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### **SOCIAL SENSE OF PRINCIPLE OF HUMANISM IN LABOUR LAW OF UKRAINE**

*The main aspects of realization of the principle of humanism have been described and revealed in given scientific article. The essence of this category in the norms of main institutes of labour has been developed. The definition of the principle of humanism have been proposed The impact of realization of the principle of humanism into labour law norms, affirmance of human social value in his sense of justice, respect demonstration in legislation, observance of his rights, civil liberties and interests have been demonstrated.*

**Key words:** *humanism, social value, additional rights and acquittance from duties, respect to an employee's dignity, comfort of labour activity; public maintenance.*

**Кузьменко Г.В. Соціальна сутність принципу гуманізму в трудовому праві України.**

*У науковій статті виявлені та визначені основні правові аспекти реалізації принципу гуманізму. Розкрита суть цієї категорії в нормах основних інститутів трудового права. Запропоноване поняття принципу гуманізму в трудовому праві. Також показано, як реалізація принципу гуманізму в норми трудового права впливає на ефективність цієї галузі, утвердження в правосвідомості людини його соціальної цінності, прояву в законодавстві поваги до нього, дотримання прав, свобод і інтересів.*

**Ключові слова:** *гуманізм, соціальна цінність, додаткові права і звільнення від обов'язків, повага до людської гідності працівника, комфортність трудової діяльності; державний захист.*

***Кузьменко Г.В. Социальная сущность принципа гуманизма в трудовом праве Украины.***

*В представленной научной статье выявлены и обозначены основные правовые аспекты реализации принципа гуманизма. Раскрыта сущность этой категории в нормах основных институтов трудового права. Предложено понятие принципа гуманизма в трудовом праве. Также показано, как реализация принципа гуманизма в нормы трудового права влияет на эффективность этой отрасли, утверждения в правосознании человека его социальной ценности, проявления в законодательстве уважения к нему, соблюдения прав, свобод и интересов.*

***Ключевые слова:*** гуманизм, социальная ценность, дополнительные права и освобождение от обязанностей, уважение к человеческому достоинству работника, комфортность трудовой деятельности; государственная защита.

The history of principle of humanism in law proves its exceptional priority in legal doctrine. It has gone from indirect fixing in legal norms to the role of the core idea, realized in preambles of modern fundamental regulatory legal acts and, therefore, has become the basic rule of social co-operation.

Evolution of the attitude to a person has formed the list of main features of humanism. These are possible to form, taking into account the criteria of human social happiness:

1) absolute value of human life and health. Any threat to life and health of a person, use of human life without his consent as an instrument for political, military, medical purposes, deliberate risks for human health has to be treated by government as a inadmissibility in any circumstances;

2) respect to humans dignity. Physical care for life and health of a personality without such moral essential like respect doesn't correspond to the essence of humanism;

3) social and legal security and information support. Legal protection guaranteeing, provision of social and information support of those people who need the increased attention from the state are the unconditional demands for existence of a state which task is the provision of the comfort and happiness for people with restricted abilities, incurables, pensioners, unwed mothers, people of no fixed abode, orphans, prisoners.

Simultaneously, one concept has been expressed in legal doctrine: protection of this category of people comes not out of the principle of humanism but out of the principle of equality. Thus, Professor V.D. Filimonov points out that "support of vulnerable members of society (minors, afflicted people, handicapped people, pensioners and so on) always corresponds to the society interests and its way to development and progress" [1, p. 102-103.]

4) freedom. Self-willed interference in private affairs of a person, illegal restriction of his freedom in communication, movement, free expressions of thoughts, skills realization in education, labour, creative work, family life can't exist in a state, oriented to humanistic development.

Humanism, first of all, has influenced the instrument of social regulation as liberal, valuable idea, democratizing all the legal mechanism. The key ideas of humanism have found their realization in law in following aspects:

a) historical and political:

- abolition at the level of law implementation. Nowadays the slave-owning, exploitation and forced labour have been officially prohibited in all countries of the world. The last bar on slave-owning and use of slave labour has been introduced in Mauritania in July, 1980. The knowing of dignity as integral features of all without exception people from birth has ended the humiliation and exploitation of a human by human. Dignity and value of a person underline in his ability to moral self-identification. Therefore, everybody has to respect each other's autonomy. No one should be treated as the instrument for reaching the goals – this is the fundamental principle of respect of human dignity and related demands to it [2, p. 123].

b) legal:

- introduction of institution of agreement. Equality as one of the features of humanism has triggered the legal equivalence of the parties which desire to reach concord within expression of their will and fix it in the form of law-making treaty. Treaty is a form of legal dialogue between the subjects of law which has formed the culture of legal relations to evolutionally higher level. So, it were the Roman Empire times first to spread the rule “like one comes to agreement with another, it will have the corresponding force (homologeîn, (greek) ὁμόλογος – to talk equally)” [3, p. 236-240]. Scientific concepts prove that the basic element of any agreement is the equality of parties at least at the moment of its signing, and the absence of equality makes it unnecessary [4, p. 81-82] Moreover, law-making treaty has been considered to be the main regulator of social relations for a long time.

- introduction of the custody and committeeship institution. Custody and committeeship play the important role in mankind history since every person can be vulnerable to social risks. Thus, O.N. Ukolova and V.V. Melikhov consider that “rising amount of quantity of handicapped people, economic crisis, modern ideas of humanism have become the source of social attention to this social group” [5, p. 131]. Care for people who are not able to realize their rights and meet obligations on their own due to insufficient ability or its total absence is a quality of humanism-oriented society of social state.

- possibility to protect the outraged right and interests judicially. The right for legal defense is indispensable essential of mechanism of unhampered realization of community of its rights and legal freedoms. Presuppositions for origin of legal defense institution occurred when contractual adjustment of disputes changed physical savage. Thus, first courts of arbitration appeared in Hellenic civilization. Later the Romans adopted these courts and the Roman Civil law, as is well known, has triggered civil codes of most of European countries. The right for impartial and fair judicial examination was fixed in Magna Carta, dated 1215 and in United States Declaration of Independence, 1776 [6, p. 145].

Due to humanism legal defense has been enriched with the principle of assumption of innocence - *ne bis in idem* – the prohibition to call to account for the

same violation twice and also the freedom from self-accusation, the right not to testify against nearest relations and members of the family.

We consider the principle of humanism in law to be the general principle of law which approves the priority of interests of a single person upon states and society interests and which is fixed in law norms that secure human dignity and set the additional rights and plays the main role within identity and self-actualization of a person in social life.

Analyzing the realization of the principle of humanism into law norms, professor V.D. Filimonov considers that the last ones, in one case, embody humanism, based on fairness of equality of all members of social relations, and in another – humanism based on fairness of inequality [7, p. 105 - 106].

Thus, Professor V.D Filimonov divides norms which embody the humanism of equality of rights and duties into the norms that fix the basic rights and freedoms of a person and the norms which regulate a person's realization of his basic rights and freedoms. The first group of norms is set by international law and the Constitution of the country. The second covers two subgroups of norms - within realization of law and within their protection in social life. They are fixed in branch codes and laws [7, p. 105-106].

Norms which embody the humanism of inequality of rights and duties are applied when a person needs to be given additional rights or acquittance from other duties and legal restrictions which are general for all people. The author points out that "inequality becomes humanistic and fair when it is needed to help people who meet the difficulties in view of exceptional peculiarities of their life or harsh living conditions, for instance, when help for elderly, handicapped people, pregnant women, people who support minor children or aged parents, people who face with financial difficulties and so on is needed. The author gives an example of the legislative acquittance from duty to pass the employment probation for pregnant women and people under 18 years old" [7, p. 106].

Principle of humanism in labor law norms within scientific understanding can be regarded in two meanings: in narrow and wide sense. Wide sense covers almost all types of labour relations which occur in the movement of following tasks:

- social and legal (provision of all-round development of a person in labour relations, respect to an employee and employer, non admission of any discrimination, forced labour, provision of morally healthy climate in collective, social maintenance, state support guaranteeing while employer's incapacity for work);
- organizational (provision of decent and favourable conditions for job placement, work process and aggrandizement, occupational safety and health, rational limitation of work hours, observance of the right to rest);
- economic (provision of such level of payment for labour which guarantees the adequate standard of living for an employee and members of his family).

In narrow sense the principle of humanism should be connected with the duty of the state to determine and to guarantee preferred treatment, additional rights for separate categories of employees who are in unequal positions with other others because of that or other reasons and to determine leniency (liability exemption or acquaintance) in labour relations.

So, such universal idea like principle of humanism is typical for all the labour law branch and for its institutes to a greater or lesser extent. It expresses by the following key ideas which are general for all the institutes:

- 1) prohibition of forced labour caused by threat of applying or applying violent influence;
- 2) provision of respect to employee's dignity as to the highest social value;
- 3) attitude to a worker as a bearer of ability to work and not to a mean of production;
- 4) government protection of labour rights of an employee;
- 5) guaranteeing of support for vulnerable categories of employees;
- 6) non admission of any discrimination to a worker;
- 7) provision of creative self-actualization, self-affirmation and improvement of labour potential of an employee;
- 8) provision of conditions for all-round humanization of work;
- 9) observance of an employee's right to take part in social and production affairs and procurement of social partnership;
- 10) prohibition of child labour.

Derivative ideas of principle of humanism have been realized in institutes of labour law in the following way:

1) labour contract and job placement (guaranteeing of voluntary labour, individualization of labour relations as a mean that allows to represent the interests of an employee and employer more efficiently, invalidity of provisions of a labour contract that worsen employee's position, prohibition of any discrimination while job placement and work and prohibition to dismiss on the discrimination grounds, procurement of the elimination of unemployment, free of charge procurement in selection of suitable and gainful work, professional training and retraining, guaranteeing of severance pay for employees who lost permanent job );

2) labour hours and rest time (determination of admissible duration of working time, rational combination of work hours and rest time regimes according to physiological peculiarities of human organism, prohibition to recruit in night time and off hours, guaranteeing of annual paid leave, prohibition of compensatory leave for working overtime);

3) labour rate fixing and wage (limited material responsibility, indexation of wages);

4) women' labour, juvenile labor and labour of handicapped people (provision of favourable legal and social regime for combining job with maternity, provision of additional guarantees and privileges while job placement and dismiss);

5) occupational safety and health (all round provision of safe work conditions, provision of decent conditions on-the-job to risen the factor of moral and psychological satisfaction of employees, refusal to work if an employee has a reasonable suspicion that fulfillment of his duties can be dangerous for him and people around, provision of special regimes of diet and rest for workers who face very harsh conditions, provision of comfortable production environment, non admission of mobbing and bullying in labour relations);

6) labor discipline and disciplinary liability (employee's presumption of innocence, adequacy of punishment to harmful consequence, impossibility to discipline twice for the same violation of labour discipline. impossibility to discipline after the expiry of six months, remission of penalty).

Thus, principle of humanism in labour law is an imperative demand to lawmaking and law enforcement in labour relations which:

1) gives the additional rights and privileges to those employees who can't compete as equals with the rest of workers and need additional help in labour self-actualization;

2) release this category of employees from execution of some their duties which other workers have;

3) approve the ideal of dignity and value of an employee in labour relations.

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