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DEVELOPMENT TRENDS OF SOCIAL PARTNERSHIP LEGAL REGULATION IN EMPLOYMENT LAW OF UKRAINE

In the article the legal regulation of social partnership in employment law of Ukraine is analyzed. The ways of its improving are offered in this context.

Key words: *social partnership, employment law, legal regulation, development trends.*

Мищук М.О. Тенденції розвитку правового регулювання соціального партнерства в трудовому праві України

У статті здійснюється аналіз правового регулювання соціального партнерства в трудовому праві України. У цьому контексті запропоновано шляхи його вдосконалення.

Ключові слова: *соціальне партнерство, трудове право, правове регулювання, тенденції розвитку.*

Мищук М.О. Тенденции развития правового регулирования социального партнерства в трудовом праве Украины

В статье проводится анализ правового регулирования социального партнерства в трудовом праве Украины. В этом контексте предложены пути его совершенствования.

Ключевые слова: *социальное партнерство, трудовое право, правовое регулирование, тенденции развития.*

One of the fundamental factors of social and economic stability of any state is the level of development and legal regulation of social relations in terms of social partnership. The dynamics of the evolution of these relations and scientific and technological development of the country stipulate condition changes in the legal relationship between employer and employees. The above-mentioned is explained by changing of educational and qualifying requirements of employees, job description, there is a severe competition in the labor market, the displacement of people by automated technical systems, informatization of running cycle, etc.

Relevance of the main trends of further development of social partnership legal regulation in employment law of Ukraine caused by the fact that today there are stable,

global and transformational changes of labor conditions. Nowadays (without looking into the future) there is an urgent need for a qualitative upgrade of existing social partnership mechanism in a state.

The questions of the main trends of further development of social partnership legal regulation in employment law of Ukraine are violated by such famous scholars as V. H. Varnavskiyi, V.S. Venedyktov, V.M. Gordin, A.V. Klymenko, V.I. Kutsenko, Ya.V. Ostafiyichuk, E.M. Libanova, K.V. Pavliuk, O. V. Radchenko, G.I. Chanysheva, A.I. Chernysh, P. Shylepnytskyi and others. At the same time we note that there were no scientific researches where further development trend of social partnership legal regulation would be a subject. Representatives of labor law doctrine rather fruitfully studied social partnership, but the above-mentioned issue remains somewhat out of the consideration. That's why one could argue that superficial and fragmentary scientific research results make it urgent.

Analyzing the main trends in the evolution of social partnership legal regulation we emphasize that crucial is to replace the term "social partnership" in the national legal practice with the concept of "social dialogue". The latter was firstly used in the legal system of Ukraine in the decree of the President of Ukraine "On the development of social dialogue in Ukraine" dated 29 December 2005 [1]. He had established the National Tripartite Social and Economic Council and dissolved the National Council of Social Partnership. That is connected with the fact that the concept of "social partnership" in the international employment law is not used, in particular, in ILO deeds. In terms of the latter it refers to the social dialogue between employees, employers and the government. ILO activity in this sphere aims to strengthen the organizations of employers and workers, and governments in solving social and economic problems and facilitate their dialogue through the appropriate institutions and mechanisms at the national and international levels. In order to strengthen social dialogue ILO helps organizations of employers and workers to attract new members (especially women and youth), to improve the quality of services, to develop and establish relations between public authorities and representatives of workers and employers [2, 41].

It is uncontroversial that the work - is the main activity of individuals. In addition, provisions should be recognized that organized labor can be effective and civilized only in terms of the principle of social partnership, which is of fundamental importance.

The work was, is and remains a major source of income for people who perform certain employment functions in enterprise, institution or organization. Public relations are dynamic; they are constantly changing, evolving. Labor relations are accompanied by social partnership that is cooperation between employers (owners of the means of production) and workers. The State is also recognized as an independent party of this partnership - it monitors compliance with employment law.

From point of view of O. Radchenko, during the current crisis transformations remain conditions for the rise of social conflicts and social risks connected with differentiation of property, space expansion of public exclusion, manifested in a decrease of human capabilities and resources of self-realization and in loss of personal perspectives, inaccessibility of many social benefits [3, 58].

To reveal the issue of further development of social partnership legal regulation it is needed to give statements of P.D. Pylypenko that social partnership as a phenomenon and as a principle of employment law is new to the national legal system, in contrast to the legal systems in the countries with developed market economies. There are such well-known forms of social partnership in the international law as bipartism (USA, Canada) and tripartism (France, Germany). Those forms have long occupied their significant place in the collective and contractual regulation of labor relations [4, 51].

We completely agree with the above-mentioned information and we note that in Ukraine (compared to the young state) there is no own national legal system with its own characteristics. Social partnership has begun to emerge since Ukraine's independence (1991). Thus, the Ukrainian Soviet Socialist Republic as the Soviet Union had no inherent social partnership, considering the fact that in terms of the planned economy and the absence of the private sphere of management and business employers abuse their position, it was impossible. This was due to the fact that the owner of all means of manufacturing in the USSR was the state only and in the USSR the principle of "rule of the proletariat" was proclaimed, that meant the absence of any private business and the "dictatorship of the proletariat."

Taking into account that social partnership in employment law of Ukraine gained its development recently, it became a new concept for its employment law; in-depth study and analysis of the main trends of its further development are seen today.

In the context of the above-mentioned scientific position of Yu. V. Chetkov, who notes that for the national science of employment law it is significant the broad understanding of the legal industry as designed to serve the purposes of safety, not only as protecting the interests of employees. This idea corresponds to the essence of employment law, the origin and development of which is connected on the one hand, with the development of industrial production and increased use of hired labor, and on the second - the idea of humanism, the gradual realization of human life and health as higher values.

However, under socialism even the aim of protecting the workers interests achieved especially with the help of stringent public regulation, whereby the worker was protected even from himself (for example, secondary employment was strictly limited, it was explained by the fact that a person has right for the rest and actually relieve themselves of this right and cause harm to his or her health). The transference to a market economy changed the situation greatly. But the problem of correlation of public and private development trends in employment law was not resolved properly, because there were no theoretical assumptions. In such circumstances, public trends in this sphere have not been brought to its logical conclusion, nor have evolved towards feasibility and reasonableness [5, 108].

We note that the public intervention of state into the social partnership in the employment law of Ukraine is regulated inconsistently and haphazardly.

Judging from the analysis of the employment law doctrine we can identify the main trends of further development of social partnership legal regulation in employment law, which should cover the following issues:

1. Development of the mechanism for employment in terms of global computerization and automatization of the operating process.

The task of labor relations management in terms of the transition to the 6th technological mode is primarily the fullest involvement (development and use) of the creative potential of individuals. For that purpose so-called "humanized" management turns away from rigid opposition of leisure time (creativity) and operating time (production) and creates the conditions and opportunities for creative human potential disclosure already in the work itself. Accordingly, the last from the process of human use is converted into a factor of its development. Thus, various models and social partnerships systems against the background of post-industrial trends to stimulate creative principles diverge from the usual pattern of construction the objectivistic management and labor relations towards various methods of staff attracting to the development and process of management and labor. Unfortunately, during the global transition to the 6th technological way Ukraine loses many opportunities related to the material and technical resources and human potential, especially at the level of the system social communication, use and development [6, 19].

2. Mechanism reforming for parties encouraging of social partnership in terms of mutual cooperation and social dialogue.

We think that the law-making body has to develop a system of social and economic inducements for both employers and employees. They should serve as encouragement and motivation for both parties of social partnership. The main task of the state is to reduce social tension in society which is always evolving in any country and in any public cell.

Sustainable success in a competitive environment is connected usually with increased responsibility of a staff, improvement of creativity stimulating of employees, internal corporate deployment of continuous process of learning, improving organization activities, development of part-time work, flexible work schedule. Technological and economic transformations in perspective enforce dependence on ultimate success of the production quality of human life, especially on the level of education and skill, organization and motivation. According to the Lisbon Summit of the European Union (March 2000) the use of new technologies and increased knowledge is a crucial factor of increasing number of qualitative working places, preservation and maintenance of social cooperation. So often targeted tax allowances are given not only to the innovative, venture enterprises, industrial parks, technopolises, but also to those companies that are actively engaged in educational programs, participate in the formation of the system of social partnership, which effectively would impact both the employer and the employee [7].

3. Cardinal changes in the organization of the employment relationship between the employee, on the one hand, and the employer – on the other one.

In recent days for adaptation in the conditions of market labor relations in Ukraine needs new organizational models that involve the production of quality products. Accordingly, industrial giants and small businesses and their strategic association are not typical. Moreover, this organization requires flexible production cycles, changing technology and more qualified workers who would

easily adapt to the constant changes and would be ready for continuous updating of knowledge.

4. Gradual integration of social partnership in employment law to civil society.

V.E. Shedyakov convinces that social partnership in today's conditions allows to conduct productive, not destructive interaction of interests of major actors of labor relations given the current situation as well as long-term perspective to ensure social stability, and rearrange emphasis on processes trigger economic growth and progressive development of models of social management on social functioning interested in business and social integration of corporations. Practical movement is made herewith (A) from the conflict - to the partnership model of interaction; (B) from the analysis of certain individual cases - to management of relationships and flows; (C) from hostility - to cooperation; (D) from creation of various predictions - to use of reliable information; (E) from support from the limited experience - to the strategy of transition; (E) from the functional integration – to the procedural, from the vertical – to the virtual; (G) from withholding information - to sharing it; (I) from the use of subjective experience – to continuous training and so on. [8, 89].

5. Business attracting to the guarantee system of social dialogue.

Supporting scientific position that the character of the interaction between the government and business is one of the most important indicators of society as a whole, we note that the higher the efficiency of interaction between business and public sectors is, the greater the positive impact on the welfare of society as a whole. That is why the economic transformation in Ukraine at the current stage of its development it is necessary to search possible beneficial areas of the state and business in solving social problems, in improving and developing effective mechanisms for such interaction, which is good to all parties [9, 103].

To sum up the above-mentioned, we hope that all the trends of further development of social partnership legal regulation in employment law of Ukraine are aimed at reducing social tensions in the labor market and between employers and employees. The value of this partnership will be not to resolve existing conflicts and contradictions between these entities and that it would be aimed at preventing any possible (even minimal) inconsistencies between workers on the one hand, and employers - on the other. Trends in the further development of social partnership are constantly changing depending on the development of the society itself.

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ІДЕЇ ПОСИЛЕННЯ ГНУЧКОСТІ ПРАВОВОГО РЕГУЛЮВАННЯ ТРУДОВИХ ВІДНОСИН

У статті аналізуються питання посилення гнучкості регулювання трудових відносин. Визначено види гнучкості правового регулювання трудових відносин. Встановлено, що гнучкість правового регулювання трудових відносин постає ефективним елементом регулювання ринку праці в сучасних умовах господарювання.

Ключові слова: *гнучкість, трудові відносини, працівники, нестандартні форми зайнятості.*

Погорелова А.С. Идеи усиления гибкости правового регулирования трудовых отношений

В статье анализируются вопросы усиления гибкости регулирования трудовых отношений. Определены виды гибкости правового регулирования трудовых отношений. Установлено, что гибкость правового регулирования трудовых отношений возникает эффективным элементом регулирования рынка труда в современных условиях хозяйствования.

Ключевые слова: *гибкость, трудовые отношения, работники, нестандартные формы занятости.*