

Disciplinary Liability for Violation of Labor Legislation: the Context of Realization of the Right to Labour

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Abstract

The article substantiates the expediency of classifying labor law violations that are not crimes or misdemeanors of officials and employees in the field of public administration, to disciplinary offenses entailing non-material and material disciplinary liability which must be provided for in the future Labor Code of Ukraine. This position is primarily due to the fact that a citizen (employee), being a general subject of a labor offense (as opposed to an employer as its special subject), is not endowed with official powers in public administration and cannot bear administrative (managerial) responsibility for committing an offense, as detailed in the article.

Key words: discipline, labor legislation, labor legal relations, labor law violation, labor law responsibility, contractual responsibility, disciplinary responsibility, material responsibility, administrative responsibility, criminal responsibility.

Introduction

According to the provisions of Article 1, parts 1, 2, 4 and 7 of Article 43 of the Constitution of Ukraine, the Ukrainian state as a social and legal state, creates conditions for the full exercise by citizens of the right to work, which includes the opportunity to earn a living by work that a person freely chooses or for which freely agrees, guarantees equal opportunities in choosing a profession and type of labor activity, as well as the right to proper working conditions, timely receipt of remuneration (Constitution of Ukraine, 1996).

Society is social national and territorial system of people's interaction, which realizes individual, group and general interests in the sphere of production relations of a certain historical type with the establishment of the corresponding normative restrictions on the freedom of subjects as a general compromise. It is forming a behavioral necessity for participants in social relations. The level of individual awareness and acceptance of such a need, manifested in relation to social tasks and values, the realization of rights and obligations, with the subsequent (positive or negative for the subject) reaction of society and the state to the results of socially significant behavior, forms the concept responsibility.

Responsible behavior means the socially significant activity of an individual on the basis of his acceptance of regulatory requirements in connection with the awareness of the essence and significance of lawful actions, activities, their consequences for society, its groups and individuals, and social progress. The measure of responsible behavior is discipline, which means a set of rules for the behavior of an individual that correspond to the rules of social community, work and office routine, and fulfillment of the terms of contracts accepted in social norms or requirements.

The result of the subject's socially responsible behavior entails positive consequences for him in the form of moral and material rewards. Such consequences form a retrospective positive responsibility for the socially useful behavior that has taken place. It, in its turn, serves as a stimulus for the same behavior in the future, orienting the subject towards future socially responsible law-abiding behavior, which presupposes perspective and prospective positive responsibility. This assumption indicates its provision by objective law, defining a passive objective nature (Khutoryan, 2003).

The reverse orientation of behavior means a subjective rejection of the requirements of objective law, motivated by the prevalence of individual illegal interests over general ones, manifested in asocial illegal actions that form irresponsible behavior, entailing the onset of negative retrospective social and legal responsibility.

Legal responsibility is of decisive importance for protecting public interests and values from unlawful encroachments, which is a legal relationship between the subject of the offense and the competent law enforcement and judicial authority of the state or another authorized person, containing the authority to apply sanctions of protective norms to the personality of the offender, obliging him to incur certain personal hardships, material and organizational nature.

At the same time, socially dangerous offenses that cause maximum harm to public and state interests in the sphere of labor relations are provided for by the norms of criminal law as the following crimes: criminal acts and criminal offenses. Their types, structures and qualifying signs are contained in the Criminal Code of Ukraine (Ukrainian CC), which also provides for and the most severe criminal liability, the procedure for bringing to which is regulated by the Criminal Procedure Code of Ukraine.

Other socially harmful offenses, causing minor harm to public interests in the sphere of labor legal relations, violating labor discipline, are provided for by the norms of administrative and labor law as misdemeanors such as administrative offenses, disciplinary offenses. Their types, compositions and qualifying signs are contained in the Code of Ukraine on Administrative Offenses and the Code of Labor Laws of Ukraine, which provides for labor liability as administrative as disciplinary, as well as the procedure for attracting and material sanctions for committing.

Such differentiation of offenses, despite its tradition, seems imperfect, since there is a mixture of "vertical", namely the degree of social harm, and "horizontal", namely the sphere of public relations, objects and subjects of offenses, criteria. This creates a significant "dispersion" of protective orders in the system legislation, causing its increased conflict and chaos. In addition, a citizen represented by an employee, being a general subject of a labor offense, as it is opposed to an employer as his special subject, is not endowed with official powers in public administration and cannot bear administrative or managerial responsibility for committing an offense.

Problem development status

The institution of legal responsibility for violation of labor legislation was investigated by V.M. Andreev, N.B. Bolotin, V.S. Venediktov, Yu.S. Godovanets, V.K. Grischuk, N.I. Duravkina, V.V. Zhernakov, S.I. Zapara, I.V. Tooth, D.A. Karpenko, I.P. Klimishin, L.R. Kosmiy, I.A. Kuzmin, O. N. Lukyanchikov, A.M. Lushnikov, M.V. Lushnikova, V.P. Mironenko, I. V. Novoselskaya, A.I. Protsevsky, R.I. Obruchkov, P.D. Pilipenko, V.I. Prokopenko, V.G. Rotan, S.N. Sinchuk,

M.P. Stadnik, L.I. Surovskaya, N.N. Khutoryan, O. V. Cherkasov, I.I. Shamshina, O. N. Yaroshenko and others.

However, these problems were considered fragmentary. To solve them, the way of rethinking of these criteria is required on the basis of decriminalization, an objective legal limitation of administrative liability, a significant expansion of the scope of disciplinary liability for improper execution of public order rules in the labor sphere.

Purpose of the article

The purpose of the article is to substantiate the need to improve the differentiation of labor offenses (in the present legislation: administrative offenses, disciplinary offenses), and justify the use of only disciplinary liability for their commission, enshrined in the improved Labor Code of Ukraine. This contributes to the decriminalization and humanization of legal responsibility, the establishment of the principle of human centrism in it.

Materials and methods

The article uses the analysis of legal doctrine, works of famous legal scholars and representatives of other social sciences. Also, a wide analysis of the regulatory framework was carried out, including acts of labor, administrative and criminal legislation. In the preparation of the article, such general scientific and special legal research methods were applied as: analysis and synthesis, deduction and induction, information retrieval, systemic functional, doctrinal, comparative legal, hermeneutic, synergetic, and other methods.

Results and Discussion

Article 22 of the Universal Declaration of Human Rights states that everyone has the right to work, to free choice of work, to fair and favorable working conditions and to protection from unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and satisfactory remuneration, ensuring an existence worthy of a person for himself and his family, and supplemented, if necessary, by other means of social security. The right to work is guaranteed by articles 6-8 of the International Covenant on Economic, Social and Cultural Rights (The United Nations General Assembly International Convention Economic, Social and Cultural Rights, 1966).

The right to work in Ukraine is guaranteed by Article 43 of the Constitution of Ukraine. This article is the constitutional basis of all labor legislation of Ukraine and provides for the right of everyone to work, which includes the opportunity to earn his living by work that he freely chooses or freely agrees to. The state creates conditions for the full exercise by citizens of the right to work, guarantees equal opportunities in choosing a profession and type of work (Constitution of Ukraine, 1996).

The norms, establishing and regulating legal liability for violations of labor laws, are distributed across four branches of law such as labor, civil, administrative and criminal. At the same time, many of them are imperfect due to archaism, lack of specificity or blanket, scattered, as S.I. Zapara states. This leads to legal confusion of citizens, their loss of confidence in the law, passive waiting and observation, complicating the appeal to the courts to protect their labor rights. Mistrust in the institutions for the protection of labor rights, labor dispute commissions, conciliation commissions, labor arbitration, courts in connection with abuses of the right to excessive administration by employers. It proves about the unpreparedness of workers to self-defense of their labor rights, hindering a full-fledged social partnership of the parties participating in labor relations, testifying to the spread of the sentiments of legal nihilism in the public legal consciousness. Looking for the way out

of this situation, S.I. Zapara indicates a clear concretization of legal liability in labor relations in the relevant legal norms, expressed in a special law, as well as the provision of its specific types, methods, sizes, procedure for compensation for damage and types of enforcement in labor and collective agreements and agreements concluded in accordance with labor legislation and are of a civil nature (Zapara, 2015).

The objective and legal grounds for legal liability in labor legislation provide for labor offenses that infringe on the procedure for organizing work established by the internal labor regulations or statutes and regulations on discipline, as well as on the property rights of an employer or employee as subjects of civil law relations. The first are disciplinary offenses, for which there is disciplinary responsibility, consisting in the application of disciplinary measures (Art. 139-152 Chapter X of the Labor Code of Ukraine of December 10, 1971); the latter are expressed in the commission of civil violations in connection with non-fulfillment or improper fulfillment by one of the parties of contractual obligations to comply with the property rights of the other party in accordance with labor legislation, assuming financial liability (Art. 130-138 Chapter IX of the Labor Code of Ukraine dated 10 December 1971), the terms of the labor agreement, contract, collective agreement (Labor Code of Ukraine, 1971).

According to Yu.S. Hodovanets and I.S. Kanzafarova's statement, both of these types of legal liability in labor law are predominantly of private law nature (Hodovanets, 2016), since related offenses cause property damage to the counterparty (Kanzafarova, 2007), infringing on contractual discipline.

The opinion of scientists on legal responsibility in labor law as the obligation of subjects of labor legal relations to be responsible for non-compliance with labor discipline (Pilipenko et al., 2007) logically confirms the disciplinary nature of material liability for acts causing property damage to the party to the employment contract through the fault of the other party. The same conclusion follows from the O.V. Cherkasov's point of view on responsibility in labor law as the obligation of the parties to the employment relationship to experience adverse personal, property or organizational consequences for the offense committed in the field of hired labor in the manner established by labor legislation (Cherkasov, 2015).

According to A.I. Protsevsky, modern contracts in the field of labor relations are focused on the autonomous social and labor partnership of their subjects on the basis of predominantly dispositive provisions of the law as a legal source of contractual labor law, which ensures the coordination of the interests of the latter with the interests of society and the state (Protsevsky, 2014). The development of market relations in Ukraine determines dispositive contractual principles of labor legal responsibility, referring it to contractual types, which allows the parties to an employment contract to determine their own mutual measures of such responsibility, specifying the disciplinary sanctions provided for by law (Yaroshenko, 2013). At the same time, liability for violation of labor discipline is one-sided, and for causing material damage is bilateral (Hodovanets, 2016).

Moreover, both of these types of labor law responsibility are associated with a violation of discipline, the rules of which support not only the internal labor schedule, but also the proper attitude to the property of the enterprise, institution, organization, property rights of the employee and employer, which, in accordance with labor legislation, is provided for by the provisions of labor and collective agreements.

Therefore, V.A. Chub, the presence or absence of property damage determines the application of material or disciplinary (non-material) liability sanctions. An employee may be held liable not for any culpable unlawful failure to comply with labor discipline, but only for such, as a result of which material damage was caused to the employer. At the same time, a complex application of disciplinary, material and criminal liability measures is possible. The entry into force of a court verdict,

which established the employee's guilt in stealing the employer's property (Chub, 2018) can serve as an example.

The inter-sectoral nature of the legal regulation of labor relations in Ukraine is determined, as it is noted, by the possibility of applying, along with disciplinary and material, administrative and criminal liability. The latter is inherent in civil law content. They are regulated by both labor and, respectively, administrative and criminal law. Due to the close connection of the grounds for the onset of these types of responsibility with the subject of labor law regulation, according to R.I. Obruchkov's statement, it is impossible to understand and apply criminal, and administrative liability without proper study and clarification of the content of specific employment relationship correctly, during which the participants committed certain offenses (Obruchkov, 2015).

In the present labor legislation, as V.S. Venediktov states, there is no concept of its notion. There are no types of legal responsibility inherent only in this branch of law. Disciplinary and material liability, although regulated by labor law, is also widely used in other industries. Conversely, criminal and administrative liability can be applied for violation of labor laws. Therefore, the presence of various types of legal responsibility in the process of regulating labor relations should have its own name (Venediktov, 1996).

The state, noted by the authors, leads to the idea of the need to consolidate all protective norms; containing sanctions for violation of discipline in the field of labor relations into a single codified legislative act the Labor Code of Ukraine, excepting criminal law. The present Customs Code of Ukraine, dated March 13, 2012 No. 4495-VI, containing Section XVIII "Violations of customs rules and responsibility for them" and Section XIX "Proceedings in cases of violations of customs rules" (Customs Code of Ukraine, 2012) is the exact confirmation.

Administrative responsibility for violation of labor legislation is enshrined in Art. 41-413 Ch. 5. "Administrative offenses in the field of labor protection and public health" of the Code of Ukraine on Administrative Offense, dated 7 December, 1984 Art. 41 "Violations of the requirements of labor legislation and labor protection" is provided for: illegal delays in the payment of pensions, scholarships, wages or their payment not in full; the term for providing employees with documents on their labor activity or indicating in them inaccurate data; violations of the term and procedure for certification of workplaces for working conditions, other violations of the requirements of labor legislation; actual admission of an employee to work without signing an employment contract, admission to work of a foreigner or stateless person and persons in respect of whom a decision was made to draw up documents for granting refugee status, on the terms of an employment contract without permission to use their labor; violation of the requirements of regulatory enactments on labor protection; violation of the established procedure for notification (provision of information) to the central executive body implementing state policy in the field of labor protection, about an accident at work, violation of the guarantees and benefits established by law for employees involved in the performance of military duties (Petkov, 2012).

In Art. 411 "Evasion of participation in negotiations to conclude, amend or supplement a collective agreement, contract", for these acts the responsibility of persons representing the owners or their authorized bodies or trade unions or other bodies authorized by the labor collective, representatives of labor collectives was established (Petkov, 2012).

The persons listed in Art. 411 are liable. According to Art. 412 "Violation or non-fulfillment of a collective agreement, contract" and Art. 413, "Failure to provide information for collective bargaining and control over the implementation of collective agreements, agreements" (Petkov, 2012) they are liable too.

These violations of the procedure for the employment of foreigners and stateless persons, payment of wages, failure to comply with the legal requirements of officials of the central executive authority on supervision and control over compliance with labor legislation are committed in the field of labor management as illegal acts of employers (special subjects of labor offenses), managing enterprises, institutions, organizations, regardless of the form of ownership. And since the subject of administrative law mainly includes the relations of public administration, it seems appropriate to transfer the norms on the responsibility of managers of non-state enterprises for labor law violations of discipline from the Code of Administrative Offenses and Administrative Offenses into the Labor Code (Petkov, 2011).

Criminal liability for violation of labor legislation is provided for by the Special Part of the Criminal Code of Ukraine in Art. 170 "Obstruction of the legitimate activities of trade unions, political parties, public organizations", art. 171 "Obstruction of the legitimate professional activities of journalists", art. 172 "Gross violation of labor legislation", Art. 173 "Gross violation of a labor agreement", Art. 174 "Compulsion to participate in a strike or obstruction of participation in a strike", and Art. 175 "Failure to pay wages, scholarships, pensions or other statutory benefits" (Criminal Code of Ukraine, 2011). It borders on administrative responsibility for such offenses, differing from the first in the greater severity of sanctions. Moreover, the decriminalization of liability for violations of labor legislation is evidenced by Art. 175 of the Criminal Code of Ukraine on non-payment of wages for more than one month is criminal in favor of expanding. Therefore, non-payment for a shorter period is not a criminal, but an administrative offense, responsibility for which is provided for in Part 1 of Art. 41. (CUonAO). In addition, it applies only to regular payments (Klimyshyn, 2012).

The analysis of scientific works, educational material and legislation of Ukraine gives grounds for the conclusion that the institution of labor law responsibility has an intersectoral nature, and therefore the features of its application are established by industry legislation.

Conclusion

Thus, all violations of labor legislation that are not crimes or administrative offenses (misconduct) of officials and employees in connection with the exercise of their powers in the field of public administration are inherently disciplinary in nature. Legal liability for violations of labor legislation is characterized by a disciplinary basis, private law content, contractual form, and a dispositive implementation mechanism. Proceeding from this, the protective norms, the sanctions of which determine the legal responsibility of managers (employers) and employees for violation of the rules of discipline contained in labor legal relations should be placed in the relevant sections of the Special Part of the future Labor Code of Ukraine. In the same place - a section on the peculiarities of the procedural procedure for imposing penalties for violations of labor discipline by a special authorized body. The special part of the code should consolidate the control and supervisory powers of a single body to ensure the implementation of labor legislation, the Labor Inspectorate namely, as well as regulate the procedure for conducting inspections by it for the correctness of imposing penalties on employees.

In this approach, the Ukrainian legal system will get rid of some rudiments of the Soviet legal system. So material liability, in particular in labor law, is not only the obligation of the employee to compensate for the damage caused to the employer (enterprise, institution, organization, individual entrepreneur) as a result of violation of labor discipline, but also the obligation of the employer to compensate for the damage caused to the employee (in as a result of illegal deprivation of the opportunity to work, for delay in the payment of wages), or his property, that is, violation of the labor rights of the citizen. In general, material liability cannot be considered as a separate type of legal

liability and is a legal sanction an inalienable consequence unfavorable for the offender for committing the offender. The material component of responsibility for the commission of a misdemeanor or crime is provided by measures of state coercion and methods of ensuring legal influence.

The proposed approach, based on the postulates of the theory of law, corresponding to the conceptual foundations of Roman law, tested in the present Customs Code of Ukraine, harmonizes the legislation on legal liability in labor relations.

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