

ABSTRACT
of the thesis of Raziya Dinara Bagdatovna
"Theoretical and practical aspects of improving the Institute of labor law
responsibility",
submitted for the degree of Doctor of Philosophy (PhD)
in the specialty: "6D030100- Jurisprudence»

The relevance of the topic of the thesis research is associated with the undeniable importance of the theory of labor law in the development of fundamental methods of legal regulation of labor relations in the Republic of Kazakhstan.

During the period of industrial transformation, it becomes obvious that new challenges are changing the very concept of production, the structure and needs of world markets. In such conditions, Kazakhstan is focused on updating its production assets in accordance with the latest technological standards. Accordingly, the legislation faces an important task-not only to protect national interests, but also to synchronize with the dynamically developing international legal environment.

National legislation should develop new views on the existing model of mechanisms and ways of managing relations in the sphere of public labor organization.

Labor law as a branch of law in the modern sense, was developed on the basis of factory legislation dictated by the needs of industrial production and the existing economic situation, and that fact undoubtedly affected its functions, methods and principles. It is almost in this state now.

"The economy of high technology requires a completely different law than the economy of smoking chimneys." Formed in past centuries, the methods of legal regulation of labor relations demonstrate a crisis state, therefore, in order to preserve its independence and necessity, labor law must adapt to the requirements of the new time.

"Today, there is a gradual transformation of traditional labor law into a legal branch, which, while retaining its former name and many formal features of the old type of labor law, acquires new features. In fact, it seeks to redefine its niche in the legal field, provide, improve its tools and revive on a new basis." In modern conditions, labor activity, being exposed to the factors of information and technological progress, needs to form adequate mechanisms of legal regulation, to transform its main institutions, to create a legal framework for a fundamentally new model of labor relations.

The tasks of labor legislation are to ensure the necessary conditions aimed at achieving a balance of interests of all categories involved in labor activity, guaranteeing economic growth, improving efficient production and people's well-being. The successful completion of these tasks depends, first of all, on the quality of scientific research in this area, the results of the search for modern ways to stabilize and regulate labor relations.

The topic of the dissertation is predetermined by the indicated relevance and is related to the State Program for the development of education and science of the Republic of Kazakhstan for 2020–2025, the Program Document "Strategy

Kazakhstan-2050: a new political course for a successful State,” and the concept for social development of the Republic of Kazakhstan until 2030.

Assessing the current state of the scientific problem, it should be noted that there is an enduring interest in issues of legal liability in labor law.

For a long time, issues of disciplinary and financial responsibility have been subjected to scientific research, resulting in new concepts and constructive scientific discussions. At the same time, there is still no unity of opinion in science on the definition of the concept of labor liability, its legal nature, functions, criteria for correlation with related legal categories, etc. The solution of the above-mentioned problems will, in our opinion, reveal the essence of labor liability as an important social and legal phenomenon.

The goal is a comprehensive study of the Institute of labor and legal responsibility, taking into accounts the conceptual developments of legal science, the doctrine of labor law, the requirements of current legislation and the practice of its application.

To achieve the mentioned goal the following tasks are set in the work:

1) to systematize the existing scientific approaches to the essence of labor and law responsibility, apply the findings to build independent theoretical structures;

2) to justify the need to introduce the term "labor law responsibility" into domestic labor law, and reflect its industry-specific features in the proposed definition;

3) to disclose labor and law responsibility as an institution of law, to determine the branch affiliation of disciplinary and material responsibility on the basis of research of functions, principles, signs;

4) to identify and analyze the correlation of norms of related branches of law in resolving issues of responsibility in the field of labor;

5) to conduct a comparative analysis and generalization of foreign experience in legal regulation of legal relations of responsibility in the field of labor;

6) to reveal and justify the theoretical and practical problems of the application of measures of labor liability, to develop proposals and recommendations aimed at improving national legislation in the studied area.

The object of the research is the legal relationship of labor law responsibility.

The subject of the research is the basic general theoretical and practical problems of the Institution of labor liability.

The scientific novelty of the dissertation research is that this work is the first comprehensive study in domestic science, dedicated to the modern institute of labor liability as an independent type of legal responsibility.

Provisions for defense:

1. The dissertation research determines that labor liability is an institution of the branch of labor law and acts as a system of legal norms regulating homogeneous social relations in the field of bringing the parties to an employment contract to responsibility. Material and disciplinary responsibility are disclosed in the thesis as sub-institutions of labor law responsibility.

2. It is noted that the definition of "responsibility in labor law" enshrined in the

theory of law leads to an expanded interpretation of the institution of labor liability, deprives it of its sector characteristics. The specified factor determines the need to introduce the generic term "labor law responsibility" into labor law, which will determine its independent nature, distinguish it from other types of responsibility in the field of labor that have a different industry affiliation, as well as establish legal boundaries.

3. It is suggested that paragraph 76, part 1, article 1 of the Labor Code of the Republic of Kazakhstan does not disclose the concept of disciplinary misconduct in accordance with its industry nature and characteristics. The conclusions that a disciplinary offense is expressed in unlawful and guilty non-performance or improper performance of a job are not accurate and convincing. The content of the disciplinary offense should be supplemented with such an element as abuse of the right, defined as an act carried out within the limits of the employee's subjective right, but violating the interests of others or creating conditions for obtaining an unjustified advantage.

Definition 76, part 1, article 1 of the Labor Code of the Republic of Kazakhstan is proposed to be worded as follows: "Disciplinary misconduct is a guilty, unlawful failure to perform or improper performance by an employee of his duties, as well as abuse of his rights or official authority provided by applicable law, terms of the employment contract and other labor agreements."

4. The study refutes the prevailing stereotypical judgment that employees whose disciplinary liability is regulated by special legal acts are referred to as special subjects of disciplinary liability. As usual, they include employees of certain categories - judges, civil servants and military personnel, law enforcement officers, etc. We defend the position that the disciplinary liability of the aforementioned employees is not of a legal nature, however, like the employees themselves are not subjects of labor law, and their official activities are carried out in the framework of administrative and legal relations.

5. The work recognizes the existence of controversial issues regarding the implementation of disciplinary measures, in particular, it raises doubts, as fixed in paragraph 1 of article 64 of the Labor Code of the Republic of Kazakhstan, the equal status of the employer and the first head of the national managing holding; the inclusion in the list of disciplinary sanctions of "strict reprimand", which is a measure of the same type with "reprimand", with identical terms, legal consequences and procedures; the lack of legal tools to bring the employee to disciplinary liability by enforcing the position.

In this regard, the thesis offers the following version of paragraph 1, article 64 of the Labor Code of the Republic of Kazakhstan: "1. If an employee commits a disciplinary offense, the employer may apply the following types of disciplinary sanctions in cases provided by the laws of the Republic of Kazakhstan:

- 1) remark;
- 2) reprimand;
- 3) demotion/ dismissal;

4) termination of an employment contract on the initiative of the employer on the grounds provided for in sub-paragraphs 8), 9), 10), 11), 12), 13), 14), 15), 16), 17)

and 18) of paragraph 1 of article 52 of this Code."

The research notes that the absence of a fixed mechanism for the proportionality of offense and disciplinary sanction in the labor legislation deprives employees of the guarantee of ensuring the principle of fairness when bringing to disciplinary responsibility.

The author proposes to supplement article 65 of the Labor Code of the Republic of Kazakhstan with paragraph 6, which has the following content: "... when applying disciplinary measures, the employer must take into account the proportionality of the disciplinary sanction of the degree of serious misconduct, the circumstances in which it was committed, the employee's previous behavior and his attitude to work"; article 22 of the Normative Decree of the Supreme Court of the Republic of Kazakhstan "On certain issues of the application by the courts of the legislation on the settlement of labor disputes" paragraph 3, of the following content "... when considering a dispute in connection with an employee having committed a disciplinary offense, the courts should take into account that the decision to bring the employee to a disciplinary responsibility and the election of the type of disciplinary sanction should be based on the proportionality of the disciplinary sanction to the degree of severity of the committed offense, the circumstances under which it was made, the employee's previous behavior and his attitude to work."

6. In the thesis, the relationship of the compliance of the regulated bases of the employer's material responsibility and the essence of the responsibility itself was derived, on the basis of which it is proposed to regulate the responsibility of the employer for causing damage to the employee's property through the norms of the institution of labor liability.

Based on the research of the nature of relations on compensation for harm to life and health of an employee caused at work, it is proved that these relations are regulated by the standards of the branch of social security law due to the specifics of modern mechanisms that combine protective - compensatory and socio - adaptive functions.

The scientific significance of the results of the work is expressed in the fact that the conclusions and practical recommendations contained in the dissertation are intended to make a definite contribution to the development of the science of labor law and contribute to solution of scientific problems related to the establishment of an effective legal mechanism to ensure effective regulation of relations labor law responsibility.

The practical significance of the research is determined by the possibility of using the developed recommendations in solving current problems of labor law and improving current legislation.

The materials of the dissertation can be used in teaching the disciplines "Labor law", "Labor procedural law", etc.

Testing the results of the work. The formulated results are reflected in scientific publications on the topic of the dissertation research.

The dissertation was prepared and discussed at the Department of civil law disciplines of the Kazakh Humanitarian Juridical Innovative University.

On the topic of the thesis published:

1. State Mechanisms for the Protection of Children from the Worst Forms of Labor in the Republic of Kazakhstan // Indian Journal of Science and Technology, 2016 g.s.217-222
2. Otrasleyve osobennosti instituta moralnogo vreda v trudovyh pravootnosheniyah// Nauka i zhizn Kazakhstana. № 7 (72) 2018. S.50-54
3. Istoricheskie predposylki formirovaniya otrasli trudovogo prava v Kazakhstane // Semey kalasynyn Shakarim atyndagy memlekettik universitetinin habarshysy № 3(87) 2019. S.404-408;
4. Problemnye voprosy zaklyucheniya soglasheniya o nekonkurentcii v sovremennyh trudovyh otnosheniyah// Nauka i zhizn Kazakhstana. №6/2 2019. S. 73-77
5. Realizatciya printcipa spravedlivosti v institute distciplinarnoi otvetstvennosti//Vestnik Instituta zakonodatelstva i pravovoj informacii RK №3 (57) – 2019, S.73-78.
6. Rol sudebnoj praktiki v opredelenii otcenochnyh ponyatij po trudovym sporam// Sbornik materialov mezhdunarodnoj nauchno-prakticheskoy konferencii «Prava cheloveka i spravedlivoje pravosudie: sovremennye gorizonty videniya»7.12.2018 g., Astana. S.260-262
7. Sovershenie amoralnogo prostupka kak osnovanie uvolneniya pedagogicheskikh rabotnikov po trudovomu zakonodatelstvu Respubliki Kazakhstan: socialno-pravovoj aspekt// Sbornik materialov V Mezhdunarodnoi nauchno-prakticheskoy konferencii «Nauka i obrazovanie v sovremennom mire: vyzovy XXI veka», dekabr 2019 g. S.48-51
8. K voprosu ob otraslevoj prinadlezhnosti pravootnoshenij po vozmeshcheniyu vreda_ prichinennogo zhizni ili zdorovyu rabotnika v Respublike Kazakhstan // Abstracts of II International Scientific and Practical Conference «Eurasian scientific congress» Barcelona, Spain, 24-25 February 2020. S. 521-525
9. Enbek sharty – enbek – kukykyk zhauapkershiliginin ishki mezheleri // Vestnik KazGYUIU, 2018g.
10. Osobennosti pravovoj ohrany kommercheskoj tajny v trudovyh otnosheniyah// Ezhemesyachnyj nauchnyj zhurnal EVRAZIJSKIY SOYUZ UCHENYH (ESU) № 8 (65) / 2019. 5 chast, s. 63-66
11. Osobennosti material`noj otvetstvennosti rabotodatelya za vred, prichinennyj imushhestvu rabotnika po trudovomu zakonodatelstvu Kyrgyzskoj Respubliki // Mezhdunarodnyj zhurnal nauchnyh publikacij «Colloquium-journal» (№ 37), Polsha, 2019 g.