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THE CONCEPT AND CLASSIFICATION OF GUARANTEES PROTECTING LABOUR RIGHTS OF EMPLOYEES IN ATYPICAL FORMS OF EMPLOYMENT

Abstract. Purpose. The purpose of the article is to define the concept and classify the guarantees protecting labour rights of employees when using atypical forms of employment. **Results.** Relying on the analysis of scientific views of scholars on the essence of the concept of "guarantees", the article offers the author's definition of "guarantees protecting labour rights of employees when using atypical forms of employment". An emphasis is placed on the diversity of the relevant guarantees, and on this basis, it is proposed to divide the latter into: legal (juridical); economic; social; procedural and political guarantees. It is noted that legal guarantees in labour law should be classified according to the following criteria: a) legal force – constitutional, international and sectoral; b) the degree of specificity – universal (covering all labour rights) and special (covering the implementation of a specific labour right); c) the scope – general (ensuring labour rights of all employees regardless of legal status) and additional (provided for a certain category of employees by gender, age, health status, etc.); d) the form of expression of legal guarantees – guarantees-permissions, guarantees-obligations, guarantees-prohibitions, guarantees-restrictions; e) the nature of the impact – guarantees-sanctions, guarantees-recommendations, alternative guarantees. **Conclusions.** It is concluded that guarantees protecting labour rights of employees when using atypical forms of employment should be most appropriately classified into: a) legal (juridical) guarantees, which are a set of legal conditions and means by which social relations in the field under study are regulated and ordered; b) economic guarantees are activities aimed at ensuring economic and financial rights and interests of employees; c) social guarantees aimed at implementing social measures in relation to this category of employees; d) procedural guarantees are activities aimed at protecting the rights of employees in court or out of court; e) political guarantees are state activities aimed at ensuring the rights and freedoms of citizens in general and in the field of labour in particular; and f) organisational guarantees.

Key words: guarantees, classification, protection, labour rights, employees, atypical forms of employment.

1. Introduction

The active use of atypical forms of employment in recent years necessitates the construction of a system of guarantees protecting the labour rights of the relevant category of employees. In general, guarantees are the main goal of the state, and the state is the guarantor of human rights and freedoms. The law secures the rights and freedoms of every individual and, by regulating human relations, prevents their violation. However, it defines the role of the law as a guarantor only through the prism of the use or application of the force of punishment. To date, the legislator has developed a broad system of guarantees to protect the rights of employees, including those who work in atypical employment.

However, the fact that there are a number of theoretical problems in this field should be noted as a drawback, in particular, the concept of guarantees protecting labour rights of employees when using atypical forms of employment, as well as their classification, is not defined.

The problem of protection of labour rights of employees when using atypical forms of employment has been considered in the scientific works by Yu.Yu. Ivchuk, T.M. Zavorotchenko, I.V. Zub, V.V. Pavchuk, V.H. Rotan, V.M. Sloma, O.Ye. Sonin, I.M. Shopina, I.I. Yatskevych and many others. However, despite a considerable number of scientific achievements, comprehensive scientific research on the definition

and classification of guarantees is not available in the scientific literature protecting labour rights of employees when using atypical forms of employment.

That is why the purpose of the article is to define the concept and classify the guarantees protecting labour rights of employees when using atypical forms of employment.

2. The content of the concept of "guarantees" in determining the rights of employees when using atypical forms of employment

The concept of guarantees is actively used in many sectors of public life, which has led to a large number of approaches to its interpretation, in particular, in the legal literature. According to O.P. Rudnytska, guarantees are a socio-political and legal phenomenon characterised by three components: 1) cognitive, enabling to reveal substantive theoretical knowledge about the object of their influence, to obtain practical knowledge about the social and legal policy of the state; 2) ideological, used by the political authorities as a means of promoting democratic ideas within the country and abroad; 3) practical, which is recognised as an instrument of jurisprudence, a prerequisite for satisfaction of social benefits of an individual. Therefore, the author defines guarantees as: a system of socio-economic, political, legal, organisational prerequisites, conditions, means and methods which create opportunities for an individual to exercise his/her rights, freedoms and interests (Rudnytska, 2011).

In the theory of law, according to O. Chernetska, guarantees are understood as a system of conditions and means by which the full and effective functioning of a particular institution is ensured due to the specific features of social development. The purpose of these guarantees is precisely to create the most favourable conditions for the actual implementation and unhindered exercise of their powers by public authorities and local self-government bodies, as well as their officials. Guarantees are also aimed at eliminating possible causes and obstacles to incomplete or improper performance of their functions and powers (Chernetska, 2006). V. Sirenko defines guarantees as a set of objective and subjective factors aimed at ensuring the exercise of human rights, freedoms and obligations, eliminating possible causes and conditions for their incomplete or improper exercise, and protecting them from all violations. In the socio-legal mechanism for the exercise of rights and obligations, they play a supporting role and thus differ from the actual implementation. He divides all guarantees into general and special (legal) ones (Sirenko, 1983). The legal guarantees V. Sirenko proposes to include the following: a) constitutional

control and supervision; b) means of protection and defence; c) liability of persons guilty of committing violations of rights and freedoms; d) procedural forms of their protection; e) prevention of violations and prevention of violations of rights and freedoms (Sirenko, 1983).

In a broad sense, according to B.I. Stakhura, guarantees are best understood as the entirety of objective and subjective factors aimed at full realisation and comprehensive protection of the rights and freedoms of citizens, elimination of causes and conditions for their improper exercise and protection against violations. By establishing the content and scope of human rights and freedoms, the state assumes the guarantee of compliance with these guidelines. Moreover, given that the exercise of the rights and freedoms of citizens is inevitably associated with the need to apply measures of procedural coercion, the state is forced to develop an effective mechanism that limits the claims of public authorities to undivided dominance in the field of regulation of relations with the population. In this regard, guarantees can be seen as a system of conditions, means and methods that ensure equal opportunities for the identification, acquisition and exercise of rights and freedoms (Stakhura, 2016).

Therefore, the guarantees protecting labour rights of employees when using atypical forms of employment are a set of legally defined conditions, tools and means used by the state, employer and employees themselves to ensure the actual exercise of their rights, freedoms and interests in the relevant field. These guarantees are broad in nature and content, and therefore it is advisable to classify them. A logically correct, scientifically sound classification allows to reflect the regularities of development of the classified objects, to find out their interrelationships and gives grounds for generalising conclusions and proposals. Since any classification is not only a means of systematisation, but also a prerequisite for scientific analysis of the object under study, it should be based on the most essential features - classification criteria of an objective nature that help to organise the material in accordance with its internal relations (Shtanko, 2009).

3. Classification of guarantees in determining the rights of employees when using atypical forms of employment

In her research, H.V. Tolhachova came to the conclusion that the most common classification of guarantees in the legal literature is based on their practical application, namely, on: general, which cover the entirety of objective and subjective factors aimed at ensuring the realisation of human rights

and freedoms, their protection and restoration in case of violation; special, which are defined as a system of legal means that facilitate the process of realisation, protection and restoration of rights and freedoms of participants in the legal relations, their content is to make both human rights and their protection mandatory in the state power context (Tolkachova, 2015). Consequently, the author believes that general guarantees are classified by the scope of social relations into: a) political - the basic principles of the state system, which include the principle of democracy; the principle of state sovereignty, which provides for the supremacy, autonomy, independence, completeness and indivisibility of state power; distribution of power between independent and interrelated branches of state power – legislative, executive and judicial; political pluralism, etc; b) socio-economic – a set of relations and interconnections of a free civil society and the unity of socio-economic space; c) organisational and legal – organisational activities of state bodies and non-governmental organisations to ensure, protect and defend human rights and freedoms as provided for by law; d) ideological (spiritual and moral) – manifested in the general recognition and perception of universal humanistic values, ideas of a democratic, law-based social state and civil society, the rule of law and social justice (Tolkachova, 2015).

P.M. Rabinovych and M.I. Khavroniuk classify guarantees of the implementation of constitutional rights and freedoms into general social guarantees and legal guarantees (Rabinovych, Khavroniuk, 2004). General social guarantees are classified into ideological, political, economic, social, and organisational. Legal guarantees are classified according to the following criteria: 1) depending on the content: a) material; b) procedural; c) organisational; 2) depending on the legal status: a) international and national; b) constitutional and sectoral guarantees; c) other legal guarantees; 3) by the criterion of the main guarantor: a) state guarantees; b) international guarantees; c) guarantees provided by the state with the participation of relevant associations of citizens; d) guarantees provided by the state with the participation of citizens themselves. The special (protective) rights-guarantees include constitutional guarantees provided for in Articles 55-63 of the Constitution of Ukraine (Rabinovych, Khavroniuk, 2004).

In general, legal guarantees can be classified according to the following criteria: 1) by actors: parliamentary; presidential; judicial; administrative; 2) by the nature of legal activities: law-making guarantees, the main content thereof being the constitutional

consolidation of the legal status of actors and the determination of means of influence on violators; law-explanatory guarantees provide access to information to actors on the content of their rights and freedoms; law application guarantees create conditions for the exercise of rights, observance of prohibitions and fulfilment of obligations as a means of guaranteeing rights; 3) by areas: constitutional guarantees, which have the highest legal force, are the basis of legal guarantees aimed at protecting the Constitution of Ukraine and the institutions provided for by it; procedural guarantees that ensure the process of exercising the rights of parties and protect their interests in the process of performing legally significant actions; 4) by content: regulatory guarantees, which are defined as provisions and principles regarding the inalienability, inviolability, inexhaustibility, and equality of human rights and freedoms; organisational guarantees, which are characterised as the status of special entities that facilitate the exercise of rights; 5) by status: preventive guarantees, facilitating the prevention of violations of subjective rights and failure to fulfil legal obligations; protective guarantees, providing for the possibility of fixing measures of influence in case of violations of rights guaranteed by the state; punitive guarantees, that is, the real possibility of applying coercive measures to violators on behalf of the state; 6) by the nature in general: development and consistency of the provisions enshrining human rights; an effective system of supervision over the observance of human rights and freedoms; availability of measures to ensure the restoration of the violated right. The purpose of the above guarantees is to ensure the conditions most favourable to the exercise of the rights and freedoms granted by the Constitution, as well as their effective protection (Bobrovnyk, 1999; Kuzmenko, 2014).

In his research, S.M. Bortnyk proposes to classify legal guarantees of police activities as follows: 1) by the presence of a direct connection with the principles of the National Police: (a) a police officer is a representative of the state; (b) legality of activities; (c) restriction of access to information on certain aspects of police activities; 2) depending on their scope: (a) general legal (legality; improvement of legislation, its completeness and indisputability, etc.); (b) intersectoral (protection of police officers from interference with their professional activities; protection against unlawful attacks on life and health of police officers (their family members, persons dismissed from service) in connection with the performance of professional duties; establishment of special measures of state

protection; legislative consolidation of specifics of legal liability for offences against police officers (their family members) (c) sectoral (establishment of powers exclusively by law; special procedure for purchasing means of self-defence; restrictions on subordination of police officers); 3) labour guarantees (specific working hours and rest periods of police officers, their financial and pension provision) (Bortnyk, 2017).

Researchers of the scientific issue of legal guarantees in labour law classify the latter according to the following criteria: a) legal force – constitutional, international and sectoral; b) degree of specificity – universal (relating to all labour rights) and special (relating to ensuring the implementation of a specific labour right); b) the scope of action – general (ensuring labour rights of all employees regardless of their legal status) and additional (provided for a certain category of employees by gender, age, health status, etc.); d) the form of expression of legal guarantees – guarantees-permissions, guarantees-obligations, guarantees-pro-

hibitions, guarantees-restrictions; e) the nature of influence – guarantees-sanctions, guarantees-recommendations, alternative guarantees (Sytnytska, 2009).

4. Conclusions

Therefore, the scientific research enables us to state that guarantees protecting labour rights of employees when using atypical forms of employment should be most appropriately classified into: a) legal (juridical) guarantees, which are a set of legal conditions and means by which social relations in the field under study are regulated and ordered; b) economic guarantees are activities aimed at ensuring economic and financial rights and interests of employees; c) social guarantees aimed at implementing social measures in relation to this category of employees; d) procedural guarantees are activities aimed at protecting the rights of employees in court or out of court; e) political guarantees are state activities aimed at ensuring the rights and freedoms of citizens in general and in the field of labour in particular; and f) organisational guarantees.

References:

- Bobrovnyk, S. (1999). Prava harantii zakhystu prav liudyny v suchasnomu sviti. Prava i svobody liudyny ta suchasnyi suspilnyi prohres [Legal guarantees of human rights protection in the modern world]. Uzhhorod: Snina (in Ukrainian).
- Bortnyk, S.N. (2017). Sviaz yurydycheskykh harantii s pryntsyypamy deiatelnosti polityseiskykh [The relationship between legal guarantees and the principles of police activity]. Pravo y Zakon. № 4. pp. 39-44 (in Ukrainian).
- Chernetska, O.V. (2006). Konstytutsiino-pravovyi status deputativ mistsevykh rad v Ukraini [Constitutional and legal status of deputies of local councils in Ukraine]. *Candidate's thesis*. Kyiv (in Ukrainian).
- Kuzmenko, Ya.P. (2014). Zahalna kharakterystyka yurydychnykh harantii prava liudyny na zhyttia [General characteristics of legal guarantees of the human right to life]. *Naukovi visnyk Uzhhorodskoho natsionalnoho universytetu*. no. 29(1). pp. 27-32 (in Ukrainian).
- Rabinovych, P.M., Khavroniuk, M.I. (2004). Prava liudyny i hromadianyna [Human and citizen rights: a study guide]. Kyiv: Atika (in Ukrainian).
- Rudnytska, O.P. (2011). Poniattia ta klasyfikatsiia harantiinykh vyplat [Concept and classification of guarantee payments]. *Aktualni problemy derzhavy i prava*. no. 57. pp. 175–182 (in Ukrainian).
- Shtanko, A.O. (2009). Pravoporushennia yak vyd pravovoi povedinky [Crime as a type of legal behavior]. *Candidate's thesis*. (in Ukrainian).
- Stakhura, B.I. (2016). Rol orhaniv derzhavnoi vlady u zabezpechenni prav liudyny i hromadianyna v demokratychnomu suspilstvi: teoretyko-pravovyi vymir [The role of state authorities in ensuring human and citizen rights in a democratic society: theoretical and legal dimension]. *Candidate's thesis*. Lviv: Lvivskiy derzhavnyi universytet vnutrishnikh sprav (in Ukrainian).
- Sirenko, V.F. (1983). Realnost prav sovet'skykh hrazhdan [The reality of the rights of Soviet citizens]. Kyev: Naukova dumka (in Ukrainian).
- Sytnytska, O.A. (2009). Yurydychni harantii prava na pratsiu ta prava na vidpochynok za trudovym zakonodavstvom Ukrainy [Legal guarantees of the right to work and the right to rest under the labor legislation of Ukraine]. *Extended abstract of candidate's thesis*. Lviv (in Ukrainian).
- Tolkachova, H.V. (2015). Harantii prav ta svobod dytyny: poniattia, pravova pryroda ta yikh klasyfikatsiia [Guarantees of the rights and freedoms of the child: concepts, legal nature and their classification]. *Chasopys Kyivskoho universytetu prava*. no. 1. pp. 65-68 (in Ukrainian).

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ПОНЯТТЯ ТА КЛАСИФІКАЦІЯ ГАРАНТІЙ ЗАХИСТУ ТРУДОВИХ ПРАВ НАЙМАНИХ ПРАЦІВНИКІВ ПРИ ВИКОРИСТАННІ НЕТИПОВИХ ФОРМ ЗАЙНЯТОСТІ

Анотація. Мета. Метою статті є визначити поняття та здійснити класифікацію гарантій захисту трудових прав найманих працівників при використанні нетипових форм зайнятості. **Результати.** У статті, спираючись на аналіз наукових поглядів вчених стосовно сутності поняття «гарантії», запропоновано авторське визначення «гарантій захисту трудових прав найманих працівників при використанні нетипових форм зайнятості». Акцентовано увагу на багатоманітності відповідних гарантій, на основі чого останні запропоновано поділити на: правові (юридичні); економічні; соціальні; процесуальні та політичні гарантії. Наголошено, що юридичні гарантії у трудовому праві доцільно класифікувати за такими критеріями: а) юридична сила – конституційні, міжнародні та галузеві; б) ступінь конкретизації – універсальні (стосуються усіх трудових прав) та спеціальні (стосуються забезпечення реалізації конкретного трудового права); в) сфера дії – загальні (забезпечення трудових прав усіх працівників незалежно від правового статусу) та додаткові (передбачені для певної категорії працівників за статтю, віком, станом здоров'я тощо); г) форма вираження юридичних гарантій – гарантії-дозволи, гарантії-обов'язки, гарантії-заборони, гарантії-обмеження; д) характер впливу – гарантії-санкції, гарантії-рекомендації, альтернативні гарантії. **Висновки.** Зроблено висновок, що гарантії захисту трудових прав найманих працівників при використанні нетипових форм зайнятості найбільш доцільно поділити на: а) правові (юридичні) гарантії, які представляють собою сукупність правових умов та засобів за допомогою яких регулюються та упорядковуються суспільні відносини у досліджуваній сфері; б) гарантії економічні – це діяльність спрямована на забезпечення економічних та фінансових прав та інтересів працівників; в) соціальні гарантії, що спрямовані на реалізацію заходів соціального характеру по відношенню до вказаної категорії працівників; г) процесуальні гарантії – діяльність щодо захисту прав працівників у судовому чи позасудовому порядку; г) політичні – гарантії, які полягають у діяльності держави щодо забезпечення прав і свобод громадян взагалі та у сфері праці, зокрема; та д) організаційні.

Ключові слова: гарантії, класифікація, захист, трудові права, наймані працівники, нетипові форми зайнятості.