

ТРУДОВЕ ПРАВО ТА ПРАВО СОЦІАЛЬНОГО ЗАБЕЗПЕЧЕННЯ

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THE SYSTEM OF LEGAL PROTECTION OF EMPLOYEES' LABOUR RIGHTS AND LEGAL INTERESTS IN UKRAINE

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The issue of the concept of legal protection of employees' labour rights and legal interests and its correlation with the concept of defence of labour rights has been examined in the article. The author has concluded that legal protection should be regarded as an individual stage of defence of labour rights and legal interests.

The notion of legal protection of employees' labour rights has been defined in the article.

The concept of the protection legal system of employees' subjective labour rights and legal interests and its components has been considered. The components of the protection system are the following: availability of norms of labour law and labour legal relations; legal facts affirming violation of a right; law enforcement acts of jurisdictional agencies, as well as acts of self-protection; availability of a right to protection; effectiveness of current subjects which are legally bind to protect the infringed rights.

The article has analyzed the legal forms of protection of labour rights, among which jurisdictional and unjurisdictional forms are distinguished. The jurisdictional forms are: judicial and administrative protection. The unjurisdictional forms are: conciliative-arbitral procedures, self-protection and public defence which are performed by elective trade union authorities.

Keywords: mechanism of legal protection, labour rights, legal interests, legal forms of protection.

The constitutional provision as to the individual, his life and health, honor and dignity, inviolability and security, as the highest social value requires the system that protects and defends these values to be fixed by law.

In this regard, special attention should be paid to the development of effective mechanisms for individual rights legal defense, including labor rights, as one of the most socially significant.

The Constitution of Ukraine provides the right of everyone to defend their rights and freedoms from violations and illegal encroachments by any means not prohibited by the law. Therefore, there is the problem of creating an effective system of defense of socio-economic rights, and among them, in particular labour rights.

The issue of legal defense of rights and freedoms in Ukraine is being studied in the general theory of law and in separate branches. This issue is being raised both in dissertations, monographs and textbooks. The question as to the rights defense was the matter of scientific research of civil law representatives. Invaluable contribution to the development of defense systems was made by the famous scientist V. Griбанov. [9]. In labor law, issues of labour rights defense are comprehensively investigated by I. Lagutina

[16]. The separate forms of labor rights defense are examined by V. Lazor [17], A. Kurennoy [15] and others.

At the same time, the authors' majority considered the issue of labour rights defense mainly in the light of individual and collective labor disputes solution. Therefore there is a need for the research of solid defense system of the employees' labor rights and interests.

First of all, it should be noted that the concepts of protection and defense of subjective rights and legitimate interests are not identical. In particular, A. Mordovets notes that the protection of rights is a condition of its lawful implementation under the control of social institutions without their intervention. Measures of protection are used when something hampers rights realization. If the rights have been violated already, they should not be protected, but recovered [19, p. 85].

Instead, basing on the fact that defense involves prevention and non-admission of rights violation, and in case of rights violation their recovery and compensation, Z. Makarova concludes that the concept of «rights defense» is broader than «the rights protection» [18, p. 217–231].

Yu. Tolstoy and A. Serheyev emphasize that the «rights protection» concept is broader than the «rights defense» concept. Herewith according to the mentioned scientists, the protection of law in its broadest sense includes measures not only legal, but also economic, political, organizational and other measures aimed at creating the necessary conditions for subjective rights. To the legal measures, they include all activities aimed at the development of relations in their normal not broken state and recovery of violated or disputed rights and interests. In the narrow sense, «protection» includes only measures provided by law to restore the rights in case of its violation or contestation. They states that the subjective rights defense is considered to be the protection of rights in its narrow sense [8, p. 291].

Based on the above we can draw some findings.

The term «rights protection» is used in legislation to refer to the legal construction for the preservation of something that is being protected. It includes not only legal, but also economic, institutional and other measures aimed at creating the necessary conditions for subjective rights. As for the legal means of protection, then these include all means by which ensured the development of labor relations as well as restoration of damaged or disputed rights and interests.

Legal protection is being materialized by setting the relevant norms of law, legal incentives, prohibitions etc.

The content of the legal protection of subjective rights system includes a variety of legal means, the purpose of which is to prevent possible violations. Among them, the state authorities' activity and the adjustment of legal norms as for the mentioned rights regulation, including its protection should be singled out.

In this regard, it can be concluded that the legal protection includes:

- The adjustment of norms defining the rights and obligations, determining the order of its realization and defense and providing sanctions;
- The activities of authorized persons as to the implementation of their rights;
- Activities of state authorities in order to prevent violations of rights and activities as for the infringed rights defense [4, p. 201].

The legal defense in a modern society is an important institution of law, because it is one of the methods of the legal person status protection, establishes the legal guarantee of rights and freedoms. The main objective of the mechanism of labor rights and interests defense is to ensure that the main constitutional obligation of the state to affirm and guarantee human rights and freedoms is being observed.

The legal basis for the possibility of defense is one of the most effective mechanisms for implementation of socio-economic rights and freedoms. The activity of subjects of law, which is conducted in a variety of legal forms in order to achieve a state of complete legal protection, is considered to be the protection of subjective rights [22, p. 29]. Considering the object, different types of defense of individual subjective rights can be separately distinguished. Among these, the defense of labour rights and employees interests should be singled out.

Prof I. Lagutina considers the concept of labour rights in the broad and narrow senses:

– In the narrow, sense this means the observance of human rights, violations prevention, the actual recovery of illegally violated rights and the labour laws and adjustment, by the labour legislation and relevant authorities' actions, of the real effective employers' liability for violations of labour rights;

– In the broad sense this means the realization of the protective function of labour law, which displays the protective function of the state [16, p. 24].

As you can see, the concept of labour rights includes prevention of violations that are not an integral part of the defense but the protection of the rights. In addition, the concept of defense includes the liability for the rights violation, which is also questionable, since the responsibility is a separate legal category and is aimed at establishing negative consequences for the offender rather than the remedy.

Legal defense of labour rights is possible only when these rights are violated, while legal protection is carried out at all stages of subjective rights.

Interdependence of legal defense and legal protection appears that defending the subjective right of a person authorized body thus provides a protective function in relation to public order, public relations, and rights of others. Remedy act both aimed at the protection of public order and uphold the principles of morality.

It's necessary to recognize that legal protection is a broader concept in comparison with legal defense. The principles of rights inviolability and fulfillment and measures directed to prevent violations of these rights lie in the basis of legal protection. At the same time, safeguard norms aimed primarily at the restoration of law and removal of obstacles in its implementation by certain actions.

This means that legal defense to some extent can be considered as a separate stage of labor rights and legitimate interests protection.

It is difficult to agree with prof. S. Alekseev who defines the term «defense» as the state-compulsory activity directed to the fulfillment of «recovery» tasks, in particular to the infringed right recovery, enforcement of legal obligation [2, p. 202]. In this case, we leave out a certain kind of defense, which is widely used in civil law as well as in labour law as self-defense. Also in the settlement of collective labour disputes in labour legal relations, there is no government bodies' activity, as everything is solved by the means of conciliation bodies. In addition, the defense includes not only the activities of public authorities, but also the activities of public and other authorities that have to restore the violated right. Therefore the concept of rights defense should be understood more broadly.

When it comes to the implementation of his or her constitutional rights, it is impossible not to note that any persons right, including the right to work, should be protected, and the carrier has the powers of this right defense [13, p. 39].

We can conclude that the settlement of relevant relations by the labour law and establishing labour rights as well as creating possibilities for their implementation cannot be considered as defense.

Thus, a set of substantive measures, organizational and procedural methods of combating and preventing violations of labor laws, renewal of labor rights and compensation arising from this damage can be considered as the labor rights and interests defense. It should be noted that the defense involves both the activities of government and state authorities and the activities of the subjects of labour relations themselves as to the eliminating barriers in the implementation of labor rights [6, p. 5].

The reality of today's life require an adequate approach to the labour rights defense, the use of international legal defending standards, and the creation of an effective legal defense mechanism of these rights. On a theoretical level, it is necessary to examine also the elements of the legal defense of labour rights and legitimate interests.

The philosophy understood the system as a set of defined elements between which there is a logical connection or interaction [24, p. 626]. The system is characterized by internal consistency and following features:

- 1) Unity and integrity of the system;
- 2) Internal differentiation, the presence of certain elements;
- 3) A structure that is a way of communication between the elements;
- 4) Availability of targets as a selfmaking factor.

Labour rights defense system provides two main features. They are segmentation and integrity [24, p. 626].

The integrity of the system is due to its purpose. E. Vavilin, examining the implementation and protection of civil rights, said that the purpose of the civil rights defense is to ensure, through sequentially organized legal facilities, guaranteed protection of subjective rights and interests. Each link of the defense system should be formed so that it can implement not only its internal task, and justify its essence, but also can create favorable conditions for the onset and implementation of the next phase [7, p. 83–84].

In contrast to the protection of labour rights the purpose of defense is to restore violated or disputed rights and legitimate interests of labour relations participants, and create opportunities for prevention of these disorders, as well as a compensation of damages caused by the violation of these rights. This happens when the rights of these persons are violated, when obliged subject does not fulfill its duties or perform them improperly, or when the subject does cause interference to the rights realization, commits an offense causing harm by his own misconduct.

Dissection of any system and in particular the system of human rights defense provides the existence of certain elements.

As any legal phenomenon, the defense of labour rights and employees' legitimate interests is being realized through appropriate legal relations.

The presence of regulatory relationships and subjects which are entitled with specific rights and responsibilities are the initial elements for the legal defense existence.

If you violate specific rights the protection relationships arrived. They arise and exist to restore violated or disputed rights and legitimate interests of subjects of labour relations. The relationship arising from the enforcement of the law between the injured party and the offender in cases of infringement, the content of which is the subjective right to defense and subjective protection duty directed to ensure the defense of violated subjective rights (or restoration of legal status) is considered to be protective legal relationship [14, p. 351]. Protective relationship are caused by the offenses committed by the relevant subjects [10, p. 237]. Protective labour relationship arising from violations of labor rights, and as a result of harm caused to employees, both material and moral. Thus, article 237-1 of Labor Code of Ukraine provides the possibility of compensation for moral harm to the employee by the employer, if it is caused due to the violation of his or her legal rights.

All legal relationship as to the defense of labour rights and interests are protective in their nature since their appearance and existence is aimed at restoring the violated labour rights and interests of employees.

In theory of labour law, protective relations have not been researched. At the same time, in the science of criminal law and civil law the theory of protective relations is sufficiently developed. In sphere of civil procedural law the existence of security relations is being denied [26, p. 81].

For the first time the concept of protective relations was introduced by N. Alexandrov. He noted that a violation of legal norms evokes between the offender and the competent authority a special (law enforcement) relationship, the purpose of which is to apply to the offender the appropriate sanctions in case of confirmation of irregularity of perpetrated action [1, p. 91–92].

The theoretical basis of this type of relationship is the separation of all relations on regulatory and protective. S. Alekseev states that regulatory relationship is a relationship through which regulatory functions are implemented: static and dynamic and are the means of realization of subjective rights and legal obligations [2, p. 350]. Regulatory relations are the primary means of ensuring the proper functioning of the labor rights and interests of employees as well as the existence of internal labor regulations. However, the existence of regulatory relations is provided by the existence of protective legal relations. Protective relations are the relations through which a protective function of law is implemented. They arise on the basis of protective legal norms, with their help the legal liability measures and the subjective rights defense are put into effect [2, p. 351]. Protective relations arise as a result of offense or other abnormal behavior of obliged person and are designed to defend the violated subjective rights, to stop the perpetrator, eliminate the negative consequences of the offense, and restore the initial state [25, p. 27]. They arise on the ground of legal prohibitions and are the result of the committed offense by the subject [10, p. 337].

Protective labour relations arise in case of violation of internal labour regulations, or violations of employees' labour rights and interests, in other words they arise as a result of violation by the subject of regulatory relations his or her legal obligations.

By means of protective legal mechanism, the effect of compulsory enforcement of infringed regulatory subjective right is succeeded [3, p. 83].

The existence of protective legal relations helps to provide the realization of ways of labour rights and legal interests' protection. Actually within the protective labour relations, the protective function of labour law is implemented. As pointed out by S. Alekseev, the defense of subjective rights is realized within a special, protective relationship [2, p. 367].

Current labour law provides defense for the violated individual and collective labor rights by means of individual and collective labour disputes solution. The possibility of appeal against the actions and decisions of employers who violate labour rights of employees is an essential element of legal defense.

A group of subjects who have the authority to defend the labour rights should be included in the mechanism of legal defense of labour rights. The range of subjects endowed with the competence of labour rights defense is quite broad. For example, an employee may apply to the commission on labour disputes, or to court to protect his rights. It can also refer to the appropriate state authority in the manner prescribed by the law of Ukraine «On citizens' appeals», or the prosecution in accordance with the law of Ukraine «On the Prosecutor's Office». In addition, in accordance with the law of Ukraine «On Trade Unions, their Rights and Guarantees of their Activities» employee may appeal

to the elected body of the primary trade union organization in order to protect his rights. In addition, the employee may also apply to the representative of the Verkhovna Rada of Ukraine on human rights and after exhausting all domestic remedies to seek protection of his or her rights and freedoms to the relevant bodies of international organizations, member of which Ukraine stands. In particular, this could be the European Court of Human Rights.

Labour rights can be protected in an appropriate legal form. The statutory based order of activity, conducted by the defense subject, in order to restore the violated human rights and legal interests and compensation of damages caused by violation can be considered as the legal form of defense of labour rights and employees legitimate interests.

A variety of legal forms of rights defense is caused by the peculiarity of labor law method. It is singled out, in literature that the combination of labour law decentralized (autonomous) and centralized (mandatory) framework of legal regulation is one of the features of the labour law method [23, p. 25].

Due to this method's feature, in the mechanism of labour rights and interests defense the jurisdictional and non-jurisdictional legal forms can be distinguished

The jurisdictional form is being divided into judicial and administrative defense. Among non-jurisdictional forms are:

- a) Conciliation-arbitration procedures used in solving collective labor disputes;
- b) Self-defense;
- c) Social defense that is performed by the elective trade union bodies.

A characteristic feature of non-jurisdictional defense form is not a solution of dispute but to assist the parties to reach a compromise in dispute by adopting a mutually acceptable solution.

The judicial defense is the main legal form of employees' labour rights and interests defense. In accordance with the Constitution of Ukraine the rights and freedoms of man and citizen are protected by the court. Everyone is guaranteed the right to appeal the decisions, acts or omissions of public authorities, local authorities, officials and public servants. In accordance with the Art. 2 of the Labour Code of Ukraine, employees are entitled to apply to court to resolve labour disputes. The procedure for implementing this law regulated in Chapter XV of the Code.

However, as correctly noted in the scientific literature, the right to a trial is not absolute and may be subject to limitations permitted by implication, because the right of access to court by its nature requires regulation by the state. However, such restrictions should not affect access to the courts or impede such access in this way [12, p. 157].

Protection of aggravated labour rights and interests can be carried out as in the court proceedings as in the order proceedings in cases defined by the law.

Ukraine's Constitutional Court in its judgment on 9 July 2002 noted that, in accordance with the Ukraine's Constitution, the individual's right of access to a court to resolve the dispute cannot be restricted by law and other normative legal acts [21].

The activity of the European Court of Human Rights is a special type of judicial protection of employees' labour rights and interests. In accordance with Article 55 of the Constitution of Ukraine everyone has the right, after exhausting all domestic legal remedies to seek defense of their rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations, member of which Ukraine stands.

The administrative defense is another form of legal protection of labor rights and interests of employees. This is the certain public authorities' activity, defined by the law, as to the realization of labour rights and interests of employees in order to prevent the

possible ongoing violations, elimination of obstacles in exercising of subjective rights and legitimate interests in prescribed procedural form.

The bodies of local governments and their executive bodies, executive authorities, as well as specially authorized bodies of executive power (of special competence) exercise administrative defense of labour rights and interests of employees within its jurisdiction.

These bodies according to current legislation are:

- Labour inspection and authorities;
- State Service of Mining Supervision and Industrial Safety;
- sanitary and epidemiological bodies;
- specially-authorized state body on radiation and safety;
- specially-authorized state body on the State Fire Supervision;
- The Representative of the Verkhovna Rada of Ukraine on human rights;
- Prosecutor's office.

Another form of legal protection of labour rights is public defense. Public defense is mainly controlled and supervised by applicable law trade unions. The Law of Ukraine «On Trade Unions, their rights and guarantees» stipulates that trade unions are created for the representation and protection of labour, social and economic rights and interests of union members [11].

The analysis of scientific literature and current legislation testifies that the defense of human rights carried out by trade unions is expressed in at least two ways. First, it's a participation in the system of social partnership, in particular it is shown during the collective bargaining, consultation and collective treaties and agreements conclusion. Secondly, through the representation of employees in dealing with individual and collective labour disputes [5, p. 16–20]. Labour law allows representation in the following types of labour relations: in the settlement of collective labour disputes; when solving individual labour disputes; at the conclusion of collective agreements; in the determining of individual and collective labour conditions; when adopting local normative acts; in social dialogue.

In the individual labour relations, trade unions represent the rights and interests of its own members. In collective labour relations trade unions represent employees regardless of union membership in the organization.

Another form of legal protection of labour rights is conciliation-arbitration procedure. The Laws of Ukraine «On Social Dialogue in Ukraine» and «On the procedure for settling collective labour disputes (conflicts)» are the legal base for the use of conciliation-arbitration procedures. The presence of such legal form can be explained by the possibility of labour relations regulation on the contractual basis. Conciliation-arbitration procedure may be used for collective disputes and individual labour disputes settlement. They can also be used to align the position of the parties in collective bargaining within the social dialogue.

Next form of rights legal defense is the self-defense of rights and legal interests.

The self-defense is considered to be an independent actions of the employee, not prohibited by law, without recourse to the authorities for the labour rights defense and the refusal of the employee or group of employees to perform labour duties and directed to protect the violated rights and legitimate interests when such acts are not prohibited by law and not cross the morals of society.

The provision of Art.55 of the Constitution of Ukraine, which stipulates the right of citizens to protect their rights and freedoms from violations and illegal encroachments by any means, not prohibited by law, is the legal base of self-defense.

These forms of rights defense employees can choose on their own within the law.

A. Protsevskyy notes that the uniqueness of labour law is that within the laws a certain space of actions is guaranteed that allows participants of labour contract to determine the best option of behavior [20].

It should be noted that the choice of forms of defense depends not only on the employee but also on the nature of the violated right. Accordingly, within the selected form of defense employee should apply to the competent body whose powers are to provide protection for violated labor rights or legitimate interest.

It seems that the components of labour rights legal defense system should be anchored in the current labor legislation by making appropriate changes.

Thus, based on the foregoing, we conclude that an effective and coherent set of separate elements of regulation and defense of violated rights of the labour relations subjects with the aim to eliminate these violations and to recover damages caused by the violation of labour rights and interests is considered to be the system of labour rights defense

The constituent elements of the labour rights legal defense are: the existence of labour norms, as well as labour relations; legal facts that prove the violation of law, law enforcement jurisdictions acts and acts of self-defense; the existence of a defense right; subjects that acts effectively within the scope of their obligation to defend the violated right.

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СИСТЕМА ПРАВОВОГО ЗАХИСТУ ТРУДОВИХ ПРАВ ТА ЗАКОННИХ ІНТЕРЕСІВ ПРАЦІВНИКІВ В УКРАЇНІ

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Розглянуто поняття правового захисту трудових прав та законних інтересів працівників та його співвідношення із поняттям охорони трудових прав. Зроблено висновок про те, що правовий захист можна розглядати як окремий етап охорони трудових прав та законних інтересів.

Автор дійшов до висновку, що під захистом трудових прав і законних інтересів необхідно розуміти сукупність матеріально-правових способів, організаційних і процесуальних засобів припинення і запобігання порушень трудового законодавства, відновлення порушених трудових прав громадян і відшкодування понесеної внаслідок цього шкоди. При цьому зазначено, що захист передбачає як діяльність державних і уповноважених державою органів, так і діяльність самих суб'єктів трудових правовідносин з усунення перешкод у здійсненні трудових прав, а також їх захисту.

Розглянуто поняття системи правового захисту суб'єктивних трудових прав та законних інтересів працівників, а також її елементи.

Проаналізовано співвідношення регулятивних та охоронних правовідносин у системі захисту трудових прав. Зроблено висновок, що правовідносини з приводу захисту порушених трудових прав та законних інтересів носять характер охоронних.

До елементів системи захисту автор відніс: наявність норм трудового права, а також правовідносин; юридичні факти, що свідчать про порушення права, правозастосувальні акти юрисдикційних органів, а також актів самозахисту; наявність у особи права на захист; ефективно діючі суб'єкти, на які законом покладено обов'язок зі захисту порушених прав. Акцентована увага на різноманітності правових форм захисту трудових прав. Зроблено висновок, що різноманітність правових форм захисту трудових прав обумовлена особливістю методу трудового права. Серед правових форм виділено

юрисдикційні форми і неюрисдикційні. Розкрито основні ознаки юрисдикційних і неюрисдикційних правових форм захисту. Серед юрисдикційних форм виділено судовий і адміністративний захист. Акцентовано увагу, що судова форма захисту є основною серед правових форм. Особливим видом судового захисту трудових прав та законних інтересів працівників є діяльність Європейського суду з прав людини. У неюрисдикційній формі виділено примирно-третейські процедури, самозахист та громадський захист, який здійснюють виборні профспілкові органи. Захист трудових прав профспілки проводять у двох напрямках: участь у системі соціального партнерства, зокрема при проведенні колективних переговорів, консультацій, а також укладання колективних договорів та угод; а також, шляхом здійснення представництва найманих працівників при вирішенні індивідуальних і колективних трудових спорів.

Характерною ознакою неюрисдикційних форм захисту є не вирішення спору, а сприяння сторонам спору у досягненні компромісу, шляхом прийняття взаємоприйнятого рішення.

Ключові слова: механізм правового захисту, трудові права, законні інтереси, правові форми захисту.