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Trade Union Representation Issues in the Russian Federation

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Abstract: This study considers the institution of trade union representation in the Russian Federation. The sereachers address issues of implementation of international law in the Russian labor law on trade union rights. We are deeply consider the theoretical and practical issues of trade union activity.

Key words: Representation of workers, trade union rights of workers, employers, social representation, trade

INTRODUCTION

The right to form trade unions and joining them to protect their interests laid down in Article 23 of the Universal Declaration of Human Rights, the international covenant on economic, social and cultural rights, where in Article 8 given right get more detail transcript. It is directly enshrined in the highest legal act of the country in Article 30 of the Russian Constitution. Basic file the rules concerning the right of association trade union rights contained in ILO instruments.

LITERATURE REVIEW

In particular, the Conventions: No. 87 (1948) «The Freedom of Association and Protection of the Right to Associations», No. 98 (1949) «The protection of rights of employees in the company and the opportunities available to them» and No. 154 (1981) «The Promotion of collective bargaining» and Recommendation No. 143 (1971) «The protection of rights representatives of the employees in the company and the opportunities available to them».

The right to association laid down in Article 5 of the European Social Charter ratified by the Russian Federation in 2009. It establishes the right of workers and employers to form local, national and international organizations for the protection of their economic and social interests and to join those organizations. Charter of social rights and guarantees of citizens of independent states, approved by inter-parliamentary assembly of states-CIS member in Article 46 says that the workers without any distinction have the right to freely establish of their choice trade unions and freely join them without prior permission. Workers are entitled to form trade union organizations in enterprises and other workplaces. All trade unions have equal rights. Trade unions are independent in their activities. Belonging or not belonging to a trade union does not entail any restriction of the labor, socio-economic, political or personal rights and freedoms of workers.

The legal basis for trade union representation in the Russian Federation now constitute Article 19 of the Russian Constitution the Labor Code of the Russian Federation and the Federal Law of 12. 01. 1996 No. 10-FZ «The Trade Unions, their Rights and Guarantees».

The Russian labor law accepted to speak about the presence of specific entities' representative employees and «representative of the employer» (Snigireva, 1983). The development of this view promoted the inclusion in Chapter 4 of the Labour Code indication of employees' representatives and representatives of the employer in the social-partnership.

DATA AND ESTIMATION TECHNIQUES

Thus, it developed and continues to develop the system of representation in the Russian legal system including the employer (employers). For example, some

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scientists state based on the norms of the Labor Code that the head of the organization called "representative", whose legal status is supplemented with functions of representation of a legal entity in labor relations. The representation in the labor relations they see similarities with representation in civil proceedings since in both cases it is associated with access to qualified legal assistance which is determined by the terms of the legal system. Some researchers analyzing some of the elements of the legal status of representatives of employees and employers come to the conclusion about the possibility of referring them to the number of subjects of labor law.

This point of view has their opponents among specialists in labor law, who believe that the construction, worked out by the science of civil law and used to refer to certain phenomena in the labor law has nothing to do with the representation (Lebedev, 1999).

It has been suggested that the Russian labor law representation is allowed in respect of social partnership. One of such examples is the representation of trade union representation.

Suppose that trade union representation a special kind of social representation and not an institution of representation known by civil law. Some Russian researchers state, emphasizing the difference between the trade unions and other types of representation, the social character of the first noted.

At present the system of relationships, carried out in order to harmonize the interests of employees, employers and the government concerning regulation of labor relations and other relations directly linked to them called the social partnership. It is in partnership, the most is manifested representative function of trade unions aims to resolve social objectives. The social character of trade union representation is shown in the fact that the main purpose of its implementation the protection of the rights and legitimate interests of workers in the social-partnership and in the course of employment.

Given right of trade unions one of the legal guarantees of labor rights. In exercising the right of representation trade unions allow workers to express and defend their interests.

The rights of trade unions, at the same time is the responsibility, first of all to the employees union members provides not only the opportunity but also the obligation which is based on the realization of the need for these rights and the obligation to implement them. The concept of the indivisibility of rights responsibilities of trade unions is essential to understanding the nature of representation as if the exercise of the rights depends on the will of the subject, the legal responsibilities should always be followed which means that if there is a corresponding situation unions must use the rights granted to them.

Therefore, any legal actions of trade unions (expression of opinion, consent, approval, demand, etc.) should be considered as forms of exercising their powers of representation.

A similar point of view on the unity of rights and responsibilities of trade unions to express the will and protect the interests of its members and other employees expressed in Western European economic and social sciences, and out of touch with the political system of the state. John Stuart Mill in the 19th century formulated and E. Li in the 90s of the twentieth century stated: «The union members have an obligation to the rest of the working class» (Nourtdinova, 2010).

Thus, the representation of workers, the protection of their legal rights this right is the duty of trade unions which is in indissoluble unity of the content, purpose, method of implementation, the means to ensure. These charges are not to the state and to the employees union members whose interests trade unions should represent and defend. Fulfillment of this kind duty to ensure, first and foremost, by the power of social, moral (in union) influences. State in respect of trade unions do not use methods of direct or decrees ban.

Trade union representation should be interpreted as a way of implementing the protective function of trade unions as representative activity itself as an abstract concept without achieving the aim of protecting the rights and interests of workers lose all legal significance. Representation should be seen as a way of realization of the collective rights of workers in the social-partnership (for example the right to participate in collective bargaining, the right to participate in management of the organization).

Seems that one should distinguish between two kinds of representation of employees by trade unions depending on the fact of membership in it: representation in labor and associated labor relations. Trade unions and their associations (associations), primary trade union organizations and their bodies, represent and protect the rights and interests of trade union members on individual labor and associated labor relations (Article 11 of the Federal Law «on trade unions, their rights and guarantees»). For example with representation in court the interests of a particular employee, representation of nature in this case depends on the fact of belonging to a particular union. If the employee is a union member, the representation is based on the law and labor is legal. If not, then this is a private office, it occurs on the basis of a contract and issued a power of attorney. Implementing it in this case will take place in accordance with the rules of civil procedure law.

Representation in the field of collective rights and interests of an indefinite number of employees, regardless of their union membership which is based on the norms of law.

Trade unions and their associations (organizations), primary trade union organizations and their bodies, represent and protect the rights and interests of employees regardless of union membership in the case of giving them powers of representation in the prescribed manner (Article 11 of the Federal Law "on trade unions, their rights and guarantees").

This representation may occur in the social partnership, collective bargaining, labor disputes, taking into account the proposals of all-Russian trade unions nationwide unions (associations) of trade unions, inter-regional trade unions, inter-regional associations (organizations) of trade union organizations, regional associations (organizations) of trade union organizations, regional trade union organizations on draft legislation affecting the social and labor rights of workers.

The formulation of Article 23 of the Federal Law «on trade unions, their rights and guarantees» on the right to appeal to the court "in cases of violation of labor legislation" in relation to an indefinite number of people trade unionists testifies to the collective nature of such representation.

The trade union representation interests of employees in the organization is the primary trade union organizations and their agencies members of the trade union bodies. Their activity is to represent and protect the rights and interests of the of employees often causes a negative reaction on the part of employers who use their power resorting to harassment of union officers and rank and file union members for their professional (union) work.

The protection of the rights of the elected representatives of the employees dedicated to a number of provisions of the European Social Charter, ILO Convention No. 135 (1971) «on protection of rights in the company and the opportunities available to them representatives of employees» and ILO Recommendation No. 143 (1971) «on protection of rights representatives of the employees in the company and the opportunities available to them».

The circle of subjects, who are subject to these ILO instruments persons who are recognized as such under national law or practice whether they are:

- Trade union representatives, namely representatives designated or elected by trade unions or by members of such unions
- Elected representatives, namely, representatives who are freely elected by employees in accordance with the provisions of national laws or regulations or collective agreements which are not included in the activities of the function which is recognized as the exclusive prerogative of trade unions in the country

Thus, according to Article 1 ILO Convention No. 135 and representatives of employees at the company are effectively protected against any action that may harm them including dismissal based on their status or activities as workers representatives or to their trade union membership or their participation in union activities to the extent that they act in accordance with existing laws or collective agreements or other jointly agreed arrangements.

In paragraph 6 of ILO Recommendation No. 143 said that in countries where there are no sufficient appropriate measures for the protection applicable to workers in general specific measures to ensure effective protection of workers representatives should be taken. These may include for example, the following measures:

- Detailed and precise definition of the reasons justifying termination of employment of workers' representatives
- The requirement to consult with an independent body, public or private or a joint body or the receipt of its opinion or consent before the decision to dismiss a workers' representative becomes final
- The special appeal procedure for the representatives of employees who consider that their employment relationship is terminated without reason or that their working conditions adversely modified or applied to them unjust measures
- The establishment of an effective order of redress against unfair termination of employment relations of employee representatives including if it is not contrary to the basic legal principles of the country, the restoration of such representatives on their previous work with the payment of their lost wages and preserving them acquired rights
- Laying on the employer the burden of proof of the validity of his actions in the case of complaints of discriminatory dismissal or unfavorable change in the conditions of work of workers representative
- Recognition of a priority to workers representatives for their work in the event of redundancies

EMPIRICAL RESULTS

Article 373-376 of the Labor Code provide personal guarantees to employees who are members of a trade

union as well as the heads of (their deputies) elected collegial bodies of the primary trade union organizations elected collegial bodies of trade union organizations of the structural units of the organization (not lower shop and similar) and freed from basic work but also released trade unionists and workers who are members of elected trade union body that is those who are most directly confronted with the employers and their associations public authorities local self-government.

At the same time some researchers such guarantees are seen as the benefits of union members compared to employees who are not union members. In their opinion should be completely excluded from the legislative, judicial and administrative practice of every kind of preference and benefits provided to employees in connection with their membership of a trade union.

ILO Convention number 135 was ratified by the Federal Law of July 1, 2010 No. 137-FZ which requires stronger safeguards for the protection from discrimination on the grounds of union membership and the implementation of the members of trade union bodies of representative authority.

Been many proposals on possible ways of providing guarantees to members of trade union bodies (Mavrin *et al*., 1996). According to some researchers, it was appropriate domestic legislation to establish the dismissal of employees engaged in trade union activities on the grounds not related to guilty actions of the worker the pre-control mechanism on the part of the court or authority conducting state supervision and control over observance of labor legislation. The union is in this case may be an employee in the exercise of preliminary control (Snigireva, 1983).

Guarantees against discrimination on the grounds of trade union activities as a whole are seen outside the context of the specific grounds of dismissal by the employer (Safonov, 2009).

Although, there are the Labor Code in the general rules on the prohibition of discrimination according to the Committee of Experts on the Application of Conventions and Recommendations of the ILO, in practice, ubiquitous situation of discrimination of employees and trade union leaders in connection with their membership of a trade union.

The official Russian government authorities position on these observations based on the fact that Article 3 the Labor Code provides for general rules on the prohibition of discrimination based on membership or non-public organizations (including trade unions). Since, the rules the Labor Code provide for penalties for violation of labor laws the national measures to protect against discrimination are sufficient.

This substantiation of the position is not sufficiently compelling for several reasons. First, mentioned in the reply of the Government of the Russian Federation, Article 195 of the Labor Code, provides for the obligation of the employer to attract disciplinary proceedings against the head of the organization, the head of the structural division of the organization, their deputies at the request of employees representative body is not supported by the rules contained sanctions for non-performance of this article and in the current market environment is more of a declarative nature. Article 201 and 285 of the Criminal Code establish responsibility not for violation of labor laws and for abuse of power and abuse of power.

Second, the specific facts contained in the report of the Committee of Experts on the Application of Conventions and Recommendations of the ILO indicate that the practice, unfortunately know only a small number of instances where discrimination is recognized as the true cause of dismissal in relation to the specified number of persons. This was the reason for the treatment of a complaint to the ILO Committee on Freedom of Association Russian Confederation of Labor and the European Court of Human Rights on Danilenkova and 32 other Russian citizens. This complaint was filed against the Russian Federation in accordance with Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

As a result, the ECHR concluded that the state has failed in its positive obligation to provide effective and clear judicial protection against discrimination on the grounds of trade union membership. There has therefore been a violation of Article 14 taken together with Article 11 of the Convention.

Besides other, the ILO Committee on Freedom of Association in the report No. 331 established that the legislation of the Russian Federation providing protection against acts of anti-union discrimination is not sufficiently clear. In this regard, he suggested that the authorities of the Russian Federation to take the necessary measures including legislative measures to ensure that complaints of anti-union discrimination in the context of national procedures, characterized by clarity and urgency.

A similar position on the inadmissibility of changing labor relations on the grounds of trade union activity that is for reasons bearing clearly discriminatory was expressed in the judgment of the European Court of Human Rights of November 14, 2006 «Metin Turan against Turkey» (Metin Turan v. Turkey No. 20868/02) which noted that the decision to transfer the applicant in the city located in another region because of its membership in legitimate union action was not «necessary in a democratic society» as made in connection with his

membership in the union and because it was the intervention of the authorities of his right to participate in trade union activities.

In connection with the stated positions of the ECHR and the ILO seems clear conclusion in the determination of the Constitutional Court on the issue of the distribution of the burden of proof in an appeal against a court refusal superior trade union body to give consent to the dismissal of an employee.

Thus, the employer is considered necessary in order to implement effective economic activities of the organization to improve its organizational structure by reducing the number or staff of workers to obtain the consent of the superior elected trade union body in the dismissal of an employee who is the head (his deputy) of the elected trade union collegial body and is not freed from the basic work it must submit a reasoned proof that the forth coming dismissal of the employee due precisely these objectives and is not related to the implementation of their trade union activities.

In this case, the relevant trade union body is obliged to provide the court with evidence that his refusal is based on objective facts supporting the persecution of the employee by the employer by reason of his trade union activities, i.e., dismissal is discriminatory (Snigireva, 1983).

This position of the Constitutional Court of the Russian Federation was raised to the Russian ratification of the ILO Convention number 135 and this explains it is not matching with the provisions of an international treaty and paragraph 6 of the Recommendation No. 143 «on protection of rights of employees in the company and the opportunities available to them». ILO instruments have placed the burden of proving the validity of actions in case of complaints of discriminatory dismissal or unfavorable change in the conditions of work for the employer.

CONCLUSION

In this context suggest that general rules establishing in the Labor Code guarantees against discrimination on the grounds of trade union activity outside the context of the specific grounds of dismissal in the absence of RF explicit anti-discrimination legislation and court practice are unlikely to be protected illegal dismissals of members of trade union bodies.

We think that the provision of guarantees for trade union immunity should take into account the norms of the Russian Federation ratified the Convention No. 135 "on protection of rights of employees in the company and the opportunities available to them." Guarantees against discrimination on the grounds of trade union activities still need to communicate with the specific grounds of dismissal that is paragraphs 2, 3 or 5 of Article 81 of the Labor Code provided that the employer the right to judicial review of disagreement superior elected trade union body.

In order to bring the Labor Code into conformity with the norms of the ILO Convention No. 135 «on protection of rights of employees in the company and the opportunities available to them» necessary complement h. 2 tablespoons. 3 of the Labor Code after the words «membership or non-membership of public associations» the words (trade unions other representative bodies of workers) in connection with trade union activities and Article 374 TC RF part as follows: «in case of refusal the superior trade union body to consent to the dismissal the employer may apply to the court for recognition of its unfounded. The responsibility for proving the validity of the decision to terminate the employment contract and the lack of discriminatory motives of dismissal rests with the employer».

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