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THE CURRENT STATUS OF LABOUR LAW REGULATORY MECHANISM FOR COMPENSATION FOR DAMAGES IN UKRAINE

Abstract. *Purpose*. The purpose of the article is to assess the current status of labour law regulatory framework for compensation for damages in Ukraine. ***Results*.** The article analyses the provisions of the current legislation aimed at regulating social relations in the field of compensation for damages. As an element of the regulatory mechanism for compensation for damage, bylaws are aimed at specifying the procedure for determining and covering damage. However, it should be noted that currently a significant gap exists in this area, as most of these documents are not in force and no new ones have been adopted. The provisions of bylaws derive from laws. This is universally recognised and no one doubts it. That is why all bylaws, without exception, have less legal force than any law and cannot contradict it, nor can they amend or repeal the provisions of laws. Otherwise, the by-laws shall be deemed invalid from the moment of their adoption and shall be cancelled. The existence of bylaws in the legal system is due to the multi-level structure of social relations themselves, which require to be regulated both by laws and bylaws, as well as need prompt, competent and professional resolution of issues in various spheres of society. The study of legal provisions as one of the key elements of the regulatory mechanism for compensation for damages in labour law enables to find out the rules and the legal regime, under which the said compensation should be made, to identify gaps, duplications, ambiguities and other shortcomings in these rules that negatively affect the ability of parties to labour relations to obtain appropriate compensation. ***Conclusions*.** The author concludes that the current labour regulatory mechanism for compensation for damages in Ukraine is not holistic and complete and requires significant improvement in both formal (systematisation) and substantive terms. Streamlining the legislation under study, eliminating gaps and other shortcomings in its content is a prerequisite for ensuring high-quality regulatory mechanism for compensation for damages.

Key words: regulatory mechanism, labour law, compensation, damage, labour legislation.

1. Introduction

At present, numerous gaps exist in the current Ukrainian labour legislation in terms of defining key conceptual and terminological constructs (such as damage, material and moral damage, extreme necessity, etc.), a clear and unambiguous understanding of which is very important for the correct resolution of issues related to compensation for damages in labour law. However, a much more important issue is to find out the current state of the regulatory mechanism for compensation for damages under the labour law of Ukraine in order to establish its quality and efficiency, and to identify any gaps and other shortcomings.

The issue of the regulatory mechanism for compensation for damages in Ukrainian labour law has been repeatedly under the focus in scientific research by a number of scholars. For example, these are: M.I. Baru, V.V. Haievyi, S.L. Ivanov, S.S. Karynskyi, R.Z. Lyvshyshch, N.M. Khutorian, O.M. Korotka, T.Ye. Krysan, O.Yu. Kostiuchenko, Ye.Yu. Podorodnii, I.A. Rymar, S.V. Selezen, P.R. Stavysskyi, and many others. However, despite considerable scientific achievements, there are still many theoretical and practical problems in the relevant field.

As a result, the purpose of the article is to assess the current status of labour law regulatory framework for compensation for damages in Ukraine.

2. Fundamental principles of the regulatory mechanism

The regulatory mechanism is a complex multidimensional phenomenon, which includes

a number of constituent elements (legal means), such as: the rule of law; a legal act; a legal fact; the implementation of law; legal consciousness, awareness of legal provisions by actors; legal culture; lawful behaviour; unlawful behaviour; legal responsibility; measure of state coercion applied to an offender (Jakutova, 2004, pp.24–28).

In the present study, we are particularly interested in elements of the regulatory mechanism such as provisions of law and regulations. The legal norms are the primary integral structural element of the regulatory mechanism. According to M.V. Tsvik and other legal scholars, a legal norm is a primary, individual smallest structural element of law, a rule of conduct recognised and protected by the State. A legal norm directly regulates, gives legal meaning to social relations and finds its external expression in a legal provision (Tsvik, Tkachenko, Bohachova, 2002, p. 258). Ye.V. Bilozorov, V.P. Vlasenko and O.B. Horova argue that the legal state regulates social relations primarily through the provisions of law, since extra-legal regulators of social behaviour have never been sufficient to regulate and reconcile human interests, to keep a person within the requirements established by society. That is why legal provisions play is of extreme importance in the system of social provisions. From their point of view, a provision of law is a formally defined rule of a general nature established or authorised by the state or other authorised lawmaker with the aim of regulating or protecting public relations and ensured by the possibility of coercion (Bilozorov, Vlasenko, Horova, Zavalnyi, Zaiats, 2017, p. 132). Ye.Yu. Podorozhnii believes that a legal norm is an officially approved, formalised (standardised) rule of social behaviour, which, from the perspective of the state, is the most appropriate and useful in the current conditions of social development, and therefore this rule is comprehensively enforced by the state, including, if necessary, by using coercion (Podorozhnii, 2015).

Thus, the study of legal norms as one of the key elements of the regulatory mechanism for compensation for damages in labour law enables to find out the rules and the legal regime, under which the said compensation should be made, to identify gaps, duplications, ambiguities and other shortcomings in these rules that negatively affect the ability of parties to labour relations to obtain appropriate compensation.

The study of specific legal norms is inextricably linked to the study of the relevant system of legal regulations that are the sources of the former (i.e. legal provisions). A legal regulation is an official written document adopted by an authorised state body that establishes, amends, terminates or specifies a certain legal norm. This document reflects the will of the authorised actor of law, is binding, has a documentary form of consolidation, and is enforced by the state, including by coercive means (Shemshuchenko, 2003, p. 192). At the official level, the concept of a legal regulation is enshrined in the Code of Administrative Procedure of Ukraine, where it is defined as a management act (decision) of a public authority that establishes, changes, terminates (cancels) general rules regulating similar relations and is intended for long-term and repeated use (Code of Administrative Procedure of Ukraine, 2005). Therefore, the study of the system and content of legal regulations containing provisions on compensation for damages in labour law enables to establish the quality of legislative regulatory mechanism for the issues of compensation under study at different levels of the hierarchy of legislation in force in our country.

3. Legal force of legal regulations

When studying the state of the regulatory mechanism for compensation for damages by the labour law provisions of Ukraine, we will rely on such a criterion as the legal force of legal regulations, i.e., the property of legal regulations which determines their mutual hierarchical subordination and the ratio of binding force between them in the system of legislation (Draft Law of Ukraine On Regulatory Acts, 2008).

In terms of legal force, the Constitution of Ukraine is the pinnacle of Ukrainian legislation. Moreover, it (the Constitution) is also the basis of national legislation, since it enshrines the fundamental, most important and general values and principles on which social life in our country is based. These basic principles of the organisation and functioning of public life in Ukraine include compensation for damages, the right to which is enshrined in several articles of the Basic Law of the State, in particular, Articles 32, 41, 50, 56, 62, 66, 152. However, the provisions of these articles do not directly relate to labour and labour relations, however, the Constitution stipulates that an individual, his life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value. Human rights and freedoms, and guarantees thereof shall determine the essence and course of activities of the State. The State shall be responsible to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty of the State (Constitution of Ukraine, 1996). The analysis of constitutional provisions clearly reveals that the State guarantees, protects and defends a number of other civil, economic and social rights, which include the right to property, the right to work, and the right to

protect one's rights and legitimate interests, including compensation for damage. The Constitution explicitly states that everyone has the right to protect their rights and freedoms from violations and unlawful encroachments by any means not prohibited by law (Constitution of Ukraine, 1996).

Although the Constitution of Ukraine does not explicitly provide for compensation for damages in labour relations, it follows from the provisions of the Basic Law that each participant in these relations has the right to protect his or her rights, freedoms and legitimate interests that constitute the content of labour relations. For example, this includes the right to restore justice in the event of a breach of it by a party (parties) to the employment relationship and to compensation for damage caused as a result of such unlawful actions (inaction). In addition, the parties to labour relations may exercise their right to compensation for the said damage in both jurisdictional and non-jurisdictional forms.

International legal instruments are of importance in the system of guaranteeing the right to compensation for damage. International legal acts generally do not explicitly establish the right to compensation for damage to employees and/or employers, but their provisions do provide for that a State that has acceded to the relevant international treaties guarantees the right to work and to favourable and just conditions for its realisation. For example, Article 23 of the Universal Declaration of Human Rights (1948) states that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests (Universal declaration of human rights: international document, 1948). In accordance with the International Covenant on Economic, Social and Cultural Rights (1966), the States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual. The States Parties to the Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: a) Remuneration which provides all workers, as a minimum, with:(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; b) Safe and healthy working conditions; c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays (International Covenant on Economic, Social and Cultural Rights 1966). A significant number of important labour standards, in particular those related to labour safety, are provided for in the European Social Charter (European Social Charter (revised), 1996). Obviously, the obligations of state parties under international treaties to ensure an appropriate level of fairness and safety in the field of labour cannot be considered properly fulfilled if the country does not have a mechanism for compensation for damage within the relevant labour relations. And the provisions of a number of these treaties (declarations, covenants, charters, etc.) are aimed at drawing the attention of States to the relevant issues and establishing key principles for their resolution.

4. Systems of legal regulations of Ukraine

Next, in the hierarchy of the system of legal regulations of Ukraine, laws are distinguished by their legal force in legal theory. A law is a legal regulation of a representative supreme body of state power (or civil society/directly of the people) that regulates the most important issues of public life, establishes the rights and obligations of citizens, has supreme legal force and is adopted in compliance with a special legislative procedure (Skakun, 2011, p. 316). The law is the main means of external public fixation and legal consolidation, enabling to clearly define its specific content and further protection (Surmin, Bakumenko, Mykhnenko, 2010, pp. 244-245). Among the laws that regulate labour relations, the most important sectoral codified legal regulation is the Labour

Code of Ukraine. The state of regulatory mechanism for compensation issues in this Code is far from ideal and is characterised by a number of problems:

1) only the mechanism for compensation for damage caused by unlawful acts (omissions) of employees has found more or less meaningful consolidation in the Labour Code of Ukraine. For example, the provisions on this compensation are enshrined in Chapter IX of the Code, devoted to the material liability of employees, which deals with the procedure for determining the amount of damage and its compensation, as well as guarantees of the rights of employees in covering damage. However, even here there are shortcomings, for example, the lack of definitions of important concepts such as "extreme necessity", "direct actual damage", "industrial and economic risk", and "employee fault";

2) issues related to compensation by the employer in favour of the employee are rather superficially regulated, as well as the provisions on this type of compensation are not systematised – they are scattered in a number of articles (Articles 22, 117, 173, 235-237-1, etc.) of different chapters of the Code, unlike compensation provided by employees;

3) the criteria and procedure for determining non-pecuniary damage are absent;

4) provisions that would allow employees to protect their right to compensation out of court (e.g., self-defence, mediation, etc.) are absent.

In addition to the Labour Code of Ukraine, to a certain extent, the issues of compensation for damages in labour law are regulated by other laws, such as "On labour protection" (Law of Ukraine on labour protection, 1992); "Fundamentals of Ukrainian legislation on compulsory state social insurance" (Fundamentals of the legislation of Ukraine on compulsory state social insurance, 1998); "On Compulsory State Social Insurance (Law of Ukraine On Compulsory state social insurance, 1999); "On determining the amount of damages caused to an enterprise, institution or organisation by theft, destruction (damage), shortage or loss of precious metals, precious stones and currency valuables" (The Law of Ukraine On Determining the Amount of Damages Caused to Enterprises, Institutions, Organizations by Theft, Destruction (damage), Lack or Loss of Precious Metals, Precious Stones, and Currency Valuables, 1995), etc.

The most extensive level is the bylaw level. A bylaw is a document issued by a competent authority or official on the basis of the law, in accordance with it, to specify and implement legislative requirements and contains legal provisions. It is important to understand that the subordinate nature of such regulations does not mean that they are less legally binding. They have the necessary legal force, but it does not have the universality and supremacy inherent in laws. The legal force depends on the status of state bodies, the nature and purpose of these regulations (Vediernikov and Papirna, 2008). The provisions of bylaws derive from laws. This is universally recognised and no one doubts it. That is why all bylaws, without exception, have less legal force than any law and cannot contradict it, nor can they amend or repeal the provisions of laws. Otherwise, the by-laws shall be deemed invalid from the moment of their adoption and shall be cancelled. The existence of bylaws in the legal system is due to the multi-level structure of social relations themselves, which require to be regulated both by laws and bylaws, as well as need prompt, competent and professional resolution of issues in various spheres of society (Kyrychenko, Kurakin, 2010).

As an element of the regulatory mechanism for compensation for damage, bylaws are aimed at detailing the procedure for determining and covering damage. However, it should be noted that currently a significant gap exists in this area, as most of these documents are not in force and no new ones have been adopted.

Finally, the last level of the regulatory mechanism for compensation for damage in labour law is contractual, which is also generally by-law, but its specificity is that the provisions established therein are adopted not in a centralised manner, but by contractual agreement between the parties to the labour relations. The current Labour Code of Ukraine provides for fairly broad opportunities for the parties to labour relations to regulate their rights and obligations, in particular, separate written agreements define full financial liability of the employee and collective (team) financial liability. However, we are convinced that the possibilities of the contractual form of compensation settlement are not being used to the fullest extent today. In particular, we believe that a contract can and should be used as a non-jurisdictional form of protection of employees' right to compensation for damages.

5. Conclusions

To sum up, the current labour regulatory mechanism for compensation for damages in Ukraine is not holistic and complete and requires significant improvement in both formal (systematisation) and substantive terms. Streamlining the legislation under study, eliminating gaps and other shortcomings in its content is a prerequisite for ensuring high-quality regulatory mechanism for compensation for damages.

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СУЧАСНИЙ СТАН ПРАВОВОГО РЕГУЛЮВАННЯ ВІДШКОДУВАННЯ ШКОДИ НОРМАМИ ТРУДОВОГО ПРАВА УКРАЇНИ

Анотація. ***Мета.*** Мета статті – надати оцінку сучасному стану правового регулювання відшкодування шкоди нормами трудового права України. ***Результати.*** У статті здійснено аналіз норм чинного законодавства, положення якого спрямовані на регулювання суспільних відносин у сфері відшкодування шкоди. Як елемент механізму правового регулювання відшкодування шкоди підзаконні нормативно-правові акти спрямовані на деталізацію порядку визначення та покриття шкоди. Однак слід констатувати, що на сьогодні тут є суттєві прогалини, оскільки більшість із таких документів натепер не чинні, а нові не прийняті. Приписи підзаконних актів є похідними від законів. Це є загальновизнаним і ні в кого не викликає будь-яких сумнівів. І тому всі без винятку підзаконні акти мають меншу юридичну силу, ніж будь-який закон, і не можуть протирічити йому, а також не можуть змінювати або скасовувати норми законів. В іншому разі підзаконні акти визнаються недійсними з моменту їх прийняття і підлягають скасуванню. Існування підзаконних нормативно-правових актів у правовій системі зумовлено багаторівневою структурою самих суспільних відносин, які потребують як законодавчого, так і підзаконного нормативного регулювання, а також необхідністю оперативного, компетентного і професійного вирішення питань у різних сферах життєдіяльності суспільства. Вивчення правових норм як одного із ключових елементів механізму правового регулювання відшкодування шкоди у трудовому праві дозволяє з'ясувати ті правила, той юридичний режим, за якими має відбуватися зазначене відшкодування, виявити наявні у цих правилах прогалини, дублювання, нечіткості та інші недоліки, що негативним чином позначаються на можливостях учасників трудових відносин щодо отримання відповідного відшкодування шкоди. ***Висновки.*** Зроблено висновок, що наявне на сьогодні трудо-правове регулювання відшкодування шкоди в Україні не має цілісного та завершеного вигляду і потребує суттєвого доопрацювання як у формальному (проведення систематизації), так і змістовому сенсі. Упорядкування досліджуваного законодавства, усунення у його змісті прогалин та інших недоліків є необхідною умовою забезпечення якісного правового регулювання відшкодування шкоди.

Ключові слова: правове регулювання, трудове право, відшкодування, шкода, трудове законодавство.

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