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SPECIFIC FEATURES OF THE REGULATORY FRAMEWORK FOR THE INSTITUTION OF SUPERVISION AND CONTROL OVER COMPLIANCE OF LABOUR LAW PROVISIONS WITH LABOUR LEGISLATION

Abstract. Purpose. The purpose of the article is to reveal specific features of the regulatory framework for the institution of supervision and control over compliance of labour law provisions with labour legislation. **Results.** In the article, the author analyses the provisions of current labour legislation aimed at regulating the institution of supervision and control over compliance with labour legislation. It is concluded that there is no clear legislative distinction between labour law and administrative law in the regulatory framework for the institution of supervision and control over compliance with labour legislation. The key features of the regulatory framework for the institution of supervision and control over compliance of labour law provisions with labour legislation are highlighted. **Conclusions.** It is concluded that in Ukraine no clear legislative distinction is made between labour law and administrative law in the regulatory framework for the institution of supervision and control over compliance with labour legislation. This is due to the presence of administrative law and labour law provisions in the same legal regulations, which are important sources of labour law in particular. Moreover, the labour law provisions mainly regulate the so-called internal relations on supervision and control over compliance with labour legislation, as although they are of a managerial nature, they directly relate to the organisation of labour relations of employees in terms of monitoring compliance of these relations with legal requirements. Therefore, specific features of the regulatory framework for the institution of supervision and control over compliance of labour law provisions with labour legislation include the following: first, it is aimed at achieving a purpose of social significance that covers both individual and collective interests - compliance with the requirements of labour legislation; second, it is of a service nature in respect of labour relations directly, as it is focused on ensuring their emergence, implementation and termination; third, it is exercised by the provisions of labour law to the extent that it relates to labour relations, without covering purely managerial relations, which are within the scope of regulatory provisions of administrative law.

Key words: regulatory framework, supervision, control, labour legislation, labour law.

1. Introduction

Ensuring the proper functioning of labour and closely related legal relations is virtually impossible without an efficiently structured system of supervision and control. Control and supervision over compliance with labour legislation are objective, lawful, ongoing activities of authorised public authorities and public organisations to respond to reports of labour rights violations and to verify that the participants in labour relations fulfil their obligations and comply with the prohibitions provided for by labour legislation in order to protect the right to work and other labour rights of the popu-

lation through preventive activities and legal liability. (Kailo, 2020). Nevertheless, effective supervision and control depends on many factors, among which the regulatory framework plays a key role. Moreover, the scientific literature is full of debates about which branch of law is the key to the relevant regulatory framework.

Some problematic issues related to the legal framework for supervision and control over compliance with labour legislation have been considered in their scientific works by: N.D. Hetmatseva, K.M. Husov, Yu.P. Dmytrenko, O.V. Zabrodina, L.V. Mohilevskiy, V.O. Neviadovskiy, D.V. Sychov, Ye.Yu. Podorozhnyi,

A.M. Sotskyi, O.M. Yaroshenko, and many others. However, despite the significant theoretical achievements, the legal literature lacks comprehensive studies on the specific features of the regulatory framework for institution of supervision and control over compliance of labour law provisions with labour legislation.

Thus, the purpose of the article is to reveal the specific features of the regulatory framework for institution of supervision and control over compliance of labour law provisions with labour legislation.

2. Specific features of the regulatory framework for labour law supervision and control over compliance with labour legislation

In order to outline the peculiarities of the regulatory framework for labour law supervision and control over compliance with labour legislation, we should first of all have a clear understanding of the specifics of the subject matter of labour law. Usually, the subject matter of labour law includes labour and closely associated relations. Therewith, the legal literature review reveals quite different perspectives on the specific content of the relations that constitute the subject matter of labour law.

O.Yu. Balitska argues that labour relations are a complex category which encompasses a number of simpler legal relations: performance of work in a certain job function, remuneration, work for a fixed period of time, etc. However, no doubt that the main place in the system of labour relations belongs to legal relations between an employer and an employee, which are based on the employee's work and take the form of an employment contract. Therefore, the author defines labour relations as relations regulated by labour law, which arise through an employment contract between an employer and an employee, and at the same time labour relations are a legal form of expression of social and labour relations arising on a bilateral basis: between the employer or an authorised body and an employee (Kucher, 2017).

According to H.I. Chanysheva and O.S. Shchukin labour relations are relations arising on the basis of an agreement between an employee and an employer on the personal performance by the employee of a labour function (work in a certain profession, speciality, qualification, position) for timely and full wages in the interests, under the direction and control of the employer provided that the employee complies with the internal labour regulations and the employer provides proper, safe and healthy working conditions as prescribed by law, collective bargaining agreements, labour contracts, and other agreements (Chanysheva, Shchukin, 2021). Therefore, this refers exclusively to individual labour relations as the main

object of the regulatory framework for labour law provisions.

Following N.D. Hetmatseva and I.H. Kozub, labour relations include all legal relations regulated by labour law, the main ones being those arising between an employee and an employer. In addition, the authors emphasise that these relations do not exhaust the list of labour relations. N.D. Hetmatseva and I.H. Kozub include legal relations on employment and recruitment, organisational and managerial legal relations, supervision and control over compliance with labour legislation and labour protection, legal relations on material liability of the parties to an employment contract and on resolution of labour disputes, etc. Moreover, according to the authors, they are labour relations at least because they are regulated by labour law (Hetmatseva, Kozub, 2013). Therefore, the researchers consider the fact that legal relations are regulated by labour law to be a key feature of labour relations.

In O.O. Protsevskiy's opinion, other relations which constitute the subject matter of labour law are: 1) those characterising joint work, in particular, relations of organisation and management; 2) those arising from the participation of a trade union body in organising remuneration, creating appropriate conditions and managing a collective agreement, resolving labour disputes; 3) those arising from violation of labour rights; 4) relations on social protection of actors; 5) relations in the field of state social guarantees; 6) in the field of social partnership (Protsevskiy, 2001). Therewith, the author does not distinguish supervisory and control relations over compliance with labour legislation into a separate group of other subjects of labour law.

Thus, the labour law regulatory framework for supervision and control over compliance with labour legislation is primarily based on their direct connection with individual labour relations arising between an employer and an employee. The legal literature also lacks unanimity in determining which functional group of other institutions closely related to individual labour relations the institution of supervision and control over compliance with labour legislation belongs to.

3. Regulatory and legal framework for the institution of supervision and control over compliance with labour legislation

It should be noted that a significant number of scholars refer to relations concerning supervision and control over compliance with labour legislation as organisational and managerial relations. Organisational and managerial relations, as a derivative of labour relations, ensure the existence of a link between an individual employee

and authorised persons, a person (enterprise, institution, organisation), their role in ensuring that all employees perform their labour function with the use of incentives and guarantees. The role of organisational and managerial relations in labour law should be considered comprehensively: between employees as a labour collective and the employer's authorised person(s), the authorised person and the trade union, and between the trade union and employees. The content of organisational and managerial relations significantly affects the scope of legal powers and duties of the parties to the main labour relationship, as it determines the nature of working conditions, organisation of remuneration and other issues affecting the interests of employees of a given enterprise, institution or organisation. In most cases, the specific bearer of the relevant obligations is the administration, although the labour collective may also assume certain obligations, usually of an additional nature to those established by law, for example, a reduction in the time limit for completing production tasks, etc. (Danylova, 2013). M.V. Danilova considers that the content of organisational and managerial relations in labour law is subjective rights, which are linked by mutual properties and legal relations, and corresponding legal obligations in the field of organisation and management of labour at an enterprise, institution or organisation with the participation of employees, employers and their representatives (Danylova, 2013).

Therefore, the institution of supervision and control over compliance with labour legislation is regulated by labour law as a type of relations closely linked to the relations arising between an employee and an employer to ensure compliance with the requirements of the legislation in the course of hired labour, which are managerial in nature. The close connection with the purely labour relations arising between the employer and the employee and the supervision and control relations as the object of the regulatory framework for labour law is due to the preventive and incentive effect on the participants in these labour relations. Such influence is exercised even before a candidate for employment acquires the status of an employee, during the employment relations and their termination.

The regulatory framework for institution of supervision and control over compliance of labour law provisions with labour legislation is implemented within the existing regulatory mechanism for labour relations. In the legal literature, all the means of the regulatory framework for labour relations are usually divided into certain groups depending on the purpose of the actor involved in regulating, namely: legal means of state regulatory framework;

legal means of contractual regulatory framework, which combines legal means of individual contractual and collective contractual regulatory framework. The legal means of state regulatory framework include labour law provisions, principles, international acts ratified by Ukraine and legal regulations. The labour law provisions define both the social relations themselves (their scope, parties, content) regulated by labour law and the legal means of ensuring the possible or actual behaviour of the parties to labour relations (Hetmantseva, Mytrytska, 2021). The legal regulatory framework for the institution of supervision and control over compliance with labour law provisions with labour legislation is based on international legal acts, laws of Ukraine, bylaws and collective bargaining agreements.

It should be noted that the Labour Code of Ukraine defines the very existence of supervision and control over compliance with labour legislation as a necessary part of labour relations, specifying the legal framework for this institution in a particular Chapter XVIII "Supervision and Control over Compliance with Labour Legislation". The very content of this Chapter indicates the comprehensive nature of state supervision and control over compliance with labour legislation, since Article 259 provides that state supervision and control over compliance with labour legislation covers all legal entities regardless of their form of ownership, type of activities, business, as well as individual entrepreneurs who use hired labour.

It is essential to mention that the structure of the regulatory framework for supervision and control over compliance with labour protection legislation is also contained in the Law of Ukraine "On Labour Protection". The Law lists the bodies that exercise state supervision over compliance with laws and other legal regulations on labour protection, the rights of officials of the central executive body that implements public policy on labour protection, and a reference provision to the Law of Ukraine "On Civil Service" in terms of the liability of officials of the central executive body, implementing public policy on labour protection for the performance of their duties, general issues of social protection of these officials, including the very fact that the state guarantees social protection to such persons, assistance to these persons by law enforcement officials, preservation of the right to benefits under the law for persons dismissed from positions in state supervisory bodies due to age or illness or injury, as well as for family members or dependents of an official who has died while performing official duties (Law of Ukraine On Labor Protection, 1992). In this regard, it is reasonable to agree that

such provisions are the prerogative of administrative law (and they are simply duplicated in labour law) (Dvornyk, 2018). Therefore, the provisions of the Labour Code of Ukraine and the provisions of the Law of Ukraine "On Labour Protection" insofar as they regulate the list and powers of actors exercising supervision and control over compliance with labour legislation in relation to enterprises, institutions and organisations regardless of ownership and individuals using hired labour, are in fact sources of administrative and legal provisions.

The Law of Ukraine "On Employment of the Population" provides for a separate Section on control and responsibility in the field of employment, which covers the range of actors authorised to exercise state and public control over compliance with legislation in this field, as well as the range of offences with sanctions imposed on those responsible for committing them (Law of Ukraine On Employment of the Population, 2012).

The Law of Ukraine "On Labour Protection" contains provisions relating to public control over compliance with labour protection legislation, establishing the range of actors, issues subject to public control in this field, powers of actors exercising public control, in particular trade unions, as well as persons authorised by employees on labour protection issues, and sets out certain guarantees for their activities, in particular, it provides that any legitimate interests of employees in connection with the performance of their duties as persons authorised by employees on labour protection issues cannot be infringed upon. Their dismissal or disciplinary or financial liability may be exercised only with the consent of employees in accordance with the procedure established by the collective agreement (Law of Ukraine on labor protection, 1992). In addition, it should be emphasised that the provisions relating to liability for violations of labour protection legislation in the Law "On Labour Protection", unlike the Labour Code, are placed outside the section on supervision and control in a separate section, which should be considered fully justified. Therefore, the same legal regulation contains provisions of both administrative law and labour law regarding the regulatory framework for control and supervision over compliance with labour legislation. We should agree with S.I. Dvornik's opinion that in terms of relations arising from labour relations, the issue of control and supervision over compliance with labour legislation falls within the regulatory framework for labour law provisions (Dvornyk, 2018).

4. Conclusions

To sum up, no clear legislative distinction is made between labour law and administrative

law in the regulatory framework for institution of supervision and control over compliance with labour legislation. This is due to the presence of administrative law and labour law provisions in the same legal regulations, which are important sources of labour law in particular. Moreover, the labour law provisions mainly regulate the so-called internal relations on supervision and control over compliance with labour legislation, as although they are of a managerial nature, they directly relate to the organisation of labour relations of employees in terms of monitoring compliance of these relations with legal requirements.

Therefore, the specific features of the regulatory framework for the institution of supervision and control over compliance of labour law provisions with labour legislation include the following: first, it is aimed at achieving a purpose of social significance that covers both individual and collective interests - compliance with the requirements of labour legislation; second, it is of a service nature in respect of labour relations directly, as it is aimed at ensuring their emergence, implementation and termination; third, it is exercised by the provisions of labour law to the extent that it relates to labour relations, without covering purely managerial relations, which are within the scope of regulatory provisions of administrative law.

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ОСОБЛИВОСТІ ПРАВОВОГО РЕГУЛЮВАННЯ ІНСТИТУТУ НАГЛЯДУ І КОНТРОЛЮ ЗА ДОДЕРЖАННЯМ ЗАКОНОДАВСТВА ПРО ПРАЦЮ НОРМАМИ ТРУДОВОГО ПРАВА

Анотація. *Метою* статті є розкрити особливості правового регулювання інституту нагляду і контролю за додержанням законодавства про працю нормами трудового права. **Результати.** У статті здійснено аналіз норм чинного трудового законодавства, норми якого спрямовані на регулювання інституту нагляду і контролю за додержанням законодавства про працю. Зроблено висновок про відсутність чіткого законодавчого розмежування норм трудового та норм адміністративного права у сфері правового регулювання інституту нагляду і контролю за додержанням законодавства про працю. Виокремлено ключові особливості правового регулювання інституту нагляду і контролю за додержанням законодавства про працю нормами трудового права. **Висновки.** Зроблено висновок, що в Україні відсутнє чітке законодавчого розмежування норм трудового та норм адміністративного права у сфері правового регулювання інституту нагляду і контролю за додержанням законодавства про працю. Це пов'язано з наявністю адміністративно-правових та трудо-правових норм в одних і тих же нормативно-правових актах, що є важливими джерелами насамперед трудового права. При цьому нормами трудового права врегульовуються переважно так звані внутрішні відносини із здійснення нагляду та контролю за додержанням законодавства про працю, оскільки вони хоча і мають управлінський характер, але безпосередньо стосуються організації трудових відносин найманих працівників з точки зору забезпечення моніторингу відповідності цих відносин законодавчим вимогам. Тож, до особливостей правового регулювання інституту нагляду і контролю за додержанням законодавства про працю нормами трудового права доцільно віднести те, що: по-перше, воно спрямовано на досягнення соціально значущої мети, яка охоплює як індивідуальні, так і колективні інтереси – виконання вимог законодавства про працю; по-друге, має обслуговуючий характер по відношенню безпосередньо до трудових правовідносин, оскільки спрямовано на забезпечення їх виникнення, реалізацію та припинення; по-третє, здійснюється нормами трудового права в тій мірі, в якій це стосується саме трудових відносин, без охоплення суто управлінських відносин, які входять до кола правового регулювання норм адміністративного права.

Ключові слова: правове регулювання, нагляд, контроль, трудове законодавство, трудове право.

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