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THEORETICAL AND METHODOLOGICAL APPROACHES TO DEFINING CONCEPTS OF THE LABOUR LAW SYSTEM

Abstract. Purpose. The purpose of the article is to generalise theoretical and methodological approaches to defining concepts of the labour law system. **Results.** The article, by relying on the literature review, reveals the essence, content and meaning of concepts in the system of labour law. It is argued that the system of labour law consists of a large number of elements, which are both specific (inherent in the labour law only) and general (typical for almost all branches of the system of national law of Ukraine). The author proved that the main purpose of the structure of the labour law system is to ensure effective and efficient functioning of the regulatory-educational and protection mechanisms of the given branch of law. It is found that the constituent part of the concepts of the labour law system is sub-concepts, which also represent unity and commonality of a certain number of uniform legal provisions within a given concept. Sub-concepts, unlike concepts, do not possess the holistic subject-matter detachment and have no specific methods and principles of regulation. The labour collective, without any doubt, is the basis of activity of any enterprise, because the efficiency of activity of the whole organisation depends on its coordinated work. Collective labour law is the name of the block of legal provisions of the labour law, which regulates relations between the labour collective and the employer (or authorised body) of the enterprise, organisation, institution. **Conclusions.** Therefore, we consider it possible to define the structure of the labour law system as an internal structure of this system, which is determined by the order of placement and the nature of links between its structural elements, chains. The system of labour law consists of a large number of elements, which are both specific (inherent in the labour law only) and general (typical for almost all branches of the system of national law of Ukraine). In our opinion, the main purpose of the structure of the labour law system is to ensure effective and efficient functioning of the regulatory-educational and protection mechanisms of the given branch of law.

Key words: legal concept, labour law, functions, individual labour law, collective law.

1. Introduction

The fact that labour law is an important branch in the system of national law of Ukraine is uncontroversial. Its main role is to regulate the conduct of people in the process of their work by means of provisions. At the same time, they (provisions) should also protect the employee's legal rights and interests, provide an enabling environment for work, etc. Implementation of these tasks is impossible without the effective structure of the system of labour law of Ukraine. It should be noted that the most characteristic structural parts of the labour law system are concepts. Thus, their study is relevant and requires further consideration by both domestic and foreign scientists. In general, the structure of the labour law system is the internal organisation of the law branch, objectively determined, manifested in

unity, coordination and distribution of legal provisions by concepts and other branch phenomena, structural formations (Chanysheva, Bolotina, 1999, p. 35). Therefore, the structure of the labour law system is presented in the form of its construction, which is first of all the composition, set of components, parts of this legal entity. The literature review traditionally reveals that the concepts are an important element of the structure of the law system.

The labour law structures have been regarded by scientists such as A.M. Kolodii, H.I. Chanysheva, N.B. Bolotina, Y.Y. Ivchuk, O.V. Zaichuk, A.P. Zayets, V.S. Zhuravskyi, O.L. Kopylenko, A.M. Kolodii, V.V. Kopieichykov, S.L. Lysenkov, V.M. Syrykh, et al. However, the scientists have emphasised that the concepts are the main structural parts of the labour law system. At the same time, the majority of scientists have

quite a superficial approach to the definition of the range and content of these concepts.

Consequently, the purpose of the article is to generalise theoretical and methodological approaches to defining concepts of the labour law system.

2. Determination of the specificities of the concept of labour law.

According to S.S. Alekseev, the concept of law is a separate group of legal provisions that regulate social relations of a particular kind. As examples, the author underlined the concept of property rights in civil law, the concept of liability of officials in administrative law, the concept of election law and the provisions regulating the status of a deputy in the constitutional law. The author argued that the concepts can be branch-related and inter-branch (complex) (Alekseev, Arkhipov, Ignatenko, 2004, 305). As for labour law concepts, they cover a set of legal provisions, smaller than the branch, and differ from each other in the subject of regulation, i.e., the peculiarities of certain types of social relations or individual parties (elements) of a particular kind of public relations (Ivchuk, 2004, pp. 25-26). In Y.Y. Ivchuk's opinion, labour law concepts are objectively formed structural subdivisions, designed, within the subject-matter of the branch of law, to regulate with the necessary detail a separate kind of social-labour relations or a separate element (side) of complex single labour law relationship (Ivchuk, 2004, p. 68). The author argues that specificities of the labour law concepts include:

1. The nature and specificities of the concept of labour law can be get straight on the basis of the fact that it is a unity of legal provisions, which in turn is an element of the next structural unit - the subbranch of labour law. Labour law concepts are aimed at regulating a certain sector, part of labour and associated relations. Each concept of labour law is a relatively separate "block", "assembly" of labour law.

2. The following three features act as the legal criterion for defining a particular set of legal provisions in a specific concept of labour law: a) the legal unity of legal provisions. As an integral formation, the concept of labour law is characterised by the unity of content, which is expressed in general provisions, legal principles or a combination of legal notions used, unity of legal regime of regulated social-labour relations; b) the full regulatory mechanism for a certain combination of labour and associated relations; c) definition of the provisions forming the legal concept in chapters, sections, parts and other structural elements of legal regulations, which are intended to regulate labour and closely associated relations.

3. The features that identify the concept of labour law as an independent subdivision of the branch system are determined by the decision-making functions of a particular legal concept, its role in the integral, relatively completed regulating of social and labour relations. With regard to regulatory properties, each concept of labour law provides an independent regulatory effect on a certain area of labour and associated relations. This is the main characteristic that represents the unity of labour law provisions in its concept.

4. The concept of labour law is distinguished by a certain internal organisation of the regulatory material covered by it. "Outside," in relations with other subdivisions of the labour law branch, the legal concept is a system-integral, indivisible formation, a single legal unity. However, this integrity, indivisibility exists because certain legal provisions are connected not only with the homogeneity of the actual content, intellectual-volitional, legal unity, but also with certain internal organisation. In other words, the concept of labour law has its own structure. Its structure is characterised by: a) the existence of a set of "equal" regulatory provisions; b) certain legal differences in provisions. Therefore, they are linked in a single complex that comprehensively affect this sector of social and labour relations; c) combination of all provisions with the stable legal relations, which are expressed in the general provisions, and most importantly in the legal structure. The last of these features is decisive.

5. Labour law concepts receive an external, special consolidation in the system of labour legislation. Sometimes the legal concept is fixed in a separate legal regulation (Ivchuk, 2003, p. 84).

To sum up, the concepts are the main structural elements of the labour law system, because they are, first, more precise, specific and uniform in their subject matter of regulation, and second, they are logically completed and relatively independent subsystems of the labour law system, that allows them to make certain structural and substantive changes without affecting other components of the system of the legal branch under investigation.

The important point of grouping into concepts is that:

- uniform provisions are grouped according to the subject-matter and methods of regulatory mechanism, which contributes to a clearer definition of the main areas of the regulatory impact of labour law;
- more substantive and operative regulation of labour relations is provided;
- the internal integrity and autonomy of the labour law system is ensured.

The constituent part of the concepts of the labour law system is sub-concepts, which

also represent unity and commonality of a certain number of uniform legal provisions within a given concept. Sub-concepts, unlike concepts, do not possess the intended subject separation, and have no specific regulatory methods and principles.

Moreover, according to N.B. Bolotina, the structure of the system of labour law of Ukraine, except the above-mentioned one, has the form of three parts, in particular: general provisions, individual labour law, collective labour law, since labour law provisions regulating collective labour relations are united in a relatively separate part of labour law – collective labour law (Bolotina, 2003, p. 587). The general provisions contain the provisions defining the subject-matter, scope, functions of labour law, principles of legal regulatory framework, unity and differentiation, subjects of labour law, their legal status (Bolotina, Chanysheva, 2000).

3. Definition of labour law functions

Traditionally, the legal literature distinguishes the following basic functions of labour law:

– Regulatory. The regulatory function of labour law is aimed at the regulation of social relations in the field of labour and at ensuring their purposeful and most expedient development. This function is fulfilled by defining specific trends of people's conduct, realisation of their labour rights and duties (Mykhailov, 2007). The regulatory function of labour law is the main one, because it regulates the legal conduct of the parties of labour legal relations. Due to the positive influence on the conduct of participants of the mentioned legal relations, this function is called to promote the increase of labour productivity, production efficiency, strengthening of labour discipline and improvement of working conditions and living conditions of workers;

– Social. The mentioned function of labour law is reflected in the provisions concerning employment, freedom of labour and other labour constitutional rights, in the provisions concerning safe working conditions, labour protection, limitation of working time, measures of labour, payment and compensation, etc. (Kiselev, 1996, p. 123). A striking manifestation of the social function is a set of legal measures for pregnant women and women who have children of a certain age. In addition to the prohibition of their dismissal on the initiative of the employer, there is a duty to employ them in cases of complete liquidation of the enterprise, institutions, organisations, and in cases of their dismissal after the termination of the fixed-term employment contract. During the period of employment, average wages are kept.

– Protective. The existence of this function is conditioned by the need to protect public relations that form the subject-matter of the given branch of law. In protecting these relations, labour law prohibits actions that interfere with their normal appearance and functioning, providing for them legal liability. We advocate the perspective of P.D. Pylypenko that the essence of the protective function of labour law is a generic category. The protective function of labour law is that labour law creates equal opportunities for citizens to realise their ability to work, establishing uniform provisions on working conditions at enterprises of different forms of ownership. By limiting the degree of operation and fixing the minimum level of guarantees of wages, rest, social security, etc., the labour law guarantees the person the opportunity to feel themselves as a full-fledged citizen of the State (Pylypenko, 1999, p. 76). Therefore, the protective function is important in terms of protection of the rights and legitimate interests of both hired workers and employers, ensuring the proper level of legality of occurrence, leakage, change and/or termination of their relations with respect to the use of hired labour;

– Production. The production function of labour law is a function of protection of interests of owners-entrepreneurs, i.e. employers. Labour law, despite its social nature, cannot but protect the interests of the second party in labour relations, because otherwise it will either enter into conflict with other laws or the employers themselves will have to ignore labour legislation and seek other legal ways to use labour outside of those laws, provided by this legislation. The production function of labour law is also aimed at protecting property rights of employers, their interests as property owners (Pylypenko, 2007). Thus, the mentioned function of labour law promotes the protection of rights of the parties to labour relations directly in the process of production. It contributes to normal and continuous work of the entire organisation.

– Educational. The status of a person in the workplace is significantly determined by his/her mental abilities, though physical abilities are an important component of the labour force. It is due to thinking, consciousness, mental abilities that a person plays an active role in social production (Prokopenko, 2000). This function is designed to ensure that employees are disciplined when they perform their functions. It should be noted that this function is not unique to labour law, and it is characteristic for almost all branches of law in the system of national law of Ukraine.

The next part in the structure of the labour law system, according to the above-men-

tioned position of N.B. Bolotina, is an individual labour law. It is based on individual legal labour relations, which in turn are voluntary, free, bilateral, continuous, regulated by labour law relations, which arise between individual employee and employer as a result of the right to work and conclusion of the employment contract (Bolotina, 2003, p. 3). Individual labour law includes, for example, individual rights of employed workers to pay wages and to implement labour protection standards and employer rights to perform work and careful treatment of materials. It includes such legal concepts as: a labour contract; labour standards; labour remuneration; working hours; rest time; health care of employees at production; labour discipline; evaluation of labour results and certification of employees; vocational training and advanced training of employees; disciplinary responsibility of employees; material responsibility of the parties to the labour contract (Bolotina, Chanysheva, 2000). Therefore, individual labour law consists of such structural groups, which are aimed at regulating relations of the individual employee with the employer. However, it should be noted that in modern conditions individual labour legal relations can-

not exist without collective agreements, as for all employers the provision of collective agreements is obligatory.

The labour collective, without any doubt, is the basis of activity of any enterprise, because the efficiency of activity of the entire organisation depends on its coordinated work. Collective labour law designates the block of labour law provisions, which regulates relations between the labour collective and the employer (or authorised body) of the enterprise, organisation, institution.

4. Conclusions

Thus, we consider it possible to define the structure of the labour law system as an internal structure of this system, which is determined by the order of placement and the nature of links between its structural elements, chains. The system of labour law consists of a large number of elements, which are both specific (specific to the labour law only) and general (typical for almost all branches of the system of national law of Ukraine). In our opinion, the main purpose of the structure of the labour law system is to ensure effective and efficient functioning of the regulatory-educational and protection mechanisms of the given branch of law.

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ТЕОРЕТИКО-МЕТОДОЛОГІЧНІ ПІДХОДИ ДО ВИЗНАЧЕННЯ ІНСТИТУТІВ СИСТЕМИ ТРУДОВОГО ПРАВА

Анотація. Мета. Метою статті є узагальнення теоретико-методологічних підходів до визначення інститутів системи трудового права. **Результати.** У статті, спираючись на аналіз наукових поглядів вчених, розкрито сутність, зміст та значення інститутів в системі трудового права. Аргументовано, що система трудового права складається з великої кількості елементів, які є як специфічними (властивими лише для галузі трудового права), так і загальними (характерні майже для всіх галузей системи національного права України). Доведено, що головною метою структури системи трудового права є забезпечення ефективного та дієвого функціонування регулятивно-виховного та охоронного механізмів даної правової галузі. З'ясовано, що складовою частиною інститутів системи трудового права є підінститути, які також являють собою єдність та спільність певної кількості однорідних правових норм у межах того чи іншого інституту. Підінститути, на відміну від інститутів, не володіють цільною предметною відособленістю і не мають специфічних прийомів і принципів регулювання. Трудовий колектив, беззаперечно, є основою діяльності будь-якого підприємства, адже від його злагодженої роботи залежить ефективність діяльності всієї організації. Колективне трудове право – найменування блоку правових норм галузі трудового права, що регулює взаємовідносини між трудовим колективом та роботодавцем (або уповноваженим ним органом) підприємства, організації, установи. **Висновки.** Таким чином, вважаємо можливим визначити структуру системи трудового права як внутрішню будову даної системи, що визначається порядком розміщення та характером зв'язків між її структурними елементами, ланками. Система трудового права складається з великої кількості елементів, які є як специфічними (властивими лише для галузі трудового права), так і загальними (характерні майже для всіх галузей системи національного права України). Головною метою структури системи трудового права, на нашу думку, є забезпечення ефективного та дієвого функціонування регулятивно-виховного та охоронного механізмів даної галузі права.

Ключові слова: правовий інститут, трудове право, функції, індивідуальне трудове право, колективне право.

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