

On some guarantees of labor rights of citizens in connection with election campaigns

Yu Mihailenko^{1*}, I Prasolova¹ and A Ivanov¹

¹ Altai State University, 61 Lenina pr., Barnaul 656049 Russia

E-mail: mihailenko@gmail.com

Abstract. The article discusses the guarantees of labor rights of citizens involved in an election campaign (members of election commissions, registered candidates, artists and officials of organizations involved in providing information on elections) within the framework of the classification of guarantees developed in the science of labor law. Based on the analysis of legislation and the practice of its application, the authors conclude that the organizational guarantees have undergone quite significant changes under the influence of the legal positions of the Constitutional Court of the Russian Federation. The research results can be applied in the legal proactive of cross-border regions of Russia, especially those sharing borders with the former Soviet Republics.

Keywords: labor rights, guarantees, citizens, election campaign, law

1. Introduction

Electoral rights of citizens are guaranteed by the norms of various branches of law. The Constitutional Law [1], Criminal Law [2] [3], and other [4] [5] [6] aspects of the protection of political rights in general and the electoral rights of citizens in particular have been repeatedly considered in the scholarly literature.

An important factor ensuring the independence and openness of elections is legal means, providing protection in the sphere of labor relations of those persons who perform publicly important functions in connection with an election campaign.

2. Materials and Methods

The article analyzes the labor legislation of the Russian Federation, as well as legislation on elections, focusing on, first of all, the provisions of the Federal Law of June 12, 2002 No. 67-FZ on Basic Guarantees of Electoral Rights and the Right to Participate in the Referendum of Citizens of the Russian Federation (hereinafter, the Law on Guarantees of Voting Rights). In addition, the materials of the judicial practice of applying the standards establishing guarantees for the labor rights of persons involved in the election campaign are also analyzed, including the practice of the Constitutional Court of the Russian Federation.

Special legal research methods were also used, including the comparative legal method (in historical aspect).

3. Results

Guarantees in the Labor Law are the means, methods, and conditions by which the rights granted to employees are exercised in the field of social and labor relations (article 164 of the Labor Code of the Russian Federation). Commenting on this definition, A. K. Gavrilina proposed to refer to means as certain “techniques that are used to ensure the realization of the rights granted to the employee” (for example, preserving the place of work (position) and average earnings); ways to treat as a specific course of action (for example, an extrajudicial and judicial remedy); finally, conditions are considered as requirements, rules, the fulfillment of which ensures the realization of the right of an employee [7]. For example, the proposal to transfer an employee to another job (with his consent) refers to the conditions of termination of an employment contract for individual reasons. Conditions for reducing the period of notice of dismissal in connection with the liquidation of an organization, reduction in the number (staff) of its employees are, first of all, the employee’s written consent to this and, secondly, the additional guarantee payment, which is calculated in proportion to the unworked period (article 180 of the Labor Code of the Russian Federation).

By nature, these guarantees can be divided into two groups: tangible (monetary, property) and intangible (organizational, procedural) [8, 9]. The tangible guarantees include the following: guarantee payments for periods when the employee did not fulfill his labor function for reasons recognized as valid (including termination benefits upon termination of the employment contract), and additional payments for periods when, for reasons beyond the control of the employee, his earnings decreased (for example, for a temporary transfer that does not require the consent of the employee, article 72.2 of the Labor Code of the RF).

Organizational (intangible) guarantees include the following: cases of dismissal from work for carrying out any socially necessary activity (for example, for passing a compulsory medical examination; for participating in the work of an election commission); the preservation of employment for the period of such release; the offer of other work at impossibility of performance former, caused by the employment contract; ban on termination of employment.

Such a ban on dismissal at the initiative of the employer, as a rule [10], may be complete, such as in relation to persons on leave, as well as during a period of temporary disability (part 6 of article 81 of the Labor Code of the Russian Federation) or persons with family responsibilities (article 261 of the Labor Code of the Russian Federation). Or, in addition to observing the general procedure for dismissal, the employer is obliged to involve another body in the procedure of termination of the employment contract. As such bodies, the Labor Code of the Russian Federation names the relevant trade unions (their primary organizations), bodies that have authorized workers' representatives to participate in collective bargaining (Article 39) or to resolve a collective labor dispute (Article 405), state labor inspectorates and juvenile affairs commissions (Article 269). Thus, in the terminology of Article 164 of the Labor Code of the Russian Federation, engaging relevant bodies in participation in the procedure for dismissal in these cases is a condition for the exercise of the rights of workers in the field of social and labor relations. In the case when the ban on dismissal is set, it should obviously be a question of guarantees as ways of ensuring the rights of workers.

For those involved in the election campaign, additional guarantees to ensure the realization of their labor rights are established by the legislation on elections. In accordance with the Law on Electoral Rights Guarantees, members of an election commission, registered candidates, as well as creative workers and media officials, who are directly involved in providing information on elections, cannot be dismissed by the employer. This restriction applies to a member with a decisive vote and is valid until the end of his term, in relation to a member with an advisory vote, and also applies to a registered candidate during an election period (or a referendum campaign) (Articles 29, 41 of the Voting Rights Guarantee Act).

Guarantees of the labor rights of persons involved in the information support of elections are set forth in Article 45 of the Law on Guarantees of Voting Rights as follows: they cannot be dismissed at the initiative of the employer during the election campaign (referendum campaign) and within a year after their expiration, “except for the case when they were punished, in accordance with labor

legislation, not contested in court or recognized in judicial order lawful and reasonable.” At the same time, the presumption of illegality of terminating the contract on the initiative of the employer acts according to the general rule should be considered in the following way: it is the employer who bears the burden of denial, i.e. the duty to prove the legality of the basis and compliance with the established procedure for dismissal (Clause 23 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of March 17, 2004 No. 2 On the Application by the Courts of the Russian Federation of the Labor Code of the Russian Federation). Therefore, such a clause in the quoted rule means only that an absolute ban on the dismissal of persons involved in information support of elections concerns only non-disciplinary grounds. For the same reasons listed in part three of Article 192 of the Labor Code of the Russian Federation, these workers may be dismissed under general conditions.

Note that, in accordance with the legal position repeatedly expressed in acts of the Constitutional Court of the Russian Federation (Resolution No. 5-P dated February 20, 1996 and No. 3-P dated January 24, 2002; Definitions No. 160-O-P dated January 16, 2007, No. 840-O-O dated June 1, 2010, December 16, 2010 of the year № 1722-O-O), certain guarantees provided to the members of election commissions should also not be interpreted as excluding any possibility of dismissing the aforementioned persons for gross violation of their job duties.

At the same time, to assess the legality of termination of labor relations, the fulfillment of one more condition is necessary. In particular, the dismissal should not be the result of persecution of a person for the performance of publicly assigned functions. Unfortunately, the Constitutional Court of the Russian Federation, having emphasized this circumstance in the operative part of the definition, did not specify who is obliged to prove it or refute (Determination of the Constitutional Court of the Russian Federation dated January 16, 2007 No. 160-O-P). The guarantees provided to members of election commissions are designed to ensure their enhanced protection by law, by virtue of their publicly significant powers, to protect them from unwarranted persecution. Therefore, it is the employer who must bear the burden of proving that the dismissal for gross violation of labor discipline is made on a legal basis and in compliance with the requirements relating to its procedure. Also, the employer must be obliged to additionally prove that the dismissal is not related to the execution of the powers of an election commission member.

In addition to the rules limiting the dismissal of persons employed in an election campaign, the law also establishes other intangible guarantees: dismissal from work while preserving the place of work (position); restriction on transfers, travel (articles 29, 41, and 45 of the Voting Rights Guarantee Act). So, from the date of registration of the candidate to the day of the official publication of the election results, the employer is obliged to release the registered candidate from work on any day and at any time during the specified period, according to his statement. A member of an election commission may be exempted from the main work for the period of preparation and holding of elections (referendum) on the basis of a representation from the commission. At the same time, the main place of work (position) is retained for him, and compensation is paid to him for the period during which he was released from the main job. Strictly speaking, this payment is not a compensation within the meaning attached to this term by article 164 of the Labor Code of the Russian Federation. And this payment represents a material guarantee (a guarantee payment made from the budget funds allocated for the conduct of elections, a referendum).

The summarized research results are as follows:

1. Certain guarantees of the citizen's labor rights in connection with the election campaign are mainly of an organizational nature. Material guarantees, erroneously referred to in the Law on Guarantees of Voting Rights as compensation, are provided at the expense of the corresponding budget funds.
2. The legal positions of the Constitutional Court concerning the ban on dismissal of members of election commissions, on the one hand, are based on legal traditions [11], and on the other, they are under the influence of their further formation.

3. The absolute ban on the dismissal of persons involved in the information support of the elections concerns only non-disciplinary grounds (as of today).

4. Discussion

Given the unity and differentiation of the Labor Law, the general and special guarantees stand out. The general guarantees are enshrined in the norms of the Labor Code of the Russian Federation, which apply to all categories of workers, regardless of the nature of the labor function performed and the characteristics of the employee himself. The special guarantees are established both by the code itself and by other federal laws (article 165 of the Labor Code of the Russian Federation) and concern certain categories of workers. These workers either perform a special job (an objective factor of differentiation) or have a certain property related to the worker himself, regardless of the work he performs or the conditions for its performance (subject differentiation factor). Such a division of factors (grounds, criteria) of the differentiation of the Labor Law norms is traditional [12].

However, the contemporary scholarship proposes to change the approach to the selection of criteria for differentiation [13]. In particular, it is proposed to differentiate on the basis of the structure of the employment relationship and the working conditions factor [14]. It is proposed to associate the subject differentiation not only with the personal characteristics of citizens-subjects of labor legal relations, but also with the specifics of the employer as a subject of labor legal relations [15].

In our opinion, the complication of differentiation criteria, first, can violate the requirement of a single classification basis [16]. Second, it has no practical significance, because it does not contribute to the correct definition of the scope of special norms [17].

The Constitutional Court has repeatedly emphasized (Resolution No. 5-P of 1996, Definition No. 160-O-P of 2007) that the guarantees provided, to members of election commissions in particular, are not their personal privilege, but they have a public law nature. However, from the point of view of the differentiation of the Labor Law norms, they are provided regardless of the nature of their work (conditions of performance), i.e. taking into account its subjective factor.

5. Conclusion

Thus, the guarantees ensuring the exercise of the workers' rights in the sphere of social and labor relations are both material and organizational (procedural) in nature. The organizational guarantees have undergone quite significant changes under the influence of the legal positions of the Constitutional Court of the Russian Federation. They went from a total ban on the dismissal of persons participating in the election campaign to imposing on the employer an additional duty to prove that the dismissal was not a way to exert pressure, prosecute or punish a person in connection with the execution of publicly significant powers.

From the point of view of the unity and differentiation of labor law, the rules on guarantees of labor rights of citizens in connection with the election campaign are special, established taking into account the subjective factor (basis) of differentiation of labor legislation. Consequently, the employee's loss of publicly significant status automatically deprives this person of additional guarantees at work.

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