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NATURE AND CONTENT OF INTERNAL LABOUR REGULATIONS AS AN ELEMENT OF THE EMPLOYER'S ECONOMIC POWER

Abstract. The ***purpose of the article*** is to reveal the nature and content of the internal labour regulations as an element of the employer's economic power.

Results. In the article, the analysis of scientific views allows revealing general theoretical approaches to the interpretation of the concept of "internal labour regulations". The internal labour regulations cannot be reduced to legal relations in the case of individual actors of labour law, moreover, their system, implying these legal relations. The internal labour regulations of any organisation are designed for employees who are not personified, that is, for everyone and not only those who work, but also those who will work in the future. If the internal labour regulations are considered from the perspective of the legal regulatory mechanism, they are part of it as a provision of objective law. In order for a legal relationship to arise, it is necessary to have a certain legal fact, for example, an employment contract, an agreement of a transfer to a branch, a representation, etc.

Conclusions. It is concluded that, at the present stage, the internal labour regulations can be considered as a social and legal category based on economic power, the content of which is a set of rules of labour conduct for participants in general labour subordinate to the employer, among which legal rules formulated by the employer and adopted directly by the labour collective, with the participation of its elected bodies or the employers themselves, play a decisive role. Currently, technological provisions, that is, the legal rules of inactivity of technological process are developed, improved and applied by the employer personally. The technological process is closely linked to the protection of employees' work, and thus to the protection function of trade unions. From this perspective, the participation of trade union bodies, if not in the elaboration of technological rules, then in their application, would seem justified. However, in a market economy and well-understood competition of organisations, the State considers this aspect of the internal labour regulations as a priority for the employer, which ensures mobility and efficiency in the recovery of technology, the technological process and legal rules they mediate.

Key words: internal labour regulations, economic power, employee, employer.

1. Introduction

Labour relations, which have undergone fundamental changes in the context of the transition to a market economy, now require a fundamentally different approach to the legal regulatory mechanism, changes in its methods and types. This has also affected attitudes towards the very idea of the legal regulatory mechanism for labour relations. A number of works have emerged that treat both individual elements and the entire legal regulatory mechanism differently. It is now clear that the existing level of theoretical and practical knowledge of the various elements of the legal regulatory mechanism governing labour relations, their optimum expression and technical legal establishment is not sufficient to ensure an effective legal regulatory framework in the present circumstances and requires further special development. In particular, the internal labour regulations, apart from the role of a local regulation, are an important element of the employer's economic power.

In scientific works, the nature and content of internal labour regulations have been considered by: N.T. Mykhalenko, L.O. Syrovatska, N.A. Tymonov, V.M. Smirnov, D.V. Zhuravlov, L.V. Mohilevskyi, V.M. Lebediev, O.S. Pashkov, P.D. Pylypenko, N.M. Khutorian, and many others. However, in spite of the large number of scientific achievements, scientists have rather superficially researched the internal labour reg-

ulations as an element of the employer's economic power.

Therefore, the ***purpose of the article*** is to reveal the nature and content of the internal labour regulations as an element of the employer's economic power.

2. The history of the establishment and development of internal labour regulations

The literature review reveals that the concept of internal labour regulations has long been under focus of scholars. However, there is still no generally accepted understanding of the term. L.S. Tal' was one of the first to define the content of the internal regulations of the economic entity. He argued that the regulations created within organisations were private legal regulations. What he interpreted the private legal regulations as a kind of objective right, since it was based on law-making (regulatory) factors capable, in accordance with the legal views of society and the perception of persons subject to these regulations, to establish binding rules of conduct (Tal', 1919, p. 50). According to L.S. Tal', the regulatory expression of the will of private individuals are the internal labour regulations, collective agreements and other regulatory agreements.

In Soviet labour law, N.T. Mikhailenko studied the internal labour regulations. He defined it as a system of rules for the conduct of workers and officials of socialist enterprises, organisations and institutions aimed at the full and rational use of working time, increasing productivity and producing sound products (Mikhailenko, 1972, p. 209). V.M. Smirnov defined the internal labour regulations on the basis of the system of legal relations that develop within the company (institution) in the course of performing production tasks which ensure the exercise of subjective rights and duties by all participants in the work process (Smirnov, 1980). L.A. Syrovatska considered the internal labour regulations as "the regulations governing conduct, interaction between employees at a specific enterprise, institution, organisation in the process of work" (Syrovatskaia, 1998, p. 228). According to her, it is determined by the rules of the internal labour regulations and, in some industries, by disciplinary regulations (Syrovatskaia, 1998, pp. 228–229).

Therefore, in most cases, in the field of labour law, the internal labour regulations are understood as prescriptions based on the provisions of objective law; as the application of these provisions in labour relations; or as the procedure for the labour conduct of the participants in the joint work, subject to a local legal regulation – the internal labour regulations. Indeed, all of these elements occur, in one way or another, in the analysis of internal labour regulations. First, it is not possible to present the internal labour regulations of any organisation without the existence of legal provisions that contain rules for the labour conduct of employees subordinate in the course of work to the employer and his/her representatives. Second, the mere existence of such provisions is meaningless, except for the purpose of their adoption – implementation, strict compliance by all participants in the joint work process in a given organisation. Third, all rules of labour conduct in an organisation should normally be systematized in such a way that they are accessible and understandable to all employees of the organisation.

Therefore, the determination of internal labour regulations requires to distinguish, first, its regulatory basis and, second, its role in determining the work conduct of the employees of the organisation. The regulatory basis of the internal labour regulations cannot be reduced to only one local regulation, as L.A. Syrovatska has done, or to the entire set of labour law, which contains generally binding prescriptions emanating from the State (N.A. Timonov). In both cases, there are extreme trends in internal labour regulations.

The internal labour regulations cannot be reduced to legal relations in the case of individual actors of labour law, moreover, their system, implying these legal relations. The internal labour regulations of any organisation are designed for employees who are not personified, that is, for everyone and not only those who work, but also those who will work in the future. The internal labour regulations of any organisation are designed for employees who are not personified, that is, for everyone and not only those who work, but also those who will work in the future. If the internal labour regulations are considered from the perspective of the legal regulatory mechanism, they are part of it as a provision of objective law. In order for a legal relationship to arise, it is necessary to have a certain legal fact, for example, an employment contract, an agreement of a transfer to a branch, a representation, etc.

A.P. Sarkisov's identification of the internal labour regulations with the regime of legal relations in organizing the use of labour (legal relations in respect of the internal labour regulation) (Sarkisov, 1984, pp. 9–10) does not withstand scrutiny. When a researcher attempts to incorporate labour relations or its individual elements into the internal labour regulations, he avoids any possibility of demonstrating the practical significance of this category of labour law, to reveal the possibilities corre-

sponding to the phases (stages) in the realization of this legal phenomenon, equates it, in whole or in part, with the exercise by employees of their rights and obligations at work, that is, in the final analysis, one way or another, reduces the internal labour regulations to labour discipline, which is intolerable. To a certain extent, the internal labour regulations of an organisation can be equated only with the regulatory basis of labour discipline, as with the set of provisions containing rules of labour conduct of employees. This system (set) of rules of labour conduct includes not only legal provisions but also other social provisions, such as traditions, customs, public organisations' provisions operating in the enterprise. For example, the role of the trade union and the requirements of the statute regarding the union member's attitude to work and to his or her work duties. Customs and traditions are so closely related to legal rules of labour conduct that they are often approved by the standard-setting bodies of enterprises and incorporated into the content of local regulations, including the internal labour regulations. Without any analysis or even considering of social provisions in the formation of the internal labour regulations, it is difficult to understand the mechanism of its effectiveness, since it is only through joint action, joint application of legal provisions with other social provisions, implying rules of conduct in the course of work, can ensure proper order in the organisation.

In a market economy, the internal labour regulations can be considered as a "regulatory formalisation of economic power" (Lebedev, 1999, p. 98). The internal labour regulations of an organisation are a complex social phenomenon. It is indeed based on economic power, modified in the process of social partnership. Economic power in the market has become a necessary element of the organisational unity of the legal entity. The social partnership of the employer and the employees has a certain impact on economic power, deforming it in a certain way. When jointly developing and adopting local regulations, the employer and employees of the organisation, their representatives are equally obliged to abide by the standards contained therein.

3. Role of economic power of the organisation in making internal labour regulations

The analysis of economic power in an organisation initially requires consideration of the issue of power as a social phenomenon. This will enable to define more precisely the nature of economic power and its role in making the internal labour regulations.

In the course of social development, relations of power and subordination have developed among members of society. Without internal coordination and order, the creation, development and functioning of social groups, institutionalized associations and labour collectives are impossible. All this requires to regulate properly human conduct to ensure their joint activity (Afanas'eva, 1968, p. 41). Power as a social phenomenon performs the regulatory function, subordinating the conduct of people in the process of their interaction.

Economic power in an organisation is a form of power as a social category. Therefore, this definition of power, with a few exceptions, is also applicable to the analysis of economic power. L.S. Tal' was one of the first to study economic power in the organisation. He argued that economic power was the legal position of an employer as head of an enterprise in relation to other persons forming part of a given social unit (Tal', 1916, p. 30). He identified regulatory, managerial and disciplinary powers (Tal', 1919).

Subsequently, V.M. Smirnov wrote that the regulatory authority is the right of the head of production alone or together with the trade union to issue local provisions of law. In his opinion, power in question is the totality of the law-making powers of the administration, exercised within the limits strictly established by the State (Smirnov, 1972, p. 34). The modern period, as noted above, is characterized by the absence of strict regulatory mechanism for the internal life of the organisation by the State and its bodies. The State sets standards for the legal regulatory mechanism for labour which cannot be worsened. The competence of the administration is determined, first of all, by the organisation's statute and by the job descriptions drawn up and adopted by the organisation itself.

Managerial power means the authority of the head to properly organise the production process and assign the work duties to individual employees (Smirnov, 1972, p. 34). The autonomy of the organisation in a market economy entitles the employer (his/her representative) to form, at his/her discretion, the technological process in the organisation, taking into account the market conditions for goods and services, logistics and other factors, affecting the freedom of the employer to choose the technology of the production process. Disciplinary power is the authority to impose disciplinary measures on those who violate labour discipline and to reward employees for excellent performance. These types of power, which are characteristic of the employer, constitute a single concept of managerial and disciplinary power. It is a social phenomenon that reflects the essence of society (Smirnov, 1972, p. 34).

According to L.S. Tal', "economic power should be exercised within its scope, should be manifested in legal forms" (Tal', 1916; Postovalova, 2018). In modern Ukrainian conditions, first, the power of the owner of an organisation is limited by the State and by peremptory provisions. Second, the will of the labour collective also influences the formation of economic power within the framework of social partnership, one of the forms of which is local standard-setting. Third, using economic power, the employer forms the technological process in the organisation. In turn, the technological process is chosen by the employer on the basis of objective and subjective factors influencing his/her choice. Therefore, the will and interests of the employer and the executive and managerial power of the owner in the organisation are deformed.

The mission of economic power in an organisation is to form a certain manner of action (conduct) of a work collective or individual worker; to determine the scope of proper conduct and to ensure that every employee is subordinate to one's interests and to the will of the employer and his or her representatives. The interests and will of the employer constitute the internal content of economic power. The essence of power is its ability to influence the conduct of people (Tikhomirov, 1968, p. 25; Kravchenko, 2012), to subordinate social groups and individuals to its will and interests. Economic power in the organisation is at the heart of and a sine qua non of managing the employment of hired workers. For management it is common to have power and organizing foundations. Power, including economic power, imparts a stable character to the management structure, bringing it into operation, ensuring the achievement of goals, harmonizing and regularizing (Barnashov, 1973, p. 9) the actions of participants in general, subordinate, contractual work.

4. Conclusions

Therefore, at the present stage, the internal labour regulations can be considered as a social and legal category based on economic power, the content of which is a set of rules of labour conduct for participants in general labour subordinate to the employer, among which legal rules formulated by the employer and adopted directly by the labour collective, with the participation of its elected bodies or the employers themselves, play a decisive role. Currently, technological provisions, that is, the legal rules of inactivity of technological process are developed, improved and applied by the employer personally. The technological process is closely linked to the protection of employees' work, and thus to the protection function of trade unions. From this perspective, the participation of trade union bodies, if not in the elaboration of technological rules, then in their application, would seem justified. However, in a market economy and well-understood competition of organisations, the State considers this aspect of the internal labour regulations as a priority for the employer, which ensures mobility and efficiency in the recovery of technology, the technological process and legal rules they mediate.

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СУТНІСТЬ ТА ЗМІСТ ВНУТРІШНЬОГО ТРУДОВОГО РОЗПОРЯДКУ ЯК ЕЛЕМЕНТА ГОСПОДАРСЬКОЇ ВЛАДИ РОБОТОДАВЦЯ

Анотація. ***Метою статті*** є розкриття сутності та змісту внутрішнього трудового розпорядку як елемента господарської влади роботодавця.

Результати. У статті з огляду на аналіз наукових поглядів учених розкрито загальнотеоретичні підходи до тлумачення поняття «внутрішній трудовий розпорядок». Внутрішній трудовий розпорядок не може бути зведений до правових відносин, коли йдеться про окремих суб'єктів трудового права, а тим більше – до їх системи, елементами якої ці правові відносини є. Внутрішній трудовий розпорядок будь-якої організації розрахований на найманих робітників, коло яких не персоніфікується, тобто на всіх і кожного з тих, хто не лише працює нині, а й влаштується на роботу в майбутньому. Якщо розглядати внутрішній трудовий розпорядок із погляду механізму правового регулювання, то він вписується в такий його елемент, як норма об'єктивного права. Для виникнення правового відношення необхідна наявність певного юридичного факту, до якого можна віднести, наприклад, трудовий договір, угоду про переведення до філії чи представництва тощо.

Висновки. Констатовано, що на сучасному етапі внутрішній трудовий розпорядок можна розглядати як соціально-правову категорію, засновану на господарській владі, зміст якої становить сукупність норм трудової поведінки учасників спільної, підлеглої роботодавцеві праці, серед яких визначальну роль виконують юридичні правила, сформульовані роботодавцем та прийняті трудовим колективом безпосередньо, за участю його виборних органів або роботодавцем самостійно. У цей час технологічні норми, тобто юридичні правила недіяльності технологічного процесу, розробляються, удосконалюються й застосовуються роботодавцем одноосібно. Технологічний процес тісно пов'язаний з охороною праці працівників, а отже, й із захисною функцією профспілок. Із цього погляду здавалася би виправданою участь профспілкових органів якщо не в розробленні, то хоча б у застосуванні технологічних норм. Однак у ринкових умовах господарювання та цілком зрозумілої конкуренції організацій держава вважає цей аспект внутрішнього трудового розпорядку пріоритетом роботодавця, що забезпечує йому мобільність та ефективність у відновленні технології, технологічного процесу й опосередкованих ними правових норм.

Ключові слова: внутрішній трудовий розпорядок, господарська влада, працівник, роботодавець.

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