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ОСНОВНИ ПРИНЦИПИ УКРАЇНСЬКОГО КОНСТИТУЦІОНАЛІЗМУ В КОНТЕКСТІ ЄВРОПЕЙСЬКОГО ВИМІРУ

Анотація

У статті розкрито зміст та функціональний взаємозв'язок принципів верховенства права, верховенства прав людини та конституційного демократизму як основних принципів українського конституціоналізму в контексті процесів євроінтеграції України. Визначено, що в сучасних умовах конституційних перетворень ці принципи набувають надважливого значення для України, що прагне формування демократичного суспільства і правової держави відповідно до європейських стандартів та цінностей.

Ключові слова: конституціоналізм, принципи українського конституціоналізму, верховенство права, права людини, конституційний демократизм, конституційні перетворення, європейські цінності та стандарти.

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ОСНОВНЫЕ ПРИНЦИПЫ УКРАИНСКОГО КОНСТИТУЦИОНАЛИЗМА В КОНТЕКСТЕ ЕВРОПЕЙСКОГО ИЗМЕРЕНИЯ

Аннотация

В статье раскрыто содержание и функциональная взаимосвязь принципов верховенства права, верховенства прав человека и конституционного демократизма как основных принципов украинского конституционализма в контексте процессов евроинтеграции Украины. Констатировано, что в современных условиях конституционных преобразований эти принципы приобретают важнейшее значение для Украины, которая стремится к формированию демократического общества и правового государства в соответствии с европейскими стандартами и ценностями.

Ключевые слова: конституционализм, принципы украинского конституционализма, верховенство права, права человека, конституционный демократизм, конституционные преобразования, европейские ценности и стандарты.

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MECHANISM FOR ENSURING OF THE RIGHT OF EMPLOYEE TO DIGNITY AT WORK

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The article analyzes the legal nature and content of the right of an employee to dignity at work that will understand his place in the labour rights. It aims to provide an overview of the costs, the causes and consequences of mental ill health in the workplace. This article also focuses on the description of the second report on the application of the provisions of the European Social Charter (revised) that Ukraine has submitted. Formulated proposals designed to ensure more effective personal non-property labour right. Emphasize the critical importance of ensuring the personal non-property labour right by courts of general jurisdiction, supervisory authorities, the Ukrainian Parliament Commissioner for Human Rights.

Keywords: dignity, personal non-property labour rights, moral harassment in the workplace, methods of protection.

The problem. Ensuring effective implementation of the right of employees to the protection of their dignity at work is impossible without overcoming manifestations of moral harassment in the workplace. Category "dignity" as a moral value deeply penetrated into the legal content of the legal system.

The analysis of research work and publications. The most significant contribution to the the re-

search of the concept of legal regulation of the right of employees to the protection of their dignity are the works of legal scholars, such as: N.N. Agarkov, A.M. Aleksandrov, S.S. Alekseev, M.I. Baru, E.A. Yerzhova, A.S. Joffe, I.J. Kiselev, K.D. Krylov, R.Z. Livshits, A.M. Lushnikov, M.V. Lushnikova, S.P. Mavrin, A.F. Nurtdinova, A.S. Pashkov, V. Skobelkin, L.S. Tal, E.B. Khokhlov, L.A. Chikanova,

A.M. Erdelevsky, as well as K. Ahola, S. Calderbank, G. Connolly, T. Cox, A. Elkin, A. Gehrke, R. Gründler, J. Hassard, J. K. Hesselink, M. Hupke, A. Jain, S. Leka, N. Mellor, A. Pinder, M. Rahnfeld, P. Rosch etc.

The purpose of this article is to research mechanism for ensuring of the right of employees to dignity at work as one of the basic personal non-property labour rights.

The main material. There is no doubt that psychosocial risks and work-related stress are among the most challenging issues in occupational safety and health. They impact significantly on the health of individuals, organisations and national economies.

Around half of European employees consider stress to be common in their workplace, and it contributes to around half of all lost working days. Like many other issues surrounding mental health, stress is often misunderstood or stigmatised. Some examples of working conditions leading to psychosocial risks are: excessive workloads; conflicting demands and lack of role clarity; lack of involvement in making decisions that affect the employee and lack of influence over the way the job is done; poorly managed organisational change, job insecurity; ineffective communication, lack of support from management or colleagues; psychological harassment [1].

According to the 6th Working Conditions Survey 2013 published by the French Ministry of Labour (Dares), work pressure in terms of pace of work increased between 2005 and 2013, and appears to be linked to organisational change and feelings of greater job insecurity. Nearly one-third of employees face external demands such as pressure to provide prompt responses or having work determined by the automatic movement of a production line. These pressures have increased for all occupational groups, although the rise is more pronounced for tertiary workers and skilled craftsmen. The share of employees whose work pace is monitored by a computer is also rising in all occupational groups, up from 25% in 2005 to 35% in 2013. Managers and social workers are most affected by this trend [2]. Furthermore, employees claim they are now more likely to have to interrupt tasks in order to do another job, and to have to change their job depending on the needs of their organisation.

A more recent poll in the UK by Investors in People [3], published in February 2014, found that over half (54%) of full-time employees feel their employer doesn't care about their health and well-being as long as they get the job done. Over one-quarter (29%) of employees in the UK is unhappy in their job, and as overall job satisfaction decreases, the number of sick days taken goes up. However, the research also shows that over half (51%) of those questioned said the health and well-being benefits offered by their employer improve their overall job satisfaction. Respondents stated that flexible hours (43%) were the top health and well-being benefit that makes, or would make them, feel most satisfied and valued in their role. With eight out of ten (80%) people saying they would feel more positive towards their employer if they offered better health and wellbeing benefits, the research suggests that by improving some

simple health and wellbeing practices, businesses could reduce the absenteeism rate.

The Health and Safety Executive estimates the costs to society of work-related stress to be around 4 billion each year in the UK [4].

Policies and approaches relevant to the management of psychosocial risks, can take various forms. On the basis of existing literature, policy initiatives which relate to psychosocial risk management can be classified as: legislation/policy development; standards at national/stakeholder levels; stakeholder/collective agreements; signed declarations; international organisation action; social dialogue initiatives; national strategy development; development of guidelines; economic incentives/programmes; establishing networks/partnerships.

In the last decade, new “softer” forms of policy which directly refer to psychosocial risks and its associated problems have been initiated in the EU through increased stakeholder involvement within such frameworks as social dialogue and corporate social responsibility [5].

In the high-pressure environment of the financial sector, work pace and demands are high. To reduce stress from high workloads and demands, the bank Len & Spar of Denmark set up the “DO IT NOW” project. The aim was to improve efficiency within the company by giving workers the tools to complete work in a more structured way and reduce wasted time. “The Good Life” is a course run for employees focusing on wellbeing, values, attitudes and habits in work and at home. After one year of The Good Life course, 55 % of employees reported that their work-life balance had improved [6]. Care interviews have resulted in the halving of sickness absence/stress-related leave in the bank.

The following samples also illustrate how campaigns that have been launched to tackle psychosocial risks are proceeding.

For instance, Schneider Electric, an electrical utilities group (France), introduced a preventive approach, outlined in a company agreement by the social partners, using internal staff and resources already available. A prevention programme aimed to train staff involved in prevention to develop a common language and to be alert to psychosocial risks, including burnout, and to develop tools to prevent bullying or suicide risks and to help affected employees to remain in employment. A significant number of managers, health and safety officers and employees have received training on psychosocial risks so far. Raising awareness about psychosocial risks is one of the priority training topics for 2015. The first results from the measures implemented show that the number of managers suffering from burnout has decreased by more than 50 % [7]. The psychosocial risk prevention program at Schneider Electric France has been selected by the French Ministry of Labour to represent France at the European competition on stress at work at the ILO.

In Germany, employers are cooperating with the unions and the Federal Ministry for Labour and Social Affairs (BMAS) to reduce psychological strains and protect employees' health in the context of the “Joint declaration on psychological health at the workplace” signed by the BDA, DGB and BMAS in the autumn of 2013. In Sweden, the

Work Environment Authority investigated whether employer responsibility for the psychosocial work environment should be binding by law. The debate started following a district court ruling that two managers were found guilty of violating the Health and Safety at Work Act and of involuntary manslaughter under the Criminal Code for the suicide of a worker after a year of bullying [8]. Employer organisations are against any binding legislation because of the difficulty in measuring a good psychosocial working environment.

In Belgium, a law was introduced in September 2014 on the prevention of psychosocial risks, which expands coverage for the entirety of psychosocial risks and sets out procedures and the responsibilities of the different actors. It is a law against burnout came into effect on 1 September 2014. Burnout describes an individual's psychological response to chronic stressors at work. It is not regarded as a medical condition, i.e., it is not included as a diagnosis in the medical classification systems. However, in the International Classification of Diseases (version 10) burnout can be coded as a factor that influences health status and in the Diagnostic Statistical Manual (version IV) it is listed as a condition that may require clinical attention. The burnout phenomenon was originally discovered in professionals employed in human service work; particularly among professional care groups. A major part of this work involves contact with a variety of people, which can subsequently develop into a source of stress. Relative to human service work, the symptoms of burnout were labelled as emotional exhaustion, depersonalization, and diminished personal accomplishment [9]. It was later realised that burnout can result from prolonged work stress in a wider range of occupations.

A new Belgian law obliges employers to acknowledge the risk of burnout among their employees and take appropriate measures to prevent it. Employers in Belgium will be responsible for conducting risk analyses and counselling employees in order to avoid burnout, a feeling of exhaustion and hopelessness brought on by prolonged exposure to stress in the workplace. It is the first time that the term "burnout" has been used in Belgian legislation [10].

Effective and fully established psychosocial risk management should incorporate five important elements: 1) a declared focus on a defined work population, workplace, set of operations or particular type of equipment; 2) an assessment of risks to understand the nature of the problem and their underlying causes; 3) the design and implementation of actions designed to remove or reduce those risks (solutions); 4) the evaluation of those actions; 5) the active and careful management of the process [11].

There is a wide variety of actions and strategies that can be successfully used to promote mental health and prevent work-related stress. The common characteristics observed in initiatives to promote wellbeing and health and prevent mental ill-health were: identification of workplace risk factors; the use of organisational measures to reduce the identified risks; the development of a workplace culture/ environment conducive to workers' health and wellbeing; flexible working hours and support for daily life challenges (e.g.,

access to child care); job modification and career development; the use of multi-component wellbeing programmes (for example, including physical exercise programmes in Mental health promotion programmes); training and awareness raising measures on mental health issues for managers as well as employees; early identification of stress and mental ill-health and enhanced care management; free psychological counselling and specific psychological support [12].

Ukraine ratified the Revised European Social Charter on 21/12/2006, accepting 74 of the 98 paragraphs of the Charter, including Article 26 "Right to dignity in the workplace" [13]. Ukraine has submitted the second report on the application of the provisions of the European Social Charter (revised) in the Council of Europe on 6 October 2009.

Moral harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination. And this independently from the fact that not all harassment behaviors are acts of discrimination, except when this is presumed by law.

Thus, it is the employer's responsibility and legal obligation to assess and manage psychosocial risks in the workplace.

In such situation, the most substantive problem is that once work-related stress and ill health set in, absenteeism is usually already on the increase, and therefore productivity and innovation are already in decline.

Ukraine has submitted the Second Report on the application of the provisions of the European Social Charter (revised) in the Council of Europe on 6 October 2009. However, the European Committee of Social Rights Committee asks for precise information on laws, administrative acts or case law which guarantees the right of persons to effective protection against moral harassment in the workplace or in relation to work. The report contains no information about the liability of employers and means of redress.

The Committee recalls that it must be possible for employers to be held liable towards persons employed or not employed by them who have suffered moral harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, etc.

The protection against moral harassment in the workplace or in relation to work, must include effective judicial remedies, comprising the right to appeal to an independent body in the event of harassment.

There are no special provisions on burden of proof. The Committee has ruled that effective protection of employees requires a shift in the burden of proof. In particular, courts should be able to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges (Conclusions 2003, Slovenia). The Committee asks what is the situation as regards burden of proof. The protection against moral harassment includes the right to obtain adequate compensation and the right and not to be

retaliated against for upholding these rights. Also the Committee asks for information on how the right of persons to effective reparation for pecuniary and non pecuniary damage is guaranteed [14].

Furthermore, it should be noted that the results of the monitoring of the Ukrainian Parliament Commissioner for Human Rights indicated that it is due to mismatch between the effective provisions of labour legislation and other legal acts and contemporary social and economic developments, international trends and standards, as well as due to the lack of efficient state policies over the labour market and employment sector. It is especially manifested through the problems such as creation of decent workplaces, reduction of 'shadow' employment and payment of wages, informal and non-standard employment, and improper and untimely response to new challenges emerging at the labour market with regard to greater globalization.

Therefore, a number of legislative amendments are proposed to solve the above-mentioned problems, such as: bringing labour legislation in conformity with the requirements of European Social Charter (revised) and the conventions of International Labour Organization; ensuring the observance of the right to judicial protection and unconditional implementation of the court judg-

ments; improving of the functions of state surveillance and control over the observance of labour legislation [15, p. 357].

Conclusions. However, in the acts of the current legislation and in the draft Labour Code of Ukraine the term "moral harassment", appropriate preventive measures, the legal responsibility are not provided. It appears advisable to enshrine in the draft Labour Code of Ukraine such forms and methods of protection of employee from moral harassment in the workplace, the protection of their dignity at work: 1) the employee shall have the right to suspend work if there are reasonable grounds to believe that the working environment is an imminent and a serious threat, and the period of downtime is also subject to payment (self-defence of employees of their labour rights); 2) the employee has the right to file a complaint about moral harassment to the representative bodies of the company (in particular, the defence of employees labour rights by trade unions); 3) the employee has the right to file a complaint to the State Labour Service of Ukraine (the defence of employees labour rights by bodies exercising state supervision and control over the observance of labour legislation.); 4) the employee enjoys the right to apply to the court (judicial defence of labour rights of employees).

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МЕХАНІЗМ ЗАБЕЗПЕЧЕННЯ ПРАВА ПРАЦІВНИКА НА ГІДНЕ СТАВЛЕННЯ НА РОБОТІ

Анотація

У статті аналізуються юридична природа і зміст права працівника на гідне ставлення на роботі, його місце в системі трудових прав. Звертається увага на огляд витрат, причин і наслідків морального переслідування на робочому місці. Надається характеристика представленої Україною другої доповіді щодо реалізації положень Європейської соціальної хартії (переглянутої). Формулюються пропозиції, спрямовані на більш ефективне забезпечення цього особистого немайнового трудового права. Підкреслюється важливість забезпечення особистих немайнових трудових прав судами загальної юрисдикції, органами державного контролю та нагляду, Уповноваженим Верховної Ради України з прав людини.

Ключові слова: гідність, особисті немайнові трудові права, моральне переслідування на робочому місці, способи захисту.

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МЕХАНИЗМ ОБЕСПЕЧЕНИЯ ПРАВА РАБОТНИКА НА ДОСТОЙНОЕ ОБРАЩЕНИЕ НА РАБОТЕ

Аннотация

В статье анализируются юридическая природа и содержание права работника на достойное отношение к работе, его место в системе трудовых прав. Обращается внимание на обзор расходов, причин и последствиям морального преследования на рабочем месте. Охарактеризован представленный Украиной второй доклад относительно реализации положений Европейской социальной хартии (пересмотренной). Формулируются предложения, направленные на более эффективное обеспечение этого личного неимущественного трудового права. Подчеркивается важность обеспечения личных неимущественных трудовых прав судами общей юрисдикции, органами государственного контроля и надзора, Уполномоченным Верховной Рады Украины по правам человека.

Ключевые слова: достоинство, личные неимущественные трудовые права, моральное преследование на рабочем месте, способы защиты.

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REGIONAL DEVELOPMENT AND SPATIAL DISTRIBUTION OF CRIME IN UKRAINE

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Crime is a complicated phenomenon that needs a complex of temporal, structural and geographical approaches of analysis. The specific issue addressed in this paper concerns the expediency of scientific study of the nexus between crime spatial distribution and regional socio-economic development (or underdevelopment). The study includes a number of quantitative techniques and criminometric methods that combine correlation, regression and cluster analysis. The obtained results are helpful for identifying the most significant clusters of crime with regard to uneven regional development. Three crime clusters were formed with explicit pattern – a higher level of crime corresponds to a higher level of social and economic indicators and vice versa. Nevertheless the economic development in regions of Ukraine is considerable, but not the most influential determinant of crime distribution. According to the regression coefficients the predictor of urbanization has the most significant response: for each 1 increase of urbanization, crime increases by 0.79.

Keywords: crime, development, urbanization, region, geography of crime, criminometrics, cluster analysis.

Introduction. In the transition to the post-industrial type of operation, many communities have faced the paradox that in contrast to the expected positive and progressive impact created a number of socio-economic and derived there from criminogenic threats and risks, which reflect the

adaptive nature of criminal activity to the development. Currently popular concept of sustainable development has evolved from the environmental problems to the problems of security, including the component of criminological security. Accordingly, one of the defining challenges of modern criminol-