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THE ISSUE OF HARMONISATION AND DIFFERENTIATION OF LABOUR AND ADMINISTRATIVE LAW IN THE REGULATORY FRAMEWORK FOR LIABILITY FOR VIOLATION OF LABOUR LEGISLATION

Abstract. ***Purpose.*** The purpose of the article is to reveal the issue of harmonisation and differentiation of labour and administrative law provisions in the regulatory framework for liability for violation of labour legislation. ***Results.*** The article, relying on the analysis of scientific views of scholars and current legislation, reveals the essence and content of disciplinary, material and administrative liability for violation of labour legislation. The author focuses on how labour and administrative law provisions are harmonised in terms of regulating liability for violation of labour legislation. The provisions of labour and administrative law are differentiated in the context of the topic presented. It is determined that pecuniary liability is primarily aimed at restoring the violated material right of an employee and/or employer in the event of actions and/or omissions that resulted in the loss of material benefits by one of the parties to the labour relationship as a result of unlawful actions of one of the entities. The specifics of this type of liability are as follows: first, it is contractual in nature, as an agreement on liability is concluded between the employee and the employer; second, both the employee and the employer may be subject to this type of liability; third, the limits of material liability are clearly defined at the legislative level; fourth, its purpose is dual: on the one hand, it provides for compensation for damage, and on the other hand, it protects employees from unjustified deductions from their wages. ***Conclusions***. It is concluded that the provisions of labour and administrative law in terms of regulatory framework for liability for violation of labour legislation are consistent in terms of determining the range of entities that may be subject to liability for committing offences in the field of public relations under study. With regards to the differentiation between the provisions of these branches in the context of the presented issues, it is due to the purpose of each type of liability: first, labour law mainly regulates the liability of employees for violations of applicable labour laws and local regulations in the course of their employment; meanwhile, administrative law regulates the liability of managers of enterprises, institutions and organisations, as well as officials of public authorities who are parties to legal labour relations ; second, sanctions that may be imposed on violators of labour laws are clearly differentiated, as well as a list of grounds and conditions for the application of the latter; third, labour and administrative law provides for different entities authorised to bring violators to a particular type of legal liability.

Key words: legal liability, labour law, administrative law, offence, legislation, labour.

1. Introduction

The effective functioning of labour relations requires the proper functioning of legal liability. However, in this context, it should be noted that one of the important issues of modern science is the problem of harmonisation and differentiation between labour and administrative law provisions regarding offenders' legal liability. Moreover, the degree and type of liability for violations of labour legislation depends: first, on the entity that committed the offence; second, on the legal status of the controlling actor; third, on the nature and severity of the offence.

Some problematic issues of liability for violation of labour legislation have been considered in the scientific works by: O.M. Bandurka, Yu.D. Batan, O.V. Dykyi, K.V. Kovalenko, L.H. Koziatnyk, K.Yu. Melnyk, A.Yu. Podorozhnii, I.A. Rymar, N.M. Khutorian and many others. However, despite a considerable number

of scientific achievements, the legal literature still does not resolve the issue of harmonisation and differentiation between labour and administrative law in the regulatory framework for liability for violations of labour legislation.

As a result, the purpose of the article is to reveal the issue of harmonisation and differentiation of labour and administrative law provisions in the regulatory framework for liability for violation of labour legislation.

2. Content of disciplinary and material liability

Legal liability, in its most general sense, is a measure of state coercion regulated by legislative provisions that may be applied to a person in the event of actions contrary to the applicable law and which is manifested in the application of measures to the offender that involve restrictions on of a personal and/or property nature. In addition, it should be noted that the specifics of legal liability directly depend on the provisions of which branch of law it is regulated.

With regard to the issues presented in this study, the specifics of the labour sphere and its parties cause the problem of harmonisation and differentiation of labour and administrative law provisions in the regulatory framework for liability for violation of labour legislation. The existence of the above problem is due to: first, a wide range of entities that may be subject to liability in case of violation of the applicable labour legislation (in particular, an employee and an employer, as well as entities legal status thereof is derived from the labour one (trade unions, the State Labour Service (and its officials)), etc.); second, several types of liability may be applied to certain categories of actors, which may be regulated by several branches of law, both labour and administrative; third, the severity of the offence. In this context, it should also be noted that labour law regulates the types of liability such as disciplinary and material liability. In turn, the provisions of the administrative law define administrative liability.

First, the content of disciplinary and material liability regulated by the labour law provisions should be considered. K.Yu. Melnyk argues that disciplinary liability is one of the types of legal liability, implying that an employee who has violated labour discipline shall suffer the punishment provided for by labour law. The scholar also notes that the main ground for disciplinary liability is a disciplinary offence (Melnyk, 2014). A.Yu. Podorozhnyi marks that disciplinary liability means the obligation of an employee to be responsible to the employer, who has disciplinary power, for a breach of labour discipline committed by him/her in the form of non-performance or improper performance of labour duties through the fault of the employee and to suffer negative consequences as a result of this, as provided for by labour law (Podorozhnii, 2018).

Therefore, disciplinary liability is the most lenient type of legal liability applied to violators of labour laws for minor offences. It is the obligation of an employee to be punished for violations of applicable laws and regulations, as well as other provisions stipulated in a collective agreement and individual employment contract. In accordance with the provisions of the Labour Code of Ukraine, disciplinary sanctions are imposed by the body that has the right to hire (elect, approve and appoint) the employee in question. Disciplinary penalties may also be imposed on employees who are disciplined in accordance with charters, regulations and other acts of legislation on discipline by bodies higher in the order of subordination to the bodies referred to in part one of this Article. Disciplinary action shall be taken by the employer immediately upon discovery of the misdemeanour, but not later than one month from the date of its discovery, not counting the time the employee is released from work due to temporary disability or is on leave. Prior to imposing a disciplinary sanction, the employer must request written explanations from the breacher of labour discipline. Only one disciplinary sanction may be imposed for each breach of labour discipline. When choosing the type of penalty, the employer should consider the severity of the breach and the damage caused by it, the circumstances under which the offence was committed, and the employee's previous work (Code of Labour Laws of Ukraine, 1971).

Therefore, disciplinary liability means imposing disciplinary sanctions on the relevant persons. This feature is crucial for disciplinary liability and reflects the essence of this type of liability so deeply that the concepts of "disciplinary liability" and "disciplinary sanction" are often used in the literature and practice as equivalent (Kovalenko, 2008). Disciplinary coercion is extrajudicial, characterised by the widespread use of moral and legal sanctions, and is carried out by entities of disciplinary power. While civil coercive measures can be applied to both individual and collective participants in legal relations, disciplinary measures are applied only to physical persons, they are not only personalised but also individualised. Within its scope, there are many sanctions and procedures designed for a specific group of people (Kovalenko, 2008).

The disciplinary liability is closely related to material liability. According to N.M. Khutorian, material liability in the labour law of Ukraine is the need for one of the parties to labour relations to compensate for material damage (and in some cases moral damage) caused to the other party

as a result of improper performance of its labour duties as provided for by labour law (Code of Labour Laws of Ukraine, 1971). With regard to employee liability, it is necessary to mention Article 130 of the Labour Code, according to which employees are liable for damages caused to an enterprise, institution or organisation as a result of breach of their employment duties (Code of Labour Laws of Ukraine, 1971). When imposing material liability, the rights and legitimate interests of employees are guaranteed by establishing liability only for direct actual damage, only in the scope and manner provided by law, and provided that such damage is caused to the enterprise, institution, organisation by the employee's guilty unlawful acts (omissions). This liability is usually limited to a certain portion of the employee's earnings and shall not exceed the full amount of the damage caused, except in cases provided for by law. If the above grounds and conditions are met, material liability may be imposed regardless of the employee's disciplinary, administrative or criminal liability. Employees may not be held liable for damage that falls within the category of normal industrial and economic risk, as well as for damage caused by an employee who was in a state of emergency. Only employees who are officials may be held liable for profits not received by an enterprise, institution or organisation. The employee who caused the damage may voluntarily cover it in full or in part. With the consent of the employer, the employee may transfer equivalent property to cover the damage or repair the damaged property (Code of Labour Laws of Ukraine, 1971).

It should be noted that not only the employee, but also the employer may be held liable. The current labour legislation of Ukraine provides for the employer's material liability for damage caused to the employee. According to Articles 117, 235, 236 of the Labour Code, the employer shall compensate the employee for damage caused by a delay in severance pay, unlawful dismissal, transfer of the employee to another job, incorrect wording of the reason for dismissal in the labour book, delay in issuing the labour book due to the fault of the owner or his/her authorised body, and delay in executing the decision to reinstate the employee. According to Article 237-1 of the Labour Code, the owner or his/her authorised body shall compensate the employee for non-pecuniary damage. Article 237 provides for material liability of an official guilty of unlawful dismissal or transfer of an employee (Code of Labour Laws of Ukraine, 1971; Rymar, 2017).

Therefore, material liability is primarily aimed at restoring the violated material right of an employee and/or employer in the event of actions and/or omissions that resulted in the loss of material benefits by one of the parties to the labour relationship as a result of unlawful actions of one of the entities. The specificities of this type of liability are: first, it is contractual in nature, as an agreement on liability is concluded between the employee and the employer; second, both the employee and the employer may be subject to this type of liability; third, the limits of material liability are clearly defined at the legislative level; fourth, its purpose is dual: on the one hand, it provides for compensation for damage, and on the other hand, it protects employees from unjustified deductions from their wages.

3. Content of administrative liability

Next, administrative liability as a type of liability should be considered, it is closely intertwined with labour law, but the procedure for its implementation is regulated exclusively by the provisions of the administrative law. According to S.M. Kremenchutskyi, administrative liability is a type of legal liability expressed in the imposition of an administrative penalty by an authorised body or official to a person who has committed an administrative offence. This type of liability is characterised by the same features as legal liability in general (Kremenchutskyi, 2009). I.P. Holosnichenko interprets administrative liability as a type of legal liability, which is a set of administrative legal relations arising in connection with the application by authorised bodies (officials) to persons who have committed an administrative offence of special sanctions – administrative penalties – provided for by the provisions of administrative law (Holosnichenko, 2004).

The factual ground for administrative liability, enabling to subject a person to it, is the commission of an administrative offence (misdemeanour). According to the Code of Administrative Offences of Ukraine, Article 9, Part 1, an administrative offence (misdemeanour) is an unlawful, culpable (intentional or negligent) act or omission that infringes upon public order, property, rights and freedoms of citizens, the established order of governance and entails administrative liability provided for by law. It should be noted that this definition simultaneously uses and identifies two terms and, thus, two concepts: "administrative offence" and "administrative misdemeanour" (Code of Ukraine on Administrative Offences, 1984).

With regard to the topic under study, the Code of Administrative Offences provides for administrative liability for committing administrative offences related to compliance with labour legislation, such as: violation of the established terms of payment of wages, payment of wages not in full, and the term

for providing employees with wages by officials of enterprises, institutions, organisations regardless of ownership and individual entrepreneurs, including former employees, upon their request, documents related to their employment at a given enterprise, institution, organisation or individual entrepreneur required for the purpose of granting a pension (length of service, salary, etc.), specified by the Law of Ukraine "On Citizens' Appeals", or submission of these documents with inaccurate data, violation of the deadline for certification of workplaces in terms of working conditions and the procedure for its conduct, as well as other violations of labour legislation; repeated violation of the above within a year for which the person has already been subjected to an administrative penalty, or the same acts committed against a juvenile, pregnant woman, single father, mother or a person replacing them and raising a child under the age of 14 or a disabled child; actual admission of an employee to work without an employment agreement (contract), admission to work of a foreigner or stateless person and persons in respect of whom a decision has been made to draw up documents for resolving the issue of granting refugee status, on the terms of an employment agreement (contract) without a work permit for a foreigner or stateless person; repeated commission of the aforementioned violation within a year for which the person has already been subjected to an administrative penalty; violation of the guarantees and benefits established by law for employees engaged in the performance of duties under the laws of Ukraine "On military duty and military service", "On alternative (non-military) service", "On mobilisation training and mobilisation"; violation of the requirements of legislative and other regulations on labour protection, except for the violations listed below; violation of the established procedure for reporting (providing information) to the central executive body implementing public policy on labour protection about an occupational accident (Koziatnyk, 2020).

The Code of Administrative Offences in force provides for administrative liability for violations of labour and occupational safety laws. The liability for these violations is provided for in the Code of Administrative Offences, Article 41, part 5 and 6. Fines range shall be from UAH 340 to UAH 850 (twenty to fifty tax-free minimum incomes). Certain special sanctions are also provided for in Articles 93 and 94 of the Code of Administrative Offences. They relate to violations of the requirements of the legislation on safe work practices and regulations on the storage, use and accounting of explosive materials in industries and facilities controlled by the central executive body that implements public policy on labour protection (Manager's responsibility for violation of labour legislation, 2022).

4. Conclusions

To sum up, it should be noted that the provisions of labour and administrative law in the issue of regulatory framework for liability for violation of labour legislation are consistent in determining the range of entities that may be subject to liability for committing offences in the field of public relations under study. With regards to the differentiation between the provisions of these branches in the context of the presented issues, it is due to the purpose of each type of liability:

– First, labour law mainly regulates the liability of employees for violations of applicable labour laws and local regulations in the course of their employment; meanwhile, administrative law regulates the liability of managers of enterprises, institutions and organisations, as well as officials of public authorities who are parties to legal labour relations;

– Second, sanctions that may be imposed on violators of labour laws are clearly differentiated, as well as a list of grounds and conditions for the application of the latter;

– Third, labour and administrative law provides for different entities authorised to bring violators to a particular type of legal liability.

However, despite the seemingly clear distinction between labour and administrative law in regulating liability for violations of labour legislation, there are still some uncertainties in this field regarding provisions to be applied to the employer in case of violations in the areas of remuneration and labour protection, in particular, the boundaries of such liability are quite blurred, which often complicates the process of bringing the latter to financial and/or administrative liability.

References:

Holosnichenko, I.P. (2004). Administratyvne pravo Ukrainy [Administrative law of Ukraine]. K.: Yurydychna dumka [in Ukrainian].

Kodeks Ukrainy pro administratyvni pravoporushennia: vid 07 hrudnia 1984 roku № 8073-X [Code of Ukraine on Administrative Offenses: dated December 7, 1984 No. 8073-X]. (1984). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/80731-10/conv#Text [in Ukrainian].

Kodeks zakoniv pro pratsiu Ukrainy: vid 10 hrudnia 1971 roku № 322-VIII [Code of Labor Laws of Ukraine: dated December 10, 1971 No. 322-VIII]. (1971). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/322-08/conv#Text [in Ukrainian].

Kovalenko, K.V. (2008). Zahalna ta spetsialna dystsyplinarna vidpovidalnist [General and special disciplinary responsibility]. *Forum prava*. no. 2. pp. 231–236 [in Ukrainian].

Koziatnyk, L.H. (2020). Vydy vidpovidalnosti za porushennia trudovoho zakonodavstva [Types of liability for violation of labor legislation]. *kadrovik.isu.net*. Retrieved from https://kadrovik.isu.net.ua/news/507835-vidi-vidpovidalnosti-za-porushennya-trudovogo-zakonodavstva [in Ukrainian].

Kremenchutskyi, S.M. (2009). Diialnist pravookhoronnykh orhaniv Ukrainy shchodo administratyvno-pravovoi protydii nelehalnii immihratsii [Activities of law enforcement agencies of Ukraine regarding administrative and legal countermeasures against illegal immigration]. *Candidate's thesis*. Lviv: Lviv. derzh. un-t vnutr. sprav. [in Ukrainian].

Melnyk, K.Iu. (2014). Trudove pravo Ukrainy [Labor law of Ukraine]. Kharkiv : Disa plius [in Ukrainian].

Podorozhnii, A.Iu. (2018). Orhanizatsiino-pravovi zasady prytiahnennia pratsivnykiv do dystsyplinarnoi vidpovidalnosti [Organizational and legal principles of bringing employees to disciplinary responsibility]. *Candidate's thesis*. Kharkiv [in Ukrainian].

Rymar, I.A. (2017) Materialna vidpovidalnist robotodavtsia za shkodu, zapodiianu pratsivnykovi [Material liability of the employer for the damage caused to the employee]. *Odeski yurydychni chytannia*. no.2. pp. 94–96 [in Ukrainian].

Vidpovidalnist kerivnyka za porushennia trudovoho zakonodavstva [Manager's responsibility for violation of labor legislation]. (2022). *oppb.com.ua*. Retrieved from https://oppb.com.ua/news/vidpovidalnist-kerivnyka-za-porushennya-trudovogo-zakonodavstva [in Ukrainian].

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ПРОБЛЕМА УЗГОДЖЕННЯ ТА РОЗМЕЖУВАННЯ НОРМ ТРУДОВОГО Й АДМІНІСТРАТИВНОГО ПРАВА В ПРАВОВОМУ РЕГУЛЮВАННІ ПРИТЯГНЕННЯ ДО ВІДПОВІДАЛЬНОСТІ ЗА ПОРУШЕННЯ ЗАКОНОДАВСТВА ПРО ПРАЦЮ

Анотація. ***Мета.*** Метою статті є розкрити проблему узгодження та розмежування норм трудового й адміністративного права в правовому регулюванні притягнення до відповідальності за порушення законодавства про працю. ***Результати.*** У статті на основі аналізу наукових поглядів учених та норм чинного законодавства розкрито сутність та зміст дисциплінарної, матеріальної та адміністративної відповідальності за порушення законодавства про працю. Акцентовано увагу на тому, як узгоджуються норми трудового та адміністративного права в питанні регулювання відповідальності за порушення законодавства про працю. Здійснено розмежування норм трудового та адміністративного права в контексті представленої проблематики. Визначено, що матеріальна відповідальність передусім спрямована на відновлення порушеного матеріального права працівника та/або роботодавця в разі вчинення дій та/або бездіяльності, що призвели до втрати матеріальних благ однією зі сторін трудових правовідносин унаслідок неправомірних дій одного із вказаних суб'єктів. Особливістю такого виду відповідальності є: по-перше, вона має договірний характер, адже між працівником та роботодавцем укладається договір про матеріальну відповідальність; по-друге, до вказаного виду відповідальності може бути притягнуто як працівника, так і роботодавця; по-третє, межі матеріальної відповідальності чітко визначені на законодавчому рівні; по-четверте, її мета має подвійний характер: так, з одного боку вона передбачає відшкодування шкоди, а з іншого – захист працівників від необґрунтованих відрахувань з їхньої заробітної плати. ***Висновки.*** Зроблено висновок, що норми трудового та адміністративного права в питанні правового регулювання притягнення до відповідальності за порушення законодавства про працю узгоджуються за напрямом визначення кола суб'єктів, яких може бути притягнуто до відповідальності за вчинення правопорушень у досліджуваній сфері суспільних відносин. Що ж стосується розмежування норм указаних галузей у контексті представленої проблематики, то в даному контексті необхідно виходити із призначення кожного виду відповідальності: по-перше, нормами трудового права регулюється здебільшого відповідальність працівників за вчинення ними порушень норм чинного трудового законодавства, а також локальних нормативних актів безпосередньо в процесі здійснення ними трудової діяльності; у свою чергу нормами адміністративного права регулюється відповідальність керівників підприємств, установ організацій, а також посадових осіб органів державної влади, які є суб'єктами трудового права; по-друге, існує чітке розмежування санкцій, які можуть бути застосовані по відношенню до порушників трудового законодавства, а також перелік підстав та умов застосування останніх; по-третє, нормами трудового та адміністративного права передбачаються різні суб'єкти, які володіють повноваженнями щодо притягнення порушників до того чи іншого виду юридичної відповідальності.

Ключові слова: юридична відповідальність, трудове право, адміністративне право, правопорушення, законодавство, праця.

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