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RIGHT TO STRIKE IN THE MECHANISM OF ENSURING LABOUR RIGHTS

Formulation of the problem. A person enters into labour relations, acquires labour rights in order to satisfy his interests and needs with their help. This happens through the commission by an authorised person of actions that make up the content of the labour rights received by him. The completeness and reality of the exercise of rights depends on how effective their protection is in case of violation. In this regard, it is necessary to guarantee the possibility of protecting the right in any form provided for by law.

The right to strike is a fundamental right resting upon three basic liberties: freedom from forced labour, freedom of association, and freedom of expression. In so doing, it challenges and rejects two dominant strategies in arguing for a fundamental right to strike: (a) that the right is derivative of a single basic liberty; (b) that the right is derivative of a right to collective bargaining. The contours of these basic liberties are developed using the republican ideal of non-domination and contestatory citizenship.

Analysis of recent research and publications. The category of the right to strike became the subject of study in the works of such famous scientists as J. Bellace, N. Bolotina, V. Burak, E. Gerasimova, R. Garrido-Yserte, B. Gernigon, K. Ewing, N. Izzati, J. Leyton-Garcна, M. Masters, S. Matteudi-Lecocq, V.V. Fedina, N.M. Shvets, J. Stanford, P. Tomlinson, and others.

The purpose of this article is to research issues of realisation of the right to strike as a collective labour right of employees and its place in the mechanism of ensuring labour rights.

Presentation of the main material of the study. The right to strike is a universally accepted principle enshrined in the 1948 Universal Declaration of Human Rights. It has been developed at international level by the International Labour Office (ILO) supervisory bodies but is not mentioned explicitly in ILO conventions or recommendations. In Europe, the European Social Charter of 1961 recognises “the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike”. The revised European Social Charter1 was a source of inspiration for the 1989 EU Charter of Fundamental Social Rights of

Workers and the European Charter of Fundamental Rights signed in Nice on 18 December 2000.

The term "strike" covers several possible types of action (work stoppage, job action, walk-out, sit-down strike, sympathy strike, secondary strike, wildcat strike etc).

In 2022, strikes were severely restricted or banned in 129 out of 148 countries [1]. In a number of these countries, industrial actions were brutally repressed by the authorities, and workers exercising their right to strike often faced criminal prosecution and summary dismissals. Violations of the right to strike are grouped into two categories: prosecution of union leaders for participating in strikes and cases of dismissals for taking part in strike action.

The Constitution of Ukraine in article 44 guarantees the right to strike with some restrictions as follows: "Those who are employed have the right to strike for the protection of their economic and social interests. The procedure for exercising the right to strike is established by law, taking into account the necessity to ensure national security, health protection, and rights and freedoms of other persons (...) The prohibition of a strike is possible only on the basis of the law".

The Law on the Procedure for Settlement of Collective Labour Disputes, Articles 17-287 provides rules on the procedure for exercising the right to strike. Article 24 provides that employees (with the exception of technical and maintenance personnel) of prosecution authorities, courts, military forces, state authorities, security and law-enforcement bodies shall be banned from striking.

The right to strike is an essential part of freedom of association. While it's a last resort, without it, workers and unions lack the power to defend their positions against the economic and political power of employers. The right to strike is under attack in many countries and trade unions are fighting back.

In 2015 the International Labour Organization employers' groups and certain governments challenged ILO Convention 87 on Freedom of Association, which is ratified by 153 countries, and upholds the right to strike [2].

Even with this convention, the right to strike is still under threat around the world.

For instance, strikes in Australia have become very rare in recent decades, thanks to restrictive labour laws passed since the 1990s [3].

Simultaneously, strikes are blighting the UK like no time since the dark days of the early to mid-1970s – but those organised by trade unions in compliance with employment laws remain lawful and are immune from liability to the employer whose business is impacted. However, trade unions that organise unlawful industrial action lose immunity and are exposed to potential legal claims. This usually takes the form of an injunction application to the High Court in advance of the threatened industrial action, in which the employer seeks an injunction prohibiting the planned industrial action going ahead. Breach of an injunction can result in a finding of contempt of court with serious consequences [4].

Nevertheless, the United Kingdom faces a fresh wave of strikes this year after unions launched a series of actions in December, including the largest

NHS strike in history and the biggest walkout of ambulance staff in three decades. Hundreds of thousands of employees have been striking, with more set to walk out over pay and conditions. The biggest day of industrial action since the current wave of strikes began last year took place as Chancellor Jeremy Hunt revealed his spring budget on 15 March. Teachers, junior doctors, regional BBC journalists, university lecturers, civil servants and London Underground drivers all walked out. Before that, February saw the UK's biggest day of industrial action in more than a decade as teachers, university staff, train drivers, civil servants, bus drivers and security guards all went on strike [5].

Thus, thousands of employees across several industries have taken industrial action in recent months [6].

Germany has a long history of labour activism, with employees often engaging in strikes and other forms of industrial action to demand better wages, working conditions and benefits. The "mega-strike" - as it has been termed by local media – follows recent labour unrest in a number of German industries, including the postal service, airports and local transportation [7].

Strikes a persistent headache for travellers in Germany. The capital airport strike followed similar walkouts that paralyzed the airports in Dusseldorf, Hamburg and Cologne/Bonn on Thursday (27.04.2023), leading to the cancellation of some 700 flights. That strike was expanded to airports in Stuttgart and Karlsruhe/Baden-Baden on Friday and on Saturday, some flights were still being suspended or delayed at Baden airport. Wage negotiations remain stalled as Verdi is demanding pay increases for night, weekend, and public holiday shifts. Negotiations are scheduled to continue on Thursday. In addition to the airport strikes, the German railway and transport union EVG organised on Friday (28.04.2023) a nationwide transport strike, impacting around 50 companies, including national rail operator Deutsche Bahn.

Labour Day protests and strikes have taken over France, Italy and the Netherlands, with employees and labour unions demanding better government policies to safeguard their rights and meet their wage demands [8].

It is important to note that strikes are a significant part of the culture of working life in Europe. But how has the number of working days lost to strikes changed over the last decades? According to a dataset prepared by the European Trade Union Institute (ETUI), the countries going on strike the most have seen slight changes in ranking over the last 20 years. Between 2000 and 2009, the annual average of days not worked due to strikes per 1,000 employees was the highest in Spain, where an average 153 working days were lost. The period of 2020-2021 offers data for only two years, with no data for some countries. France (79 days) had the highest annual average lost days due to strikes, followed by Belgium (57 days), Norway (50 days), and Denmark and Finland (49 days each) [9].

A distinction should be made between self-defence of labour rights and a strike.

It may be said that self-defence is a legal phenomenon inherent in various branches of both public and private law. Self-defence is most widely used in civil law (for example, retention of property, early termination of a contract,

etc.) and in criminal law (necessary self-defence). The Institute of Self-Defense has become the subject of serious scientific research, primarily by representatives of the science of civil law. This institution is provided for by the legislation of other countries.

It should be taken into account that self-defence is considered as a non-jurisdictional form of protection of labour rights and interests of employees, which has its own branch specifics. Self-defence by employees of their labour rights differs in that: 1) the right to self-defence arises in case of violation of labour rights and interests or occurrence of other obstacles in the realisation of rights and interests; 2) these are unilateral, independent personal actions of employees to protect their rights and interests without recourse to jurisdictional or other state bodies; 3) these are lawful acts (activity or inaction) in cases not prohibited by law; 4) the method of self-defence should not exceed the established limits of self-defence.

Attention should be drawn that methods of self-protection of labour rights can be classified on different grounds. Depending on the subject structure, the methods of self-protection by employees of their labour rights can be divided into individual and collective. The first should include, for example, the employee's refusal to perform work not provided for in the employment contract (Article 31 of the Labour Code); refusal of work that directly threatens the life or health of the employee, with the exception of cases when the performance of such work is stipulated by the employment contract concluded with the employee (Part 5 of Article 153 of the Labour Code, Article 6 of the Law of Ukraine "On Labour Protection") and others. A collective way of self-defence is to declare a strike.

Differences between self-defence of labour rights and a strike are distinguished. Self-defence is a refusal to perform work in order to protect the individual labour rights of an employee (the right to free choice of work, the right to pay for work, the right to rest, the right to safe and healthy working conditions). And according to Art. 17 of the Law of Ukraine "On the procedure for resolving collective labour disputes (conflicts)", a strike is a temporary collective voluntary stoppage of work by employees of an enterprise, institution, organisation (structural unit) with the aim of resolving a collective labour dispute (conflict).

The right to self-defence is exercised by the employee independently, independently of other employees during the period of self-defence of their labour rights. At the same time, individual employees can exercise self-protection of rights, but they do not collectively create a collective interest, their demands must be individualised.

However, in contrast to self-defence, a strike is used as a last resort if conciliation procedures have not led to the resolution of a collective labour dispute (conflict), or the employer evades conciliation procedures or does not fulfil an agreement reached during the resolution of a collective labour dispute (conflict).

In addition to exercising the right to self-defence, the employee can apply to the court or other competent authority, and during the strike, conciliation procedures must be conducted, the parties to the collective labour dispute

(conflict) are obliged to continue searching for ways to resolve it, using all available opportunities.

And finally, self-defence of labour rights and a strike differ in their legal consequences. Refusal to perform work in self-defence may continue until the violation of labour rights is eliminated. The result of such a refusal can only be the renewal of the violated right of the employee.

The duration of the strike is determined by the effectiveness of the procedures carried out during this period. The strike can be ended by an agreement on establishing new rights of employees, on the implementation or partial implementation of the rights provided for by the collective agreement (agreement). It is also possible to terminate the strike by the body that led it (by the body or person determined by the general meeting (conference) of employees when deciding to announce a strike), without resolving a collective labour dispute. The employees who participate in the strike are not paid for their strike time.

Recently, in a number of countries, the interpretation of the right to strike as a purely collective right, which is implemented by trade unions and labour collectives, has been criticised, and a new concept of the right to strike as an individual right, as the right of each employee to decide on the refusal to fulfil the main obligation under employment contract – provision of labour services. At the same time, the new concept does not deny that a strike, as an individual right, is nevertheless realised, as a rule, through the collective actions of employees. This is a kind of individual right in collective execution.

Article 295 of the Labour Code of the Republic of Azerbaijan provides for the right of an employee to declare an individual strike for a period of up to one month in order to renew his violated rights.

Despite the mentioned differences, in our opinion, the strike should be classified as a collective way of self-defence by employees of their labour rights.

Conclusions. Thus, everyone can apply for the protection of their rights in cases where: rights are violated; obstacles to the realisation of rights are created; the employee is assigned duties that are not stipulated by the employment contract or legislation. Thanks to self-defence, prompt, effective, economical protection of violated rights can be ensured, as a result of which an authorised person often prefers self-defence to the protection of his rights by state or other competent authorities. “Acting of his own will and in his own interest”, the victim chooses “the methods of quick and sensual response for the offender”.

In contrast to jurisdictional protection, which is carried out in a clearly defined procedural form, during self-defence, the victim has more freedom to choose the extent and nature of the right in accordance with the content of the violated right, the nature of the actions by which it was violated, as well as the consequences caused by this violation reaction.

It should be taken into account that effective labour regulation is fundamental to development. Labour is at the heart of human, economic and social development. Striking the right balance in labour regulation is therefore critical.

It is necessary to emphasise the mutual, bilateral nature of the collective form of protection of the rights of employees and employers, which is carried out with the help of a system of collective agreements and collective agreements, as well as by trade unions and employers' organisations. In the field of labour relations, employees and employers are given the right to organise in order to protect their rights and interests.

Employees have long used the term "strike" as a powerful tool to pressure employers into resolving their grievances. This collective labour right is essential in demanding better pay and working conditions, a positive work environment, excellent career opportunities and other benefits. Collective bargaining makes employees stronger in negotiations with employers.

The right to strike should only be used as a last resort if conciliation procedures did not lead to the resolution of a collective labour dispute (conflict) or the employer evades conciliation procedures or does not fulfil the agreement reached during the resolution of a collective labour dispute (conflict).

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Summary

Lagutina I. V. **Right to strike in the mechanism of ensuring labour rights.** – Article.

The article considers how each of the international systems recognize the right to strike. Much attention has been given to the ILO and the ECHR because of the complex elements involved in the evolution of their supervisory bodies. With the exception of the European Social Charter, in all of the systems under study there are still relevant debates about the precise status and position of the right to strike, a fact that shows us that the topic is indeed a very controversial one even today.

To assess the extent and the limits of the right to strike as a fundamental human right is extremely important to know which forms of activity (and inactivity) can be considered as a

strike according to the legal systems are analysing, as well as some of the requirements that are accepted as preconditions to be fulfilled before engaging in lawful strike action.

It is emphasised that the right is an essential part of freedom of association. While it's a last resort, without it, employees and unions lack the power to defend their positions against the economic and political power of employers. The right to strike is under attack in many countries and trade unions are fighting back.

Even at the ILO level, where detailed treatment of the right to strike, there are several forms of limitations in place. The ILO has accepted as compatible with Freedom of Association regulations on the forms of strike action, the objectives it aims to, the procedures and formalities that must be followed before striking, among many others which can be found on the legal literature. A similar situation can be seen in the case-law of the ECSR and the ECtHR. This last body, as we have seen, has extended the constraints of the right to strike in forms that contradict the principle that it cites as guidance. In an increasingly interconnected labour market, a coordinated approach will soon become a necessity. If the existence of a human right to strike is to have any meaning in future times, legal and political efforts must be focused on protecting the principles developed by the ILO, which have helped to advance the cause of employee's rights in different countries.

Key words: right to strike, working conditions, employer, employee, labour rights.

Анотація

Лагутіна І. В. **Право на страйк у механізмі забезпечення трудових прав.** – Стаття.

У статті розглядається, як кожна з міжнародних систем визнає право на страйк. Велика увага приділяється МОП та ЄСПЛ через складні елементи, задіяні в еволюції їхніх наглядових органів. За винятком Європейської соціальної хартії, в усіх досліджуваних системах досі тривають актуальні дебати щодо статусу права на страйк, факт, який показує нам, що ця тема справді є дуже суперечливою навіть сьогодні.

Для оцінки обсягу та меж права на страйк як основного права людини надзвичайно важливо знати, які форми діяльності (і бездіяльності) можна вважати страйком відповідно до правових систем, а також деякі з вимоги, які прийняті як попередні умови, які необхідно виконати перед проведенням законного страйку.

Підкреслюється, що право є невід'ємною частиною свободи об'єднання. Хоча це крайній засіб, без нього працівникам і профспілкам бракує повноважень захистити свої позиції від економічної та політичної влади роботодавців. Право на страйк піддається нападам у багатьох країнах, і профспілки дають відсіч.

Навіть на рівні МОП, де детально розглядається право на страйк, існує кілька форм обмежень. МОП визнала такими, що відповідають свободі асоціації, положення про форми страйку, цілі, які вони мають, процедури та формальності, яких необхідно дотримуватися перед страйком, серед багатьох інших, які можна знайти в юридичній літературі. Подібну ситуацію можна побачити в прецедентному праві ЄКСП та ЄСПЛ. Цей останній орган, як ми бачили, розширив обмеження права на страйк у формах, які суперечать принципу, який він цитує як керівництво. На все більш взаємопов'язаному ринку праці скоординований підхід незабаром стане необхідністю. Щоб існування права людини на страйк мало якесь значення в майбутньому, правові та політичні зусилля повинні бути зосереджені на захисті принципів, розроблених МОП, які допомогли просунути справу захисту прав працівників у різних країнах.

Ключові слова: право на страйк, умови праці, роботодавець, працівник, трудові права.