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Extrajudicial bodies for labor conflicts resolution

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Abstract: The article studies the legal status of extrajudicial bodies for the resolution of labor conflicts as well as the procedure of labor conflicts resolution. It also analyses domestic and foreign extrajudicial bodies experience in resolving labor disputes. The resolution of labor disputes is traditionally associated with the judiciary. However, due to the overload of the latter, the length of the judicial procedure of considering and resolving conflicts and the high level of court costs, the search for alternative extrajudicial solutions to labor disputes is highly in demand. On the other hand, alternative extrajudicial methods of resolving labor disputes will significantly reduce the workload of judicial bodies and the social tension among the participants in the process of resolving labor disputes. The comradely courts were endowed with the trust of the staff, acted as its willpower and were accountable to it. These courts turned into a kind of public courts which were created to consider and resolve minor legal conflicts that did not affect essential human rights. The main purpose of the newly created comradely courts was to educate people through persuasion and social influence. Their activity was based on such principles as production-territorial principle, that of expediency, election and accountability of judges. In addition, the

comradely courts, as a body of justice, operated on the same principles as courts of general jurisdiction, in particular, election and independence of judges, open and oral character of court proceedings.

Keywords: Extrajudicial bodies for resolving labor disputes; justice; alternative forms of resolving legal conflicts; labor conflict

1 Introduction

In the conditions of market economy development, emerging economic crises that affect the number of jobs, the level of wages affects the development of our society, the development of each person. The existence and standard of living of each of us depends on the specific field of work.[1] Therefore, work is central to everyone's life, and working relationships contain a high degree of conflict. The employer's desire to achieve maximum profit at a minimum amount of costs and, conversely, leads to disputes between the employer and employees, which grow into litigation, which does not contribute to a constructive settlement of disputes.[2] Analysis of the practice of resolving labor disputes in Ukraine showed that individual labor disputes focus on litigation in their resolution, and collective labor disputes on the contrary (except for collective labor disputes involving employees who are legally legalized). strikes), only out-of-court agreements and in fact deprived of the possibility of consideration in court, which makes the judiciary an ineffective tool for resolving labor disputes.[3]

According to the Constitution of Ukraine[4], everyone has the right to go to court to protect their rights. The trial can be long, expensive, psychologically stressful and stressful and does not always guarantee the proper execution of court decisions[5]. Therefore, everybody needs to know about alternative methods of resolving conflicts in pre-trial and out-of-court proceedings, which guarantee the participation of the parties in decision-making, save money and time and maintain social ties.

In our opinion, the creation of specialized labor courts, as proposed by V. V. Melnyk,[6] G. I. Chanysheva,[7] will only complicate the domestic judicial system and

1 RIBEIRO, 2021, p. 109-129.
2 PANKOVA; MIGACHEV, 2020, p. 119-147.
3 CAPUTO; MARZI MALEY; SILIC, 2019, p. 87-110.
4 Constitution of Ukraine, 1996.
5 KISIL; KISIL, 2021.
6 MELNYK, 2019.
7 CHANYSHEVA, 2020.

increase the amount of the State budget funding for the judiciary. The institution of comradely courts is not new for the domestic judicial system. The Decree of the USSR Council of People's Commissars of June 12, 1920 "On Labor Disciplinary Comradely Courts"[8] defined the order of their organization and activity, their structure and number of members, the rights and responsibilities of the latter, as well as the types of penalties applied to violators of labor discipline. The labor disciplinary courts mostly considered cases of the labor discipline violations, disruptions in the production process, and so on.[9] Subsequently, the responsibilities of these courts were expanded to consider cases of misconduct in public places and insignificant misappropriation of enterprises and institutions' funds. For committing such offenses, the courts could impose various penalties, such as a reduction in wages, a forced transfer to the overtime work in the hardest conditions, and even an imprisonment in labor camps. In the exceptional circumstances, the labor disciplinary courts could transfer a case to a military tribunal.

2 Analysis of the History of the Development and Formation of Comradely Courts

In the 30s of the twentieth century the comradely courts were infamous for harsh measures imposed on violators. These measures resulted in fewer absences, late appearances at work and other violations of working discipline. But they could not improve work results. The reason for the low productivity in this period of time was the lack of material or moral motivation for work results. During World War II, labor disciplinary courts did not operate. Later, by the Resolution of the USSR Council of Ministers No. 2563 of August 22, 1950, the Decree "On Labor Disciplinary Comradely Courts" was stated as expired.[10] In 1961, the Presidium of the USSR Verkhovna Rada, by its Decree of 15.08.1961, resumed the institution of comradely courts.[11] Mostly their activities were the opposite of labor disciplinary courts. In particular, the main task delegated to comradely courts was to prevent delinquency, educate citizens by persuasion under the influence of their social environment, and create intolerance to labor discipline violations or any anti-social acts in the society. The Regulation "On the Comradely Courts of the Ukrainian SSR",[12] as amended on March 23, 1977, provided the formation of two types of comradely courts, such as industrial (formed at the place of work or studying on the condition of the number of employees at the enterprise being no less than 50

8 MAKHYNYA, 2020.
9 SOTSKYI, 2021.
10 Resolution of the USSR Council of Ministers No. 2563 ..., 1950.
11 Decree of the Presidium of the Verkhovna Rada ..., 1961.
12 Decree of the Presidium of the Verkhovna Rada, 1977.

people) and territorial (formed at the place of residence). The maintenance of the comradely courts functioning was entrusted to the administration of enterprises, institutions, organizations, housing and maintenance organizations, or associations of apartment buildings co-owners. The legal assistance to comradely courts was provided by the judiciary, the prosecutor's office and the courts. Legal literature, normative legal and legislative acts were provided to the comradely courts by the administration or the trade union committee of enterprises, institutions, and organizations.

The comradely courts consisted of 5 members and were completed with citizens who, according to their business and moral qualities, were able to successfully perform the tasks set before such courts. The candidates were elected for a term of 2 years by open ballot and by a majority vote of those present at the meeting of the enterprise labor staff. The chairman, deputy chairman and secretary of the court were elected from among the elected members of the court. At least once a year, the chairman reported on the activities of the court at the general meeting of the labor staff. The comradely courts members who had actively participated in considering cases, as well as in carrying out preventive work in the labor staff, among students of higher and secondary special educational institutions at the place of citizens residence, were rewarded by the trade union committee or the administration of the enterprise, institution, organization, or local government.[13]

The comradely courts had in their jurisdiction the following cases:

- violation of labor discipline: improper performance of work or delay due to an employee's improper attitude to his duties;
- non-compliance with labor protection requirements;
- loss or damage of equipment, inventory, tools, materials and other state or public property as a result of an employee's improper attitude to his duties on the condition that it did not entail criminal liability;
- unauthorized, especially for personal purposes, use of vehicles, agricultural machinery, machines, tools, raw materials and other property, belonging to a state enterprise, institution, organization, collective farm, other cooperative and other public organization, on the condition that these actions had not caused significant damage to these enterprises, institutions and organizations;
- immoral behavior in public places (drinking alcohol, petty hooliganism, petty theft of state or public property, etc.);

[13] INSHYN; VAVZHENCHUK; MOSKALENKO, 2021.

- first-time theft of low-value consumer goods and household items that were in the personal property of citizens, in the case when the person prosecuted and the victim were both members of the same staff;
- first-time insults, slander, calumny, beatings and light bodily injuries that did not cause a health disorder;
- non-fulfilment or improper fulfilment of responsibilities for the upbringing of children by their parents, guardians or custodians; indecent treatment of parents; indecent behavior in the family; indecent treatment of women; evasion of patients with chronic alcoholism from treatment in health care facilities.

Meetings of the comradely court, related to the case, were held during non-working hours. Cases were heard in public by at least three members of the comradely court, but in all cases their number had to be odd. The presiding judge and members of the comradely court were disqualified of participating in the proceedings if any of them was a victim, a participant in the civil dispute, a relative of the victim or a participant in the civil dispute, or a person being a subject to the comradely court, a witness, and under any other circumstances that gave reason to believe that the presiding judge or members of the comradely court might be personally interested in the results of the proceedings. In those cases, they were obliged to resign.[14] For the same reasons, the presiding judge and members of the comradely court might be challenged by a person brought to the court, the victim and any participants in that particular civil dispute.

The matter of satisfaction or refusal of the declared challenge was solved by the whole body of the comradely court considering the case. As a result of considering cases, the comradely courts could apply the following means of influence:

- oblige the defendant to publicly apologize to the victim or the staff;
- announce a comradely warning;
- announce a public condemnation;
- announce a public reprimand with or without publication in the press;
- impose a fine;
- transfer the person guilty of violating labor discipline to a lower-paid position, in accordance with the current labor legislation;
- submit to the head of the enterprise, institution, organization the issue of dismissal, in accordance with the applicable law, of the employee performing educational functions or work related to the direct service of monetary or commodity property, if given the nature of the offenses

[14] KUCHKO, 2021.

committed by this person, the comradely court found it impossible to further entrust the culprit with such work.

It should be noted that throughout the period of their activity, the comradely courts quite rarely applied to violators of the labor discipline such measures as submission to the management of the enterprise, institution, organization the issue of dismissal, or transferring the violator to another position.[15] As a rule, they applied measures of educational influence in order to reform offenders within the labor staff.[16] Another extrajudicial way to resolve legal conflicts is the commission on labor disputes, which, in accordance with Art. 224 of the Labor Code, is a body that operates at enterprises, institutions, organizations to resolve individual labor disputes arising between an employee and the employer or an authorized body, due to the violation of legal labor rights and interests.[17] The commission on labor disputes is formed by the general meeting of the labor staff of the enterprise which employs more than 15 employees. The general meeting of employees determines the election procedure, composition, number and term of office of the commission. The commission on labor disputes elects from among its members the chairman, his deputies and the secretary of the commission. The organizational and maintenance support of the commission is provided at the expense of the owner of the enterprise or his authorized body. An employee of the enterprise has the right to apply to the commission on labor disputes within three months from the day when he learned or should have learned about the violation of his rights. If the employee has missed the specified period for valid reasons, the commission on labor disputes has the right to renew the missed term.

The employee appeals to the commission on labor disputes by submitting an application which is subject to the mandatory registration. From the moment of the application being submitted and registered, the commission is obliged to consider and resolve the labor conflict within 10 days. A meeting of the commission on labor disputes is considered valid if it is attended by at least two-thirds of the elected members. A labor conflict can be considered both in the presence of the employee who submitted the application and, in his absence, (if the employee specified in his application an option of resolving the conflict in his absence), as well as in the presence of representatives of the owner or his authorized body. At the initiative of the employee, his interests in the commission may be represented by a representative of the enterprise trade union or a lawyer.

If the employee or his representative does not show at the meeting of the commission, the consideration of his application is postponed for the next

[15] MARAGNO, 2021, p. 21-32.
[16] Labor Code, 1971.
[17] Law of Ukraine No. 2134-XII ..., 1992.

meeting. In case of repeated non-appearance of the employee or his representative, the commission may withdraw the submitted application. Then the employee has the right to re-submit his application within three months. In the process of considering the application, the owner of the enterprise or his authorized body and the employee have the right to give a motivated challenge to the commission or one of its members. Applications for such a challenge are resolved by a majority vote of the present members of the commission, in the absence of the person to whom the challenge was filed. The commission on labor disputes has the right to involve witnesses, instruct experts to carry out technical and accounting checks, demand any necessary documents from the owner or his authorized body. Minutes are kept at the meeting of the commission on labor disputes, at the end of which the minutes are signed by the chairman of the commission or his deputy, and secretary.

3 International Experience of Organizing the Work of a Comrades' Court

In the Republic of Estonia, labor disputes are resolved extrajudicially by the Labor Disputes Commissions which operate under the Labor Inspectorates. According to Art. 4 of the Law "On Labor Disputes", the Labor Disputes Commission is an extrajudicial independent body that resolves labor disputes. The Commission consists of the head of an enterprise and a representative of the employees (the so-called juror), who must meet the relevant requirements. The head of the Labor Disputes Commission is appointed and dismissed by the Minister. The candidate for the position of the head of the Labor Disputes Commission must meet the following criteria:

- have a master's degree in law;
- know the labor law and the procedure for resolving a labor dispute;
- be professionally and morally qualified;
- have no criminal records;
- have never been removed from the position of a judge, notary, bailiff, or expelled from the bar.

A member of the Labor Disputes Commission (juror) must be an able-bodied Estonian resident who speaks Estonian at B2 level, has appropriate moral qualities and no criminal records, is not declared bankrupt and is in a satisfactory state of health. The Trade Unions Association and the Central Employers Unions compile their own lists of candidates for the position of the juror, which are approved by the Labor Inspectorate. From these submitted lists, the head of the Labor Disputes Commission appoints the members of the Commission, who are notified of the time of a meeting in advance so that they have an opportunity to review the documents

on the case. The members of the Commission (jurors) retain their main job and are remunerated for their work in the Labor Disputes Commission.

An employee can apply to the Commission in person or through a representative, and has the right to submit an application to the Labor Disputes Commission at the place of personal residence or work, or at the place of the employer's residence or location. An application for resolving a collective labor dispute is submitted to the Labor Disputes Commission at the place of the employer's residence or work, or to the Labor Disputes Commission at the location of the Employers Union or the Central Employers Union. The application indicates:

- personal data and identification number of the applicant;
- personal data and identification number of the person in respect of whom the claims are made;
- clearly stated claims of the applicant;
- evidence substantiating the claims;
- the elected Labor Disputes Commission;
- the type of the labor conflict consideration and resolution.

The Estonian law provides the following procedures for resolving labor disputes:

- conciliation procedure: the applicant may submit an application for resolving a labor conflict with its own proposals for conciliation before the Commission makes a decision. The conciliator is the head of the Labor Disputes Commission. The conciliation agreement must be signed within 10 working days from the date of the decision to initiate proceedings;
- written proceedings: they are carried out in the case of full confession of the person in respect of whom the claims are made. The head of the Labor Disputes Commission single-handedly satisfies the application for written proceedings;
- proceedings in the form of a meeting to consider and resolve labor disputes: they are carried out by the Commission consisting of 3 members in accordance with the Civil Procedure Code within 45 days from the date of receiving the application by the Labor Disputes Commission. The head of the Commission clarifies the circumstances of the labor dispute and notifies the parties to the conflict of the time and place of the meeting, their procedural status, rights and responsibilities, the consequences of non-appearance at the meeting of the Commission, and sends them copies of the documents.

The meeting of the Labor Disputes Commission is held in the presence of the parties to the conflict or their representatives, with minutes being kept in the process of considering the case. The minutes contains:

- time and place of considering the labor dispute and carrying out procedural actions, the number of the case under consideration;
- composition of the Commission for considering labor disputes;
- presence of the parties to the labor conflict, their representatives, and witnesses;
- explanation to the parties to the labor conflict of their rights and responsibilities;
- information on claims to the application, their merger or the allocation of the claims, counter-applications;
- recognition of claims, waiver of claims, compromise;
- explanations or objections of the parties, explanations of the witnesses;
- examination of the evidence;
- time of announcement of the decision;
- date of signing the minutes.

The minutes are signed by the head of the Labor Disputes Commission and the secretary who keeps the minutes. Based on the results of considering the case on labor conflict, the Labor Disputes Commission makes a decision by a majority vote in open voting. The head of the Commission is the last to vote. Members of the Commission have no right to abstain. The decision of the Commission must be lawful and reasonable, and announced within 10 working days after the meeting took place. The Commission notifies the parties of the time and place of the decision announcement in advance. Copies of the decision are handed over to the parties on the day of the decision being announced. The parties have the right to appeal the decision of the Labor Disputes Commission in court within 30 days from the date of receiving the decision.

The most successful example of the transition to extrajudicial means of resolving labor disputes is Japan. It was in this country that the transition from the formal (collective) regulation of labor relations to informal ones took place through joint consultations between employers and trade union bodies. The latter have made a significant contribution to the regulation of labor relations. It is their balanced and timely position on socio-economic and political changes that has given the relations with employers the character of concerted actions. The regulation of labor relations as collective negotiations appeared in Japan in the postwar period. The Law "On Trade Unions" of June 10, 1949[18] provided employees with the right to express the willpower of collective negotiating. In this way, the Japanese government and business owners wanted to gain control over the settlement of labor disputes.

[18] MOLODYAKOVA, 1997.

The collective negotiating aims at: improving the employees' working conditions; raising employees' economic and social status.[19]

The Japanese law guarantees the right of collective negotiating and trade unions operating, and business owners cannot refuse their participation without good reason, have no right to independently define or change working conditions, and negotiate with individual employees.[20] To carry out negotiations, a Labor Relations Commission is created, and it has the status of a legal entity.[21] The Commission may include representatives of the trade union, such as the main leaders,[22] representatives of the higher trade union body, ordinary members of the trade union, and those of the enterprise administration, such as middle managers and employees responsible for the staff work.[23] The negotiation procedure consists of the following stages: composing a written list of issues for a discussion, discussing them, coming up with counter-proposals, discussing the latter, and finally, decision-making (oral or written).[24]

In contrast to European countries, collective negotiating in Japan is held in order to settle labor relations at each single enterprise. Accordingly, the range of issues and problems to be negotiated is much wider and more diverse. It includes, in particular:

- issues of wages, working conditions, pension benefits, severance pay, working hours, employees' relocation or transfer to other enterprises, temporary dismissal;
- issues related to industrial safety, hiring workers, a strike notification, clarification of attitude towards persons who did not take part in the strike;
- conditions of trade union activity at the enterprise.

The management problems, production plans, financial situation, organizational structure of the enterprise, increasing production efficiency, introducing new production technologies are also the subject of collective negotiating because they affect the employment and working conditions.[25] The system of joint consultations between employers and trade unions is an alternative way to collective negotiating; they are held mainly to discuss management and production issues that are not within the competence of collective negotiating. Joint consultations are held in the form of explanations, questions and answers, exchange of views on various issue.[26]

[19] MELNYK-LYMONCHENKO, 2021.
[20] SLISARENKO, 2020.
[21] LUSPENYK, 2006, p. 62-66.
[22] KOT, 2017.
[23] Judgment of the European Court of Human Rights, 2011.
[24] KULINICH, 2016.
[25] SPASIBO-FATEEVA, 2021.
[26] KHARITONOV; KHARITONOVA, 2011.

The main purpose of joint consultations is to achieve mutual understanding between the business owners and trade unions. During collective negotiating, the dispute settlement procedure can lead to labor disputes, which, in its turn, can lead to strikes. In joint consultations the result, in most cases, is mutual understanding. The lack of mutual understanding during the joint consultations indicates the need for additional consultations or their transfer to a higher level.[27] In Japan, there is a four-level system of joint consultations:

- a production unit (shop, department): joint consultations are carried out in working order to agree on methods of labor organization;
- an enterprise: at this level, joint consultations are decisive and take the form of an employment agreement. Equal numbers of representatives of the trade union and the enterprise administration are elected to take part in joint consultations;
- a branch of economy: there advisory councils from among representatives of trade unions and business organizations operate;
- the national economy: there are government advisory committees which include representatives of the government, the national trade union center and the Federation of Entrepreneurs.

4 Conclusions

The system of joint consultations has become widespread in Japan as it meets the interests of employers and helps to avoid labor conflicts. Individual labor disputes can be resolved in Japan by an employee both in court and in an alternative manner. The latter includes: filing an application at the Labor Office and resolving the labor dispute through regulation, conciliation and mediation; appealing to the labor administrative offices at the Ministry of Health, Labor and Social Protection about the violation of individual labor law. The competence of these offices includes consultations and mediation services on labor issues. In case of detecting violation of labor legislation, the labor administrative offices transfer the case to the Labor Standards Inspectorate for further investigation. The Inspectorate has the right to issue recommendations to the defendant on behalf of the plaintiff or transfer the case to the Dispute Settlement Committee to represent the plaintiff and reconcile him with the defendant.

Thus, based on the analysis of the organization and activities of extrajudicial bodies for the settlement of labor disputes, it can be concluded that extrajudicial bodies are elected, independent and democratic bodies; proceedings for considering and resolving cases are open and in compliance with the requirements of procedural law; extrajudicial bodies can function both in the field of management and justice.

[27] NOVAK, 2021.

Órgãos extrajudiciais de resolução de conflitos trabalhistas

Resumo: O artigo estuda o estatuto jurídico dos órgãos extrajudiciais para a resolução de conflitos trabalhistas, bem como o procedimento de resolução de conflitos trabalhistas. Também analisa a experiência de órgãos extrajudiciais nacionais e estrangeiros na solução de conflitos trabalhistas. A resolução de conflitos trabalhistas está tradicionalmente associada ao judiciário. No entanto, devido à sobrecarga destes últimos, à morosidade do processo judicial de apreciação e resolução de conflitos e ao elevado nível de custas judiciais, a procura de soluções alternativas extrajudiciais para os conflitos laborais é muito procurada. Por outro lado, métodos extrajudiciais alternativos de solução de conflitos trabalhistas reduzirão significativamente a carga de trabalho dos órgãos judiciais e a tensão social entre os participantes do processo de resolução de conflitos trabalhistas. Os tribunais camaradas eram dotados da confiança da equipe, agiam como sua força de vontade e prestavam contas a ela. Esses tribunais se transformaram em uma espécie de tribunais públicos que foram criados para considerar e resolver pequenos conflitos jurídicos que não afetavam os direitos humanos essenciais. O objetivo principal dos tribunais camaradas recém-criados era educar as pessoas por meio da persuasão e da influência social. A sua actividade baseava-se em princípios como o princípio territorial-produtivo, o da conveniência, eleição e responsabilização dos juízes. Além disso, os tribunais camaradas, como corpo de justiça, funcionaram com os mesmos princípios dos tribunais de jurisdição geral, em particular, eleição e independência dos juízes, caráter aberto e oral dos processos judiciais.

Palavras-chave: Órgãos extrajudiciais de solução de conflitos trabalhistas; justiça; formas alternativas de solução de conflitos jurídicos; conflito trabalhista

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