

TRADE UNION LEGAL STATUS IN UKRAINE AND POLAND: COMPARATIVE-LEGAL ASPECT

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Summary. Comparative-legal analysis of trade union status on the Ukrainian and Polish legislature in comparison with International standards has been made; proposals on Poland legal experience usage in the sphere of trade union activity regulation by the Ukrainian legislation have been grounded.

Key words: trade union, legal status, legalization, deregistration, legal subjectivity, trade union responsibility.

INTRODUCTION

Trade unions take particular place among the subjects of labor law and their role is considerably becoming actually in the conditions of market economy. Active introduction of market relations leads to deterioration the level of employee's socio-legal guaranties inevitably. It strengthens institutional meaning of trade unions which according to their status have to provide the protection of labor and other socio-economic rights of employees. It determines the necessity of re-thinking and clear regulation of trade union legal status in the modern marketing conditions in the development of Ukrainian society.

Such scientists as N.B.Bolotina, V.S.Venediktov, V.V. Zhernakov, V.L.Kostyuk, N.V.Neumyvaichenko, V.Yu. Nikiforov, G.I.Chanysheva and others pay great attention to the problems of legal regulation of trade union activity at a modern stage. However, trade union legal status hasn't been determined yet in the Ukrainian legislation clearly enough.

Foreign legal regulation experience of trade union activity can be very useful for native legislator at the stage of national labor legislation reformation. In this connection the experience of legal regulation of trade union activity in Poland is very interesting; where the trade unions have been playing a significant role in a socio-economic life of the country for a long period of time.

The objective of this paper is to carry out comparative-legal analysis of trade union status on the Ukrainian and Polish legislation and on the base of it to form the proposals on the improvement of legal regulation of trade union activity in Ukraine.

THE RESEARCH SUBJECT

The research subject is the normative-legal base of trade union regulation on the legislation of Poland and Ukraine, international legal standards in this sphere.

Problem aspects of legal regulation of trade union activity on the native legislation, existing scientific positions concerning the trade union legal status and guaranties of their activity have to be considered.

THE RESULTS OF THEORETICAL-LEGAL RESEARCHES

The professor I.Ya. Kiselyev stresses that Poland was the first country in Eastern Europe which began its way from socialism and totalitarianism to the market economy and democracy, showing the road to other countries of this area. The peculiarities of this country development (the activity of trade union “Solidarnost”, workers mass strike actions) lead to the fact that at the beginning of the 90th in Poland four laws (on trade unions, entrepreneur’s organizations, collective treaties, the order of collective working disputes solution) have been adopted. These laws gave the foundation to the new collective labor law. These laws fully correspond to the International standards and due to it they reflect the specific features of the country transition economy going along the market transformations [Kiselyov 1999].

At first, the Convention norms MOT № 87 “On the association freedom and organization defense rights” 1948, can be referred to the international standards in the sphere of trade union activity. These standards guarantee the workers the right to establish organizations and also join them with the aim of defending their interests according to their choice [3].

Pointed out international standards have been reflected in the Constitution of Ukraine, in which the right to establish organizations and join them with the aim of defending their labor rights and interests is secured as one of the most important socio-economic human rights. So, section 3, article 36 of the Ukrainian Constitution says that the “citizens have the right to participate in trade unions with the aim of defending their labor and socio-economic rights and interests” [2].

The right to join the trade unions includes such employees’ rights as to join and leave them according to the terms and order determined by their charters; the right to elect their representatives to defend the interests of the trade union members, to participate in the internal organization life, the right to realize freely their trade union activity without any state bodies permission. This right is legally secured in article 6 of the Ukrainian Law “On the trade unions, their activity rights and guarantees” of September, 15, 1999 (further – The Law of Ukraine) [5].

In this section the norms of Ukrainian legislation coincide with the position of Polish legislation.

Polish Law on the trade unions 1991 was one of the first acts of the labor legislation in the Eastern European countries. It meant the outgoing from the previous system of labor relations regulation, including the trade union activity; this law introduced the notions which were quite different from the previous legislation; the trade union independence from political parties, trade union pluralism and so forth. This

Law determines the trade union as volunteer self-governing working organization, created to defend and present their social and professional rights and interests. The independence of trade unions from the entrepreneurs, state bodies and any other organizations is proposed [Kiselyov 1999].

There is an important standard both in the Ukrainian and Polish legislation, securing discrimination to be or not to be a member of the trade union [5, article 5]. Thus, the positive feature of the Polish Legislation is that it concretizes the given standard and lays down that we can't admit so called "closed shop", which means that if you are a trade union member you are given a job.

Unlike the Ukrainian Law the Polish Law on the trade unions stresses more accurately and clearly the circle of people who can be trade union members. A wide scope of workers has the right to join the trade unions in Poland: employees with different kind of labor contracts; the cooperative members; managers working on the labor contracts (like the Ukrainian legislation they are the directors of enterprises, establishments, organizations); and also home workers. Pensioners and also unemployed people have the right to be trade union members. The policemen and frontier guards have the right to establish trade unions but only with limitations defined by the legislation. The military people haven't the right to form trade unions [Kiselyov 1999].

The Ukrainian Law is limited by the general standard to establish trade unions freely and it is used at the local level regulation which gives the possibility to be a trade union member, indicating that "The trade union charter can give the possibility to be a trade union member to those people who are busy with creative activity, farmers, enterprisers, and also people who study both at the vocational –technical schools and higher institutions, the people who have retired or those who don't work temporarily" [5, ss.1,3 art 7].

It seems to be more reasonable to secure clearly the circle of people who can establish trade unions and who can't do it, it is given in a separate article of the Ukrainian Legislation in order to avoid the legal uncertainty.

The Polish Law on the trade unions and the Ukrainian Law secure the legal status of trade unions as subjects of labor law. The elements of legal status as it is known are legal subjectivity, the main working rights and obligations, the guarantees of working rights and obligations, stipulated responsibility for the offence of labor obligations by the legislation.

The trade unions acquire the legal subjectivity from the moment of legalization which means the beginning of their activity. The positive character of the Polish and Ukrainian legislation is that the law determines the definite requirements to the content of charted documents which are necessary to establish trade union legal subjectivity.

According to the Ukrainian legislation the trade union registration is done by the local justice bodies, but according to the Polish Law it is done by the court of the province. The advantage of the Polish legislation is that the basis of trade union de-registration is clearly defined which can be either volunteer or forced. Trade unions de-registration is executed by that court which legalized this trade union [Kiselyov 1999].

As for our point of view, if one body has the right to legalize or to de-legalize the trade union it allows to provide clarity, objectivity, efficiency, legality as well for arising of trade union legal subjectivity as for its ceasing.

According to the Law of Ukraine the court makes a decision on forced trade union disbandment, but the general meeting of trade union members makes a decision on a volunteer disbandment; in this case the order of trade union de-registration is not regulated by the Law [5, p. 18], that's why the legal uncertainty concerning the trade union legal subjectivity is created.

It is also necessary to mention that the Polish Law on trade unions indicates minimum number of members, namely 10 people, which is necessary to make a trade union. There is no such an order in the Ukrainian Law; it puts uncertainty into the order of trade union formation.

It seems to us that the Law of Ukraine has and some other problems in the secure of trade union legal status. For instance, section II of an above mentioned Law is called "The rights and duties of trade unions, their associations", but there is not any delimitation between the rights and duties in the text of this section, in reality, only trade union rights are fixed in this section.

We consider that proposed model of trade unions preliminary powers only in the forms of rights and not duties in the labor legislation of Ukraine doesn't allow to say completely that trade unions are the effective defense mechanism of their members rights and interests. In such a legal regulation the trade union can or can't be on the employees' side, so it can refuse them in their defense. Such an approach levels the active trade union participation in the solution of social problems both at the state level, at the level of territorial communities and at a local production level. Moreover, it is necessary to stress that today trade unions in spite of their independence declared at the legislation level, actually, are depended on the employers because in fact they are financed by them [5, pages 42-44].

In our opinion the creation of optimal approaches to the realization of defense function by them must be the base of a constructive model of the trade union legal status. The trade union defense function is aimed at the defense of employee's individual and collective rights and interests. That is why it is necessary to lay down that the defense of their members' rights and interests by the trade unions is not the right but it is exclusively the trade union duty. Legislative secure of such a duty is very important because a subjective right is a measure of possible behavior at authorized side's discretion. That's why coming from the legal nature of the category of "law" we can say that nowadays the trade unions either can execute or can't execute their defense function.

Preliminary powers of chosen bodies of primary trade union organization at the enterprises, in the establishments or organizations are not clearly presented. By the law the main preliminary powers are: to conclude and control the fulfillment of the collective treaty, to report about its fulfillment at the general meeting of workers, to address with requirements to the corresponding bodies to call an official functionary to account for failure of collective treaty terms; to solve the problems of introducing, revising and changing of labor norms together with an employer, to solve the questions of employees payment, working hours and rest; to give the permission for overtime work, work at the week-ends and so fourth.

The indicated preliminary powers of a chosen body of a preliminary trade union organization can have a constructive character only if the mechanism which helps perform them lays down the trade union's and its official functionary's responsibility

for the failure or bad fulfillment of their preliminary powers and they must be clearly determined.

There is such a positive standard in the Polish legislation on the trade unions as: if the trade unions of the enterprise don't present remarks, comments and propositions on the regulations, shifts timetable, vocation schedules and so fourth during 30 days, the employer has the right to solve all these questions himself. We think that it would be very useful for the Ukrainian legislator to take this rule in order to create effective mechanism which helps the chosen bodies of the preliminary trade union organizations realize their preliminary powers.

The position of N.B. Bolotina deserves attention and support, who considers that the questions of trade union property responsibility for their duties performance are very actual and urgent at a modern stage, and also it is very actual to define the financial sources for such a responsibility. In the legislation of European countries and the USA where trade union movement is recognized everywhere, the trade union obligations are stipulated legislatively, and also property responsibility for the trade union account is considered. Besides, administrative and criminal responsibility of trade union official functionaries is also stipulated [Bolotina 2006].

Taking into consideration Poland experience it is necessary to note that in Poland the responsibility as a fine (till 50 thousand zloty) for the infringement of this law both from the employers' side, trade unions and their workers is stipulated by the Law on the trade unions. A special procedure of trade union punishment for breaking the law is established legislatively.

So, if the court registered the trade union lays out that it breaks the legislation; the court must demand that the trade union stops this infringement during 14 days, and the procurator's office must start the trial. If the trade union body doesn't stop breaking the law during 14 days and ignores the court's notifications, the court has the right: to impose a fine on each trade union member; to demand to hold new elections of trade union bodies. If the trade union body doesn't obey this demand, its activity must be sustained.

The court may make a decision about the trade union de-registration breaking the law and ignoring the court's notifications, on inadmissible such an infringement and on the expelling of this trade union from the trade union register. This judgment may be appealed in the Court of Appeal. The trade union expelled from the trade union register must stop its activity immediately and must be self-liquidated during 3 months after the given judgment comes into force [Kiselyov 1999].

We consider that a legal approach of the Polish legislation to the regulation of trade union responsibility must be taken into account by the Ukrainian legislation. Acting Ukrainian legislation on trade unions contains only one article devoted to the responsibility called "The responsibility of official functionaries", which actually doesn't say about the responsibility of the trade union itself for the failure of its duties and labor legislation [5, p.46].

So, we may say that one of the most important elements of trade union legal status is the responsibility for the infringement of labor obligations, but nowadays it is not regulated by the Ukrainian legislation and that's why it is the essential legal gap.

CONCLUSION

We can come to the conclusion on the base of the conducted analysis that a legal status of trade unions as subjects of labor law is clearly enough defined by the Polish legislation. Due to above mentioned, the Ukrainian legislation needs to take into consideration the Polish experiment to eliminate the legal gaps in the regulation of the trade union activity in the country and to secure the trade union legal status as subjects of labor law legislatively. In particular it is reasonably to stipulate legislatively: 1) the circle of people who may be united into trade unions, who can't make trade unions; 2) minimum number of people which is necessary to establish a trade union; 3) the court powers on the trade unions legalization and de-legalization; 4) trade unions duties, the basis of their judicial responsibility, kinds of trade unions judicial responsibility and the mechanism of its usage.

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ПРАВОВОЙ СТАТУС ПРОФСОЮЗОВ В УКРАИНЕ И В ПОЛЬШЕ: СРАВНИТЕЛЬНО-ПРАВОВОЙ АСПЕКТ

Лазор Л.И., Шамшина И.И.

Аннотация. Проведен сравнительно-правовой анализ статуса профсоюзов по украинскому и польскому законодательству в сопоставлении с международно-правовыми стандартами, обоснованы предложения по использованию правового опыта Польши в сфере регулирования профсоюзной деятельности украинским законодательством.

Ключевые слова: профсоюз, правовой статус, правосубъективность, легализация, deregistration, ответственность профсоюзов.