

On Principles of Labour Law

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Abstract: The study considers the theoretical and practical understanding of the principles of labour law as a legal category. Comparative analysis of Soviet and Russian legal science on the question of the relationship between the concepts of “principles of law” and “legal principles”. Also refers to the judicial practice which promotes the interests of the employer and to prevent abuse by employees.

Key words: The principles of law, labor law, employment contract, the right to work, rights of workers and employers

INTRODUCTION

A concept of “principle” (lat. “principium”) stands for a basic foundation, a fundamental an original leading idea, a basic rule of conduct, a practice (Lyokhina and Petrova, 1952) which is most frequently used in the context of the prime postulate in any theory, teaching, science, ideology, etc. (Cherdanshev, 2001) From these standpoints, principles of law are basic leading ideas (fundamentals) penetrating law characterizing its subject-matter and forming its system (Lunev, 1978; Yavich, 1978). Principles of law have an objective character of a derived element of objective laws of social development (Lukasheva, 1970).

The Soviet and Russian legal science has long debated on correlation of “principles of law” and “legal principles” differing in a way that the latter are seen to be normative, i.e., codified in a legal act (a norm principle) (Semenov, 1982) and revealed in elements of legal social system (other than the system of law)-legal conscience, legal culture and principles of social development recognized in a legal form. S.S. Alexeev assumes that legally non-codified fundamentals cannot be associated with a number of legal principles. V.M. Vedyakhin and K.V. Vedyakhina notice that ideas remain dormant, legally insignificant theoretic fundamentals, unless formulated in legal norms (explicitly or implicitly). If mediated by the law maker these ideas become effective legal norms. L.Y. Bugrov pointed to essential significance of these principles in interpreting law breaching gaps in law and overpassing collisions with regard to subject-matter of positive law of a certain country (Bugrov, 1992).

RESEARCH

It is indicative that Article 2 of the Labour Code of the Russian Federation contains provisions that basic

principles of legal regulation of labour relations and other relations directly linked to them shall be final and conclusive rather than principles of labour law. The constitution of the Russian Federation recognizes as fundamental principles of the Russian labour law the following: prohibitions of abuse of right; restriction on rights and legal interests of employees to a degree needed for protection of constitutional fundamentals; equality of labour rights and prohibition of discrimination in the sphere of labour; prohibition of forced labour.

Thus for the foregoing reasons, it seems appropriate to conclude that principles of law are basic ideas and provisions reflecting laws of development of social relations codified in sources (forms) of law and providing for performance of law and legal consciousness, determining the essence and social function of law.

Thus, according to Article 2 of the Labour Code of the Russian Federation, main principles of legal regulation of labour relations and other relations directly linked to them include the following: freedom of labour including the right to work which everyone shall freely choose or freely agree to... It seems important that the constitution of the Russian Federation doesn't stipulate the right to work, but confirms the right to protection against unemployment.

Prohibition of forced labour and discrimination in the sphere of labour (Article 4 of the Labour Code of the Russian Federation). In conformity with this provision, everyone has equal possibilities for realisation of his/her labour rights. No one can be disabled to perform its labour rights and freedoms or take advantages depending on circumstances irrelevant to professional qualities of an employee. Meanwhile, it is not discriminative to set differentiation, exceptions, preferences and restrictions of employee's rights which are determined by legally established standards for a specific type of labour or by a particular concern of the state to persons requiring

increased social and legal protection. This principle also aims at safeguarding interests of employers and disallowing abuses of employees.

Protection against unemployment and assistance in job placement. This principle is developed in the Labour Code of the Russian Federation and several legal acts in labour sphere. For instance, according to Article of the Labour Code of the Russian Federation on canceling the labour contract in connection with liquidation of the organization (Article 81 part 1 point 1 of the Labour Code of the Russian Federation) or reducing the number of permanent staff (Article 81 part 1 point 2) the employee to be dismissed is paid a dismissal allowance in the amount of the average monthly wages for the period of taking up a job but not more than for 2 months from the date of dismissal (considering a dismissal allowance).

Safeguarding the right of every employee to equitable work conditions including the work conditions meeting safety and health requirements, the right to rest and leisure including limitations of working hours, provision of daily rest, days off and non-working holidays, paid annual vacations. This principle is provided by a significant number of norms in the Labour Code. Thus, it is important to notice that the Constitution of the Russian Federation doesn't establish the right of everyone to have equitable work conditions. Equality of employees' rights and opportunities. This principle has similar characteristics with the second one. In fact prohibition of discrimination in the sphere of labour is revealed in this equality statement. Meanwhile, these principles differ from one another from the point of their subject-matter. Thus, prohibition of forced labour proceeds from the above mentioned principle of freedom in labour and other relations directly linked to them. It seems necessary that this principle should be supplemented by some security provision.

Safeguarding the right of every employee to timely and complete payment of equitable wages ensuring the decent human sustenance for himself/herself and his/her family and not being lower than the minimal wage set by the Federal Laws. This principle seems to have quite a declarative character. Regulation of relations concerning wages in labour law and the relevant principle is realised in conformity with norms set by Chapter 21 of the Labour Code of the Russian Federation. Besides this principle is provided by some other legal acts. For instance, Federal Law from 19 June, 2000 N 82-FL "on minimum rate of labour payment" as amended and supplemented.

Safeguarding employees' opportunities, without any discrimination for carrier advancement with account for work performance, skills and the job seniority as well as for professional training, re-training and skill improvement. Proceeding from the above

mentioned principle this one and the principle of equality prohibit forced labour and discrimination in the sphere of labour. On the other hand, it is self-sustaining which is determined by its subject-matter. In fact, it can be easily characterised as the principle of sustainable development of labour qualities of an employee.

Safeguarding the employees' and employers' right of association for protection of their rights and interests, including the right of employees to organize labor unions and join them. This principle finds realization in several norms of the Labour Code and Federal Law from 12 January, 1996 N 10-FL "on professional unions, their rights and guarantees of their activity" (Bezina, 2004) as amended and supplemented. This principle seems not to comply with the constitution of the Russian Federation so far as relevant Article 30 because the constitutional principle establishes the right rather than its enforcement. At the same time, safeguard of the right and the right itself are separate notions.

Safeguarding the right of employees to participate in the organization's management in the forms stipulated by law. This legal principle is a special case of the above mentioned principle of social partnership. In accordance with Article 27 of the Labour Code of the Russian Federation, participation of employees their representatives in managing an organization is one of the forms of social partnership. However, the law maker singles out this principle from the rest. This may be connected with peculiarities of law enforcement which frequently takes place on the interdisciplinary basis. We should take into account that relations concerning internal (corporate) management of a company belong to the field of civil law for they have characteristics specified in Article 2 of the Labour Code of the Russian Federation. Therefore, this principle is realised both as a norm of labour and civil law.

Combination of state and contractual regulation of labor relations and other relations directly linked to them. In the framework the law maker pays attention to two levels of regulation in labour law-normative (normative legal and local) and contractual. These levels correlate in a certain way-the normative level takes priority over the contractual. This is revealed in a way that on the contractual level one cannot lower legal guarantees (recede from them) stipulated in the normative level, most significantly in the Labour Code of the Russian Federation. This conclusion derives directly from provisions of Article 9 of the Labour Code stipulating that collective contracts, agreements and labour contracts may not contain conditions lowering the level of rights and guarantees of employees as set forth by the labour laws. Such conditions are not applicable, provided they are

included in a collective contract or a labour contract. It should be mentioned that the principle under examination has become a common court practice when examining labour disputes since the times of the Soviet Labour Law.

At the same time, it is highly questionable to treat the correlation of the state and contractual regulation of labour relations and other relations directly linked to them as a principle of labour law helping to regulate the labour sphere.

Principle of social partnership which includes the right of employees, employers their associations to participate in contractual regulation of labor relations and other relations directly linked to them.

Article 24 of the Labour Code of the Russian Federation sets forth a number of principles (Article 24) including: equality of the parties; respect of and regard for interests of the parties; commitment of the parties to participate in the contractual relations; assistance of the state in strengthening and developing the social partnership on the democratic basis, etc.

Stipulation of these principles in labour legislation for a particular field of legal regulation proves that legal principles of specific subdivisions of labour legislation find realisation in labour law the same as in civil law.

Liability for damage to the employee caused by his/her performance of work duties. A number of principles of labour law are associated with protection of subjective rights in the sphere of labour. This principle is the one to refer to this group. In fact, it shows the way a civil legal principle of restoration of violated rights can reveal itself in the sphere of labour. Realisation of this principle is based on norms of Chapter 39 of the Labour Code stipulating compensation for property damage and moral harm. Damage resulting from moral harm lends itself to application of norms of the Labour Code (Article 237) and provisions of the Civil Code of the Russian Federation (Article 151, etc.) relevant to compensation. This is demonstrated by purview of point 63 of the Decree of Plenum of Supreme Court of the Russian Federation from 17 March, 2004 N 2. Moreover, it seems necessary to agree to a point that equivalent right of the employer should be recognized on the level of principles of law if there are sufficient legal grounds.

Establishing official state guarantees on safeguarding rights of employees and employers, exercising official state surveillance and control of compliance with them. This principle is realised within the framework of the system of legal measures set by the labour laws.

However, conspicuous is the fact that that this provision is viewed as an objective of labour law as much as the following.

Safeguarding the right to settlement of individual and collective labour disputes including judicial protection of his/her labour rights and principle of resolution of individual and collective disputes as well as the right to strike in the manner set by the Labour Code and other Federal Laws. Alongside with similar principles, these two refer to protective principles of labour law and make basis of the protection system in labour law.

Duties of the parties to a labour contract to honour the terms and conditions of the contract agreed upon, including the right of the employer to require the employees to perform their work duties and take proper care of the employer's property and the right of employees to require the employer to honour its duties and liabilities concerning the employees, the labor laws and other acts containing the labor law norms. Among the rest, this principle has a specific subject-matter, owing to its law making and law enforcement character. Although, it seems that this principle is connected with only one institute of labour law-a labour contract. Besides, viewing obligation as a principle can cause doubts.

Safeguarding the right of labour union representative to exercise labour union control of compliance with the labour laws and other acts containing the labour law norms. Alongside with state protection of rights and interests of employees, current labour legislation establishes legal regime for social (in this case-labour union) protection for them. In both cases legal registration of such protection can be initiated with codification of an adequate legal principle.

Safeguarding the right of employees to protection of their dignity in the framework of their labour activities. This principle also refers to protective principles of labour law. It seems to be realised on the interdisciplinary level both in labour and civil law. Conspicuous is the fact that this principle doesn't contain any provision on business reputation, labour dignity of an employee. Besides, a provision as related to "in the framework of their labour activities" seems debatable. Thus such issues resulting from cases of termination of a labour contract by the initiative of an employer can become and are common in court hearing practices. Besides in accordance with Article 152 of the Civil Code of the Russian Federation, protection of honour and dignity can be safeguarded after the death of a person.

Safeguarding the right to mandatory social insurance for employees. This principle is aimed to make favourable conditions for an employee helping him/her to restore his/her labour functions (as the case may allow). This also helps to safeguard employer's interests because employees are provided by property stability in certain critical situations. Meanwhile, these legal relations seem to provide for social security of people therefore it is quite debatable to refer them to the sphere of labour.

CONCLUSION

The principles of labour law under examination make basis of labour law and seem to focus on safeguarding effective realisation of subjective rights of mainly a so called “vulnerable” area of labour and other relations directly linked to them-an employee which is probably determined by the necessity of safeguarding increased legal protection of this party as economically more vulnerable in the relevant legal relations and by historical traditions of the Soviet and Russian Labour Law.

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