

CURRENT CONSTRAINS OF UZBEKISTAN LABOR LAW

Khakberdiev Aziz

Tashkent state university of law (Uzbekistan)

ABSTRACT

Over the years Uzbekistan was one of the soviet socialistic republics, however, after collapse of USSR Uzbekistan became independent and nominated own development module. During the economic transition new types of non-regular workers emerged in labor market such as part-timers, temporary workers and so forth. However, labor law did not update the provisions to keep up with the developing economy. Currently, labor law cannot provide labor protection for non-regular workers. Current Labor Code still includes former Soviet Union's labor regulation effecting to employment. Therefore, this thesis demonstrates the weaknesses of chapter IV, paragraph 2 "Labor contracting" of Uzbekistan labor code of 1995, in order to expand formal contracts to part-time and temporary workers, and facilitate flexibility of labor contractual relations according to requirements of labor market. Current Labor Code does not cover part-time and temporary worker's issues. Second, the hypothesis outlines the current labor practices on part-time workers as well as the drawbacks of labor law. Finally, by comparative analyses between Uzbek labor law approaches to propose the update the Uzbek labor law part-time and temporary contracts, which can promote transformation from informal to formal job creation and stimulate individuals to enter into the formal labor market.

INTRODUCTION

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The President of the Republic of Uzbekistan Sh.M. Mirziyoyev nominated the course aimed at further democratization and renewal of society, development of a market economy, reforming and modernizing the country, implementing practical and comprehensive measures provided for by the Action Strategy for the five priority areas of development of the Republic of Uzbekistan in 2017 - 2021, objectively requires improvement of the legal regulation of social and labor relations. Further reforms of labor legislation should ensure the effective functioning of the labor market, achieving a balance between the interests of workers and employers, increasing the motivation of workers for productive work, and employers to produce competitive products, fixing effective mechanisms for protecting workers' labor rights.

New president has launched transformation period after a long stagnation in all spheres in the republic. In 2016 the President Sh.M. Mirziyoyev in the State Program for the implementation

of the Strategy of Action for the five priority areas for the development of the Republic of Uzbekistan in 2017 - 2021 years in the “Year of active investment and social development” set the task to become one of the leading countries in rating criteria of the “Doing Business”. Any dynamically developing economy requires create highly efficient and new job places instead of old, inefficient ones. This process must go on continuously. Since employers creating jobs, which are either just starting their activities, or growing and developing, the risks of financial losses and even closure of production are high, so it is necessary that the costs of creating and running a business should be reasonable. Obviously, it is just one of the important components of the investment climate. Investment attractiveness depends not only on labor legislation but also other important factors such as the protection of property rights, the quality and effectiveness of state regulation, the absence of corruption, the availability of infrastructure like roads, electric networks. However, labor law plays a primary role in these processes which is in most cases undervalued. So, if an employer cannot quickly and adequately respond to market requirements, decide business processes, and must spend significant funds on maintaining inefficient jobs, it will be unprofitable to invest in the country's economy. And then capital will be invested where there is more flexibility, more attractiveness and significantly higher profitability. In other words, competition for investment is competition for job places. International rating agencies assessing the conditions of the investment climate and the prospects for doing business in Uzbekistan pay special attention to those factors.

Reforms during last ten years gradually triggered whole country economy to transition to a market orientated economy model. Legal entities in the country increased twice in a number from 137 303 to 268 406 which obviously impacted hugely to the labor market. Naturally all those business entities needed work force, employees number engaged in new established work places grew almost three times from 4 million to 10,4 million people. Economy had a boom in sector of small and medium-sized enterprises (SMEs). Share of SMEs in GDP up to 56% and the share of employment in SMEs 80%. However, the articles on employment in the current Labor Code focused mainly on large enterprises of traditional industries, it does not meet modern realities and does not establish the peculiarities of the legal regulation of labor of persons employed in the small business and individual entrepreneurs, does not reflect the legal features of certain forms of employment widely used in practice (part-timers, seasonal worker, etc.)

The current Labor Code of the Republic of Uzbekistan was adopted on December 21, 1995 and entered into force on April 1, 1996. At the time of its adoption, the Labor Code was considered as tentative one, ensuring the further economic development of the country during the transition period. It is also important to emphasize that the current Labor Code is not representative of contemporary realities and does not take into account the active development of various new forms of citizen involvement in work, does not create sufficient prerequisites for the widespread use of flexible work regimes that allow employers, in particular, to choose simpler forms of engagement additional workers for example, with an increase in seasonal demand for products, goods and services and temporary workers.

Uzbekistan in the period of post-soviet economic transformation adopted and entered into force current Labor Code more than twenty-two years ago, it is quite obvious that a number of

provisions need to be revised taking into account the realities of today's reforms. An analysis of the historical development and legacy of the current Labor Code will allow identifying not only norms that need further improvement, provisions to be reviewed but also helps to understand the reason of absence of sufficient institutions such as part-timers, temporary and seasonal workers in the current Labor Code.

Uzbekistan's Labor Code development background based on three labor codes of the RSFSR, adopted in 1918, 1922 and 1972. In 1918 the Russian Socialist Federative Soviet Republic adopted the Labor Code of Soviet Union. However, Labor Code did not fix many important sectorial institutions especially there were no norms about the most important, a labor contract. A serious drawback of the Labor Code of 1918 was also the declarative nature of many of its provisions. Thus, the legislative body faced with the task of making the Code more flexible, not formal and actually functioning, as close as possible to that time labor relations. Finally, the Labor Code of 1922 succeeded to make less ideologies, as a whole, had a compromising character, performing not only a socially protective, but also an economic function. Initially, the Code extended to the territory of all Soviet republics. Thus, other Soviet republics according to the Decree of the All-Russian Central Executive Committee of the Russian Socialist Federative Soviet Republic (RSFSR) of November 9, 1922, introduced the Code of Labor Laws on their territory without changes. Then Soviet Uzbekistan adopted its Labor Code on the basis of the Soviet Union's code (Labor Code of the Uzbek SSR 1929). Soviet republics had adopted Labor code as formality rather than a legal document to undertake the labor issues. After the transformation of the Tajik Autonomous Soviet Socialist Republic into a union republic in 1929, the Labor Code of the Uzbek SSR continued to operate in neighbor Tajik SSR. It is important to note that all these codes are not much different from the Labor Code of the RSFSR. However, the 1922 Code can be attributed to a kind of "golden fund" of Soviet labor rights. The Code fixed new intuitions such as 8-hour working day, minimum annual paid leave, prohibition of child labor, restriction of overtime work. In comparison to the Code in 1918 the Code 1922 includes chapters "On the employment contract" had no analogues in the previous labor acts. In the Labor Code of 1922, a special chapter XIII "The work of women and minors" first appeared. Nevertheless, the All-Union Central Council of Trade Unions was clearly not in favor of the workers and violated the new chapter norms of the Labor Code. The Decree of the All-Union Central Council of Trade Unions in 1938 allowed the directors of cotton, knitwear and paper mills to keep the average salary for pregnant women transferred to easier work. The Labor Code of 1922 acted during 50 years with merely changes as a single labor law before the and period of WWII. Finally, RSFSR adopted next Labor Code after war in 1972. New labor code was not sustainable or had not had dramatic changes in the articles.

After the collapse of the USSR most of post-Soviet republics during the 1990s have developed and adopted new Labor Codes or other codified laws. Currently, new labor codes have been adopted in the following CIS countries:

1. The Labor Code of Turkmenistan 1993;
2. The Labor Code of the Republic of Uzbekistan 1995;
3. The Labor Code of the Republic of Tajikistan 1997;
4. The Labor Code of the Kyrgyz Republic 1997;

5. The Labor Code of the Republic of Kazakhstan in 2007.

All four post-soviet republics adopted independent labor codes, however, the concept of the codes were merely formal document rather than close to reality to the labor issues of that time. However, except the Kazakhstan, which is the latest post-soviet republic among the Central Asia countries, adopted Labor Code in 2007. Kazakhstan before the Labor Code used The Labor Law of Kazakhstan Republic adopted in 1999. Unlike Uzbekistan Labor Code, Kazakhstan Labor code contains article 27 “other forms of labor agreement”, this article stipulates different forms of employment contracts such as part-timers, temporary workers. Article 134 on “seasonal workers” and mechanisms of employment written clearly. The GDP of the republic of Kazakhstan is the highest among the post-soviet Central Asia countries. Kazakhstan in early transformation period from soviet republic to independent one used flexible module in legislative for labor regulation during the transitional economy. Thus, Kazakhstan adopted law which is quite amenable to make amendments in case of changing the course of economy rather than make amendments in Codes. As it is obvious, the post-Soviet republics are characterized by codified labor legislation. Such characteristic of Western European states: historically, labor legislation was formed there by adopting ordinary, less commonly, consolidated laws on individual labor law institutions, and civil codes are partially applied to employment relations. Nevertheless, Uzbekistan or Kazakhstan as post-soviet countries with developing economy did not choose any law modules of development from developed countries such as German’s or French. On the contrary all five countries nominated their own development modules in the countries.

From 1924 up to 1991 de jure Uzbek labor law as Uzbek Soviet Socialistic Republic was a part of the Soviet Union so the vast total of soviet labor law legislation served the superior political and economic aims of the state. A peculiar situation was established concerning labor legislation at that time in the USSR and in a number of other socialist countries within Uzbekistan. As the economy was nationalized, private law principles were removed from labor legislation, and the state, centralized regulation became prevailing in labor relations. Modern labor law of independent Uzbekistan succeeded such an analogous labor relations of Soviet Union. Thus, Labor law of Uzbekistan does not have the concept of market oriented labor relations, diversity and flexibility of labor relations in the labor code which is currently the basic legal document in labor issues. Therefore, the current labor environment in Uzbekistan shows that the some sort of concept and elements of soviet labor law still exists and it is detrimental for due activity of labor law as an institution of civil society and left the reforms of labor law as a second-rate domain.

There are several objectives in historical development of labor law of Soviet Uzbek Republic causing to obstacles nowadays in modern Uzbekistan labor law. First, there was no codified federal law during the Soviet Union. The Russian Soviet Federative Socialist Republic the Labor Code of 1922 adopted in all other Soviet Republics. Later on all Republics updated and re-adopted in 1929 and 1972 as the basic labor law. The labor codes in individual republics differ from that of the Russian Soviet Federative Socialist Republic only in insignificant details. Only after the independence many republics adopted individual labor codes, for instance Uzbekistan in 1995, Kazakhstan was the latest Republic adopted individual Labor code in 2007.

Until then Kazakhstan used the labor law act. The Republic of Kazakhstan the labor code provides articles providing temporary and part-time workers right conducting different types of labor contracts. Meanwhile Uzbekistan labor code has only two types of labor contract. Second, Soviet economic and political might is lined with regulations systematically strengthening labor discipline, calling for ever greater efforts, but also offering carefully calculated incentives and privileges to workers in the vital branches of economy. Therefore, modern labor code of Uzbekistan has lack of flexibility in employment issues. Current Labor Code focused mainly on large enterprises of traditional industries. In fact, in Uzbekistan small business sector expanding and employment increasing, meanwhile labor regulation does not meet the realities of economic transformation in the country in turn gives an opportunity for increasing informal employment. Third, legal basis of employment under Soviet labor law normally arise from work contracts between worker and State enterprise, which means employer is the State. However, in modern labor law relations prevailing concept of labor contract is between employer and worker solely, where employer is legal entity. Thus, more than a half of the economy in Uzbekistan forms small business representatives currently employers. Finally, there was no reference to the settlement of wage questions. Those issues are now regulated by normative acts as laws and decrees. However, rates for wages of piecework are not clear when issues are rises regarding the temporary workers or technically part-time workers. Employers decide on gentlemen agreement the rates of wages. To summarize, the study analyses the historical background of development Uzbek Labor code and pointing out several drawbacks of the Soviet Union Labor Code inherited by current Uzbek Labor Code. The purpose of the studying is to examine the essential impediments in Labor Code especially part of employment regulation. All of the above mentioned facts causes difficulties in law enforcement, including contracting, employing practices, and often does not allow a clear and unambiguous answer to questions arising during the application of labor legislation.

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