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Zh. Nurbekova*, Z. Zhanazarova, A. Beissenova

Al-Farabi Kazakh National University, Kazakhstan, Almaty
e-mail: janaranur@yahoo.com*

Trade-union movement in kazakhstan: problems and prospects

The main function of the trade-union organizations is consolidation of interests of workers and protection of their interests before the employer. The history of development of trade unions shows how difficult it is to satisfy needs of workers in the conditions of the market relations. While during the Soviet period trade unions were the appendix (addition) of the management of the enterprises which did not have real force of influence since the state was the employer, today trade unions try to represent interests of hired workers in practice. However, lack of experience of participation in processes of regulation of social and labor relations affects activity of trade unions and increase of level of mistrust to them from society. The government of the country is interested in development of trade unions since it is one of the most mass public organizations, by means of which development of social partnership in the social and labor sphere is possible.

Key words: interests, hired workers, trade unions, social partnership.

Ж.А. Нұрбекова, З.Ж. Жаназарова, А. Бейсенова

Қазақстандағы кәсіподақтар: қиындықтар мен мүмкіндіктер

Аталған мақалада авторлар әлеуметтік серіктестіктің негізгі субъектілерінің біріне назар аударады. Кәсіподақтардың негізгі мақсаты ол жұмысшылардың мақсат-мүдделерін біріктіріп оларды жұмыс берушінің алдында қорғау және іске асыру болып табылады. Кәсіподақтардың қалыптасу тарихына назар аударатын болсақ, олардың тиімді қызмет ету нарықтық қатынастар заманында күрделі жағдайға тап болатындығы көпшілікке мәлім. Қазіргі Қазақстан кәсіподақтардың негізгі жұмысы ол өзара келісімге келу және қоғам, жұмысшылардың сенімдерін ақтау болып табылады.

Түйін сөздер: мүдделер, жалданушылар, жұмыс беруші, кәсіподақтар, Еңбек кодексі.

Ж.А. Нурбекова, З.Ж. Жаназарова, А. Бейсенова

Профсоюзное движение в Казахстане: проблемы и перспективы

Основной функцией профсоюзных организаций является консолидация интересов работников и защита их интересов перед работодателем. История развития профсоюзов показывает, насколько сложно удовлетворять потребности работников в условиях рыночных отношений. Если в советский период профсоюзы были приложением (дополнением) руководства предприятий, не имеющих реальной силы воздействия, т.к. работодателем было государство. То сегодня профсоюзы пытаются на деле представлять интересы наемных работников. Однако отсутствие опыта участия в процессах регулирования социально-трудовых отношений сказывается на деятельности профсоюзов и повышению уровня недоверия к ним со стороны общества.

Ключевые слова: интересы, наемные работники, профсоюзы, работодатель, трудовое законодательство.

Introduction

Social-economic and political changes occurring in the society also caused transformation of

the whole system, including the labor. Emergence of new forms of ownership and employment influenced transformation of labor relations, protection

of the rights and distribution of social responsibility. Destatization and privatization processes, transition to the market relations did not satisfy demands and interests of the vast majority. In connection with that there appeared a need of reforming of the sphere of social security and labor relations. In his program performance the President of the country focuses attention that "... values of the world civilization, all economic and cultural wealth are created by human labor, instead of virtual financial institutions. Therefore, it is real productive labor that we have to put as the fundamentals of our policy of social modernization".[1]

One of key institutes of social partnership are trade unions as they act as universal representatives of hired workers in social partnership with employers, on their behalf at any level. Other representatives, as we know, have the right to represent workers in the relations of social partnership only at the level of the organization.

Main part

Historically, trade unions have always carried out the important role connected with development and implementation of social policy, realizing the representational, protective, administrative and control functions. In literature four types of the trade-union organizations are distinguished:

– Shop organizations. It is the oldest form of trade unions, which developed within medieval producing units (shops), they united workers and apprentices for the purpose of protection of "profession".

– General trade unions. In process of development and strengthening of industrial producing units limitation of shop (narrowly professional) trade unions became more and more obvious. At the end of the XIX century in Great Britain, and then in other countries began to appear trade unions in certain spheres of production, which united interests of workers of various professions and qualifications at national level.

– Industrial unions. They became a peculiar development of general trade unions (without canceling them) in the conditions of structuring of industrial production and non-productive sphere after scientific-technological revolution of the end of XIX-beginning of the XX centuries.

– Trade unions of one enterprise. The form of trade unions developed now in a number of the countries in which for various reasons general or industrial unions cannot provide protection of interests of workers completely. [2]

In these four forms of trade unions can be seen not only various ways of the organization of fight for the rights of workers, but also tendencies in historical development of this fight.

Formation of trade union in Kazakhstan as the institute, the activity of which is directed on protection of interests and needs of workers, originates in 19 century and is connected with industry development, introduction of the foreign capital in the mining, coal industry, construction of the railroads in Siberia and Orenburg-Tashkent. [3] In 1900-05 workers of mines and plants began to go on spontaneous walkouts and strikes with the demand for improvement of working conditions, pay rises, shortening of the working day. It was the workers of ore mining industry that became founders of the first trade unions in our country.

Trade-union movement arose everywhere where industry development and growth of the cities was observed. The first trade unions were formed in Ak-mola region on the Uspensky mine, and the purpose of that was to create favorable social-economic, housing and labor conditions. Refusal of the employer to answer the demands of workers became ground of conducting the first strike of the Kazakhstan workers.

After February and October revolutions of 1917 legalization of trade unions began, they were recognized as the mass and representative organizations of workers. In the 1920s a number of congresses were conducted, at which decisions on development of trade-union movement, effective measures for protection and observance of the rights of workers, cooperation of trade unions, and creation of the branch trade-union organizations were made.

Trade unions of the USSR united more than 98% of all workers. Watching development of trade-union movement, it is possible to notice that the first half of the 20th century is characterized by rapid growth of number of trade unions and membership in these organizations, not only in the Soviet society, but also in the world. In the Soviet central operated system the most important elements of social protection were built into an economic mechanism and were provided from center on a national level. This circumstance gave the situation in social area stability, unattainable in other systems: social guarantees had almost absolute character. So, almost inviolable employment securities at the level of the enterprise came to guarantees of lifelong preservation of a workplace for the specific worker.

The centralized system of compensation in combination with stable prices provided guarantees of obtaining the labor income, at least, at the level of a subsistence minimum. There was free access to services of spheres of health care and education.

In spite of the fact that trade unions were considered as "free associations of workers", in reality they were part of system of public administration and served as a "driving belt of party". The trade-union organizations on places were in complete dependence from administration of the enterprises and actually were its departments for solution of social problems. Traditionally, at the enterprises trade unions and administration signed the collective agreement, the contents of which practically coincided with the enterprise development plan. The conclusion of collective agreements acted as a certain formality. In the contract, special attention was paid to the questions connected with distribution of permits, material benefits, housing and so forth. Only this part of the contract had real value. Questions of level of salary, employment were not discussed and had regulating character.

Specifics of the Soviet trade unions were that they involved masses in public works, joined workers round communist party, interacted with public organizations, government bodies. At the same time under the authority of trade unions there was implementation of social development, leisure and rest organization, sanatorium service, etc. It is necessary to notice that trade unions had the printing editions distributed all over the country and by that provided a peculiar inclusion of separately taken worker into the work of the whole system. Trade unions were perceived as an important link of political system of the USSR which could by specific methods control and regulate social-economic and political requirements and interests of masses.

Scientific-technological progress affected the labor market that, in turn, affected the further development of trade-union movement. So, bright manifestation of crisis of trade-union movement is reduction in the majority of developed countries of a share of the workers joining trade unions. In the USA the unionization coefficient (extent of coverage of labor trade-union movement) fell from 34% in 1954 to 13% in 2002, in Japan – from 35% in 1970 to 22% in 2000. In very few countries (one of the exceptions is Sweden) trade unions unite more than a half of hired workers. The world indicator of coverage of workers by trade-union movement in

1970 made 29% for the private sector, and by the beginning of 21 century made less than 13% (about 160 million members of trade unions to 13 billion hired workers). [4]

Researchers defined three factors, preventing trade unions development in present period. First, increase of the international competition because of economic globalization. In process of formation of the world labor market the competitors of workers from developed countries are not only their jobless compatriots, but also mass of workers from less developed countries of the world. This group of people, possessing approximately the same set of knowledge, is ready to carry out the same volume of work for much smaller salary and the minimum package of social guarantees (even its absence is possible). Therefore, many firms of the "gold billion" countries widely use work of migrant workers not entering trade unions (often illegal), or in general transfer the activity to the countries of "the third world", where trade unions are very weak. Secondly, decline of old industries during the era of scientific-technological revolution. Trade-union movement for a long time was based on labor solidarity of workers of traditional industries (metallurgists, miners, dockers, etc.). However, in process of expansion of scientific-technological revolution there are structural shifts – the share of industrial employment is reduced, but employment grows in service trade. From hired workers of service only "blue collars" (workers with rather low qualification) seek for membership in trade unions while "white" and "gold collars" (highly skilled workers) see trade unions not as defenders of the rights, but as the conductors of compulsory equalization. The matter is that in new branches work is, as a rule, more individualized, therefore workers seek to create not so much "united front" in fight for the rights, but increase of personal qualification and, thereby, value in the opinion of employers. Although there are also trade unions in new branches, they are, as a rule, smaller and less active, than trade unions of old branches. Thus, in the USA in 2000 in industry, construction, transport and communication the share of members of trade unions made 10-24% of the employees, and in the sphere of commercial services – less than 5%. [4] Thirdly, strengthening of influence of liberal ideology on activity of the governments of developed countries. In the second half of 20 century, in process of growth of popularity of ideas of the neoclassical economic theory, the

relation between the government and labor movement started worsening. This tendency is especially noticeable in Great Britain and the USA. The governments of these countries in the last decades of 20 century pursued purposeful policy of encouragement of the competition, directed on decrease in influence of trade unions and restriction of the sphere of their activity.

According to economists, however, even if the trade-union organizations of the different countries manage to adjust cooperation among themselves, in long-term prospect trade unions are doomed to gradual dying off. [4] The trade union is a result of an industrial age with opposition of owners of the capital and hired workers typical for it. Approaching post-industrial society, this conflict loses its acuteness, vanishes, the trade-union organizations of classical type, too, will inevitably lose their value. Possibly, in the near future the center of trade-union movement will be displaced from developed countries to the developing ones, where technologies and relations of production of industrial society still dominate.

Crash of the Soviet economy caused the heaviest crisis of domestic trade unions. If earlier membership of workers in trade unions was strictly obligatory, now the mass outflow of workers who did not see any advantage of being registered as members of this bureaucratic organization has started. The manifestation of absence of interrelation between trade unions and workers resulted to strikes of the end of the 1980s, when traditional trade unions were not on the side of workers, but on the side of representatives of the state. In last years of the existence of the USSR already obvious was a lack of real influence of trade unions, both in political and in economic spheres. [3] Strengthening of crisis was promoted also by innovations in the legislation, limiting a sphere of trade unions. At many enterprises they were simply dismissed, newborn firms often purposefully interfered with creation of trade-union cells.

On October 10, 1990 at the XIV congress of trade unions of Kazakhstan the Declaration on formation of Federation of trade unions of KazakhSSR, the assignee of Kazsovsprof was adopted.

Now the Federation of trade unions of the Republic of Kazakhstan consists of 26 republican branch trade unions, 14 regional associations and trade unions of the capital city Astana. Their structures consist of more than 17 thousand of primary,

over 530 city and regional, 190 regional organizations of trade unions. [5]

Tasks of the federation are: coordination of activity of the member organizations joining Federation; representation of interests of the member organizations in authorities; assistance to development of social partnership system; initiation of development and conclusion of the General agreement with republican associations of employers and the Government of the Republic of Kazakhstan; participation in development of drafts of the laws concerning social and labor relations; participation in development of the state programs directed on creation of conditions, providing decent life and free development of the person; participation in elections of deputies of Parliament and local representative bodies; demanding and assistance to social orientation of the public economic policy in the questions concerning level and quality of life of workers; assistance in the organization and carrying out improving actions among members of trade unions and their families; cooperation with foreign, international trade-union associations, International Labor Organization, achievement of implementation and ratification by the Republic of Kazakhstan of fundamental conventions of ILO; participation in settlement of collective labor disputes; providing legal help to the member organizations; organization of training of trade-union staff and core group; propaganda and publishing activities.

The practical orientation of activity of Federation of trade unions of Kazakhstan consists of: combination of economic and political work methods; employment, dynamic social protection, legislative recognition of the rights of workers; achievement of effective and equal dialogue "trade unions – government – capital", fair regulation of new labor relations; requirement of ensuring the worthy payment for work, strengthening of control of conditions and labor protection; strengthening of unity and organization of staff; activity implementation in such areas, as vocational training, education, scientific research and publishing work; actions for removal of obstacles of free activity of trade unions at the enterprises with foreign participation.

The legal basis of activity of trade unions is made by the law on them, rights and guarantees of their activity, and the labor law as a whole as it is used by trade unions for protection of the rights and interests of hired workers. One of forms of implementation by trade unions of protective function in

the sphere of social and labor relations is control by trade unions of observance of labor law. Within the scope of labor law fall the relations of trade unions with employers, their associations and representatives connected with labor, as well as with government bodies and local government bodies. Therefore, it is admitted that one of signs of a method of labor law is participation of trade unions in regulation of social-labor relations, in particular, in establishment and application of working conditions [6].

Depending on development of the public relations, in which trade unions take part, first of all, on the relations of property and the social-political situation in the country, the acts defining a legal basis of this mass public organization change. Their rights directed on protection of labor laws and interests of hired workers are especially corrected. Thus Conventions of Recommendations of International Labor Organization, which the Republic of Kazakhstan is a full-fledged member of, have decisive impact on contents of the legislation on trade unions.

The current law of RK "About Trade unions" of 1993 as the first law of sovereign Kazakhstan devoted to trade unions as mass public organization carried out a certain role in formation of social partnership in the country in the sphere of social and labor relations, in protection of labor laws and interests of hired workers. [7] At the same time, the assessment of participation of trade unions in regulation of social and labor relations should be made not by formal factors, but by the essential ones – how such participation corresponds to performance by trade unions of the main objectives. The priority of production function and formal implementation by trade unions of protective powers, despite their abundance, gradually led to falling of authority of trade unions in our country.

According to the Kazakhstan researchers, their present structure, practical activities of trade-union committees, their machinery at the enterprises, unfortunately, do not conform to requirements of prime protection of interests of the person of work.

The requirement of protection of the rights of workers is essential especially during the modern period when in the country the social and economic contradictions amplified, which then resulted in strikes at the enterprises, especially in West Kazakhstan.

According to economists during developing of the new law of RK "About Trade unions" it is necessary to be guided by Conventions of ILO, which

are urged to have decisive impact not only on its contents.

The convention of ILO No. 87 "About freedom of associations and protection of the right to unite in trade unions" establishes the right both for workers and employers, without any distinction, to create organizations without preliminary permission to that, as well as the right to join such organizations under the only condition – to submit the charter of the latter (Article 2). [8]

Therefore, the main tendencies of development and improvement of the legislation on trade unions, their rights and guarantees during the modern period are: a) legislation reduction in compliance with the existing public relations; b) refusal from unusual for trade unions public organization of powers; c) preservation, strengthening and expansion of the rights allowing trade unions to defend social and labor rights and interests of hired workers.

The purpose of the draft law is definition of organizational bases of trade-union movement, increase of its role in social partnership for protection of the labor, social and economic laws and interests of workers and the prevention of the social and labor conflicts.

For realization of these tasks the draft law provides:

1) fixing to trade unions of the priority right for representation of interests of workers and negotiating. For this purpose the corresponding changes are made to the Labor code, providing that bodies of trade unions, their associations, and – at their absence – elective representatives, elected and authorized by workers at general meeting of workers (by a majority vote of participants) can be representatives of workers. In operating practice on equal basis with trade unions other individuals and/or legal entities authorized by workers could act as representatives of workers. 2) Expansion of powers and accurate differentiation of functions of the commissions on social partnership on levels of regulation of labor relations. 3) Obligation of execution of general, industry and regional agreements and specification of the contents of agreements. 4) Obligatory association of membership of trade unions on levels of social partnership. It is important to emphasize that the bill does not limit the right of trade unions for organizational plurality and the monopoly of one trade union is not established.

5) Legislative fixing of requirements to the trade union charter, specification of the rights, fixing of

obligations of trade union. 6) Strengthening of responsibility for non-execution of collective agreements and agreements.

Within the draft of the new Criminal code and the new Code "About administrative offenses" the following is provided: establishment of criminal liability for the actions provoking to continuation of participation in a strike deemed illegal by court; strengthening of responsibility for violations of the labor law, forcing to go on strike, untimely payment of salary, violation of the labor protection rules; strengthening of administrative responsibility for violations of the labor law, requirements of the legislation for the conclusion of the collective agreement, for violations of the law about public associations.

The basis for development of the draft law was the world practice of trade-union movement. The analysis shows that the model of functioning of trade-union movement, as a rule, corresponds to a level of development of the country and a role of social partners in redistribution of the material and non-material benefits in society.

Taking into account the international experience, recommendations of ILO and needs for the fastest institutional and structural modernization of trade unions for Kazakhstan it is offered to put model "the strong partner" in the draft of the new law on trade unions, which is also directed on expansion of influence of institute of social partnership. [9]

Growing discontent of workers, strikes in the countries of Europe and in particular in Kazakhstan, promoted revision of current law about trade unions. Lack of skills of settlement of labor disputes, lack of experience of mediation, the protest actions recorded in Mangistau, Karaganda, South Kazakhstan and Atyrau regions pushed to reevaluation of a role and value of the labor sphere in the field of real production sector.

In his speech the chairman of FTUK Kussainov A. notes the fact that the discontent of working masses which causes fears both in the government and employers grows all over the world. Trade-union leaders, in his opinion, do not have enough knowledge and skills of participation in negotiation process, and in this connection the task of mastering the ability to conduct social dialogue and achievement of consensus, as in the course of mediation, was set. [5]

In the opinion of director of the Center of actual research "Alternative" A. Chebotaryov, in general,

at the present stage of development of the Kazakhstan society and state, the role and participation of trade unions in political processes in the republic are quite minimum. In turn, this circumstance is caused by the following major factors [2].

Firstly, cardinal change of social structure of society, which occurred as a result of social and economic transformations for the years of independence of Kazakhstan. It especially affected working class, which actually ceased to represent a uniform social group with common and conscious values and interests. Today domestic workers are multilayered group presented by employees of various enterprises, self-employed, labor migrants, etc. In this regard the social base of trade unions was considerably reduced.

Secondly, high level of paternalism and absence of civil sense of justice in considerable part of Kazakhstan citizens, who only have to defend their rights and freedoms in the most extreme cases. In this regard the trade unions, especially the independent ones, are almost unclaimed in society and do not enjoy mass support.

Thirdly, essential change for years of independence of the country of structure of economy and mechanisms of its management. It is, in particular, decrease in the state participation and emergence of the financial and industrial groups controlling key industries of economy. Trade unions in these conditions should concede to influence of FIG, which has great opportunities both for education and support of the trade-union organizations under control, and for creation of various obstacles to work of independent trade unions.

Fourthly, low level of employees of various organizations and the enterprises, which in case of disputes and conflicts with the employers resort to the help of trade unions, in connection with their maximum loyalty to the corresponding employers.

Fifthly, certain conservatism in work of official trade unions. In this case FTUK and the trade-union organizations entering it, which were created back in Soviet period and used to work under the auspices of ruling CPSU, could not gain skills of full independent work in qualitatively new social-economic and political conditions. As a result, the absence of necessary knowledge and skills and, consequently, insufficient competence of trade-union staff takes place.

Sixthly, imperfection of the legislation regulating questions of creation and activity of trade

unions. They, in particular, do not possess the real rights on suppression of the facts of violations of labor laws of workers, including questions of safety and security of work.

Seventhly, dissociation of the trade-union organizations at all levels of administrative-territorial division of Kazakhstan.

Under the influence of all this the Kazakhstan trade unions turned into the organizations which have little influence in the sphere of the labor and social relations as a whole and on activity of various labor collectives in particular, and capable to influence neither employers, nor the state in interests of protection of the labor and social laws of their members.

It should be noted that such critical situation in the trade-union environment was negatively reflected in tragic events in Mangistau region. A series of strikes and labor disputes at the enterprises of oil and gas branch with their development into mass riots showed inability of local authorities to settle this situation by means of active attraction in this process of the branch and regional trade-union organizations and the commissions on social partnership.

In this regard and according to the paradigm of the Head of state the following measures, urged to expand the rights and possibilities of trade unions on protection of the rights of workers and participation in management of economy and the social sphere are advisable:

1) reduction of the legislation, regulating questions of creation and activity of trade unions, in compliance with the international standards, first of all with International Labor Organization standards;

2) ensuring regulation of labor relations in all enterprises and organizations of all forms of ownership without exception by the collective agreements, where trade unions will act as one of the parties;

3) introduction of heads of trade unions into structure of governing bodies of the enterprises and organizations of all forms of ownership;

4) providing by the state of social guarantees of the released trade-union workers both during performance of their duties and on end of term of their powers, including providing to them protection against unreasonable dismissal;

5) prevention of administrative and financial dependence of trade unions from employers, including introduction of measures of administrative and criminal liability for intervention in internal affairs of trade unions and hindrance of their activity;

6) revision of regulations and expansion of structure of participants of the tripartite commissions on social partnership of all levels at the expense of representatives of the relevant trade-union organizations.

Conclusion

Trade unions, being a social institute and at the same time organizational system, take a special place in structure of the democratic, social state. This place is defined by the fact that they are urged to carry out not only representation and expression, but also protection of cardinal social and economic interests and labor laws of the workers making the majority of modern Kazakhstan society. Possessing significant material and financial resources, necessary organizational structure, the elements of which are presented practically in all branches of economy and country regions, trade unions have opportunity to have noticeable impact on the processes happening in political and social-economic spheres of activity. Therefore, they inevitably act as the regulator of social tension in the public relations: in some cases – as a damper, in others, on the contrary, as the catalyst, amplifier. With the greatest efficiency the role of trade unions as the regulator of the public relations in the conditions of social tension is realized through system of social partnership, in which they, along with its other parties, act as equal subjects of interaction. Development of system of social partnership will allow trade unions to have big freedom and a wide range of opportunities for protection of the rights and interests of workers. The president of Kazakhstan N. Nazarbayev suggests developing and supporting business taking into account interests of workers. In communication with that increase of a role of trade unions, their effective activity will be seen soon. However, not only declarations are necessary, but also real social protection of workers, representation of their interests at all levels of the social and labor relations.

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