will be consolidated on the basis of state regulations of labor migration, labor migration management principles, especially the legal regulation of labor migrants who enter and depart the country legally, to provide a legal mechanism for restricting illegal migration etc.

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Стаття надійшла до редакції 16.07.2014.