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DOMESTIC LEGISLATIVE IMPROVEMENT ASSOCIATED TO THE SUBJECTS OF OPERATIONAL-SEARCH ACTIVITY ON A NON- PUBLIC PRINCIPLES



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Abstract

In the article prepared by the Vice-Rector for Science and International Relations, Candidate of Juridical Science, Professor Uspanov Zh. discovers the issues of legal support on assistance of citizens to the bodies carrying out operational search activities. In its current definition and regulation of operational search legislation has a mixed legal nature; it cannot be considered as an employment contract, such relations are not civil law relations, they are of administrative and managerial nature. Considering that an important component of legal support, in addition to defining the mutual rights and obligations of the parties, is that its presence enables the person assisting law enforcement agencies to openly protect, including in court, their social, labor and other rights, legal support must be attributed to the contract for the provision of paid information services.

Keywords: Citizens; Civil Law; Civil Code; Contract; Protection; Information; Confidential; Confidential Work; Methods; Operational Investigative Activities; Public Relations; Legal Support; Legal Relations; Law Enforcement Agencies; Principles; The Republic of Kazakhstan; Cooperation; Subjects; Assistance of Citizens; Labor Activity; Labor Relations; Labor Law.

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1. Introduction

Labor is a vital condition for the existence of people, meet the material and spiritual needs. All that is manmade, from the greatest discoveries and to simple objects of everyday life, it is the result

of deliberate, conscious work. In broad terms, the professional experience serves as a natural demand of society, the formation of its material basis [1, p. 14].

Structurally, the subject of labor law includes:

- 1) Labor relations arising between an employee and an employer on the basis of an employment contract, by virtue of which mutual obligations of the parties are established regarding the performance of a certain labor function;
- 2) Legal relations derived from labor: ...
- 3) Relations, expressing features of labor regulation certain categories of workers (public and civil servants, young workers, women, the disabled, etc.)

Thus, the subject of labor law acts as the relations arising about the involvement of the workforce in social production, the organization and the establishment of working conditions. It covers the employment relationship, the relationship is directly related to employment, and relationships that express the characteristics of labor regulation certain categories of workers [1, p. 24-25].

2. Materials and Methods

maintaining the dialectical method of scientific knowledge, as well as the formal-logical, historical and legal, comparative legal, statistical, systematic and structural and other private-scientific methods of research on the socio-legal phenomena.

3. Results and Discussion

The basis of the first feature of labor law method laid contractual order of the conclusion, modification and termination of labor relations. Contractual regulation of labor relations method in combination with other methods of stimulation, first of all material, has the existence of an impact on the distribution and redistribution of the labor force in the republic-wide, individual regions, enterprises (organizations) [1, s.26-27].

The method of labor law is the set of techniques and means of legal regulation of labor relations, including: contractual procedure for establishing the employment relationship, the combination of equality of the parties to the subordination of the employee to the employer, ... a special regime of work organization, a particular mechanism of action is imperative, permissible and recommendation of labor law ... [1, p. 32].

Labor law is a branch of law that includes a set of legal norms regulating social relations located in a certain system, which arise in the application, implementation of hired labor, the exercise of constitutional rights of citizens to freedom of labor, on working conditions that meet safety and hygiene requirements, on remuneration for work without any discrimination, for social protection against unemployment, for individual and collective labor disputes using the methods established by law consent, including the right to strike and the right to rest [2, p. 9].

Article 1 paragraph 14 «Basic concepts of labor» of the Labor Code of the Republic of Kazakhstan states: human activity, aimed at creating material, spiritual and other values necessary for life and meet the needs of man and society [3, p. 12].

Wage labor is characterized by the fact that the person "selling" the employer the most precious thing he has: knowledge, skills, work skills, their time. We are dealing with an animate subject of wage labor - labor that determines the specificity of the sector of the labor rights of its meaning and content, as wage labor requires a special approach in the legal regulation of its application, taking into account the fact that the employment relationship must fully protect the health and life of workers [2, p. 9].

Labor has always been and remains the same human companion. Realizing only in the work their physical and mental abilities, humanity acquires material and spiritual benefits. From the labor costs of each person depends on his material and spiritual condition. Accordingly, the level of development of the state, the progress of society as a whole is associated with the quality of work of citizens. Therefore, those social relations that arise in the process of work, the receipt of its results are subject to legal influence and protection from the state [2, p. 13-14].

Based on the above would be considered as set out in this case to provide for in the Labor Code of the Republic of Kazakhstan, Chapter 12. Features of labor regulation certain categories of workers, Article 146-1. Regulation of employment of persons who have expressed agreement to promote the bodies conducting operative investigation activity.

The work of employees, members of the authorities carrying out operational investigative activities, regulated by this Code with the specifications provided by the Law of the Republic of Kazakhstan "On operative-search activity."

In addition to the subject of legal regulation of each branch of law is characterized by its method. We are talking about the ways in which this branch of law affects the relevant group of public relations. If the subject gives an idea of what a group of public relations regulates this or that branch of law, the method determines what legal means provided by this regulation [1, p. 25].

The method of legal regulation is a separate feature of any branch of law along with the subject of legal regulation and other categories that characterize its independence. The subject of legal regulation of social relations isolates, which governs this or that branch of law, and the method gets its expression in the methods, means, ways in which the impact on the relevant social relations [2, p. 16-17].

The concept of "principle" (from the Latin principium -. The beginning, the foundation) is the original, the guiding idea, the basic rule of human behavior. With regard to the law (including labor law) principle acts as the central concept, because it is the basis of the entire legal system [1, p. 44].

The principle has an educational impact on citizens, officials and other employees of the state apparatus, employees of enterprises and organizations, regardless of the type of property and By entering into an employment contract, the parties follow the prescriptions of legal norms and conditions of the agreement, voluntarily submit their requirements to the rules of conduct, clarify, so the meaning of applicable legislation and learning the rules laid down in the legal principles of the labor legislation [1, p. 46].

The inadmissibility of limiting the rights of a person and a citizen in the sphere of labor is one of the fundamental principles of labor law. It enshrines the general provision that no one can be limited in rights in the sphere of labor activity, except for the cases provided for by current legislation; it is based on the Declaration of Fundamental Principles and Rights in the Sphere of Labor (1988) and in accordance with Constitution of the Republic of Kazakhstan (Art.12). Freedom of labor is a universal principle. It expresses the right of everyone to freely choose work or freely accept work without any discrimination or coercion to it. To this should be added the right of a person to dispose of his abilities to work, to choose a profession and type of activity (Article 6 of the RK LC). Ensuring the right to fair remuneration for labor not lower than the minimum wage is the most important principle of labor law. The Constitution of the Republic of Kazakhstan (paragraph 2 of article 24) provides for the right of citizens to remuneration for work without any discrimination. This requirement is general in nature. It applies to all persons regardless of the scope of labor [1, p. 47-48, 54].

Under the principles of civil law should be understood its basic principles, i.e. fundamental ideas, formulated by law or arising from the meaning of its prescriptions, contribute to a correct understanding of the content and textual expression of civil law, their adequate interpretation, the resolution of contradictions between them, helping to fill the gaps in the legislation. Today one can name such principles of civil law as:

- Equality of subjects of civil law relations;
- Inviolability of property;
- Freedom of civil contract;
- Good faith;
- Non-interference of the state and all third parties in private affairs and personal life;
- Protection of entrepreneurs and consumers as the main subjects of civil law relations;
- Protection of the rights and legitimate interests of the creditor;
- Security of civil rights.

All civil legal regulatory acts, first of all, the Civil Code of the Republic of Kazakhstan, correspond to these principles (comply). The enumeration of most of them is contained in article 2 of the Civil Code, which is called: "The main principles of civil law." All these principles are inextricably linked, complement each other and represent a single organic system [3, p. 31-32].

The system of the criminal process principles (Chapter 2 of the Criminal Procedure Code).

- 1) Legitimateness (Art.10 CPC)
- 2) Administration of justice only per curiam (Article 11 of the CPC)
- 3) Judicial remedy, human and citizen liberties (Article 12 of the Code of Criminal Procedure)
- 4) Respect of the person's honor and dignity (Article 13 of the Code of Criminal Procedure)
- 5) Personal integrity (Article 14 of the Code of Criminal Procedure)
- 6) Protection of the rights and freedoms of citizens in criminal proceedings (Art. 15 of the Criminal Procedure Code)
- 7) Personal privacy. Correspondence privacy of the telephone conversations, postal, telegraph and other communications (Article 16 of the Code of Criminal Procedure)
- 8) The inviolability of dwelling (Article 17 of the Code of Criminal Procedure)
- 9) Inviolability of property (Article 18 of the Code of Criminal Procedure)
- 10) Presumption of innocence (Article 19 of the CPC)

- 11) Inadmissibility of repeated conviction and prosecution (Article 20 of the Criminal Procedure Code)
- 12) Administration of justice on the basis of equality before the law and the court (Article 21 of the Code of Criminal Procedure)
- 13) The independence of the judge (Article 22 of the Code of Criminal Procedure)
- 14) The implementation of legal proceedings on the basis of competition and equality of the parties (article 23 of the CPC)
- 15) Comprehensive, complete and objective investigation of the circumstances of the case (article 24 of the CPC)
- 16) Evaluation of evidence on inner conviction (Article 25 of the Code of Criminal Procedure)
- 17) Ensuring the suspect, accused the right to defense (Art. 26 of the CPC)
- 18) Ensuring the right to qualified legal assistance (Art. 27 of the CPC)
- 19) Exemption from the obligation to testify (Article 28 of the Code of Criminal Procedure)
- 20) Publicity (Article 29 of the Code of Criminal Procedure)
- 21) The language of criminal proceedings (article 30 of the Code of Criminal Procedure)
- 22) Freedom to appeal procedural actions and decisions (Art. 31 CPC)

Each principle is warranted, execution of which ensures compliance with the principles of [4. 28-29].

The subjects of labor law are individuals and legal entities, including state bodies involved in the organization of social labor, its legal regulation, the implementation of supervision and control over labor protection and compliance with labor legislation.

Subjects of labor law institutionalized a special legal property - legal status, allowing to be members of specific labor relations. The content and characteristics of legal status in this case covers the legal personality of labor parties, guarantees of their subjective rights and legal responsibilities, as well as responsibility for the fulfillment of obligations. The combination of these elements gives a holistic view of the concept of the subject of labor law [1, p. 76].

The persons participating in civil law relations are their subjects. The range of subjects of civil legal relations is determined by Chapter 2 of the Civil Code. Along with individuals and legal entities, participants in civil legal relations may be the state and administrative-territorial units (regions, districts, cities, etc.), which in civil legal relations act on an equal footing with other participants of these relations (Art. 111 and 112 GK). The state and administrative-territorial units are not legal entities, but the rules governing the participation of legal entities in civil matters are applicable to them (except for the cases stipulated by legislative acts). Accordingly, individuals (citizens of the Republic of Kazakhstan, foreign citizens and stateless persons), legal entities, the Republic of Kazakhstan and administrative-territorial units can be subjects of civil legal relations [5, p. 130-131].

The concept of an agreement. The agreement recognizes the agreement of two or several persons on the establishment, amendment or termination of civil rights and obligations (paragraph 1 of Article 378 of the Civil Code of the Republic of Kazakhstan). The term "contract" is used in civil law in various meanings: a legal fact from which an obligation arises; this contractual obligation itself; the document that issued the contractual obligation. The contract acts as a legal fact on the

basis of which the relationship arises, changes or terminates. The contract is one of the grounds for the emergence of civil rights and obligations (Article 7 of the Civil Code of the Republic of Kazakhstan) [6, p. 451].

Article 15 paragraphs 2 of the Civil Code of the Republic of Kazakhstan «Name of a citizen» states that legislation may provide for cases of anonymous acquisition of rights by citizens and the performance of duties or the use of a pseudonym (a fictitious name). Clause 4, Article 15 of the Civil Code of the Republic of Kazakhstan also states that a citizen has the right to change his name in the manner prescribed by legislative acts. A name change is not a basis for termination or change of its rights and obligations acquired under the same name, anonymously or under a pseudonym. In Clause 6, Article 15 of the Civil Code of RK, a citizen who changed his name has the right to demand appropriate changes to the documents drawn up in his former name, as well as clause 8, the citizen has the right to demand a ban on using his name when it was done without his consent cases stipulated by the laws of the Republic of Kazakhstan. Article 16 Residence and legal address of a citizen in paragraph 4 states that a citizen has the right to demand a ban on the use of information about his place of residence or legal address when it was done without his consent, except as required by the laws of the Republic of Kazakhstan [7, p. 9].

Citizens have expressed consent to a confidential cooperation with the bodies conducting operative-investigative activities have in the contract indicate a fictitious name and surname, as well as to specify an alias and real name, first name and number of the contract to indicate in a special card where it should be kept by that employee personally, with whom the citizen wished to conclude an agreement.

In case of transferring, dismissing or killing an employee engaged in the operational-search activity or confidant refused to cooperate further a special card must be destroyed The contract number must be registered in the accounting department of the authority and registration with the higher authorities, only the contract number is sent.

State bodies, officials, and citizens, legal entities participate in the criminal process as carriers of certain rights and obligations and are subjects of the criminal process. It should be noted that the Criminal Procedure Code of the Republic of Kazakhstan does not contain the concept of “subjects of a criminal process”, but it is used along with such terms as “participants in criminal proceedings”, “persons involved in the case”, “participants in criminal proceedings” [8, p. 69].

In the Article 1. The legislation of the Republic of Kazakhstan on state protection of persons involved in criminal proceedings:

- 1) The legislation of the Republic of Kazakhstan on state protection of persons participating in criminal proceedings is based on the Constitution of the Republic of Kazakhstan and consists of the Criminal Code of the Republic of Kazakhstan, the Criminal Procedure Code of the Republic of Kazakhstan, the Criminal Executive Code of the Republic of Kazakhstan, this Law and other regulatory acts of the Republic Kazakhstan.
- 2) If an international treaty ratified by the Republic of Kazakhstan establishes other rules than those contained in this Law, the rules of the international treaty shall apply.
- 3) The bodies specified in Article 2 of this Law, in coordination with the General Prosecutor of the Republic of Kazakhstan, within their competence on the basis of this Law, adopt regulatory legal acts regulating the procedure for implementing security measures.

In the Article 1-1. Principles of state protection of persons involved in criminal proceedings.

State protection of persons involved in criminal proceedings is carried out in accordance with the principles of legality, respect for the rights and freedoms of a person and citizen, the priority of the rights and legitimate interests of the person of the protected person, the mutual responsibility of the protected persons and authorities ensuring state protection.

In the Article 3. Persons subject to state protection.

State protection in accordance with the Criminal Procedure Code of the Republic of Kazakhstan and this Law are subject to:

6-1) citizens assisting the bodies carrying out operational investigative, counterintelligence activities.

In the Article 4. The emergence of the right to state protection:

- 1) If there are sufficient grounds that the persons to be protected threaten to kill, use violence, destroy or damage property or other dangerous unlawful actions, the bodies ensuring the safety of the protected persons are obliged to take state protection measures provided for by this Law.
- 2) In cases provided for by the laws of the Republic of Kazakhstan, the decision on the use of security measures for citizens assisting the bodies carrying out operational search, counterintelligence activities, along with the body conducting the criminal process, in the manner provided for by this Law - search, counterintelligence activities [9].

4. Conclusion

Summing up the investigated question, in our opinion, we would assume that the bodies carry out the operational-search activity would constitute an agreement with citizens who have expressed their cooperation with the authorities on a confidential basis. In the contract, the authorities should provide all the security issues, protection, decryption, as well as the indication of his pseudonym. To date, the authorities ought to withdraw from the subscription, and go to the contract. Summing up the improvement of the national legal framework for cooperation of subjects of operational-search activity of the Republic of Kazakhstan with citizens on a confidential basis, we found that the institution of protection of confidential cooperation was adopted by the departmental regulatory legal acts of law enforcement agencies of the Republic of Kazakhstan from the very first years of its establishment.

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