PRE-TRIAL RESOLUTION OF INDIVIDUAL LABOR DISPUTES IN THE REPUBLIC OF AZERBAIJAN

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Orcid.org\0009-0007-5497-9233
DOI: https://doi.org/10.32782/ep.2024.4.19

The effectiveness of mechanisms for the pre-trial resolution of individual labor disputes holds great significance in ensuring and protecting the labor rights of the parties involved in labor relations. This article examines the specifics of pre-trial resolution of individual labor disputes in the Republic of Azerbaijan, comparing them with certain practices from neighboring and distant countries. It analyzes the practice and prospects of applying various forms of alternative dispute resolution, including mediation. Based on the conducted analysis, the article summarizes the shortcomings inherent in the local model and proposes a set of recommendations for their elimination.

Keywords: labor relations, labor dispute, pre-trial resolution, mediation, alternative regulation, demand.

In the modern labor law of the Republic of Azerbaijan, the claim procedure as such is not mandatory for the resolution of individual labor disputes. The Labor Code does not establish a mandatory pre-trial procedure for resolving labor disputes, which gives employees the right to apply to the court directly without first filing a claim with the employer. However, a proposal to use mediation, which must be sent to the opposing party in the manner prescribed by law, may be equated to a claim. Although the requirement to send a proposal is not directly enshrined in the Labor Code, there is a provision [1] (Article 294) on the need to participate in a preliminary mediation session, the procedure for which is already regulated in accordance with the Law "On Mediation" [2]. However, nothing limits the parties wishing to resolve the dispute peacefully in the possibility of using other alternative forms. There is always the possibility of using the claim procedure by filing an official appeal (complaint) as a way of pre-trial settlement. Of course, in practice, the effectiveness of such appeals is extremely low, since often the labor dispute itself is already based on the previously stated position of the opposing party. That is, it seems unlikely to assume that upon receipt of an official request, for example, the employer will change its position and the labor dispute will be resolved.

Pre-trial settlement of individual labor disputes can be conditionally divided into three main stages, with only the third stage being mandatory from the judicial perspective: preliminary negotiations, official appeal (claim), mediation procedure. At the same time, the current collective agreement or the employment contract itself may provide for other pre-trial review procedures. For example, settlement by the Commission on Labor Disputes. In our opinion, pre-trial consideration of labor disputes is a mistakenly missed and forgotten stage in labor law, which could significantly increase the effectiveness of resolving labor disputes if applied correctly.

The pre-trial dispute resolution procedure is relevant for employees and persons representing the interests of employees. In general, it should be recognized that the effectiveness of the pre-trial procedure largely depends on the conflict culture of the parties.

Negotiations are the first stage of pre-trial settlement, which involves an attempt by the employee and employer to find a compromise solution to the conflict that has arisen, and its importance should not be underestimated. This stage is especially effective in cases where disagreements are related to technical errors, such as incorrectly entered data in an employment contract.

Negotiations can take place in three main forms:

1. Verbal form. The employee and employer directly interact with each other in an offline format, communicating in person (or through a representative).

2. Remote form. The employee and employer interact via electronic communication, without sending paper correspondence, and also without seeing each other in person.

3. Paper form. The parties to a labor dispute communicate in paper format: they send letters via postal or courier services, which confirms receipt of the letter by the other party. This form is classic and is generally accepted positively by the courts, since it does not require special proof, unlike other forms.

It must be acknowledged that the second form is now of particular and very significant relevance. In particular, the use of e-mail, mobile communications, various messengers for correspondence, and the subsequent provision of this correspondence as evidence during the consideration of a labor dispute, including in court, is quite common. As a rule, these records may reflect very significant facts for the consideration of the case. In turn, the applicability of such evidence almost always causes controversy. In particular, Article 76.3 of the Civil Procedure Code determines the inadmissibility of using evidence obtained illegally. The Resolution of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated April 12, 2021 clarified this issue. According to this Resolution, the possibility of using such evidence reflecting the will of the parties on certain issues is recognized [3].

Direct negotiations can take place together with the submission of a claim, since negotiations coincide with the claim procedure for dispute resolution.

A claim may be filed after negotiations have failed, or negotiations may begin after a claim has been filed..

On the other hand, there are often cases when one of the parties (mostly the employer) is not interested or, for some other reason, categorically refuses to enter into any negotiations. In certain cases, for example, after dismissal, the employee may be deprived of any opportunity to contact the employer and his representatives, which can significantly complicate the conduct of such negotiations.

At the same time, certain risks arising from the circumstances of a particular dispute may become an important factor influencing the final decision of the opposing party to a labor dispute: the prospect of additional financial burden, an element of administrative (or criminal) offense and the resulting liability, reputational risks, etc.

That is, in practice, there are often cases where an erroneous assessment of the prospects of a labor dispute at the first stages and, accordingly, subsequent steps taken ultimately resulted in very serious consequences for the enterprise, up to and including a complete suspension of operations, and sometimes bankruptcy [4].

Thus, at present, any pre-trial procedure for resolving labor disputes (with the exception of mediation and the above-mentioned cases of the presence of a contractual basis for the application of pre-trial procedures) is implemented only on a voluntary basis. Neither party to a labor dispute is required to take any action (except for the mediation procedure provided by law) before going to court. The right to judicial protection may be exercised directly.

The statute of limitations remains an important factor influencing the dynamics of the working period. Thus, in accordance with the requirements of Article 296 of the Labor Code, a period of one month is set for filing a claim from the moment a violation of labor rights is discovered. In turn, for material claims, a period of one year applies. It should be noted that in practice, the problem of tight deadlines often complicates the situation with their observance and becomes the reason for missing the opportunity to ensure judicial consideration

of the dispute. According to the legislation of the Republic of Azerbaijan, the only possibility for pre-trial consideration of individual labor disputes was to appeal to a labor dispute body operating under trade unions, the activities of which are regulated by a collective agreement. The Labor Code defines a three-month period for applying to the above-mentioned body. In such a case, by applying the said procedure, the parties that caused its application are in a more privileged position compared to the others, since the said one-month limitation for filing a claim in court is not applicable to these parties. But unfortunately, the practice of using this institution of pre-trial consideration is very limited and there are no statistics in this area.

It should be noted that it is the application of the limitation period that is often the main factor preventing judicial consideration of labor disputes in court, and also has direct significance from the point of view of pre-trial settlement. As a rule, this factor directly affects the prospects of any negotiations. Moreover, the knowledge of the opposite party about the actual omission of the claim deadlines reduces the meaning of any negotiations to nothing.

Quite often the parties (employee) seek judicial protection with a significant delay, primarily resorting to administrative remedies, which in practice makes it quite difficult to comply with such limited deadlines. Since the analysis of judicial practice on labor disputes reveals a pattern of appeals to the labor inspectorate by the employee before going to court. What determines the subconscious perception of this body as a pre-trial authority. Although the Resolution of the Plenum of the Constitutional Court of July 30, 2021 clarified this situation. The court clearly ruled that it is inadmissible to accept the Labor Inspectorate as a pre-trial body for the consideration of labor disputes, emphasizing the exclusive powers of this agency to monitor compliance with labor legislation [5].

Thus, the position of the Constitutional Court of the Republic of Azerbaijan on this issue can be considered to a certain extent more rigid and oriented towards the absolute inadmissibility of distortion of the claim periods. И этом можно найти объяснение. And there is an explanation for this. We believe that providing the parties with the opportunity to manipulate through appeals that are not directly part of the consideration of the labor dispute should not affect the calculation of the limitation periods. Although, according to Part 6 of Article 296 of the Labor Code of the Republic of Azerbaijan, it is still possible to restore the limitation periods for other objective circumstances besides illness, vacation, or death of a close relative.

However, the mere presence of a clause in an employment contract on pre-trial dispute resolution is currently not grounds for extending the period for filing a claim in court. Thus, although Article 294.3 of the Labor Code of the Republic of Azerbaijan provides for the possibility of using a pre-trial dispute resolution mechanism, Article 296, which determines the limitation periods in labor disputes, does not provide for an extension of the limitation period on the specified basis.

Thus, the absence of grounds for extending or suspending the calculation of the limitation periods is, in essence, a serious obstacle to the development of the institution of pre-trial consideration of labor disputes and, accordingly, requires clarification.

But at the same time, approximately 70% of the labor disputes studied indicated the presence of a preliminary appeal to the Labor Inspectorate. According to official data from the Inspectorate, over 155 thousand manats of various social payments to employees were provided in just 9 months of the current year, with about 85% of this amount falling on wages. According to the Inspectorate, during the same period of the current year, 49 employees who were unjustifiably dismissed were reinstated in their jobs [6].

On the other hand, the availability of such information once again confirms the validity of the situation with appeals to the Inspectorate. The party that has encountered a situation that it initially assesses as violating its labor rights is naturally interested in the fastest possible resolution of the situation, a prospect that can be seen in filing a complaint.

On the other hand, at the very stage of pre-trial consideration, there are cases of creating the appearance of the beginning of the

procedure by simulating negotiations and detailing the circumstances of the case. In particular, in practice there are cases of artificially delaying the deadlines for the alleged consideration of a complaint, by making promises or other methods of influence, the ultimate goal of which is only one thing - to ensure that the statute of limitations expires.

Many scientists consider pre-trial consideration of labor disputes to be ineffective, unclaimed and outdated. Some scientists believe that pre-trial dispute resolution is relevant, but requires significant modernization

Thus, it is possible to summarize several main problems that hinder the consideration of labor disputes at the pre-trial level:

1. The course of the limitation period;
2. lack of interest of the parties (in particular the employer) in financing the activities, for example, the Labor Dispute Commission (or other structures for pre-trial consideration of labor disputes);
3. insufficient awareness of the possibility and prospects of pre-trial resolution;
4. imperfection of legislation.

The arguments stated by scientists are certainly correct; legal regulation and the actual existence of the Commission on Labor Disputes or other structures for pre-trial consideration of labor disputes in the current reality are smoothly moving towards the complete abolition of the pre-trial procedure for dispute resolution. In order to rehabilitate the pre-trial stage of resolving labor disputes, it is necessary to systematically move towards modernizing labor law. Although the practice of foreign countries in this direction varies. For example, in the Republic of Belarus, the consideration of individual labor disputes in accordance with Articles 234-238 of the Labor Code of the Republic of Belarus is a mandatory procedure, with some exceptions specified in the law [7]. However, employers have the right not to create a Labor Dispute Commission in their organization, which eliminates the possibility of pre-trial dispute resolution. Also in the Republic of Belarus, the Commission on Labor Disputes considers disputes in the interests of employees, for example, a dispute on the recovery of material damages in favor of the employer does not fall within the competence of the Commission on Labor Disputes.

In Kyrgyzstan, parties to a labor dispute have a choice: they can refer the case to court or try to resolve the conflict without judicial intervention. If the parties choose the second option, the employee can contact the Labor Dispute Commission to resolve the issue. The period for filing an appeal with the Labor Disputes Commission is three months from the moment the violation of labor rights is identified. If this deadline was missed for a valid reason, it can be restored.

Decisions made by the Labor Dispute Commission must be implemented within three days. If one of the parties does not agree with the decision, it can be appealed in court within 10 days [8].

There are several ways to resolve labor disputes out of court in Uzbekistan. One of them is to contact the Labor Dispute Commission, which deals with individual labor disputes between employees and employers. This allows avoiding lengthy and costly legal proceedings. An application must be submitted to the Labor Dispute Commission within three months after the fact of violation of labor rights is discovered. If there are valid reasons, the period may be restored. The labor dispute commissions must be executed within three days, and if one of the parties disagrees, the conflict can be appealed in court within 10 days. Another way of pre-trial settlement is the conciliation process after filing a claim in court. The court takes steps to reconcile the parties and assists in settling the dispute at any stage of the trial. This allows the parties to reach an agreement without the need for litigation [9].

The previously mentioned mediation procedure in the practice of the Republic of Azerbaijan is endowed with certain specifics. Thus, on the basis of Article 3 of the Law "On Mediation", the requirement for the use of a preliminary mediation session in disputes arising from labor relations is determined. In accordance with the requirements of labor and procedural legislation, it is impossible to appeal to the court on a labor dispute without going through the procedure of a preliminary mediation session. The essence of this procedure is to send an official proposal to conduct

mediation (indicating the grounds for the dispute) and to contact the selected mediator within the next ten days. After the case has been accepted for proceedings and the fact of the initial appeal has been verified, the mediator sends the opposing party an official notice of the place and date of the preliminary mediation session. The essence of the session is to ensure that the parties agree to hold a full mediation session. Thus, the model of mandatory mediation in Azerbaijan is reduced to holding a preliminary mediation session, which by its definition does not consider the dispute itself, but only the prospect of further mediation.

An analysis of the specified model reveals the following, in our opinion, obvious shortcomings:

1) The requirement for mandatory application of the proposal to use mediation, although it comes directly from the legislation, is devoid of practical significance, complicates the process and often takes on a formal character.

2) The paid nature of mediation services (including preliminary mediation sessions) is a certain obstacle to ensuring its accessibility

3) Gaps in legislation hinder the formation and further development of the model, which contributes to its perception as an additional burden rather than an alternative effective form of resolving a labor dispute.

4) Lack of a single digital platform to ensure the mediation process

The activities of the labor dispute commission (or its analogues) may be important in terms of providing alternatives in the possibilities of resolving labor disputes, but having obvious shortcomings, the main one of which is dependence on the employer, reduces the prospects of this institution to nothing.

Therefore, we believe that focusing on mediation as a more advanced and effective form of alternative dispute resolution is more promising. With regard to the above-mentioned shortcomings, we consider it necessary to abolish the requirement to send a preliminary proposal as a solution capable of significantly simplifying and accelerating the mediation process, and most importantly, increasing its effectiveness. In addition, the existence of a primary legislative framework can be considered a significant plus for the further promotion of alternative forms of resolving labor disputes. With regard to the provision of paid services, we consider it appropriate to consider the possibility of creating alternative state specialized institutions for labor disputes (following the example of ACAS in the UK) providing services free of charge. In terms of improving legislation, we consider it necessary to improve Articles 294 and 296 of the Labor Code of the Republic of Azerbaijan with the definition of mediation as an additional opportunity for resolving individual labor disputes, as well as the introduction of a rule suspending the limitation period when using alternative methods of resolving labor disputes determined by the parties to the employment contract or agreed upon between them upon the occurrence of a labor dispute. In addition, as an additional measure, we consider the development and implementation of electronic mediation capabilities to be extremely promising. In particular, taking into account the requirements of Article 7 of the Labor Code regarding electronic document flow in labor relations, we consider it possible to ensure the entire document flow for the mediation process at all its stages, as well as the mediation process itself (in videoconference format) by expanding the capabilities of the relevant electronic systems. Taking into account all the proposed innovations, as well as the analysis of the practice of mandatory mediation in the Republic of Azerbaijan on labor disputes based on the results of the last two years, we consider this experience worthy of attention for study as an advanced practice of alternative resolution of labor disputes.

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