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CLASSIFICATION OF PRINCIPLES OF COMPENSATION FOR DAMAGES IN LABOUR LAW OF UKRAINE

Abstract. Purpose. The purpose of the article is to reveal the essence and content and classify the principles of compensation for damages in labour law of Ukraine. **Results.** It is underlined that the concept of compensation for damages is one of those elements of the regulatory mechanism for relations in the field of hired labour that embodies requirements: on equality and mutual liability of the parties to labour relations; on ensuring safe working conditions; on the right of the parties to protect and restore their labour and closely related rights and legitimate interests. It is determined that the principle of presumption of innocence of an employee, according to which the employer is obliged to prove that damage caused is: first, the result of the employee's fault; second, not from the category of normal production and business risks; third, not caused by the employee as a result of his or her state of emergency. It is revealed that the sectoral principles of labour law include a fairly broad group of fundamental requirements, such as: the principle of voluntariness and freedom in labour; the principle of the right to work; the principle of equality; the principle of contractual nature of labour; the principle of certainty of labour function; the principle of stability of labour relations; the principle of material interest in labour results; the principle of labour safety; the principle of participation of labour collectives and trade unions in resolving issues related to setting working conditions and monitoring compliance with labour legislation; the principle of freedom of association of employees to exercise and protect their rights and freedoms through free association in trade unions, cooperatives, youth organisations, various societies, unions, etc.; the principle of the right to rest; the principle of financial support for employees in case of disability, illness and maternity. **Conclusions.** It is emphasised that special principles are inherent mainly in the concept of compensation for damages. It should be noted that they are not specific to compensation for damages in labour law, i.e., the scope of these principles is not limited to the relations of compensation for damages within labour law, but these are the principles, in our opinion, most fully and meaningfully reflect those scientifically based laws that express the value of the concept of compensation for damage as legal remedies for protecting and restoring legal justice in the field of labour.

Key words: principles, principles of law, compensation for damage, labour law of Ukraine.

1. Introduction

Compensation for damages in Ukrainian labour law is a complex activity by its nature and content, which is based on a system of starting points, basic ideas, compliance with which is mandatory for all participants in the relevant legal relations. It should be noted that principles are not just the most general provisions that form the basis of law but are the regularities of social life that have been formed as a result of its objective development, have been identified and scientifically substantiated by man as the most useful and appropriate for application in the existing legal space. Therefore, the special significance of the principles of law

is in the fact that they express in a concentrated form the key, most general and universal regularities that constitute the ideological basis of both law in general and its individual elements (branches, institutions, provisions). Due to their generality, universality, relative immutability and imperativeness, they provide a corresponding unified focus of legal life in the state.

The above fully applies to the principles of compensation for damages in the labour law of Ukraine, which are the most general and universal ideas, starting points, indisputable provisions underlying the organisation and functioning of the legal mechanism of compensation for damages. The principles are intended to provide

the ideological basis for this mechanism, its general trend and key priorities.

A number of theoretical issues related to compensation for damages in the labour law of Ukraine have been considered in their scientific works by: E.V. Babaenko, V.V. Haievyi, T.Ye. Krysan, O.Yu. Kostiuchenko, I.V. Lahutina, Ya.S. Protopopova, I.A. Rymar, S.V. Selezhen, O.P. Soroka, and many others. However, despite the considerable number of scientific achievements, the issue of the principles of compensation for damages in Ukrainian labour law is not sufficiently developed in the legal literature.

Consequently, the purpose of the article is to reveal the essence and content, and to classify the principles of compensation for damages in labour law of Ukraine.

2. Classification of principles in law

The legal doctrinal, academic, and periodical literature contains many research perspectives on the classification of principles of law in general and of individual legal phenomena. For example, the principles operating in law can be classified on the following grounds: a) by the form of regulatory expression (i.e., by the nature of the regulatory source in which they are enshrined); b) by the scope (in one or several branches, law in general); c) by the content; d) by the sector of social relations covered by the principles and the nature of social regularities reflected by them. According to the form of regulatory expression, the principles can be divided into those enshrined in international and domestic declarations, constitutions and current legislation. By scope, there are general, cross-sectoral, sectoral principles and principles of legal institutions. By content, there are general social (economic, political, etc.) and special legal principles. According to the sector of social relations to which the principles apply and the nature of social regularities reflected by them, science distinguishes the following principles: 1) universal; 2) general principles of law; 3) inter-sectoral; 4) sectoral; 5) ones of individual legal institutions (Tsvik, Petryshyn, Avramenko, 2011, pp. 198-199). Furthermore, a number of scientific proposals and approaches to the classification of principles in the field of labour law exist. However, as a rule, they are divided into: general legal, inherent in all branches of law; inter-sectoral, reflecting the common features of several branches of law; sectoral, characterising the specifics of a particular branch; intra-sectoral, relating to individual institutions (Bolotina, 2006, pp. 93-96). However, practically all legal scholars, in their views on principles in the field of law, note that other classifications, related to the study of specific principles inherent in certain legal phenomena, structural communities,

are possible, such as universal (civilisational), typological, historical, etc. (Tsvik, Petryshyn, Avramenko, 2011, p. 199). With regards to the principles of compensation for damages in labour law, researchers mostly ignore this topic, i.e. they certainly consider the principles in one way or another, since the latter permeate the entire legal frame, but do not focus on their scope and content.

3. Key principles of compensation for damages in Ukrainian labour law

Therefore, we propose our vision of the basic principles of the compensation under study, as follows general legal principles and sectoral principles.

General legal principles. This group of principles includes the most general and comprehensive initial imperative requirements that apply to every legal phenomenon, any process of legal significance in the legal field. These principles are common to all branches and sub-branches of law, legal institutions and sub-institutions. They include fundamental provisions, such as:

- the rule of law,
- humanism,
- priority of human rights;
- legality
- equality of all before the law
- mutual responsibility of the state and the citizen, etc.

We will not dwell in detail on the content and role of each individual principle of this group, as these principles have been analysed and covered by a number of researchers. It should be noted, however, that the role of these principles is to define the fundamental values on which social life in the country is based, and to which both the life of an individual and the functioning of society and the state in general are subordinated. These principles provide for the key priorities with which all legal relations and other legally significant phenomena should be built and implemented. Therefore, the organisational and legal mechanism for compensation for damages in Ukrainian labour law should be designed and operate in such a way as to fully ensure the protection, defence and, if necessary, restoration of the values enshrined in general legal principles. Violation or substitution of such values is not allowed, in particular for reasons of expediency, rationality, usefulness, etc.

Sectoral principles. These are fundamental requirements that are inherent in a particular branch of law and relate mainly to social relations regulated by its means. Sectoral principles emphasise the particularities of a specific branch of law and, along with the subject matter and method, contribute to the individualisation of the branch as an independent

branch in the general system of law (Tsvik, Petryshyn, Avramenko, 2011, p. 204). According to Yu.P. Dmytrenko, the basic (sectoral) principles of labour law should be understood as the economic regularities of organisation of social production and distribution expressed in legal regulations in the form of basic guidelines, foundations of regulatory mechanism for labour relations which determine the general trend and most characteristic features of its content (Dmytrenko, 2009, p. 102). The scientist emphasises that legal ideas and trends can be considered as the basic principles of labour law only when they are aimed at regulating public labour relations and reflect the principles of the State's policy regulating conduct of participants to these legal relations. Moreover, each legal idea should be manifested in labour legislation so that it is implemented in specific legal provisions (Dmytrenko, 2009, p. 102).

Sectoral principles of labour law include a fairly broad group of fundamental requirements, such as: the principle of voluntariness and freedom in labour; the principle of the right to work; the principle of equality; the principle of contractual nature of labour; the principle of certainty of labour function; the principle of stability of labour relations; the principle of material interest in labour results; the principle of labour safety; the principle of participation of labour collectives and trade unions in resolving issues related to setting working conditions and monitoring compliance with labour legislation; the principle of freedom of association of employees to exercise and protect their rights and freedoms through free association in trade unions, cooperatives, youth organisations, various societies, unions, etc; the principle of the right to rest; the principle of financial support for employees in case of disability, illness and maternity (Bezzub, Mikhatulina, 2007, pp. 41-44).

It is of no importance to reveal the content of each of these sectoral principles, as well as the content of the above-mentioned general legal principles, since they (sectoral principles of labour law) have been repeatedly researched and explained in many scientific works. At the same time, we consider it necessary to note that the importance of this group of principles for regulating compensation for damages in labour law is the establishment of basic, inviolable requirements for the labour sphere regarding: the organisation and implementation of labour and closely related relations; guarantees, procedure for exercising and protecting the rights, freedoms and legitimate interests of participants in these relations. In addition, the concept of compensation for damages is one of those elements of the regulatory mechanism

for relations in the field of hired labour that embodies requirements: on equality and mutual liability of the parties to labour relations; on ensuring safe working conditions; on the right of the parties to protect and restore their labour and closely related rights and legitimate interests.

From the perspective of the topic under study, the most interesting are the special principles inherent mainly in the concept of compensation for damages. It should be noted that they are not specific to compensation for damages in labour law, i.e., the scope of these principles is not limited to the relations of compensation for damages within labour law, however, these principles, in our opinion, most fully and meaningfully reflect the scientifically based regularities that express the value of the concept of compensation for damage as legal remedies for protection and restoration of legal justice in the field of labour.

We argue that the special principles include:

- the principle of reality. The content of this principle is the requirement that compensation for damage should be based on actual circumstances, not on potential or possible (probable) situations. That is, compensation for damages is always a reaction to the actual negative consequences of the actions or inaction of a party (parties) to the labour relationship that have led to certain negative consequences;
- the principle of causation. According to this principle, a party shall be liable for damages if the negative consequences that caused the damage were caused by the actions (inaction) of that party;
- the principle of adequacy and sufficiency. These fundamental provisions express the requirements that the nature, amount and procedure of compensation, on the one hand, correspond to the extent of the damage caused and satisfy the interests of the injured party, and, on the other hand, do not put the other party in an unduly difficult position or deprive a person of his or her livelihood.
- the principle of reasonableness. That is, the amount of compensation shall be justified by the actual losses. This principle is quite clearly manifested in the requirement in the Labour Code that only direct actual damage is subject to compensation. It should be noted that the application of the above principle in case of compensation for non-pecuniary damage is significantly complicated by the nature of this type of damage;
- the principle of presumption of innocence of an employee, according to which the employer is obliged to prove that damage caused is: first, the result of the employee's fault; second, not from the category of normal

production and business risks; third, not caused by the employee as a result of his or her state of emergency.

4. Conclusions

In conclusion, we would like to note that the list of principles of compensation for damages in labour law provided by us is not exclusive and is not the only possible one. However, in our opinion, it is this set of fundamental

requirements that most fully and clearly expresses the essential content and purpose of the concept under study. Moreover, we consider it necessary to note that the current labour legislation does not contain a list of principles of compensation for damages, but to a greater or lesser extent, each of the above principles is reflected in the legislative provisions.

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КЛАСИФІКАЦІЯ ПРИНЦИПІВ ВІДШКОДУВАННЯ ШКОДИ У ТРУДОВОМУ ПРАВІ УКРАЇНИ

Анотація. Мета. Мета статті – розкрити сутність та зміст і класифікувати принципи відшкодування шкоди у трудовому праві України. **Результати.** Наголошено, що інститут відшкодування шкоди є одним із тих елементів механізму правового регулювання відносин у сфері використання найманої праці, що втілює у собі вимоги: про рівність та взаємну відповідальність сторін трудових відносин; про забезпечення безпечних умов праці; про право сторін на захист і відновлення своїх трудових і тісно пов'язаних із ними прав та законних інтересів. Визначено, що принцип презумпції невинуватості найманого працівника, згідно з яким роботодавець зобов'язаний довести, що завдана шкода: по-перше, є наслідком провини найманого працівника; по-друге, не належить до категорії нормального виробничо-господарського ризику; по-третє, не завдана працівником унаслідок його перебування у стані крайньої необхідності. З'ясовано, що до галузевих принципів трудового права належить досить простора група засадничих вимог, як-то: принцип добровільності і свободи праці; принцип права на працю; принцип рівноправності; принцип договірності характеру праці; принцип визначеності трудової функції; принцип стабільності трудових відносин; принцип матеріальної зацікавленості в результатах праці; принцип безпеки праці; принцип участі трудових колективів і профспілок у вирішенні питань щодо встановлення умов праці та здійснення контролю за додержанням законодавства про працю; принцип свободи об'єднання працівників для здійснення та захисту своїх прав і свобод через вільне об'єднання в профспілки, кооперативи, молодіжні організації, різноманітні товариства, спілки тощо; принцип права на відпочинок; принцип матеріального забезпечення працівників у випадку непрацездатності, хвороби та у зв'язку з материнством. **Висновки.** Наголошено, що спеціальні принципи властиві переважно інституту відшкодування шкоди. При цьому слід відзначити, що вони не є специфічними для відшкодування шкоди у трудовому праві, тобто сфера дії цих принципів не обмежується виключно відносинами відшкодування шкоди у межах трудового права, однак саме ці принципи, на наше переконання, найбільш повно та змістовно відображають ті науково обґрунтовані закономірності, що виражають цінність інституту відшкодування шкоди як засобу захисту та відновлення правової справедливості у сфері праці.

Ключові слова: принципи, принципи права, відшкодування шкоди, трудове право України.

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