

THE REGULATION OF FIXED-TERM EMPLOYMENT CONTRACTS IN UZBEKISTAN

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Abstract

This article comparatively analyzes the efficient ways of regulating fixed-term employment contracts. As well, the paper finds that the current labor laws of Uzbekistan have several deficiencies in terms of regulating fixed-term employment contracts and they are in need of special amendments.

Index Terms — Uzbekistan, fixed-term employment, contracts, objective reason, to provide a balance, flexibility, social protection, discrimination, effective legal mechanism, labor policy.

I. INTRODUCTION

In Uzbekistan, there has been a rapid increase in fixed-term workers and atypical employees who are working under fixed-term employment contracts. At present, there is a lack of effective legal mechanisms to protect their employment rights. The issue is important for the Uzbek labor policy because of poor employment protection of widespread atypical workers and this is one of the factors that it has negatively affected the general welfare of the country as a whole. However, as L.Rahimqulova mentioned, everyone in our country is guaranteed the right to work and free choice of profession in terms of socio-economic rights [1]. The article seeks to find an efficient way that safeguards non-standard workers' rights and prevents illegal rise in fixed-term employment.

Undoubtedly, to provide a balance between the social protection of employees and flexibility of the existing labor market is an obligation of each country's policy regarding fixed-term employment contracts [2]. However, Uzbekistan should have strong labor laws in order to provide this balance. Furthermore, according to M.Raximov, the intensive integration of our economy into the world economy requires the introduction of new efficient institutions [3]. In turn, analysis of the practice of developed countries is one of the expedient ways of creating such laws and legal institutions. The experience and labor laws of Japan and Germany in regulating fixed-term employment contracts can provide productive ways to protect the employment rights of workers under this contract. Especially, recent results of the Work Style Reform of the Japanese Government and the Part-Time and Fixed-Term Employment Act of

Germany are very supportive.

II. MATERIALS AND METHODS

In the course of the research, such methods as comparative legal, historical, systemic and structural, logical, sociological, complex study of scientific sources, induction and deduction, empirical research, and analysis of statistical data were applied.

III. RESULTS AND DISCUSSION

The current Labor Code (LC) of the Republic of Uzbekistan defines the terms of employment contract and allows the parties to conclude it (1) for indefinite period, (2) for a definite term of no more than five years, and (3) for the period of enforcement a certain work. In other words, there are two main types of labor contract: indefinite-term and fixed-term. Moreover, if the labor contract does not specify the date of expiration, the law considers it as an indefinite-term contract. Without an agreement of the employee, the employer cannot re-conclude the indefinite period contract for a definite term or the period of enforcement a certain work [4].

The LC (Article 76) requires objective reasons for entering to fixed-term contracts (FTCs) or restricts the employer's right to conclude such contracts. In particular, the employers can conclude fixed-term employment contracts (1) in cases when it is impossible to conclude indefinite-term contract, taking into account the nature of the work, conditions of its fulfillment or interests of the employee, (2) with the head of the enterprise, his deputies, the chief accountant, and in case if there is absent the position of chief accountant, with the person who performs the functions of chief accountant, (3) in other cases stipulated by law [5].

The Supreme Court of the Republic of Uzbekistan states that Article 76 determines a strict list of objective reasons. In case if the employer does not take into account the requirements of this Article, a court finds the FTC invalid [6]. However, the content of the third paragraph of this Article proves that a determined list of objective reasons in the LC is not strict because other legal acts also might include such basics.

The lecturer of TSUL M.Xojabekov states that the labor legislation of the Republic of Uzbekistan pursues such tasks as creating the necessary legal conditions to achieve optimal coordination of the interests of the parties to employment relations, the interests of the state, as well as legal regulation of labor relations and other relations directly related to them [7]. Indeed, the LC and other labor laws generally regulate the issues of labor protection, employees' health and social security, settlement of labor disputes, wage and pension system, working hours, and holidays. Therefore, some people emphasize that the Uzbek labor legislation does not need any additional regulations to protect the employment rights of workers under fixed-term employment contracts. However, a large labor market covering fixed-term workers and atypical

employees who are under fixed-term employment contracts has emerged in Uzbekistan. As Dr. Sh.Ismailov argued, in modern conditions, general norms cannot completely regulate the existing diversity in labor relations [8]. For this reason, peculiarities of regulating the labor relations [9] confirm that Uzbekistan needs special legal regulations as well as the strong labor policy to protect the interests of these workers.

From a legal point of view, there are two main groups of workforce in Japan: employees hired under indefinite-term employment contracts and those under fixed-term employment contracts [10]. The analysis of the Japanese labor force shows that there are different types of workers under indefinite period and FTCs, and the legal science can use various terms to classify them. For instance, the terms “regular”, “full-time”, “permanent” and “standard” employees generally express the status of workers who conclude indefinite-term contracts with employers. In contrast, fixed-term workers are those whose employment proceeds during the set period in the labor contract. In practice, they may differ according to their types and names such as part-time workers, seasonal employees, day workers, temporary factory workers, short-term company employees, workers on short-term contracts, and contract company employees [11].

Fixed-term employment is also one of the issues that in the focus of the German labor policy and law in recent years. In one half of OECD countries including Germany, there has been a long-term upward trend in temporary employment. In particular, the OECD Employment Database represents that a percentage of fixed-term employment in Germany was 11.2 per cent in 1986, 12.7 per cent in 2000, and 12.9 per cent in 2017. This indicator is slightly higher than the OECD average which was 9.5 per cent, 11.7 per cent, and 11.2 per cent in respective years [12].

In general, fixed-term employment is a form of non-standard employment (NSE) [13] in Germany [14]. Part-time work and temporary agency work are the other types of NSE. However, these different forms may often have a combination in particular cases. More precisely, temporary agency worker generally concludes FTC with an agency. It is equally possible that a fixed-term worker works part-time only. In fact, part-time work owed under a FTC seems to be almost the standard rule in practice. On the other hand, full time work regularly goes with open-ended contracts [15].

In Germany, fixed-term employment contracts are popular. Employers use these contracts for flexible personnel planning, as extended probationary periods [16], and frequently, especially in an international context to comply with internal headcount policies as well. In contrast, fixed-term employment contracts are certainly less attractive for employees [17]. However, the German labor law provides the balance in relations between employers and fixed-term employees through particular regulations.

In general, most of the laws relating to labor relations promote to regulate fixed-term employment to some extent. However, there are some regulations that directly govern the attitudes under fixed-term employment contracts. In Japan, for instance, the Japanese Civil Code and the Labor Standards Act are currently the main regulatory laws of fixed-term employment. As well, in order to improve the employment protection of fixed-term employees, the Work Style Reform Law will change the name of the Act on Improvement of Employment Management for Part-Time Workers to the Act on Improvement of Employment Management for Part-Time Workers and Fixed-Term Contract Workers. The expected law will have several amendments which will take effect in April 2020 for large enterprises and April 2021 for small and mid-sized companies.

In Germany, according to the Section 620 of the Civil Code, the Part-Time and Fixed-Term Employment Act governs employment contracts entered into for a specified period of time. However, Uzbekistan lacks such special law. Although the LC of Uzbekistan generally regulates the fixed-term employment contracts, it has several deficiencies that need special revision.

The issue of objective reasons is more complicated. Every country has a different approach to this problem. The Japanese law, for instance, does not require objective reasons to enter into or renew fixed-term employment contracts. On the contrary, the German Part-Time and Fixed-Term Employment Act provides for eight reasonable grounds for fixed-term employment contracts.

The German Part-Time and Fixed-Term Employment Act also regulates discriminatory issues. The Section 4 of this law stipulates that employers should not treat fixed-term employees worse than indefinite-term employees unless there are objective grounds justifying different treatment. As well, the law guarantees that a fixed-term employee will be paid remuneration for work at least to a degree corresponding to the proportion of his employment term.

Furthermore, the Japanese "Part-Time and Fixed-Term Contract Workers Act", after the revision, will prohibit unreasonable disparities between indefinite-term and fixed-term workers. As well, at the request of fixed-term workers, employers will be obliged to provide explanations of the content of treatment disparities between these workers and regular workers. This provision also applies to remuneration issues.

However, the Uzbek labor laws do not have any provision prohibiting discrimination between fixed-term and long-term employees in terms of working condition and wages. Moreover, according to the content of labor laws, employers are not obliged to give explanations of the content of treatment disparities between these two types of workers. Therefore, in practice, employers often violate the employment rights of fixed-term workers. In such cases, it is difficult to talk about ensuring labor discipline. In this point, M.Karimjanov recognizes that

labor discipline is an objective necessity in the production process [18].

The employment protection of fixed-term workers is one of the main issues in the Uzbek labor law and labor market policy. However, without effective legal mechanism and strong labor policy to provide the employment rights of these employees is a difficult process. Therefore, Uzbekistan should, first and foremost, amend several existing regulations relating to fixed-term employment contracts. This article, based on the analysis and discussion in the previous lines, provides the following proposals.

First, the Article 76 of the LC of Uzbekistan, as stated above, includes a short list of general objective reasons. As well, the content of the third paragraph of this Article is more abstract, so it requires clarification. In order to prevent misinterpretation, the Uzbek legislators should form a complete list of reasonable grounds for concluding fixed-term employment contracts. The article finds that the German practice will provide a better solution to this problem.

Second, although the LC of Uzbekistan includes the general provisions regarding to discrimination, it does not cover any regulation that prohibits the disparities between fixed-term and indefinite-term employees. Therefore, in practice, the employers treat indefinite-term workers better than those of under fixed-term employment contracts in terms of working conditions and remunerations. Moreover, the LC does not stipulate a provision that makes employers give explanations about treatment disparities between these two types of workers. In turn, Uzbekistan should revise the LC taking into account the requirements of the German Part-Time and Fixed-Term Employment Act and the Japanese expected "Part-Time and Fixed-Term Contract Workers Act" regarding to this issue.

Third, in order to prevent confusion, Uzbekistan should regulate the labor relations under fixed-term employment contracts by a separate law or the LC should cover a special chapter for the fixed-term employment relations. As well, the unification of scattered norms is also important. For instance, there is a Decree of the President of the Republic of Uzbekistan that prohibits a cancellation of fixed-term employment contracts with the women who are already at the retirement age by the initiative of the employers until the expiration date. However, this regulation in turn, should immediately reflect in the LC to avoid confusion.

IV. CONCLUSION

To conclude, Uzbekistan needs to revise the current labor legislation regarding fixed-term employment contracts and conduct a strong labor policy to protect employment rights of workers under such contracts. In this case, the experience of both Japan and Germany is significant. Furthermore, Japan's Work Style Reform (Hatarakikata Kaikaku) could also be supportive for the Uzbek Government to provide a strict labor policy.

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