KAPITEL 9 / *CHAPTER 9* [9]
SOCIO-LEGAL PRINCIPLES OF REALIZATION OF LABOR RIGHTS AND CONSTITUTIONAL RIGHT TO JUDICIAL PROTECTION

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International labor law standards adopted by the international community and the European Union are the main European integration for Ukraine in building an effective mechanism for legal regulation of human labor. The implementation of the results of legislative and law enforcement activities into the legal models of realization of a person's ability to work requires time to reform the system of legislation [5, 6].

It is quite relevant to the topic of human rights through the prism of dialogue of state power and civil society. The rights of the Ukrainian people are enshrined and guaranteed by the provisions of the Constitution of Ukraine, among which the main right to work is. According to Art. 43 of the Constitution of Ukraine, every person has the right to work, that is, has the opportunity to earn a living with work that he freely chooses or freely agrees. The state, in turn, creates the conditions for its full exercise by its citizens the right to work, guarantees equal opportunities in the choice of both profession and kind of work activity, implements programs of vocational training, training and retraining of personnel, in accordance with public needs, excluding coercive work [7, 10].

In the face of today, socially responsible enterprises, organizations, institutions improve the conditions of labor practice not by the use of compensatory payments, but the introduction of the latest equipment, technology, recovery, safe conditions of the internal production environment, taking into account the requirements of labor aesthetics. The labor practice of the enterprise, institution combines the existing policies and methods regarding the work performed within the organization, the enterprise itself or on its behalf, including subcontracting. This practice goes beyond the relationship of the enterprise with its direct employees, or the responsibility that it carries for its proper or controlled jobs [9]. Labor practice includes: the issue of

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employment and promotion; procedures disciplinary and for consideration of disputes; transfer or moving employees to another place of work; termination of labor relations; training and advanced training; labor protection at the enterprise, safety in the workplace and hygiene of labor; any aspects of a policy or practice that influence working conditions, in particular, the employee's working hours and his / her work; Recognition of employees' organizations and their representation, participation of employees and organizations in collective negotiations, social dialogue and tripartite consultations on solving social problems concerning employment employment. Creating jobs, remuneration, other compensations paid to employees for their work are an important factor in the economic and social contribution of the enterprise [13].

Labor legislation, as well as labor practices in different countries, differ. In countries where the state has not adopted individual laws, the enterprise must comply with the principles regulated by the provisions of international documents, namely, the Declaration of the International Labor Organization on Basic Principles and Rights in the Field of Labor and the mechanism of its implementation and the statutory of the International Labor Organization. If the legislation is adequate, the enterprise must be observed, even if its compliance with the state is not adequate [11].

Each country is guided by the developed normative documents governing the relationship between the employer and the employee. Although specific inspections and criteria for determining existing employment relations in states differ, the fact is that the powers of the parties to the employment contract are not the same, and therefore employees need additional protection that is recognized everywhere, and this is fundamental in labor law. This is important, because not all work is performed by an employee within the limits of labor relations. Therefore, it is necessary to: make sure that work is performed by employees with official status or individual entrepreneur; not to avoid obligations to the employer, which are envisaged by law, by masking the relationship, which, in accordance with the law, is recognized as labor relations; to recognize the importance of guaranteed employment, both individual workers, in particular and society, in general; plan the use of staff to avoid irregular work or excessive use; report in advance about negative changes in activities that affect

employment and mitigate them; to provide equal conditions and opportunities for all employees without allowing direct or indirect discrimination in any work practice; eliminate any practice of unreasonable dismissal of an employee or discriminatory; protect the personal data and confidentiality of the workers; 9) to transfer work on a contractual basis or subcontract only to an enterprise that is officially recognized or otherwise has the opportunity and desire to assume the obligation of the employer to ensure decent working conditions; not to receive any advantage from the unfair, operational or cruel labor practice of a partner, supplier or subcontractor; to strive to increase employment, professional development and promotion of citizens of the country where their activities are carried out [14].

It is important to create favorable working conditions, which are a set of factors of the production environment and the work process, which affect both the health and performance of a person in the course of his / her work duty. In other words, these are the circumstances in which work activity is performed, namely, the nature of the equipment and equipment, the organization of the workplace, the level of compliance with sanitary and aesthetic norms and regulations, the psychological climate in the team. Working conditions in the enterprise are divided into: socio-economic (considered in a broader context and characterize the attitude of society) and production (directly in the workplace). labor, availability of food intake, providing access to medical services [13].

Most working conditions are determined by the current national laws, regulatory or legal acts between the employer and the employee, but some conditions are still determined by the employer. In particular, it is said that the employer should: ensure compliance with the requirements of national legislation and normative legal acts, with their agreement with international labor standards; comply with a high level of requirements established in other legal acts, in particular collective agreements; comply with the minimum requirements set out in international labor standards developed by the International Labor Organization (this is especially important if the relevant requirements have not yet been established by national law); to provide decent conditions regarding issues such as remuneration, working time, weekly weekends,

leave, occupational safety, safety in the workplace, maternity protection, opportunity to combine work at the enterprise with the performance of family responsibilities; as far as possible, allow to adhere to the national or religious tradition, customs, balance of work and personal life; to carry out remuneration or/and other form of remuneration, in accordance with the provisions of national legislation, normative acts, conditions of the collective agreement; adhere to parity in granting equal fees for equal work; to pay the wages to the relevant employee directly, allowing only certain restrictions and deductions from wages allowed by laws, normative legal acts or a collective agreement;) to fulfill obligations concerning the provision of social protection of the employee in the country of residence; respect the employee's right to adhere to the usual or agreed hours of work enshrined in the provisions of the law, regulations or a collective agreement; to pay to the employee overtime, in accordance with the requirements of the legislation, regulations or collective agreement [9].

There is a social dialogue between the subjects of labor relations, which covers negotiations of all types, consultations, exchange of information between government representatives, employer and employee regarding common interests related to economic and social issues that are concerned. Dialogue can occur between the employer and representatives of the working team, covering the issues of their interests, as well as the government, when it comes to factors of a more general nature, in particular, such as legislation and social policy. The responsibilities of the enterprise, institution include: recognition of the importance of the Institute of Social Dialogue (including and established at the international level) and structures of collective negotiations; In all cases, it is respectful to the right of employees to create their own organization and participate in it to achieve their interests or to conduct collective negotiations; In no case do not interfere with employees who want to form or enter their organizations and conduct collective negotiations; Reasonably, without interfering with the activity, as possible, to give properly selected employees access to: persons who are authorized to make decisions, jobs, employees they represent, the necessary means to fulfill their role)) information that will allow them to have an objective picture of collective negotiations [8].

The basis that provides social protection of workers is the legal and organizational basis of labor protection at the enterprise. A socially responsible enterprise develops, implements and supports labor protection policies; applies the principles of management management, including the hierarchy of controls; analyzes and controls the risks related to both labor protection and the activities of the enterprise; provides information on the employee's requirement in all cases to adhere to proper safe practice and ensures the appropriate procedures; Provides protection equipment and for some action in the event of a freelance situation; documents and investigates all incidents and problems related to labor protection at the enterprise to minimize or eliminate them; responds to risks in the field of occupational safety, taking into account their specific impact on women and men or workers who are in special conditions, in particular, people with limited opportunities, inexperienced or young workers; provide levels of labor protection measures for employees of partially employed and temporary, subcontractors; seeks to eliminate psychosocial risks in the workplace, which contribute to or lead to a stressful reaction and disease; provides the necessary training for all staff on the relevant issues; adheres to the principle that measures to ensure occupational safety in the workplace should not be related to the employee's cash costs; founded its own occupational safety system and environmental protection; recognizes and respects employees' rights to: timely obtaining full and truthful information about occupational safety -related risks and best practices to respond to risks; free clarification and clarification on all labor protection issues concerning their work; refusal, which may be an inevitable or serious threat to their lives or health, or the life and health of others; appeal to advice from organizations of employees, employers, other persons who have relevant knowledge, outside the enterprise; notification to the relevant ASP authorities[6].

If you consider a person a certain sensory center that realizes potential opportunities in the social system, the set of human abilities to realize social action in the process of life is a human potential, the development of which implies the availability of political, economic and social opportunities, the manifestation of creativity, improving productivity, self -esteem, self -esteem [1, 2]. For this purpose, a

socially responsible enterprise, at all stages of employees' work, can give access to the preparation and development of skills, career opportunities on equal and non-discriminatory conditions, as needed, to assist dismissed workers in the arrangement of new work, work and work[1, 3].

Virtuous business practice is related to ethical behavior about the interaction of the enterprise with other organizations, state bodies, partners, suppliers, contractors, clients, competitors, associations, whose members are[4].

Problems of conscientious business practices can arise in the fields of combating corruption, responsible participation in the activity of the state, competition, socially responsible behavior in relations with other enterprises, observance of property rights. Currently, a corruption for the abuse of a trusted power to receive personal gain, which can be in the form of bribery (demanding, proposal or receiving a bribe in monetary or in kind) for the participation of officials or persons from the private sector, conflict of interest, fraud, fraud, money, and hiding and hiding, can[1, 4].

In order to prevent corruption, market operator actions should be focused on: identifying the risks of corruption, implementation and maintenance of policies and practices that counteract corruption and extortion; submission of an example of anti -corruption behavior of management, demonstration of dedication, promotion and supervision over the implementation of anti -corruption policy at the enterprise; maintaining and teaching their employees, representatives in their activities to eradicate bribery and corruption; providing stimuli for progress; raising the awareness of their employees, representatives, contractors, suppliers about corruption and counteracting; adequate level of remuneration of employees and pay for legal services only; creating and maintaining an effective corruption system; encouraging their employees, partners, representatives and suppliers to notify the enterprise policy, unethical and unfair treatment, using mechanisms that ensure the implementation of messages and subsequent actions without fear of punishment; reporting cases of criminal law into the relevant law enforcement agencies; fight against corruption, with encouragement to accept such anti -corruption practice of those with whom the enterprise has economic relations[1, 5].

In the field of prevention of corruption, the legislation of Ukraine, in particular, the Law of Ukraine "On Prevention of Corruption", which defines the legal and organizational principles of functioning of the system of prevention of corruption in Ukraine, content and procedure for the use of preventive anti -corruption mechanisms, rules on elimination[4].

The central executive body with a special status that provides for the formation and implementation of the state anti-corruption policy is the National Agency for the Prevention of Corruption, the legal basis of which is the Constitution of Ukraine, the Law of Ukraine "On Prevention[1].

Every citizen has the right to judicial protection of labor rights. The basis of law and order in any democratic rule of law is to ensure and protect human rights. The Constitution of Ukraine proclaims that the provisions of laws are determined by human rights and freedoms as a citizen, and legislative and executive bodies of state power and local self -government function on the basis of human rights, recognizing at the same time justice as a way of ensuring these rights and freedoms (Article 55) [14].

The obligation of Ukraine, as a subject of international law, to protect labor rights, the role of international legal regulations in the field of human law, for the administration of justice, are very important, given the chosen path of democratic development. The introduction of modern European principles of justice, reform of the judicial system, deepen the practice of applying the rules of international law by judges, which are implemented in national legislation[6].

The Plenum Resolution No. 9 of 01.11.1996, the Supreme Court of Ukraine presents an explanation according to which "… the court cannot apply a law that regulates legal relations, otherwise as an international treaty. At the same time, international treaties apply if they do not contradict the Constitution of Ukraine "[12].

One of the fundamental human rights in the conditions of a social and rule of law is the right to judicial protection. The court is a universal jurisdiction body authorized to protect the rights and freedoms of the citizen. Article 124 of the Constitution of Ukraine declares that in Ukraine justice is carried out exclusively by courts. Delegation of a court function, as well as appropriation of functions by other bodies or officials,

are not allowed[10].

The jurisdiction of the courts applies to any legal dispute, and in the cases provided for by law, the courts shall hear other cases. According to the Law of Ukraine "On Judiciary and Status of Judges" (Article 2), the court, by exercising justice on the basis of the rule of law, provides everyone with a fair court and respect for other human rights and freedoms, guaranteed by the Constitution and laws of Ukraine, an international treaty, which is provided by the Verkhovna Rada. In addition, everyone, within a reasonable time, guarantees the protection of rights, freedoms, interests by an independent, impartial and fair court. The availability of justice for each person is ensured, in accordance with the provisions of the Constitution of Ukraine and in accordance with the procedure established by the laws of Ukraine. The legal literature states that the right to judicial protection is a way of protecting the rights, freedoms, the legitimate interests of participants in public legal relations, both individuals and legal entities. The court, on the basis of the rule of law, exercises justice, ensuring the protection of human and citizen's rights and freedoms, the rights and legitimate interests of legal entities, the interests of society and the state guaranteed by the Constitution and the laws of Ukraine[10].

The right to judicial protection is an opportunity to protect their rights in the courts of general and constitutional jurisdiction provided by law. On the one hand, this right is one of the constitutional human rights in the state, along with other political, economic, social and cultural rights, on the other - a law that establishes a special mechanism for the protection of all the above mentioned rights, without exception[9].

Thus, the right to judicial protection is exercised through the organization of justice and the administration of justice. The legal doctrine expresses the thesis that for the administration of justice, justice is: a way of sending justice, the realization of the goals and objectives of the latter, the connection of content and form in relation to justice, that is, by exercising the judiciary, a state body does justice.

The right to judicial protection is conditioned by democracy, fairness, objectivity, professionalism of trial, based on the independence of the court, publicity, competitiveness, immediacy, virtue of the trial, the need to present evidence and is

enshrined and guaranteed by the Constitution of Ukraine (Article 55) [10].

The constitutional right to judicial protection on guaranteed protection of fundamental human rights and freedoms largely meets international legal standards. Everyone has the right to effectively renew in the rights of a competent national court in case of violation of his fundamental rights granted by the Constitution or Law (Article 8 of the Universal Declaration of Human Rights)) [7].

Today, in the definition of human rights, the world level continues to search for consensus, and the issues of development and protection of fundamental rights and freedoms of man are more important at the European level. The problem of human rights has gained a global scale at the national level. In the field of labor, it is exacerbated under the current conditions of a market economy. Therefore, theoretical and practical issues related to the recognition and protection of labor rights are relevant in the field of labor law. Of particular relevance is the problem of establishing and ensuring fundamental labor rights in the conditions of industrial society, globalization of the world economy, with its adverse social consequences. It is relevant to analyze the preconditions for changes in the nature of labor relations, their impact on human labor rights, determination of the prospect of development of labor law, a set of labor rights in the human rights system[11].

For the development of this provision, in paragraph 3 of Art. 2 of the International Covenant on Civil and Political Rights, it is stated that "… every state involved in this Covenant is obliged to provide: any person of the right and freedom of which, recognized in this Covenant, has been violated, an effective remedy, even if this violation is committed by persons acting as officials; the establishment of competent judicial, administrative or legislative authorities or any other competent authority provided by the legal system of the state, the right to legal protection for any person in need of such protection, and to develop the possibilities of judicial protection; the use of the competent authorities of the means of legal protection provided » [6].

In accordance with these international legal norms, the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 8) declares everyone's right to a fair and public case for a reasonable time by an independent,

impartial court established by law, which will resolve a dispute over his rights and obligations of a civi[8].

The judicial decision is publicly proclaimed, but the press and the public may not be admitted to the hall of meetings throughout the trial or part of it in the interests of morality, public order or national security in a democratic society, when the interests of minors or the protection justice[2].

The right to judicial protection has a number of constitutional, organizational and legal guarantees. The rights and freedoms of the person and the citizen are protected by the court, everyone is guaranteed the right to appeal in court the decisions, actions or omissions of state authorities, local self -government bodies, officials and officials. Therefore, the constitutional right to judicial protection is based on the principles of versatility, accessibility, openness, reasonableness, professionalism. The right to judicial protection, in some cases, may allow pre -trial procedures (for example, the appeal to the Commission of Labor Disputes, the Ombudsman of the Verkhovna Rada of Ukraine for Human Rights, etc. [8].

The jurisdiction of the courts extends to any legal dispute (legal dispute), in particular, related to the protection of human rights and freedoms, including socio-economic. The judge, in justice, is guided by the rule of law and is independent. The main principles of justice are: equality of all participants in the trial before the law and the court; ensuring guilt; the competitiveness of the parties and freedom in providing them with their evidence and in proving their persuasiveness; maintaining a public prosecution by the prosecutor in court; ensuring the accused the right to defense; publicity of litigation and its complete fixation by technical means; reasonable terms of consideration by the court; ensuring the right to appeal the case and, in cases specified by law, to the cassation appeal of the court decision; the obligation of the court decision. The judiciary shall be conducted by a judge both individually and the panel of judges or a jury. The Court makes a decision in the name of Ukraine, which is binding on the execution, and the state ensures the enforcement of a court decision in accordance with the procedure established by law. The court is controlled by the court. The right to judicial protection of labor rights is reflected in the complex of

special labor and legal mechanisms of implementation and guarantee. According to the provisions of the Labor Code of Ukraine (Article 232), labor disputes are considered directly in the district, district in the city, city or city district courts according to the statements: employees of enterprises, institutions, organizations where the labor dispute commission is not elected; employees on the renewal at work, regardless of the grounds for termination of the employment contract, the change of the date and formulation of the reason for the dismissal, payment for the period of forced absenteeism or performance below-paid work, except for the disputes of employees specified in part three of Art. 221, Art. 222 of the current Code; the head of the enterprise, institution, organization, its deputies, chief accountant of the enterprise, organization, institutions, his deputies, officials of bodies of income and fees, which were assigned special titles, and officials of central executive bodies, which implement state policy in the field of state financial control and control. executives who are elected, approved or appointed by state bodies, local self -government bodies by public organizations, other associations of citizens, on the issues of dismissal, change of date and formulation of the cause of dismissal, transfer to other work, pay for the period of forced absenteeism and disciplinary. 221, Art.222 of this Code; the owner or his authorized body for compensation by employees of material damage caused to the enterprise, organization, institution; employees regarding the application of labor legislation, which, in accordance with the current legislation, was previously resolved by the owner or his authorized body and elected body of the primary trade union organization of the enterprise, organizations, institutions within the limits of their rights; employees on registration of employment relations for their work without concluding an employment contract and establishing the period of such work[9].

The Labor Code of Ukraine (Article 233) establishes special terms of appeal to the court for protection of labor rights. The provisions of the Code stipulates that an employee may apply for a resolution of a labor dispute directly to the district, district in the city, city or city district court within three months from the day, when he learned whether he had to learn about the violation of his right, and in the case of dismissal - within one month from the date of delivery; in case of violation of the legislation on

remuneration, the employee has the right to go to the court with a claim for recovery of his salary, without restriction at any time; In order to address the owner or his authorized body to the court in the question of recovery from the employee of material damage caused to the enterprise, organization, institution, set a period of one year from the date of detection of damage caused by the employee[10].

Other prescriptions for the implementation and guarantee of the right to judicial protection of labor rights are regulated by the rules of the Civil Procedure Code of Ukraine, taking into account the peculiarities of acts of labor legislation. However, in this approach, the application of civil procedural legislation to labor disputes does not always contribute to the effective protection of human labor rights. An effective interpretation of human rights, as natural (right by nature) and positive (right to discretion), can bring the Ukrainian judicial system to a different level of development to achieve real independence and independence. Movement on the path of implementation of natural law in court decisions cannot be fast, but it is the only correct. To help Ukrainian judges fundamentally change the approaches to the interpretation of situations related to compliance with international legal standards of human rights, the European Court of Justice (practice) of the European Court of Justice. Therefore, the practice of general jurisdiction, related to the implementation of international legal provisions, allows to distinguish the basic forms of interaction of international and national law: consolidation of the norm of international law, as a legal fact of the emergence of domestic relations; interpretation of the norm of domestic law, taking into account the rules of international law, which are binding on Ukraine; implementation of the provisions of the international treaty of Ukraine containing other rules than the Law of Ukraine; Implementation of the provision of the international treaty of Ukraine containing rules that are absent in national law[2, 6].

Practice of application by courts of Ukraine of international legal standards of human rights is a significant factor in the development of justice aimed at strengthening the principles of constructing the rule of law and civil society. Conclization by the court of existing international legal norms in the field[8].

Distribution of human rights into natural and positive ways of judicial

interpretation will bring the Ukrainian judicial system to a completely different level of development in order to achieve real independence and independence. Therefore, it is necessary to use the European Court of Human Rights more carefully and effectively, in particular, that part of it (Ratio Decidendi), which contains a legal interpretation of the norm of the European Court of Human Rights, and is a source of law for the Ukrainian Court. Therefore, under the current conditions of today, one of the prerequisites for the effectiveness and effectiveness of the right to judicial protection of labor rights is the introduction of labor court[8].