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## **BASIC FUNCTIONS OF EMPLOYERS' ORGANIZATIONS AND THEIR ASSOCIATIONS**

The article defines the basic functions of employers' organizations and their associations. The content of representative and protective functions of employers' organizations and their association is being investigating. The author recommends fixing functions of employers' organizations and their associations in the Draft Labor Code of Ukraine.

**Keywords:** employers' organization, association of employers' organizations, functions of employers' organizations and their associations.

**Problem statement.** Employers' organizations are created on the principles of voluntariness and democratism by certain employers as a result of implementation by employers of one of the most important collective labor law – the right for freedom of association, to which realization the International Labour Organization pays special attention.

In the preamble of the Constitution of the International Labour Organisation it is proclaimed among the means capable to improve working conditions and to guarantee peace and recognition of the principle of freedom of association and organisation, and the Philadelphian declaration again declared that the freedom of speech and freedom of association are necessary conditions of continuous progress. The freedom of association is recognized as one of the fundamental principles and rights in the sphere of work by the declaration of the International Labour Organization (hereinafter – ILO) on June 18, 1998.

In conventions and recommendations of the ILO the right of freedom of association equally is established both for workers, and for employers. These acts contain the basic principles of realization of the right of freedom of association. Generalizing those elements of legal status of the organizations of employers that are reflected in documents of the ILO, it is possible to draw a conclusion that employers' organizations are formed for representation and protection of interests

of employers, participation in collective contracts regulation. They are independent from the state and from the organizations of the workers, having rights of self-governance and to unite in federation and confederation and to get the rights of the legal entity.

In national legal practice, employers' organizations as the party of social partnership were recognized since the beginning of the 90th years. Their status was legislatively issued only in the Law of Ukraine "On the Organizations of Employers" of May 24, 2001. With coming into effect of the Law of Ukraine "On Employers' Organizations, their Associations, and the Rights and Guarantees of their Work" of June 22, 2012 the law stated above ceased to be in force. The new law is directed on increase of a role of employers' organizations, their associations in formation and realization of the state social and economic policy, regulation of the labor, social, economic relations, and participations in social dialogue.

**Analysis of recent research and publications.** The question of employers' organizations and their association's legal status is the subject of publications of scientists such as: N. B. Bolotina [1], G. I. Chanysheva [2, 8], M. V. Sorochishina [3]. At the same time the perspective of the main functions of the employers' organizations, their associations were not a subject of special researches in the labor law science of Ukraine yet.

**Paper purpose.** The purpose of this article is to define the content of the main functions of employers' organizations, their associations in the current legislation of Ukraine and to recommend their fixing in the Draft Labor Code of Ukraine.

**Paper main body.** Under Art. 5 of the Law of Ukraine "On the Organizations of Employers, Their Associations, the Rights And Guarantees of Their Activity" the employers' organizations, their associations are created and work for the purpose of representation and protection of the rights and legitimate interests of employers in economic, social, labor and other spheres, including their relations with other parties of social dialogue.

From this it follows that the main functions of employers' organizations, their associations should be considered representative and protective functions. It is expedient to add to these functions the following: control over the execution of collective agreements; function of information, educational and advisory functions.

As for the content of two main functions – representative and protective, the analysis of the Law of Ukraine "On Employers' Organizations, their Associations, and the Rights and Guarantees of their Work" allows to draw a conclusion that such division is rather relative as during the realization of powers provided by the Law the organization of employers, their associations actually realize the above-stated functions at the same time. For example, under Art. 19 of this law, employers' organizations, and their associations according to the legislation take part in negotiating about the conclusion of collective agreements, conclude the collective agreements, monitoring of compliance and provide their performance. Thus, employers' organizations, their associations at the same time carry out three functions: representative, protective and control.

Employers' organizations, their associations take part in social dialogue, work of bodies of social dialogue in the order and on the conditions that are determined by the legislation, agreements at national, sectoral and territorial levels.

On November 9, 2010, the General Agreement on the Regulation of the Basic Principles and Norms of Social and Economic Policy and Labor in Ukraine for 2010-2012 was signed [4]. The General Agreement on the Regulation of the Basic Principles and Norms of Social and Economic Policy and Labor Relations in Ukraine between the Cabinet of Ministers of Ukraine, national associations of employers and Ukrainian trade unions and professional associations is in force at the national level. The list of subjects of the Party of owners of the General Agreement for 2010-2012 contains in Annex 1 to the Agreement. It is about the List of the All-Ukrainian organizations and associations of employers that according to the Agreement on Creation of the Uniform Representative Body of the Party of Employers for Conducting Collective Negotiations and the Conclusion of Agreements of October 15, 2009 delegate appropriate powers to the General

Representative Body of the party of employers at the national level, and also the List of the business associations / organizations which are partners and/or the associated members of the corresponding associations which are the part of General Representative Body of the party of employers at the national level. In the first list there is Federation of Employers of Ukraine, All-Ukrainian Association of Employers, All-Ukrainian Union of the Organizations of Employers "Confederation of Employers of Ukraine", etc. In the second list there is Ukrainian Union of Industrialists and Businessmen, All-Ukrainian Public Organization "Ukrainian League of Young Businessmen", Union of Businessmen of Small, Averages and Privatized Enterprises of Ukraine, etc.

Under Art. 24 of the law employers' organizations, their associations take part in the settlement of collective labor disputes (conflicts), realizing simultaneous representative and protective functions.

Representatives of employers' organizations, their associations join in structure and take part in work of the conciliatory commissions, labor arbitration and other bodies that consider collective labor disputes (conflicts).

According to the current legislation employers' organizations, their associations have to represent and protect the rights and interests of employers in relations with labor unions, their associations, public authorities and bodies of local self-government, other associations of citizens at all levels of social dialogue (except local) – on national, sectoral, territorial.

Under Para.1 of Art. 9 of the Law of Ukraine "On Social Dialogue in Ukraine", to conduct social dialogue on the national and territorial levels, a National Tripartite Social and Economic Council and Territorial Tripartite Social and Economic Councils shall be established with an equal number of representatives of the parties to social dialogue of a respective level, according to the procedure specified by Articles 11 and 17.

A party of social dialogue can form the sector (inter-sector) tripartite or bilateral social and economic councils and other tripartite bodies of social dialogue (committees, commissions, etc.).

Upon making the decision by the parties on establishment of a tripartite or bipartite body of social dialogue and on its quantitative composition, each of the parties to social dialogue shall independently appoint (delegate) its authorized representatives to take part in the work of the body.

The trade union party and the employers party, subjects of which have confirmed their representatives, shall independently determine the procedure of election (delegation) of representatives of trade unions and associations and of employers' organizations and associations to the bodies of social dialogue at a meeting of authorized representatives of the organizations and associations entitled to engage in social dialogue of a respective level.

Under Art. 11 of the Law of Ukraine "On Social Dialogue in Ukraine", the National Tripartite Social and Economic Council (hereinafter – the National Council) shall be a permanent body established by the President of Ukraine to conduct social dialogue.

The National Council shall include equal numbers of authorized representatives of the parties to social dialogue of the national level and consist of 60 members who shall perform their duties on a voluntary basis: 20 members from the trade union party, delegated by representative associations of trade unions having the all-Ukrainian status; 20 members from the employers' party, delegated by representative associations of employers' organizations having the all-Ukrainian status; 20 members from the executive authorities' party, appointed by the Cabinet of Ministers of Ukraine.

Representatives of the trade union party and the employers' party shall be delegated in accordance with Part 5 of Article 9 of the Law of Ukraine "On Social Dialogue in Ukraine" to the sector (inter-sector) tripartite or bipartite social and economic councils (hereinafter – sector (inter-sector) councils).

The parties shall make a decision on the establishment of a sector (inter-sector) council and on the number of members thereof to social dialogue.

A sector (inter-sector) council shall include representatives of the parties to social dialogue in equal numbers. Each party shall designate the personnel of the

sector (inter-sector) council independently. Term of office of the council members shall be six years.

According to the Law of Ukraine “On Social Dialogue in Ukraine”, to conduct social dialogue on the territorial level (in the Autonomous Republic of Crimea and oblasts, cities of Kyiv and Sevastopol), Territorial Tripartite Social and Economic Councils (hereinafter – territorial councils) may be established, with equal numbers of representatives of the parties.

The decision on the establishment of the territorial council and on the number of members thereof shall be made by the parties to social dialogue of a respective level and approved by an order of the Council of Ministers of the Autonomous Republic of Crimea, regional state administrations, Kyiv and Sevastopol city state administrations, respectively.

The territorial council shall include representatives of the parties to social dialogue in equal numbers. Each party independently shall specify the personnel of the territorial council. Term of office of the council members shall be six years.

The organizations of employers, their associations have the right to take part in management of social insurance funds. The Law of Ukraine "On Obligatory State Social Insurance against Accidents at Work and Occupational Diseases That Caused Disability" of September 23 1999 [5] provided structure, functions of the Social Insurance Fund against Accidents at Work and Occupational Diseases. The Social Insurance Fund is a non-profit self-governed organization acting under the charter that is approved by its board. The board and its executive directors are to operate the Fund. The board joins representatives of the state, insured workers and employers – 15 people from every of three representative parties. The Cabinet of Ministers appoints representatives of the state, and representatives of workers and employers are delegated or chosen by associations of trade unions and employers that have the status of the All-Ukrainian.

According to the law of Ukraine "On Obligatory State Social Insurance on an Unemployment Case" of March 2, 2000 [6] it is provided that the control of the Fund of Obligatory State Social Insurance of Ukraine on a Case of Unemployment

is exercised on a parity basis by the state, representatives of insured persons and employers (Art. 10). The board of Fund includes 15 representatives from the state, insured persons and employers. Representatives of the state are representatives from the central executive authorities that are appointed by the Cabinet of Ukraine. Trade unions, their associations and associations of employers delegate representatives of insured persons and employers. Art. 1 of the law recognizes as representatives of employers' associations and unions of employers or other representatives authorized by employers' bodies.

The Law of Ukraine "On Employers' Organizations, their Associations, and Rights and Guarantees of their Work", provided powers of employers' organizations, their associations concerning representation and protection of interests of members realizing the state supervision (control) in the sphere of economic activity. According to Part 1 of Art. 21 of the law the employers' organizations, their associations have the right to represent and protect interests of the members during state supervision (control) actions of the appropriate supervisory authorities in the sphere of economic activity.

By the invitation of the employer of the employers' organizations, their associations define the authorized representative participating in the course of realization of the state supervision (control) in the sphere of economic activity.

The authorized representative has the right to make statements and messages during state supervision (control) actions of the appropriate supervisory authorities made by them at in the sphere of economic activity, obligatory for consideration of the appropriate supervisory authorities.

The Law of Ukraine "On Employers' Organizations, their Associations, and Rights and Guarantees of Their Work" settled the relations of the employers' organizations, their associations with executive authorities, bodies of local self-government, trade unions, other public associations, enterprises, establishments, organizations.

Employers' organizations, their associations, joint representative bodies of the party of employers cooperate with the Cabinet of Ukraine, other central executive

authorities, government collegial bodies, local governments, authorities of the Autonomous Republic of Crimea and local self-governments.

According to the proposition of the Cabinet of Ukraine the authorized representative of joint representative body of the party of employers of the national level participates in the Cabinet of Ministers meetings on consideration of the questions concerning formation and realization of the state social and economic policy, regulation of labor, social, economic relations.

Employers' organizations and their association recognize trade unions, their organizations, and associations as plenipotentiaries of workers and defenders of their labor, social and economic law and interests, and promote their activity.

Employers' organizations, their associations interact with labor unions, their associations on the principles of social dialogue. Disputes (conflicts) arising between them are settled in the order provided by the law.

For employers' organizations and their associations it is forbidden to interfere with activity of labor unions, their associations, to oppose in any form to workers to unite in labor unions, their associations.

Employers' organizations, their associations cooperate with the organizations representing interests of businesspersons and other subjects of managing, their associations. Employers' organizations, their associations can assume duties to represent and protect the rights and legitimate interests of businesspersons and other subjects of managing on all the level of conducting social dialogue.

Relationship of the employers' organizations, their associations and the organizations representing interests of businesspersons and other subjects of managing, their associations can be regulated by separate agreements.

Employers' organizations, their associations take part in social dialogue, work of bodies of social dialogue in an order and on the conditions determined by the legislation, agreements at the national, sectoral and territorial levels. Herewith, only those employers' organizations, their associations that corresponds to the criteria of representativeness determined by the Law of Ukraine "On Social



Dialogue in Ukraine" can represent and protect the rights and legitimate interests of employers.

The Law of Ukraine "On Social Dialogue in Ukraine" determines the criteria of representativeness on different levels. Under Art. 6 the Law of Ukraine "On Social Dialogue In Ukraine", on the national level, for taking part in collective negotiations on the conclusion of general agreement, for delegating representatives to the National Tripartite Social and Economic Council, to management bodies of general state social insurance funds, and to other tripartite bodies of social dialogue, and for taking part in international activities, representative shall be trade union associations and associations of employers' organizations that: are legalized (registered) according to law; are all-Ukrainian trade union associations numbering no less than one hundred and fifty thousand members; are all-Ukrainian associations of employers' organizations, at the enterprises of which no less than two hundred thousand workers are employed; include trade unions, organizations thereof and associations of employers' organizations in most administrative-territorial units of Ukraine specified in Part 2 of Article 133 of the Constitution of Ukraine, as well as at least three all-Ukrainian trade unions and at least three all-Ukrainian associations of employers' organizations.

On the sector level, for taking part in collective negotiations on the conclusion of sector (inter-sector) agreements and for delegating representatives to the bodies of social dialogue of respective level, representative shall be trade unions and associations thereof, employers' organizations and associations thereof that: are legalized (registered) according to law; are all-Ukrainian trade unions, with no less than three percent of workers employed in a corresponding sector as their members; are all-Ukrainian associations of employers' organizations established on the sector basis, the enterprises of members of which employ no less than five percent of the workers employed in a corresponding economic activity (activities).

On the territorial level, for taking part in collective negotiations on the conclusion of territorial agreements and for delegating representatives to the bodies

of social dialogue, representative shall be trade unions and associations thereof, employers' organizations and associations thereof that: are legalized (registered) according to law; are regional or city trade unions, organizations and associations thereof established on the territorial basis, with no less than two percent of the employed population in a relevant administrative-territorial unit as their members; are employers' organizations or associations thereof operating in the territory of a relevant administrative-territorial unit, the enterprises of members of which employ no less than five percent of the employed population in a relevant administrative-territorial unit.

Employers' organizations and associations thereof that do not meet the representativeness criteria may, as decided by the elected bodies, grant powers to representative organizations and associations of a relevant level to represent their interests or submit their proposals to relevant bodies of social dialogue for consideration. Such proposals shall be mandatory for consideration by the parties in the formulation of their aligned stand and decision-making.

According to Art. 7 of the Law of Ukraine "On social dialogue in Ukraine", the qualification of conformity of employers' organizations and associations thereof to the representativeness criteria shall be performed: on the national and sector levels by the National Mediation and Conciliation Service; on the territorial level by relevant branches of the National Mediation and Conciliation Services.

Confirmation of representativeness of the subjects of the trade union party and the employers' party shall be performed by the National Mediation and Conciliation Service and its branches, respectively, once every five years. Trade unions, organizations and associations thereof, and employers' organizations and associations thereof, including newly established ones, shall have the right to apply to the National Mediation and Conciliation Service and relevant branches thereof for qualification of conformity with the representativeness criteria given actual grounds therefore, but once a year at most.

The Order of National Service of Mediation and Reconciliation of July 21, 2011 approved the Order of Qualification of Compliance to Representativeness

Criteria and Representativeness Confirmation of Subjects of the Parties of Labor Unions and Organizations of Employers [7] by which procedure of carrying out a qualification of compliance to representativeness criteria and confirmation of representativeness of labor unions, their organizations and about 'associations, the organizations of employers and their associations at the national, sectoral and territorial levels is determined.

It is also necessary to fix legal status of the organizations of employers and their associations in the new Labor Code of Ukraine as subjects of labor relations. According to Part 2 of Art. 19 "The Parties and Subjects of the Labor Relations" of Chapter 3 "Subjects of the Labor Relations" of Book 1 "General Provisions" the organization of employers and their association are called among subjects who can take part in the labor relations.

By the way, in the Labor Code of the Russian Federation there is the separate chapter "Representation of Interests of Workers and Employers" which contains two articles – "Representation of Interests of Employers" and "Employers' Association".

**Conclusions.** In the Draft Labor Code of Ukraine there are no special norms fixing the status of employers' organization, their associations. It is supposed that the Law of Ukraine "On Employers' Organizations, their Associations, and Rights and Guarantees of Their Work" will keep the force after coming into effect of the new Labor Code of Ukraine. It talks about employers' organizations, their associations only in Book 6 "The Collective Labor Relations" as subjects of the party of employers at various levels of social dialogue (except for local). It is advisable to add to Chapter 3 "Subjects of the Labor Relations" of Book 1 "General Provisions" the separate article "Employers' Organization, Their Associations as Subjects of the Labor Relations" of the following contents: "1. Employers' organization is a non-profit public organization which unites employers. 2. Association of employers' organization is a non-profit public organization that unites the employers' organization, their associations. 3. Employers' organization, their associations are created and work for representation and protection of the

rights and legitimate interests of employers in economic, social, labor and other spheres, including in their relations with other parties of social dialogue. 4. Legal, economic and organizational bases of creation and activity of employers' organization, their associations, features of legal regulation and guarantees of their activity, and also the basic principles of their interaction with public authorities and local self-governments, trade unions and their associations, other public associations, enterprises, establishments and organizations are stated by the law".

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