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THE PRINCIPLE OF LEGALITY AND THE RULE OF LAW PRINCIPLE IN SOCIAL DIALOGUE IN THE WORLD OF WORK

Broadly speaking, the issue of human rights has gained worldwide importance, and the world of work is especially felt her exacerbation, increasing the importance of state forms of protection of labour rights.

With the active integration of the Ukrainian state into the European Community, the research of the principles of social dialogue in the world of work as the foundation of social and labour relations is becoming increasingly important. Given the changes in the political elites and the political course of the state, this issue is also acquiring outstanding political and legal significance.

Article 3 of the Law of Ukraine "On Social Dialogue in Ukraine" entitled "Basic Principles of Social Dialogue" establishes, among other principles, that social dialogue is carried out on the principles of legality and the rule of law.

Apart from the name of these principles, the legislator does not provide their definitions and does not give any further explanations. Further, this issue is also insufficiently covered in the science of labour law.

As S.P. Pogrebnyak aptly emphasized, the principles of law are one of the most pressing problems that concern jurisprudence. The rule of law in the context of Article 8 of the Constitution of Ukraine provides for the supreme legal force of the Constitution of Ukraine and compliance with the laws of Ukraine and other regulatory legal acts [1, p. 4].

The principle of legality in social dialogue in the world of work has some of its fundamental differences associated with the general specifics of social dialogue.

Considering that the legislative definition of social dialogue is the process of determining and drawing together positions, reaching joint agreements and making agreed decisions by the parties to social dialogue, which represent the interests of workers, employers and executive authorities and local governments on the formation and implementation of state social and economic policies, regulation of labour.

M.V. Sorochishin rightly holds the opinion that the principle of legality in social dialogue is implemented in three directions: 1) the parties must comply with the requirements of laws and other normative legal acts in collective-contractual regulation of labour, social and economic relations (while the requirements of the parties, methods and procedures for resolving contradictions must be legal); 2) representative bodies of employees and employers should be formed according to the rules established by law, statutes, other internal documents of organizations and public associations; 3) collective bargaining procedures should be conducted according to the rules provided for by the Ukrainian legislation; and the parties may also adopt local legal acts specifying the legislation [2, p. 90].

The second fundamental principle of social dialogue in the world of work is the rule of law.

The rule of law principle was formed by supporters of the theory of natural law in the 17th-19th centuries, and the term itself, according to historians, was introduced into the legal field by a British political, public figure and scientist in D. Harrington 1656. The classic justification of the rule of law principle described in 1885 by Oxford University professor Albert Dicey in his "Introduction to the Study of Constitutional Law", in which he outlined three main components that express the "inner spirit" of the rule of law principle and promotes this concept: a) denial of arbitrary power; b) equality before the law; c) constitutional law [3, p. 26-29].

As noted by S.P. Holovaty, since the rule of law was implemented in the domestic system of law (Constitutional Treaty of 1995) and enshrined as one of the main requirements of the Ukrainian Founding Act (Constitution of Ukraine of 1996), Ukraine has not implemented a comprehensive, systematic, special study of the essence of this principle until now [4, p. 3].

Indeed, being insufficiently researched into and implemented in existing state mechanisms, the rule of law is very broadly interpreted, which, obviously, does not benefit the protection of citizens' rights.

As for the principle of the rule of law precisely in social dialogue, this principle embodies ensuring strict observance of the rights and freedoms of the employee, other participants (parties) in social dialogue, as well as the introduction of mechanisms to appeal against actions / inaction of the employer and the state.

Ukraine ratified the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, according to which the European Court of Human Rights is the sole body established to ensure compliance with the rights and freedoms specified in the Convention and protocols thereto.

Thus, in the decision in the case "Poltoratsky v. Ukraine" of April 29, 2003, application No. 38812/97, paragraph 155, states that the Court must first consider whether the interference was carried out "in accordance with the law".

This expression primarily requires that the corresponding event have a certain basis in national legislation; it also relates to the quality of the relevant legislation and requires that it be available to the relevant person, who, moreover, should be able to predict its consequences for themselves. Moreover, this legislation must comply with the rule of law [5].

Subsequently, the ECHR, in its decisions, disclosed in more detail the essence of the rule of law principle through the principles of proportionality, protection against state arbitrariness, and a fair balance between the interests of the individual and the state. Such, for example, are the cases: "Vladimir Polishchuk and Svetlana Polishchuk v. Ukraine" (Vladimir Polishchuk and Svetlana Polishchuk v. Ukraine, application No. 12451/04), decision of September 30, 2010; "Feldman v. Ukraine" (No. 2) (Feldman v. Ukraine (no. 2), application No. 42921/09), decision of January 12, 2012, etc.

In addition, the ECHR emphasizes that, in order to comply with Article 8 § 2 of the Convention, the interference must, inter alia, be carried out "by law", that is, it must have certain grounds in national law and be compatible

with the rule of law. That is, the ECHR points to the indissolubility and interdependence of two fundamental principles: legality and the rule of law.

Thus, the principle of legality in social dialogue can be considered only where it takes into account the rule of law, because the state does not always establish such mechanisms for regulating social and labour relations that are consistent with the principles of the rule of law. In turn, the rule of law cannot be considered without bearing in mind the principle of legality. This shows the peculiar dualism of these principles in social dialogue and their fundamental importance for ensuring the existence of such a public institution as social dialogue in the world of work.

References:

1. Погребняк С.П. Основоположні принципи права (змістовна характеристика). Х. : Право, 2008. С. 4.
2. Сорочишин М.В. Правові аспекти соціального діалогу у сфері праці : дис. ... канд. юрид. наук. Одеса. 2012. 208 с.
3. Шилінгов В. Верховенство права – основоположний принцип правової системи демократичного суспільства. *Часопис Київського університету права* . 2009. No 2. С. 26–29.
4. Головатий С.П. Верховенство права: Ідея. Доктрина. Принцип : автореф. дис. на здобуття наук. ступеня д-ра юрид. наук. К., 2009. 40 с.
5. Рішення Європейського суду з прав людини, справа «Полторацький проти України»: від 29 квітня. 2003 р. URL: http://zakon5.rada.gov.ua/laws/show/974_838 . 6) Рішення Європейського суду з прав людини, справа «Недільченко та інші проти України»: від 18 січня 2018 р. URL https://zakon.rada.gov.ua/laws/show/974_c72#n102.

Ключові слова: соціальний діалог у сфері праці, принципи соціального діалогу у сфері праці, різновиди принципів соціального діалогу у сфері праці.

Ключевые слова: социальный диалог в сфере труда, принципы социального диалога в сфере труда, разновидности принципов социального диалога в сфере труда.

Key words: social dialogue in the world of work, principles of social dialogue in the world of work, varieties of principles of social dialogue in the world of work.

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ПОНЯТТЯ МЕДИЧНОЇ РЕАБІЛІТАЦІЇ ЗА ЗАКОНОДАВСТВОМ УКРАЇНИ

Беручи до уваги беззаперечний факт реформування сфери охорони здоров'я, зокрема поетапне реформування медичної допомоги, запровадження нових ІТ технологій в медицину та швидкий розвиток науково-технічного прогресу, актуальною та малодослідженою залишається