UDC 349.2
DOI https://doi.org/10.32849/2663-5313/2022.1.04

Serhii Lukash,
Doctor of Law, Professor, Director, Sumy Branch of Kharkiv National University of Internal Affairs, 24, Myru street, Sumy, Ukraine, postal code 40007, Serhii_Lukash@ukr.net
ORCID: *orcid.org/0000-0003-2957-8052*

Lukash, Serhii (2022). Place and significance of ILO regulatory documents in the system of labour law sources of Ukraine. *Entrepreneurship, Economy and Law*, 1, 23–27, doi: https://doi.org/10.32849/2663-5313/2022.1.04

PLACE AND SIGNIFICANCE OF ILO REGULATORY DOCUMENTS IN THE SYSTEM OF LABOUR LAW SOURCES OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to establish the place and significance of regulatory documents of the International Labour Organisation in the system of labour law sources of Ukraine. ***Results.*** The article, based on the analysis of scientific views and provisions of current international law, proves the importance and necessity of regulatory activity by the International Labour Organisation. It is stated that the problem of action and application of sources of international labour law in the legal system of Ukraine is only part of another larger problem – the ratio of international and domestic law. The author emphasized that a special procedure for the denunciation of conventions has been established. Any State may denounce the ratified Convention after the expiration of ten years from the date it enters into force in that State. If a State does not exercise its right of denunciation within one year after the end of the ten-year period, it shall remain bound by this Convention for a further period of ten years. ***Conclusions.*** It is concluded that the recommendations of the International Labour Organisation differ from other recommendatory acts. In particular, in accordance with para. 6 of Art. 19 of the Constitution of the International Labour Organisation, each of undertakes that it will, within a period of one year at the moment of its adoption at the General Conference of the International Labour Organisation, bring the Recommendation before the competent authority or authorities. A Member of the International Labour Organisation shall inform the Director-General of the measures taken in accordance with this obligation. At the request of the Governing Body of the International Labour Organisation, the State is obliged to submit reports on the position of the law and practice in their country in regard to the matters of recommendation. Therefore, without binding the Member States of the International Labour Organisation to comply with the Labour standards contained in these recommendations, they do, however, provide for actions that contribute to the impact of these rules on national law. Legal specificities of conventions and recommendations of the International Labour Organisation are reflected in the procedure for implementation of their provisions in domestic labour law. However, the problem of action and application of sources of international labour law in the legal system of Ukraine is only part of another larger problem – the ratio of international and domestic law, which requires further substantive research in this area.

Key words: international legal act, conventions, recommendations, International Labour Organisation.

1. Introduction

Each sovereign State creates its own system of legislation with its own forms of law. This system has a limited scope and operates only within the territory of the State. However, it is not independent of the forms of law that exist outside its territory. Interstate cooperation, as a result of joint legal settlement, is reflected and sometimes has a significant impact on national legislation. The sources of international labour law are numerous international legal instruments that are the result of cooperation between States and include international labour standards. Taking into account the general theory of international labour law and the theory of classification, the sources of international labour law can be classified according to different criteria. However, an important place in the system of relevant sources is given to the regulations of the International Labour Organisation (ILO).

Some problematic issues related to determining the nature and content of the labour law sources are considered in the scientific works

by: M.Y. Baru, V.S. Venediktov, R.Z. Livshyts, A.M. Lushnikova, V.I. Prokopenko, O.I. Protsevskyi, K.L. Tomashewskyi, and many others. However, despite the considerable number of scientific achievements, the issue of determining the place and significance of international regulations in the system of labour law sources is poorly studied, in particular, this applies to acts issued by the ILO.

For the above reason, the purpose of the article is to establish the place and significance of regulatory documents of the International Labour Organisation in the system of labour law sources of Ukraine.

2. Specificities of international regulations

Starting the research, it should be noted that international regulations are generally designed to promote a better understanding of the object of study. In particular, the following types of sources of international labour law can be distinguished by the following criteria.

Depending on the legal force, there are:

1. Contractual international legal instruments. These include international treaties concluded by States with a view to establishing international organisations dealing with labour issues, and international treaties governing fully or in part the issues of labour and labour relations;

2. Non-contractual international legal documents.

Specificities of the first group of sources are that they constitute legal obligations for Member States, usually enshrine certain means of international control over the implementation of these obligations and provide for a form of liability for non-compliance. Sources of the second group are not legally binding and therefore do not have any legal effects for the Member States. They contain declarative, recommendatory provisions, arising from their very designations (most documents of this kind are called declarations or recommendations).

The constituent documents of international organisations, involved fully or partially in solving labour issues, are multilateral international agreements. This is primarily the Constitution of the International Labour Organisation, as well as certain provisions of the UN Charter and the constituent documents of some other international universal and regional organisations. For example, Art. 1 of the ILO Constitution of 1919 declares that the purpose and objectives of the International Labour Organisation are set out in the preamble to the Constitution and in the Philadelphia Declaration on the Purposes and Objectives of the ILO of May 10, 1944, as a supplement to the Statute. The program provisions of the ILO Constitution are not only a "political directive" for the Organisation and its members, according to British lawyer, who at one time held the position of Director General of the ILO, C.W. Jenks (Jenks, 1958, p. 299), but also represent the established legal obligations of members States of the International Labour Organisation.

Therefore, ILO conventions have a special place among the sources of international Labour law. They are international treaties subject to ratification by ILO Member States with subsequent implementation in the laws and practices of those countries. According to the definition of the Vienna Convention on the Law of Treaties between States and International Organisations or between Organisations of March 21, 1986, a treaty means an international agreement governed by international law and concluded in written form: between one or more States and one or more international organisations; or between international organisations, whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation. According to Art. 5 of the Convention, the Convention applies to any treaty between one or more States and one or more international organisations which is the constituent instrument of an international organisation and to any treaty adopted within an international organisation. The ILO Constitution defines some of the legal specificities of conventions enabling their more effective implementation in the legal systems of ILO Member States. The conventions are adopted by a qualified majority (two-thirds) of the delegates at the session of the ILO General Conference. Since the ILO structure implements the principle of tripartism, such a voting procedure ensures a balance of interests between employees' and employers' representatives. The convention is then signed by the Director-General of the ILO. The Convention twelve months after the date on which the ratifications of two or three Members have been registered with the Director-General. Each adopted convention is sent to all ILO Member States to decide on its ratification. However, even before ratification, ILO Member States acquire some obligations under the conventions on the basis of their membership. Each State is obliged to bring the convention before the competent State authorities within one year of its adoption at the ILO General Conference to decide whether to give it the force of law or to take other measures. The ILO Member State shall inform the Director-General of the measures taken in accordance with this obligation. Even if the competent authorities do not agree to ratification, the State is obliged to submit reports on the status of its law and practice on non-ratified conventions at the request of the ILO Governing Body, indi-

cating the measures taken by the State authorities to bring the convention into force.

3. Legislative activity of the International Labour Organisation

The implementation of conventions is facilitated by a control mechanism. Each State that has ratified the convention is obliged to submit annual reports on the measures taken to effectively implement the convention. In addition, the State should send such reports to the representative organisations of workers and employers of their country, which, as noted in the literature, favourably distinguishes the ILO control mechanism from other control mechanisms in the field of international human rights protection (Kolosov, 2016, p. 79). Article 24 of the ILO Constitution gives these organisations the right to submit submissions to the International Labour Office if the ILO Member State has not properly ensured the implementation of the Convention to which it is a party. There are other methods of monitoring the implementation of international conventions (Kopylev, 1980).

A special procedure for denunciation of conventions has been established. Any State may denounce the ratified Convention after the expiration of ten years from the date on which it enters into force in that State. If a State does not exercise its right of denunciation within one year after the end of the ten-year period, it shall remain bound by this Convention for a further period of ten years.

It should be noted that ILO law-making activities always focus on the issues of the legal validity of conventions. The main question is whether the convention adopted by the ILO is a multilateral international agreement that binds States before or regardless of its ratification, or whether it becomes binding only after its ratification and only for those States that have ratified it. Even during the establishment of the ILO, proposals were made for mandatory ratification of adopted conventions by ILO Member States (Lukashuk, 1966, p. 21). In 1930, in his book *The International Labour Organisation*, J. Sel argued that the ILO Convention was not an international treaty but an "international law enacted by an international legislature," that is, he recognized the conventions as supranational acts of direct action in respect of ILO Member States (Ametistov, 1982, p.49).

This issue is particularly important in connection with the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up on 18 June 1998. The Declaration states that all Members, even if they have not ratified the Conventions on Fundamental Rights, have an obligation arising from the very fact of membership in the Organisation to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. Thus, notwithstanding the consent of the Member State to be bound by the convention, it is obliged to comply with the provisions of the conventions concerning fundamental rights and principles in the field of labour. It should be noted here that this contradicts the Soviet theory of international law. For example, G.I. Tunkin argues that the harmonisation of the freedoms of States to recognise treaty provisions as provisions of international law consists of individual actions of States (signing a treaty, ratification, depositing instruments of ratification or ratification notification), without which a treaty adopted by an international organisation cannot become legally binding (Tunkin, 1979, p. 88).

The question arises regarding the legal nature of the Declaration under consideration. First, this type of document is not provided for in the ILO Constitution, which means that the ILO, in adopting the Declaration, went beyond its competence established by the Constitution. Second, in the practice of international law, declarations are usually resolutions of international organisations that are policy statements. Meanwhile, the Declaration under study establishes very specific obligations for States. Therefore, the Declaration on Fundamental Principles and Rights at Work should be referred to as the sources of so-called "soft law", which do not contain firm obligations of States to implement their provisions but give only a general statement of which State are obliged to comply (Lukashuk, 1996, p. 112).

The ILO's law-making process is characterised by the adoption of recommendations. The relevant procedure is largely identical to the procedure for adopting conventions. Recommendations are adopted on the same list of issues as the conventions, accompanying them, detailing their provisions, offering a wider range of rights and a higher level of guarantees. However, the question of the legal nature of these acts is still unresolved. The problem is whether to consider ILO recommendations as a source of international labour law. There is a wide variety of opinions: from complete non-recognition of recommendations as a source of international law (it is believed that in most cases recommendations are acts of international law application by international organisations)

(Lukashuk, 1966, p. 124) to recognition of recommendations as such. The most reasonable, in our opinion, is the perspective of S.O. Ivanov, who considers the recommendations as ancillary sources of international law, which, although do not establish the will of States in the agreement, but help in law application (Ivanov, 1964, p. 107; Bilous, 2017). The recommendations are to serve as a standard, model provision in the preparation of national provisions in the field of labour regulation, without being mandatory for the State (Kiselev, 1995, p. 85; Pohrebniak, 2015).

4. Conclusions

To sum up, it should be stated that the recommendations of the International Labour Organisation differ from other recommendatory acts. In particular, in accordance with para. 6 of Art. 19 of the Constitution of the International Labour Organisation, each of undertakes that it will, within a period of one year at the moment of its adoption at the General Conference of the International Labour Organisation, bring the Recommendation before the competent authority or authorities. A Member of the International Labour Organisation shall inform the Director-General of the measures taken in accordance with this obligation. At the request of the Governing Body of the International Labour Organisation, the State is obliged to submit reports on the position of the law and practice in their country in regard to the matters of recommendation. Therefore, without binding the Member States of the International Labour Organisation to comply with the Labour standards contained in these recommendations, they do, however, provide for actions that contribute to the impact of these rules on national law.

Thus, the legal specificities of conventions and recommendations of the International Labour Organisation are reflected in the procedure for implementation of their provisions in domestic Labour law. However, the problem of action and application of sources of international labour law in the legal system of Ukraine is only part of another larger problem – the ratio of international and domestic law, which requires further substantive research in this area.

References:

Amethyst, E.M. (1982). *Mezhdunarodnoe pravo i trud: faktory implementatcii mezhdunarodnykh norm o trude [International Law and Labour: Factors in the Implementation of International Labour Standards].* Moscow: Mezhdunar. otnosheniia (in Russian).

Bilous, O.Yu. (2017). Konventsii Mizhnarodnoi orhanisatsii pratsi yak dzherela trudovoho prava Ukrainy [Convention of the International Labour Organisation as a source of Labour law of Ukraine]. *Candidate's thesis.* Odesa (in Ukrainian).

Ivanov, S.A. (1964). *Problemy mezhdunarodnogo regulirovaniia truda [Problems of international Labour regulation].* Moscow: Nauka (in Russian).

Jenks, C.W. (1958). *The Common Law of Mankind*. London (in English).

Kiselev, I.Ia. (1995). *Mezhdunarodno-pravovoe regulirovanie truda (mezhdunarodnye standarty truda) [International legal regulation of Labour (international Labour standards)].* Moscow: Moscow. univer (in Russian).

Kolosov, Iu.M. (Eds.). (2016). *Mezhdunarodnoe pravo v sovremennom mire [International law in the modern world].* Moscow: Mezhdunar. otnosheniia (in Russian).

Kopylev, B.C. (1980). Problems of control over the application of international Labour standards *[Problems of control over the application of international Labour standards].* Moscow (in Russian).

Lukashuk, I.I. (1966). *Istochniki mezhdunarodnogo prava [Sources of international law].* Kiev (in Russian).

Lukashuk, I.I. (1996). *Mezhdunarodnoe pravo [International law].* Moscow: BEK (in Russian).

Pohrebniak, O.Iu. (2015). Recommendations MOP yak dzherela trudovoho prava [ILO recommendations as a source of Labour law]. *Pravovi ta instytutsiini mekhanizmy zabezpechennia staloho rozvytku Ukrainy – Legal and institutional mechanisms for ensuring sustainable development of Ukraine,* 603–605 (in Ukrainian).

Tunkin, G.I. (1979). *Teoriia mezhdunarodnogo prava [International law theory].* Moscow: Iurid. lit. (in Russian).

Сергій Лукаш,
доктор юридичних наук, професор, директор, Сумська філія Харківського національного університету внутрішніх справ, вулиця Миру, 24, Суми, Україна, індекс 40000, Serhii_Lukash@ukr.net
ORCID: *orcid.org/0000-0003-2957-8052*

МІСЦЕ ТА ЗНАЧЕННЯ НОРМАТИВНИХ ДОКУМЕНТІВ МОП У СИСТЕМІ ДЖЕРЕЛ ТРУДОВОГО ПРАВА УКРАЇНИ

Анотація. ***Мета.*** Мета статті – встановити місце та значення нормативних документів Міжнародної організації праці в системі джерел трудового права України. ***Результати.***

У статті, спираючись на аналіз наукових поглядів вчених та норм чинного міжнародного законодавства, обґрунтована важливість та необхідність здійснення нормотворчої діяльності Міжнародною організацією праці. Констатовано, що проблема дії й застосування джерел міжнародного трудового права в правовій системі України є лише частиною іншої більшої проблеми – співвідношення міжнародного й внутрішньодержавного права. Наголошено, що встановлено особливий порядок денонсації конвенцій. Будь-яка держава може денонсувати ратифіковану конвенцію після закінчення 10 років з моменту набуття нею законної сили в цій держави. Якщо держава протягом року після закінчення десятилітнього періоду не скористається своїм правом на денонсацію, то вона залишається пов'язаною цією конвенцією ще на 10 років. ***Висновки.*** Зроблено висновок, що рекомендації Міжнародної організації праці відрізняються від інших актів рекомендаційного характеру. Зокрема, відповідно до п. 6 ст. 19 Статуту Міжнародної організації праці кожна держава зобов'язана представити рекомендацію компетентним державним органам протягом року з моменту її прийняття на Генеральній конференції Міжнародної організації праці. Держава-член Міжнародної організації праці зобов'язана інформувати Генерального директора про заходи, вжиті відповідно до зазначеного зобов'язання. Держава зобов'язана за запитом Адміністративної ради Міжнародної організації праці представляти доповіді про стан свого права й практики стосовно питань рекомендації. Таким чином, не накладаючи на держави-члени Міжнародної організації праці обов'язку щодо виконання норм про працю, що містяться в цих рекомендаціях, вони, проте, передбачають вчинення дій, що сприяють впливу цих норм на національне право. Юридичні особливості конвенцій і рекомендацій Міжнародної організації праці відображаються на порядку реалізації їхніх положень у вітчизняному трудовому праві. Однак проблема дії й застосування джерел міжнародного трудового права в правовій системі України є лише частиною іншої більшої проблеми – співвідношення міжнародного й внутрішньодержавного права, яка потребує проведення подальших змістовних досліджень у даному напрямку.

Ключові слова: міжнародний нормативно-правовий акт, конвенції, рекомендації, Міжнародна організація праці.

The article was submitted 15.02.2022
The article was revised 09.03.2022
The article was accepted 30.03.2022