

INSTITUTE OF LEGAL PROTECTION OF LABOR RIGHTS IN UKRAINE: GENESIS AND CURRENT STATE

Olena S. Boieva

Economic Court of Zaporozhye Region, Zaporozhye, Ukraine.

Email: elenaboieva1982@gmail.com

Article History: Received on 25th August 2019, Revised on 26th September 2019, Published on 24th October 2019

Abstract

Purpose: The explored issue seems to be urgent because the efficiency and accessibility of the system of social rights, especially to work and other related rights, become important among priorities of implementation of modern judicial and legal reform in Ukraine. The article is devoted to issues of formation and establishment of the institute of legal protection of labor rights by its separation at the legislative and law-enforcement level from the institute of labor rights protection which is bigger by scope and content. It is noted that knowing the genesis of the institute of legal protection of labor rights in Ukraine is an important step to improve the effectiveness of labor rights protection.

Methodology: General scientific research methods (the formalization, the analysis, and the modeling) and special-legal approaches (the historical and legal, the comparative and legal as well as the state legal modeling) are used.

Result: The need for the allocation of the industrial law legal assistance institute at a legislative and enforcement levels in the Ukrainian system of law is theoretically based. It is proved that such an allocation may be especially useful in practice while industrial dispute resolutions the standardization of which in Ukrainian legislation is insufficiently elaborated. It has been offered to make alterations in a current (or in a new draft) Labor Code of Ukraine, first of all, in the part of the number increase of legislative grounds for the reference to the court on the issue of industrial disputes.

Applications: The normative changes in the Labor Code of Ukraine offered by the author may be used by the domestic entities of the legislative leadership as well as by theorists in the sphere of labor code and by the management of the trade union associations as a basis for the preparation of corresponding drafts.

Novelty/Originality: The historical and legal genesis research of the industrial law legal assistance institute as an independent subject of the industrial law theory with the allocation and justification of its development periods in the history of domestic legal thought was carried out first in Ukrainian science literature. There were also elaborated, formed and theoretically confirmed the specific proposals on the normative changes in the Labor Code of Ukraine in the part of the individual and collective industrial disputed resolutions by means of the offered legal instruments of the industrial law legal assistance institute.

Keywords: *legal protection, labor rights, institute of the legal protection of labor rights, labor law, effective remedy.*

INTRODUCTION

The efficiency and accessibility of the system of social rights, especially to work and other related rights, become important among priorities for implementation of modern judicial and legal reform in Ukraine ([The Constitution of Ukraine, 1996](#); [Volkova, 1986](#); [Dogadov, 1949](#)). According to the international and national experience, the labor market efficiency and appropriate legal entities' motivation depend on the validity and effectiveness of the right to work and other labor rights. At the same time, opposite tendencies in the labor market create objective threats to its functioning ([Kiselev, 2001](#)). Evident facts of labor rights violations, objective tendencies towards increasing external labor migration ([Lushnikov, 2003](#)), systemic demotivation in the labor market create preconditions for social and economic reforms in Ukraine and strengthen mechanisms for protection of these rights. It should be noted that main priorities of social and economic reforms include a labor market reform, strengthening of legal remedy and labor rights protection.

The right to legal protection is believed to be very important in the system of the right to labor rights protection. Currently, the right to legal protection is considered an important component for establishing an independent and authoritative judicial branch in Ukraine. The Constitution of June 28, 1996 is based on the principle of the power distribution, which means a model for the state apparatus when the power in the state should be divided into legislative, executive and judicial powers, while each authority is independent, that precludes usurpation of all power in the state by one single branch or separate body ([The Constitution of Ukraine, 1996](#)). Article 6 of the Constitution of Ukraine states that "state power in Ukraine shall be exercised on the principles of its division into legislative, executive and judicial branches", and "legislative, executive and judicial bodies shall exercise their authorities within the limits determined by this Constitution and in accordance with the laws of Ukraine". In such circumstances, the organization of the judicial branch requires proper constitutional and legislative development. Legal protection is considered to be the most important among such issues. According to Article 55 of the Constitution of Ukraine, human and citizen's rights and freedoms shall be protected by the court. Consequently, the Constitution of Ukraine declares the right to legal protection as one of the most fundamental, universal, constitutional human rights. In the law-governed state, under the principle of the rule of law, the right to legal protection requires proper and meaningful legislative content.

Any human rights and freedoms are guaranteed by their legal protection. According to Article 55 of the Constitution of Ukraine, human and citizen's rights and freedoms are protected by the court. So, in Ukraine, all human rights and freedoms have equal legal status with no exception. According to part 3, Article 124 of the Constitution, the jurisdiction of courts covers any legal dispute and any criminal cases ([The Constitution of Ukraine, 1996](#)).

The court jurisdiction covers legal settlement of all disputes, including labor rights protection disputes, considered by many researchers as social and economic rights, forming part of generally recognized basic and inalienable human rights. Legal protection of labor rights in Ukraine is a common and effective remedy for labor rights, given that labor disputes are settled by different court jurisdictions, and court decisions are subject to mandatory enforcement, including compulsory.

RESEARCH METHODOLOGY

To study the issue, the following methods were applied (a complex of methods inherent in science, special techniques, technologies, and means to explore subjects and objects of the research). To create a holistic picture of the research, to determine causal relationships within legal institutions and industries, and to describe their significance for social processes and phenomena, general scientific methods of formalization, analysis and simulation were used during the research, as well as for theoretical modeling of situations assumingly possible upon using the suggestions and recommendations offered by the author. Also, specific scientific approaches (special legal methods): historical and legal (study of the establishment and development of the institute of labor rights legal protection), comparative and legal (comparison of various legal acts to highlight the issue), state legal simulation (search and description of the optimal model of establishment of the institute of the labor rights legal protection and its legislative and law-enforcement separation from other institutions and branches of the legal system in Ukraine) seemed reasonable to use.

The genesis of the legal protection of labor rights has not been actually studied, although some papers by Soviet and Ukrainian scholars, in particular, O.N. [Volkova](#) (1986), V.M. [Dogadov](#), (1949), I.Ya. [Kiselev](#) (2001), A.M. [Lushnikov](#) (2003), V.I. [Smolyarchuk](#) (1965), E.B. [Khokhlov](#) (2000) described the genesis and historiography of labor law development and pointed out possible legal protection of labor rights, however, without mentioning the origin, formation, development of this legal institute as separate. Many Ukrainian researchers, such as N.B. [Bolotina](#) (2006), V.S. [Venedyktov](#) (2006), V. [Zhernakov](#) (1999), I.V. [Zub](#), B.S. [Stychynsky](#) and I.A. [Grytsyak](#) (1996), M. [Inshin](#) (1998), I. [Lavrinchuk](#) (2001), V. [Lazor](#) (2000), P.D. [Pylypenko](#) (2004), S. [Prylypko](#) (1999), V.G. [Rotan](#), I.V. [Zub](#) and B.S. [Stychynsky](#) (2008), N. [Khutoryan](#) (1992), N.B. [Bolotina](#) and G.I. [Chanysheva](#) (2001), V.Sh. [Scherbina](#) (2008), and others devoted their papers to the issue of legal protection of labor rights. Also N. [Lazor](#) (1998), O.E. [Sonin](#) (2006), Yu.M. [Todyka](#) (2000), O. [Yaroshenko](#) (2000) studied the legal remedy for the rights.

The research seems to be urgent because under adaptation of the Ukrainian labor legislation to the international legal system in protection of workers' rights (with the opportunity for everyone to protect own rights and interests in court) and continuation of development of the new Labor Code, it becomes clear that it is impossible to build a truly democratic law-governed state without knowing the genesis of the institute of legal protection of labor rights in Ukraine. Also, the research seems urgent because only a few labor rights protection related issues were studied - as one of the forms inherent to the institution of labor rights protection. Many Ukrainian researchers (from 2000-2015) highlighted the need for an institution for labor rights protection to be formed. However, there are no scientific works on the issue of formation (or, rather, of separation) of the institute of legal protection of labor rights.

It should be noted that this article summarizes the author's previous researches on the genesis of legal protection of labor rights, in which the author proposed a conditional division of development of the institute of legal protection of labor rights in Ukraine into 12 stages (or periods), based on certain historical periods, characterized by protection of labor rights, including in court.

These stages (periods) are as follows:

1. Representation in the "Rus Truth" of hired workers' rights during the state of Kiev a Rus (IX-XII centuries).
2. Further consolidation of the hired workers' rights during feudal fragmentation (from the end of the XII to the mid-XVII century).
3. The status of labor rights protection in Ukrainian lands under the Moscow Tsar's protectorate, and later - within the Russian Empire (from the second half of the XVII century to the second half of the XIX century).
4. Formation and development of factory legislation and its component - an institute for labor rights protection in Ukraine in the second half of the XIX and early XX centuries.
5. Status of labor rights protection in Ukraine from 1905 to 1917.
6. Development of labor law and the institute for labor rights protection in Ukraine during the struggle for independence (1917-1918).
7. Influence of the 1919 and 1929 Constitutions on the possibility of the legal protection of individual labor rights in court.

8. Status of the legal protection of labor rights during the adoption of the 1937 Constitution and during the Second World War.
9. Negative consequences of the war in the period of 1945-1957 - the lack of the opportunity to protect labor rights in court or administrative way.
10. 1958-1971 - the gradual reformation of labor law and restoration of workers' rights to apply for protection in court in certain cases.
11. Influence of the 1978 Constitution on the state of the legal protection of labor rights.
12. From August 24, 1991 (proclamation of Ukraine's independence) till now, the concept of legal protection of workers' labor rights is constitutionally consolidated (from June 28, 1996) in Articles 3, 8, 55, 124 of the Constitution and guarantees legal protection of labor rights in court in accordance with the requirements of labor and procedural legislation.

To study the history of the formation and development of the institute of legal protection of labor rights is believed to be important at the current stage of judicial reformation in Ukraine - both for theoretical researches and for law enforcement. In addition, to know peculiarities of development of this legal institute, to summarize historical experience are believed to contribute to further improvement of labor law, in particular, to make appropriate amendments to the Draft Labor Code of Ukraine and to increase the effectiveness of labor rights protection in court.

RESULTS

The modern stage of development of the institute of the legal protection of labor rights in Ukraine is characterized by its separation at the legislative and law-enforcement level from the institute for labor rights protection bigger by scope and content.

The author has already studied issues related to the formation of the institute for labor rights protection and expressed her opinion regarding separation of the institute of the legal protection of labor rights - because this is an important step to improve protection of labor rights. Consideration of labor disputes in Ukraine is specific because they are considered not by labor courts, but by different jurisdiction courts. According to statistics, the Civil Procedural Code, the Commercial Procedural Code, the Code of Administrative Procedure, and the Code of Criminal Procedure consider many labor disputes, and the European Court of Human Rights considers Ukrainian citizens' appeals regarding long non-execution of court decisions in cases concerning employees' claims to employers about accrued but unpaid wages.

Proceeding from the theoretical study of the "institute of law" definition, it can be stated that the institute of the legal protection of labor rights has been formed, operates and develops in the legal remedy of labor rights.

The "institute of law" definition has different formulations.

The institute of law, according to P.M. [Rabinovich](#) (2007), is a system of legal norms regulating a certain group of homogeneous social relations. These institutes can be sectoral and intersectoral (for example, an institution of legal liability for environmental offenses, etc.) ([Rabinovich](#), 2007).

In the theory of state and law ([Zaychuk and Onischenko, 2006](#)), the institute of law is determined as a set of separate, interrelated legal norms forming a branch of law and regulating a certain aspect of homogeneous social relations... The institute of law differs from the field of law primarily by legal regulation scope, it does not regulate a set of qualitatively homogeneous social relations, but only their separate aspects.

Investigating the issue of separation of the institute of legal protection of labor rights from the point of view of the institution function or its main purpose, we base on O.F. [Skakun's \(2000\)](#) statement that the main purpose of institutes of law within its group of homogeneous social relations is to provide solid, relatively complete regulation.

In order to find out if there is an institution in the field of labor law that within labor relations provides solid, relatively complete regulation of issues related to the labor rights protection, we recall that in practice rights (and/or interests) are protected in a jurisdictional or non-jurisdictional manner. It is clear that the legal protection of labor rights is exercised in a jurisdictional manner. In addition to legal protection of rights guaranteed by the Constitution of Ukraine, in particular labor rights, articles 221, 231, 232 of the Labor Code of Ukraine expressly provide for the possibility for employees to settle labor disputes in court ([Code of Labor Laws of Ukraine, 1971](#)). That is, such form of labor rights protection as legal remedy, regulated grounds and limits of its application are fixed at the legislative level.

As for the provision of relatively complete regulation of homogeneous labor social relations, the legal protection of labor rights is characterized by the mechanism for achievement of this purpose not only according to the labor legislation norms but also according to the relevant procedural legislation norms.

The legal protection of labor rights implies appropriate remedies to be used. Article 16 of the Civil Code of Ukraine contains their most complete description, and therefore, the provisions of this article are applied in the legal protection of labor rights, as applicable labor law does not list remedies to protect labor rights in court.

In a generalized form, the institute of legal protection of labor rights has the following remedies: 1) to deem the terms of a labor or collective agreement to be invalid; 2) recognition of an employment agreement to be concluded; 3) restoration of the situation existed before the right violation; 4) reimbursement of expenses; 5) compensation for damage; 6) compensation for non-pecuniary damage; 7) compensation of expenses; 8) payment of pecuniary aid; 9) salary recalculation due to indexation; 10) conclusion of an employment agreement; 11) change of legal relationship; 12) termination of an employment agreement; 13) change the wording of the reason for dismissal; 14) conclusion of a collective agreement; 15) recognition of an order, or actions of the owner or his authorized body as illegal and other remedies provided by law ([Hetmantseva and Kozub, 2009](#)).

Thus, the institute of the legal protection of labor rights can be stated to operate and function, which within labor relations provides for solid, relatively complete regulation, by means of certain remedies and with the appropriate implementation mechanism, in accordance with the provisions of labor and procedural legislation.

It should be noted that the institute of legal protection of labor rights is to be considered as intersectoral, since in Ukraine the legal protection of labor rights is mainly carried out in civil, commercial, administrative proceedings and, in certain cases, by the Constitutional Court of Ukraine, and remedies are defined although not fully by the relevant procedural law. A defined form of labor rights protection, namely, legal protection, its typical remedies, as well as many cases of labor disputes considered by different jurisdiction courts show formation of an institute of legal protection of labor rights with a role ([Skakun, 2000](#)) to be solid, relatively complete regulation of social (labor) relations within the protection of the workers' rights and interests.

It should be noted that legal protection of labor rights is common and effective, given that court decisions are subject to mandatory enforcement, and in case of failure to execute a court decision by an employer, the compulsory procedure is applied.

Also, it should be noted that the institute of the legal protection of labor rights which is formed by its separation from the bigger institute for labor rights protection, is characterized by defects (deficiencies) inherent in general to the institute for labor rights protection. In particular, this is because the current labor legislation does not fully reflect the content and scope of labor rights, and the labor legislation norms regarding the employee's right to legal remedy are contained in various regulations.

The applicable Code of Labor Laws of the Ukrainian SSR was adopted in Soviet times of the common ideology that the power belongs to the working people in the Soviet state, the workers are free, they own factories, plants, etc., no exploiters as a class, and therefore no need to protect workers from anything. Due to political and historical conditions, the Labor Code does not have a chapter devoted to labor rights protection, and some issues regarding such protection are reflected in certain rules throughout the Code.

Numerous amendments to the Code during the period of independence of the country do not improve law enforcement because of other labor legislative acts adopted at different times. Often, legal norms in the mentioned acts either contradict each other or have gaps in the law, and in case of changes in social and economic conditions, employers violate the employees' labor rights in order to avoid taxation or to obtain a profit.

It should be noted that the purpose of the legal protection of labor rights is full restoration of the employee's infringed rights and/or interests, even in no fault of the employer, and the legal protection effectiveness should be in creation of most favorable conditions for settlement of labor disputes and for fast execution of court decisions both at the legislative level, and through the judicial practice. Recall that "effective" (one of the definitions of this term) means achieved desired results and consequences, provided the greatest effect, thus the effect, in this case, means a result, a consequence of any causes, forces, actions, measures ([Busel, 2004](#)).

In order to increase the effectiveness of the legal protection of labor rights and to avoid violation of procedural terms, Article 2 of the Labor Code of Ukraine, should be supplemented with Part 3 to read as follows: "Employees shall have the right to protect their labor rights and/or interests, which can be implemented in any form of protection: appeal to certain trade unions; appeal to a commission on labor disputes; appeal to relevant executive authorities, monitoring observance of the labor legislation or labor protection; appeal to court. In all and any cases, the employee's right to legal protection is inalienable. Should an employee misidentify judicial jurisdiction, a claim is to be passed within 3 days by the court applied to the court of the proper jurisdiction - without returning the claimant to the claim and with notification about the claim transfer to the relevant court". Such additions would contribute to the more effective protection of workers' labor rights and demonstrate the existence and effectiveness of the institute for the protection of labor rights.

CONCLUSION

Considering the foregoing, it should be emphasized that the necessary term for the social legal state development is to create conditions for effective protection of human and citizen's rights and freedoms, including labor rights. However, the constitutional consolidation of the right to legal protection, the creation of a system of jurisdictional and legal authorities authorized to settle disputes, including labor ones, does not mean an effective mechanism in the state for the protection of violated or disputed rights.

Today the urgent problem is that labor rights in some cases cannot be protected due to absent or imperfect legal procedures. The mechanism of regulation of labor disputes and conflicts in Ukraine is inadequate, particularly: 1) poor development of institutions of individual and collective disputes and conflicts in the labor law of Ukraine; 2) non-coordinated concepts and conflicts of certain norms; 3) legal gaps in the order of regulation of settlement of labor disputes.

Therefore, the labor legislation reformation in Ukraine should consider international standards, domestic and European legal experience. Adoption of the new Labor Code should be aimed primarily at increasing labor rights and guarantees, expanding grounds for an employee's applying to the court with a claim for labor rights protection, otherwise employees' labor rights will be violated because they cannot be protected at national courts due to absent grounds in labor legislation. Currently a priority issue for labor legislation reformation is to improve the applicable Labor Code of Ukraine.

ACKNOWLEDGMENT

The author confirms that the data do not contain any conflict of interest.

REFERENCES

1. Bolotina, N.B. (2006). Labor Law of Ukraine. Kharkov: Znanie.
2. Bolotina, N.B., and Chanyseva, G.I. (2001). Labor Law of Ukraine. Kharkov: T-"Knowledge".
3. Busel, V.T. (2004). Great explanatory dictionary of contemporary Ukrainian language. Kharkov: Irpin VTF "Perun".
4. Dogadov, V.M. (1949). Stages of development of Soviet Labor Law. LSU Scientific notes. Series of legal sciences, 107: 113-172.
5. Hetmantseva, N.D., and Kozub, I.T. (2009). Means, methods and forms of protection of labor rights. Advocat, 11(110): 37-42.
6. Inshin, M. (1998). Concerning the legal provision of the right to labor under mass labor force exemption. The Law of Ukraine, 3: 77-78.
7. Khokhlov, E.B. (2000). Essays on the history of legal regulation of labor in Russia. St. Petersburg: St. Petersburg State University.
8. Khutoryan, N. (1992). Development of labor relations in market conditions. The Law of Ukraine, 8: 6-15.
9. Kiselev, I.Ya. (2001). Labor law of Russia. Historical and legal research. Moscow: Norma.
10. Lavrinchuk, I. (2001). Procedural provision of labor rights in Ukraine. The Law of Ukraine, 1: 72-87.
11. Laws of Ukraine. (1971). Code of Labor Laws of Ukraine of December 10, 1971 No. 322-VIII. URL: <http://zakon5.rada.gov.ua/laws/show/322-08>
12. Lazor, N. (1998). Contractual and centralized regulation of labor agreement terms: solving problems. Law of Ukraine, 1: 106-107.
13. Lazor, V. (2000). On the social significance of an employment contract in market conditions. The Law of Ukraine, 7: 31-46.
14. Lushnikov, A.M. (2003). Science of Labor Law of Russia. Historical and legal essays in persons and events. Moscow: Prospect.
15. Prylypko, S. (1999). Distinction of labor law and social security law. The Law of Ukraine, 10: 58-61.
16. Pylypenko, P.D. (2004). Labor Law of Ukraine: Academic Course. Kharkov: Concern "Publishing House "De Jure".
17. Rabinovich, P.M. (2007). Principles of the general theory of law and state. Lviv: Krai.
18. Rotan, V.G., Zub, I.V., and Stychynsky, B.S. (2008). Scientific and practical commentary on the labor legislation of Ukraine. Kharkov: A.S.K.
19. Scherbina, V.Sh. (2008). Labor law of Ukraine. Kharkov: Truth.
20. Skakun, O.F. (2000). Theory of state and law. Kharkov: Consum.
21. Smolyarchuk, V.I. (1965). Actual issues of development of the science of Soviet labor law. Soviet state and law, 6: 37-44.
22. Sonin, O.E. (2006). The system of remedies to protect workers' rights at wrongful dismissal. Vernadsky Tavria National University Scientific notes. Legal Sciences, 19(3): 143-147.
23. The Constitution of Ukraine. (1996). The Constitution of Ukraine of 28.06.1996. URL: <http://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>
24. Todyka, Yu.M. (2000). The Constitution of Ukraine: problems of theory and practice. Kharkiv: Fact.
25. Venedyktov, V.S. (2006). Labor Law of Ukraine. Kharkov: Consum.
26. Volkova, O.N. (1986). The history of development of Soviet Labor Law. Moscow: All-union correspondence juridical institute.
27. Yaroshenko, O. (2000). Discrimination in implementation of the right to labor. The Law of Ukraine, 7: 53-65.
28. Zaychuk, O., and Onischenko, N.M. (2006). The theory of state and law. Kharkiv: Yurinkom Inter.
29. Zhernakov, V. (1999). Social and labor relations: concept, subjects, legal regulation. The Law of Ukraine, 10: 41-43.
30. Zub, I.V., Stychynsky B.S., and Grytsyak I.A. (1996). Labor law. Kharkiv: Published by UASM.