

V.N. Dejneka

Postgraduate Student

National University «Odessa Law Academy»,

Department of Labor law and Social Security law

Pionerska str., 2, Odessa, 65009, Ukraine

DEFINITION AND TYPES OF INDIVIDUAL LABOR DISPUTES

Notion and types of individual labor disputes based on the analysis of specific literature and existing labor laws are defined in the article. The proposals on improvement of the content of relevant norms of the Draft Labor Code of Ukraine are made.

Keywords: labor disputes, individual labor disputes, subject of individual labor dispute.

Problem statement. The settlement and resolution of labor disputes is one of the important ways to protect labor rights, freedoms and interests of labor law subjects. Among the fundamental labor rights of workers, as stipulated in Article 2 of Labor Code of Ukraine, there is right on the resolution of collective labor disputes in the manner prescribed by law, and right on court petition to resolve labor disputes, irrespective of the nature of job or position, except cases required by law. The implementation of these rights is ensured by set of rules that are contained in the Labor Code (hereinafter – LC), the Law of Ukraine “About the Procedure for Settling Collective Labor Disputes (Conflicts)”, and other normative-legal acts.

The analysis of recent researches and publications. The problems of consideration of individual labor disputes are investigated in the works of V. D. Arkhipova, M. Y. Bar, N. B. Bolotina, V. Y. Burak, S. A. Goloshchapov, P. F. Yeliseykin, O. M. Kurennoi, I. V. Lagutin, V. V. Lazor, P. D. Pilipenko, S. M. Prilipko, V. G. Rotan, V. I. Smolarchuk, I. O. Snegireva, A. I. Stavtseva, V. M. Skobelkin, V. M. Tolkunova, O. M. Yaroshenko, etc.

In connection with the preparation for the second reading of the Draft LC of Ukraine the detailed analysis of important theoretical issues of the settlement of individual labor disputes for the scientific substantiation of the relevant rules of the bill is required.

Paper purpose. The purpose of this article is to define the concept and types of individual labor disputes and make suggestions on improving the norms of the LC of Ukraine in this sphere.

Paper main body. In modern legal literature as the labor dispute is a disagreement about the application of labor legislation or the establishment or changing of working conditions unresolved by direct negotiations between the employer and employee for resolution of which the employee or the employer appealed to the competent authority on settlement of labor disputes [1, p. 665].

According to M. S. Prilipko and O. M. Yaroshenko, labor disputes are unresolved by direct negotiations disputes between the parties of social and labor relations concerning application of labor legislation, establishing new or modifying existing conditions, which were transmitted for settlement to the competent judicial body [2, p. 715].

The famous Ukrainian scientists' points of view are not exhaustive. In both cases the question is about the parties of labor disputes. In the first case of a labor dispute definition as the parties are recognized the employee and the employer that means narrowing of circle of subjects, among which there is disagreement, because it does not include the parties of collective labor disputes. In the second definition the point of issue is about parties of social and labor relations, with what we also cannot agree. About the disagreements that arise between the parties of social-labor relations, there is a mention in Article 1 of the Law of Ukraine "About the Procedure for Settling Collective Labor Disputes (Conflicts)", in connection with what the definition of labor disputes on the basis of the letter of the law, can only be applied to collective labor disputes.

In the current LC there is no legal definition of the concept and types of individual labor disputes. Chapter XV of the LC stipulates the procedure for the settlement of this category of labor disputes. Although the new labor codes adopted in the post-Soviet space defined the notion of individual and collective labor disputes. Thus, according to Article 381 of the LC of the Russian Federation, individual labor dispute is an unresolved dispute between employers and

employees on the application of labor legislation and other legal acts containing norms of labor law, collective agreement, agreements, local normative acts, employment agreements (including establishing or modifying individual conditions of labor), which is given to an authority for settlement of individual labor disputes.

To define the contest of individual labor disputes we need to consider their parties, the subject and the time of occurrence.

Among Soviet scientists S. A. Goloshchapov made a significant contribution to the development of the doctrine of individual labor disputes. He adhered to a broad interpretation of labor disputes. He believed that labor disputes are not only disputes arising from the employment relationship, but also disputes arising from derivative from employment relations: outplacement; compensation of material damage; relations between trade unions and business bodies on the issues of production, labor and welfare, social security workers, etc. [3, p. 1315]. Thus, the broad concept of labor disputes covered the labor disputes about the regulation of labor relations and other connected relations (derivative).

A broad understanding of the labor dispute occurs in modern literature. So, according to V. A. Safonov, labor dispute is a disagreement arising between the subjects of labor law on the application of labor legislation, labor agreements or the establishment of new working conditions that is resolved in the order established by the federal law [4, p. 601].

In our opinion, we should stick to a narrow interpretation of labor disputes as disagreements between the parties arising out of labor relations. As was rightly pointed out by I. Y. Kiselev, labor dispute is unresolved disagreement between the parties of labor relations [5, p. 273]. Therefore, parties of an individual labor dispute are the employee and the employer.

For the definition of individual labor disputes is also necessary to refer to the matter of dispute. Labor disputes are differentiated not only by parties of the dispute (individual and collective), but by its subject matter (nature, content). The most interesting is a division of labor disputes into disputes over the rights

(application of regulations) and disputes over interests (on the establishment of working conditions).

Disputes over the rights arise in the case of violations of workers' rights, guaranteed by the relevant responsibilities of the parties to the employment contract. Disputes over interests take place when there is a conflict of interests between employer and employee. And if solving dispute over rights, it is possible to oblige the party, which violated labor rights of the other party, to restore them, the solution of dispute over interests neither can lead responsibilities of the worker, nor the employer to satisfy (to provide) interests of each other. In this case, the agreement should be developed and signed by the parties. Current labor legislation of Ukraine in detail resolves only individual labor disputes over rights.

We should pay attention to another circumstance. We are talking about direct negotiations between the employer and employee as a way of resolving disagreements that arose between them. The modalities for negotiations that precede the appearance of an individual labor dispute, the provisions of the LC are not detailed. Owing to the ILO Recommendation № 130 About Consideration of Complaints at the Enterprise for the Purpose of their Permission of 1967, at the emergence of any disagreements it is important to worker to carry out attempt to settle them by means of negotiations with the employer.

However, thus the possibility of realization by the worker of other protection forms of the violated labor right isn't considered. For recovery of the violated labor rights the worker can use not only such form of protection as the direct address to the employer, as well as other forms: appeal to trade union, to government bodies on supervision of compliance the law about work, self-defense. In this regard it would be expedient to recognize as individual labor dispute not only the disagreements which aren't settled by direct negotiations between the worker and the employer, but also disagreements which didn't manage to be settled by application of other forms of protection provided by the legislation.

Individual labor dispute arises only when the person for its consideration and settlement (Labor Disputes Settlement Commission (hereinafter – LDSC) or court)

addressed to the appropriate jurisdictional authority. Up to this point labor dispute is considered as labor disagreement which has material-legal character. Procedural nature of disagreements arises at filing of application in the LDSC or claim statement in court that is at emergence of individual labor dispute.

Thus, in our view, individual labor disputes should be recognized as controversies unresolved by direct negotiations and through other forms of protection between the employee and the employer about the application of labor legislation, labor agreements or the establishment or change of working conditions referred for settlement to the appropriate jurisdictional authority (LDSC or court).

In the science of labor law, labor disputes are classified on various grounds. The main ones are the classification of labor disputes on two grounds depending on: 1) subjects of dispute (number of employees who participate directly or indirectly in the dispute; 2) matter of dispute.

The current legislation of Ukraine on the settlement of labor disputes is based on the first classification.

In the science of labor law individual labor disputes on the matter of dispute are divided into disputes about the application of existing labor legislation (legal disputes) and disputes over the establishment or changing of conditions of work (economic disputes). As noted by A. M. Lushnikov and M. V. Lushnikova, the matter of a labor dispute is related with the application of current labor legislation, local regulations, or with the establishment of new conditions of work that are not regulated by law or other act [6, p. 999].

Individual employment rights disputes (legal disputes) arise in connection with the enforcement of laws, other regulatory legal acts on labor, collective agreements, collective contract, and employment contract. Such labor disputes are the result of violations of labor rights of the employee, causing by the employee harm to the property of the employer, and the employee guess about his rights has been violated by the employer. Examples of individual labor disputes about rights are disputes over imposition of a disciplinary sanction, recovery of wages, reinstatement, financial responsibility, etc.

By consideration of these labor disputes, the protection of employee's labor right is carried out or the legitimacy of employer's actions is stated. Consideration of individual labor disputes over right are carried out by authorized jurisdictional body (the commission on labor disputes, court) according to the statement (claim) of the person, which considers that its right is violated. Therefore, such disputes can be still called the claim.

Individual labor disputes about interests (economic litigation) arise over the establishment of new or the modification of existing conditions of work. These labor disputes as its matter have not present, but future labor rights and obligations of parties of labor relations. In this case there is no violation of labor rights (both valid, and such that is implicit), but the controversies arise about the realization of legitimate interests of the parties, which can be satisfied when establishing new or modifying existing working conditions.

During the settlement of such disputes the parties get new labor rights or change the existing labor rights, thereby realizing their interests. Realization of the individual labor dispute parties' interests is the most real at achievement of balance of their interests.

If the previous labor disputes were related to specific right established in the legal norm, this type of individual labor disputes is generally related to the requirements of the parties to establish better working conditions than it is provided by law or other legal act. Legal labor dispute usually occurs in connection with the complaint of an employee against violation of rights enshrined in legislation or in labor treaties. I. Y. Kiselev has established the following criteria for distinguishing in this regard: the end of economic dispute depends on aspect ratio and can give to one of them an economic benefit, additional rights and privileges; the end of legal dispute – the interpretation and the implementation of valid right [7, p. 265].

However, in the current LC the order of settlement of such disputes isn't defined. The Article 242 of the LC, which provided an order of settlement of disputes about establishment of working conditions or changing of the established

working conditions by decision-making by the owner and trade-union body, it was excluded by the Law of Ukraine “About Modification and the Additions concerning Settlement of Individual Labor Disputes, to the Labor Codes of the Ukrainian Soviet Socialist Republic and Recognition of Becoming Invalid for Some Acts” of February 18, 1992.

The concept of individual labor disputes is defined in the Draft LC of Ukraine (hereinafter – the Draft) which included the ninth book “Individual Labor Disputes”, consisting of three heads: Chapter 1 “General Provisions”; Chapter 2 “Conciliatory Procedures for Consideration of Individual Labor Disputes”; Chapter 3 “Consideration of Individual Labor Disputes in Courts” (Art.417-436).

In the first part of Article 417 of the Draft the individual labor dispute is defined as a labor dispute between the employer and the employee arising from the employment relationship, and in some cases, before or after their termination. Next, Part 2 of this article refers to the matter of an individual labor dispute, which can be the conclusion, change, termination of labor contract, establishing or changing of working conditions, remuneration, and fulfillment of labor laws, agreements, collective or employment agreement, other requirements of the employee or the employer regarding violations of their rights.

A definition of an individual labor dispute is objectionable because it does not match the above mentioned provisions of the theory of labor disputes.

It is also impossible to agree with the definition of an individual labor dispute matter in Section 2 of Article 417 of the Draft.

Proceeding from the meaning of Part 2 of Article 417 of the Draft, to individual labor disputes referred both categories of disputes. However, clearly the matter of individual labor dispute in this article is not defined. It is also impossible to agree with the release of Part one of Article 417 of disputes concerning conclusion, performance, alteration, cancellation of employment contract, since these disputes by the matter are also disputes about the application of existing labor legislation. Thus, the matter of individual labor dispute may be the application of

labor legislation, labor agreements or the establishment or change of working conditions.

Conclusions. Thus, it seems appropriate to define the concept of individual labor disputes in the first part of Article 417 of the Draft as controversies between the employee and the employer about the application of labor legislation, labor agreements or the establishment or change of working conditions unresolved by direct negotiations and through other forms of protection and referred for settlement to the authorized judicial body. In Part 2 of Article 417 of the LC of Ukraine the matter of an individual labor dispute proposed to be defined as the application of labor legislation, labor agreements or the establishment or change of working conditions.

Paragraph 14 of Article 3 “The Basic Principles of Legal Regulation of Labor Relations” of the Draft, which refers to the individual’s right to settlement of individual and collective labor disputes, including the right of workers to strike, we propose to state as follows: “14) guaranteeing the settlement of individual and collective labor disputes, and the right to strike in the manner prescribed by this Code and other normative legal acts”.

The list of fundamental rights of the employee, as stipulated in Article 21 of the LC of Ukraine, should be to supplement with the right on settlement of individual and collective labor disputes, including the right to strike, in the manner prescribed by this code and other normative legal acts.

Article 44 of the Constitution states the right of workers to strike for protection of their economic and social interests. It would be useful in the preparation of amendments to the Constitution of Ukraine to consider foreign legislative experience of post-Soviet countries and to fix among the constitutional rights of man and citizen the right to individual and collective labor disputes using means for their settlement stated by law including the right to strike.

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