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Non-Judicial Procedures of Protecting the Rights of Workers in Belarus, other EEU States and Lithuania*

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The article explores non-judicial mechanisms for labor disputes in Belarus, other Eurasian Economic Union member states (Armenia, Kazakhstan Kyrgyzstan and Russia) and Lithuania in a comparative legal aspect. The author analyzes different procedures for the settlement of individual and collective labor disputes in these countries and puts forward a number of proposals to improve these procedures in the legislation.
Keywords: labor disputes, workers, arbitration, mediation, labor dispute commissions.

Introduction

Non-judicial mechanisms for handling complaints and disputes are divided into state and non-governmental mechanisms. State non-judicial complaint or dispute mechanisms play an important role in complementing and expanding judicial mechanisms. Thus, in accordance with paragraph 27 of The guiding principles on business and human rights (Guiding principles of business..., 2011), States should provide, in addition to judicial mechanisms, effective and appropriate non-judicial complaint mechanisms, which are part of the general state system of legal protection in cases of business-related human rights violations. The types of non-governmental complaint mechanisms include those created by business organizations independently or in cooperation with interested parties. They can be created in the form of an arbitration court, based on a dialogue (social partnership). It is quite difficult to draw a strict "watershed" between state and non-state protection mechanisms. Thus, labor dispute commissions (hereinafter – LDC) or conciliation commissions established in Belarus and some other Eurasian Economic Union member states (Russia, Kyrgyzstan, Kazakhstan) on a parity basis may most likely be classified as non-governmental mechanisms, since the creation of a LDC is not mandatory, and the state itself does not participate in their formation. On the other hand, in Lithuania after the reform

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of 2016–2017 the LDC can be classified as a semi-governmental non-judicial mechanism, since it introduces representatives of the state – governmental labor inspectors.

For the purposes of this paper we will pay more attention to the comparison of out-non-judicial procedures for the settlement of individual and collective labor disputes in Armenia, Kazakhstan, Kyrgyzstan, and the Russian Federation. This legal issue was analyzed in separate PhD theses in Russia and Belarus (Berezhnov, 2012; Pilipenko, 2015; Khanukayeva, 2017) (but without reference to the EEU), as well as in a number of educational publications (Eurasian labor law..., 2017. p. 445–449, 460–471; Mororzov, Chanyshev, 2016. p. 310–335). Further we will consider non-judicial mechanisms for protecting human rights from violations by employers in the Republic of Belarus, comparing them with similar procedures established in four countries of the Eurasian Economic Union (hereinafter – EEU) countries and Lithuania.

1. National legislation of Belarus on non-judicial procedures for the protection of workers' rights

The Republic of Belarus has provided for a number of non-judicial procedures in the current national legislation related to the settlement of labor disputes, both individual and collective.

Article 233 of the Labor code of the Republic of Belarus (hereinafter – Labor code) just lists two the body considering individual labor disputes on the application of labor legislation, collective contracts, collective agreements, namely:

- labor dispute commissions created from an equal number of representatives of employer and trade union. Moreover, the LDC is, as a rule, a mandatory primary body for settlement of individual labor disputes. An approximate list of disputes resolved in the commission is contained in article 236 of the Labor code;
- courts with general jurisdiction.

The rule of alternative jurisdiction of individual labor disputes is fixed in part 3 of article 236 of the Labor code: a worker who is not a member of a trade union has the right to apply to the LDC or to a court of his choice. Thus, a worker who is not a member of a trade union has the right to choose which jurisdiction to apply to in most individual labor disputes (to the LDC or to the court). This special rule-alternative has already been criticized by scientists, because by providing such a benefit for workers who are not members of a trade union, it essentially introduces a discriminatory rule on the basis of participation or non-participation in a trade union, which is prohibited by article 14 of the Labor code. In the future, it is advisable to abandon this alternative rule for these employees, extending to them the general rules of conditional and exclusive jurisdiction applicable to employees who are members of trade unions.

In addition to the two main bodies for consideration of individual labor disputes (the LDC and the court), a number of other non-judicial procedures for settlement such disputes between a business organization or an individual entrepreneur and an worker can actually be applied, namely:

- ***mediation***, which can be applied to by the parties to the employment relationship (worker and employer), having concluded an agreement on the use of mediation. According to part 1 of article 2 of the Law of the Republic of Belarus dated 12.07.2013 No. 58-Z "On mediation," this Law regulates relations related to the use of mediation in order to settle disputes, including those arising from labor relations;
- ***arbitration trial***. Article 39 of the Civil Procedure Code of Belarus and the Law of the Republic of Belarus dated 18.07.2011 No. 301-Z (ed. from 24.10.2016) on arbitration courts allow the

creation of an arbitration court for the settlement of any disputes, including individual labor disputes;

- ***the notarial form of protection of violated rights*** (through the execution of a notary writ of execution for the recovery of accrued but unpaid worker salaries and debts to pay for the cost of issued uniforms (uniform) in the cases established by legislative acts, in the amount calculated proportionally to the time remaining until the expiration of socks uniforms (uniforms) according to paragraph 1 of the Decree of the President of the Republic of Belarus from 11.08.2011 № 366 (ed. by 27.04.2016) "On some issues of notarial activities";
- ***bodies of conciliation, mediation and arbitration*** established by employers under an agreement with trade unions in accordance with article 251 of the Labor code for settlement of non-disruptive labor disputes.

Some lawyers also consider the activities of the Prosecutor's office, officials of the state labor inspection, and trade unions to be forms of labor rights protection (Skobelev, 2020, p. 44). This opinion can hardly be accepted, since these governmental and public bodies do not protect, but rather safeguard labor rights within the framework of their own supervisory and control activities.

In relation to collective labor disputes, there are also four non-judicial mechanisms for resolving conflicts between workers (represented by trade unions and their associations) and employers (their associations) in the Republic of Belarus: 1) conciliation commission; 2) mediation; 3) labor arbitration; 4) strike. Let's briefly review the first three of these procedures.

Conciliation and arbitration procedures have found their international legal basis at the universal level (ILO Recommendation № 92 "On voluntary conciliation and arbitration" of 1951).

Reconciliation is a mandatory procedure for resolving a collective labor dispute by working out an agreed solution by the parties to the conflict through mutual concessions.

The main form of reconciliation currently in Belarus is the conciliation commission, which is dedicated to articles 380 and 381 of the Labor code. In the beginning of 20th century, such bodies were often referred to in the legislation of foreign countries as conciliation chambers.

The conciliation commission is usually a temporary body for resolving labor disputes. However, this does not preclude the fact that the members of the conciliation commission can be determined in advance in a collective agreement.

If the employer refuses to meet all or part of the worker's claims or fails to notify the employer of its decision within three days, a conciliation commission is established.

The conciliation commission is formed from representatives of the parties of the collective labor dispute on an equal basis. Therefore, under the current labor legislation of Belarus, the conciliation commission, as well as the LDC, is formed in an even number of members (2, 4, 6, etc.) with equal representation from the employer (association of employers) and the trade union (association of trade unions). Until 2014, article 380 of the Labor code provided for the introduction of a neutral member in the composition of the conciliation commission, that is, an odd number of its members was assumed.

The conciliation commission shall conduct the necessary negotiations with representative bodies of workers, the employer, owner or authorized body and within five days from the date of its creation accepts by agreement of the parties a decision on any collective labor dispute that is in the Protocol and in written form sent to the parties of collective labor dispute. This decision is a recommendation for the parties. If the decision of the conciliation commission is accepted, the collective labor dispute is terminated.

If there is no agreement in the conciliation commission, the parties to a collective labor dispute may apply to a mediator or to labor arbitration under an agreement between them (article 381 of the Labor code).

Mediation is a relatively new procedure in domestic labor law for resolving collective labor disputes, borrowed from the US legal system, introduced for the first time in 1994. It was preserved in article 382 of the Labor code, but in practice, according to data the of Republican labor arbitration, it was never applied (Tomashevski *et al*., 2011, p. 90). The reason for the unpopularity of this procedure can be explained by its optional value for the parties to a collective labor dispute and the financial costs incurred by the parties when paying for mediation services. Despite this, some authors justify the need to introduce in the Labor code such non-traditional methods of procedures as arbitration on the last offer, arbitration-mediation, or preventive mediation (Yasinskaya-Kazachenko, 2017, p. 95, 125).

The consideration of a collective labor dispute with the participation of an intermediary is carried out within five days by holding consultations with the parties by the mediator (including confidential ones) and ends with the adoption by the parties to the collective labor dispute of an agreed decision based on the proposals of the mediator.

Theoretically mediation services may be established by public administration bodies, other employers, and trade unions. If the mediator's proposals are accepted, the collective labor dispute is terminated. If there is no agreement between the parties to a collective labor dispute with the participation of mediator, the parties to the collective labor dispute may apply to labor arbitration.

Labor arbitration is one of the mandatory conciliatory stages of resolving a collective labor dispute.

The main normative sources regulating the application of this procedure for the settlement of a collective labor dispute are:

- Labor code of Belarus (article 383, 384);
- Decree of the President of the Republic of Belarus № 320 of July 23, 2013 "On certain issues of settlement of collective labor disputes."

Labor arbitration is a temporary body established by agreement between the employer (employers, associations of employers) and workers represented by their representative bodies (trade unions) in order to resolve a collective labor dispute.

A collective labor dispute is resolved in labor arbitration if there is no agreement on its resolution in the conciliation commission or with the participation of mediator.

The employer must notify the governmental labor inspection within three days of the establishment of an employment arbitration.

The quantitative and personal composition of labor arbitration, the procedure for settlement of collective labor disputes, the rules for decision-making and other issues of its activities are determined by agreement of the parties, unless otherwise provided by law. Note that in practice, the parties do not always manage to quickly form the composition of labor arbitration.

A decision on a collective labor dispute is made by the labor arbitration no later than within fifteen days from the date of election of labor arbitrators (labor arbitrator).

We leave the strike as a stage of resolving a collective labor dispute outside the article.

To substantiate proposals for improving the pre-trial mechanism for resolving labor disputes in Belarus, it is important to compare with foreign experience of such procedures, especially in the European-Asian region (EEU), within which the Republic of Belarus has been actively integrating its political and legal system in recent years.

2. Non-Judicial procedures for the protection of workers' rights in the EEU countries and Lithuania

As the well-known scholar in labor law Igor Kiselev correctly wrote at the time, the methods of resolving labor conflicts in the West are divided into two: the consideration of a dispute in judicial or administrative bodies and conciliation and arbitration (Kiselev, 1999, p. 266). Moreover, the set of these procedures is characterized by a wide variety of combinations and intertwining in relation to individual and collective labor disputes. This scientist summarized and systematized these two main orders in relation to types of labor disputes in a number of leading Western countries (USA, UK, France, Italy, Germany, Japan, etc.) (Kiselev, Lushnikov, 2008, p. 495–469; Kiselev, 2005, p. 278–284).

As previously noted, four of the five EEU countries have retained non-judicial bodies for resolving individual labor disputes: in Belarus, Kyrgyzstan and Russia, these are the LDC, and the conciliation commissions in Kazakhstan. Only Armenia has abandoned the non-judicial procedure for settling individual labor disputes in favor of judicial protection.

In relation to collective labor disputes, the set of non-judicial procedures is quite similar: in most of the countries compared, conciliation and arbitration bodies are used to resolve such conflicts. The differences mainly relate to the mandatory or non-mandatory nature of certain stages (conciliation commission, mediation, labor arbitration). In most of the EEU member states, the mediation stage is optional, while the dispute resolution in the conciliation commission is always a mandatory stage.

For a better understanding of the similarities and differences in labor dispute resolution procedures in the five member States of the EEU, we present these procedures in relation to individual and collective labor disputes in the form of the table below.

The state / procedure	**Armenia**	**Belarus**	**Kazakhstan**	**Kyrgyzstan**	**Russia**
Individual labor disputes					
labor dispute commissions	–	+	+ (named conciliation commission)	+	+
Collective labor dispute					
Conciliation commission	+	+	+	+	+
Intermediary	+ (for disputes on the conclusion and amendment of a collective agreement)	+	+ (parallel stage)	+	+
Labor arbitration	–	+	+	-	+

As for the terms of pre-trial consideration of individual labor disputes, they are as follows: in Belarus, Kyrgyzstan and Russia for the LDC – 10 days from the date of application, in Kazakhstan for the conciliation commission – 15 days.

The terms of settlement of collective labor disputes in the EEU Member States vary by stage and by country, ranging from 3 working days (conciliation commission in Russia, mediator – in Armenia and Kyrgyzstan) to 15 days (labor arbitration in Belarus).

For comparison, let us cite the experience of the Republic of Lithuania on the widespread use of non-judicial mechanisms for the settlement of both individual and collective labor disputes, which is interesting, although it raises doubts in terms of borrowing, since to a certain extent it restricts the right to judicial protection of workers' labor rights.

However according to Professor of Vilnius University Tomas Davulis, "the availability of commissions, the increasing number of cases and the quality of proceedings should be attributed to the positive consequences of the reform of the system for handling individual labor disputes in Lithuania" (Davulis, 2017, p. 44).

Recall that with the adoption of the Lithuanian Labor code in 2017, the competence of the LDC was expanded: they were also instructed to consider the legality of suspension from work, dismissal from work and other disputes that previously had to be resolved only in court. In addition, the LDC in Lithuania is charged with reviewing collective labor disputes. Thus, the competence of the Lithuanian LDC is to resolve both individual and collective labor disputes out of court. According to the current legislation of Lithuania, a worker must necessarily apply to the LDC, and only if the dispute cannot be resolved there, they have the right to apply to the court. In the LDC, labor disputes about the right are resolved free of charge and court costs are not awarded. The commission is obliged to resolve the dispute no longer than within one month, and only by the decision of the chairman of the commission. The consideration of the dispute can be extended for a period longer than one month, but in any case no longer than two months. The range of labor disputes has been expanded, and the number of labor disputes considered by the commission has increased accordingly (Yanukevichene, 2018).

Conclusion

Thus it can be stated that both a set of conciliation and arbitration procedures and a fairly short time frame for resolving labor disputes out of court in Belarus and in other member states of the EEU generally meet the criteria for the effectiveness of non-judicial complaint mechanisms set out in paragraph 31 of the Guiding principles of business in the aspect of human rights: legitimacy, accessibility, predictability, fairness, transparency, compliance with human rights standards, a source of continuous learning; a combination of interaction and dialogue.

Taking into account the conducted comparative legal research, three proposals can be made:

1) make a stage of pre-trial settlement of individual labor dispute in LDC and alternative, not mandatory (and not only for workers not members of trade unions, but for workers who are trade union members), which would eliminate the discriminatory provision from part 3 of article 236 of the Labor code and the greater to guarantee the constitutional right to judicial protection enshrined in article 60 of the Constitution of the Republic of Belarus;
2) change the decision making mechanism of the LDC's is the consensus to enter the majority of the LDC members by secret ballot;
3) regulate the procedure for forming the composition of the labor arbitration through the mediation of a governmental body (the Department of governmental labor inspection of the Ministry of labor and social protection of Belarus), in a situation where the parties themselves cannot agree on its personal composition, since this issue remains a gap.

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S u m m a r y

This paper includes a comparison of non-judicial procedures for the settlement of individual and collective labor disputes in the EAEU states and Lithuania. Labor dispute commissions or conciliation commissions established in Belarus, Russia, Kyrgyzstan, Kazakhstan on a parity basis may be classified as non-governmental mechanisms. On the other hand, in Lithuania, after the reform of 2016–2017, the LDC can be classified as a semi-governmental, non-judicial mechanism. The author makes a number of proposals to improve the procedure for consideration of individual labor disputes in Belarus, taking into account a comparative analysis of the legislation of other EAEU states and Lithuania.

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