ТРУДОВЕ ПРАВО, ПРАВО СОЦІАЛЬНОГО ЗАБЕЗПЕЧЕННЯ

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GENERAL PRINCIPLES OF LABOR LAW OF THE EUROPEAN UNION

Formulation of the problem. The law of the European Union is a unique legal phenomenon that developed in the process of the development of European integration, the result of the implementation of the supranational competence of the institutions of the European Union [1, p. 324]. Speaking about the EU legal system, it should be noted that it is constantly developing. One of the branches of EU law is the labor law of the European Union. The European Commission in the Green Book "Modernization of labor law to meet the changes of the 21st century" [2] notes that the original goal of labor law was to reconcile inherent economic and social inequality with labor relations. From the very beginning, labor law focused on establishing the status of an economically active person as the main factor around which further development takes place.

The rapid development of technical progress, the growth of competitiveness as a result of the globalization process, changes in customer requirements and the significant development of the service sector indicate the need to strengthen the flexibility of the labor market. All these factors lead to the restructuring of business on a more flexible basis. First of all, such restructuring refers to changes in the organization of work, working hours, wages, and the number of the workforce at various stages of the production cycle. These changes require a greater variety of employment contracts, which do not always fall under the scope of legal regulation of European legislation. The traditional model of labor relations does not apply to all categories of employees and is not always able to regulate labor contracts with employees taking into account the changes caused by the globalization process. In contrast to these processes, the Green Book contrasts the modernized labor law as a law whose main issue is the achievement of "flexicurity", which combines the flexibility of the employment relationship with a high level of social protection of employees.

The state of research of the topic. The following scientists investigate the issues of EU labor law in their works: Yu.V. Baranyuk, S.V. Drizhchana, L.P. Harashchenko, O.V. Makogon, O.M. Mohylnyi, M.P. Stadnyk, N.M. Khutoryan, B. Berkasson, I. Boruta, I. Ya. Kiselyov, S. Yu. Kashkin, S. Klauvert, D. Collins, F. Sutcliffe, S. Sciarra, M. Shanks, and others.

The aim of the article. The purpose of the article is to reveal the essence and features of EU labor law, to identify the main factors that influenced the formation and development of European labor law, to formulate the concept of EU labor law, to analyze the principles of legal regulation of labor relations at the EU level.

Presenting main material. It should be noted that EU labor law is an important part of the European social model. The White Paper of the Commission on Social Policy of 1994 defined that the European social model is based on such values as democracy, human rights, freedom of collective bargaining, market economy, equality of opportunities for all, social protection and solidarity. The model is based on the belief that economic and social progress are inseparable [3]. The Treaty on the Functioning of the EU, the EU Charter of Fundamental Rights and EU labor law determine the legal basis for the functioning of the European social model. In Art. 153-155 of the Treaty on the Functioning of the EU establishes the legal framework for social dialogue.

The EU Charter of Fundamental Rights, reflecting fundamental rights (the right to association, the right to information and consultation, to collective bargaining and action), thus strengthens the role of social partners in defining European social policy through the legitimacy of collective bargaining and collective action, information and consultation at the enterprise level. European labor law, establishing a general framework for strengthening information and consultation (Directive 2002/14/EC), plays a decisive role in defining the European social model. The labor law of the European Union has developed together with the social policy of the Community and is an integral part of it. The legal basis for con-

ducting social policy is the provisions of the relevant sections and chapters of Part 3 of the Founding Treaty "Union Policy and Internal Actions", which establish the subject and methods (tools) with which EU institutions influence social relations and processes in one or another area of EU competence. The purpose of the social policy of the Union [4] is: "promotion of employment, improvement of living and working conditions in order to make their harmonization possible, while preserving all achievements, as well as promotion of adequate social protection, dialogue between entrepreneurs and workers, development of human resources for long-term provision of a high level of employment and combating poverty" (Article 151).

The social sphere is a subject of joint responsibility of the European Union and the EU member states. According to § 1 of Art. 153 of the Treaty on the Functioning of the European Union, the Union supports and complements the actions of member states in the following areas: a) improvement of the production environment in order to ensure health and labor protection of employees; b) working conditions; c) social security and social protection; d) protection of employees in case of termination of employment contracts; e) informing and holding consultations; f) representation and collective protection of the interests of employees and employers, including joint decision-making; g) working conditions of persons from third countries who are legally present on the territory of the EU; h) integration of persons excluded from the labor market; i) equality between men and women in terms of labor market opportunities and attitudes at work; j) prohibition of social exclusion; k) modernization of social protection systems.

Therefore, the main issues of social policy are various aspects of individual and collective labor relations, which are the subject of legal regulation of EU labor law. Over the past decades, the implementation of the competence of the European Union in the field of social policy has resulted in a stable, integral and autonomous branch of EU law – EU labor law or European labor law. EU labor law can be defined as a set of norms of EU law that regulate the labor relations of employees with employers and other relations closely related to them, which establish rights and obligations in relation to labor through the harmonization and unification of the norms of national legislation of member states [5, with. 12-14].

From the point of view of B. Berkasson [6], European labor law is an interstate system of labor legislation, formed by separate European legal systems in symbiosis with the European Union, which is characterized by individuality and openness. The European Commission [7] understands labor law as a set of legislation that establishes the rights and obligations of employees and employers at the workplace. It is noted that at the level of the Union, labor law covers two areas of relations: working conditions, including working hours, part-time employment and work on the basis of fixed-term employment contracts, working conditions of employees on business trips; informing and conducting consultations with employees, including cases of collective dismissals and transfer of the enterprise.

Therefore, the labor law of the EU is a set of norms of supranational law that regulate individual and collective labor relations between employers and employees and are the result of the unification and harmonization of the legislation of the member states of the European Union [8, p. 377]. EU labor law norms are supranational, that is, they regulate labor relations that arise between entities operating not only within a single country, but two or more countries of the European Union. That is, subjects of EU labor law have a transnational status. EU labor law, through unification and harmonization, introduces uniform and general standards into the legislation of member countries in the field of labor.

The EU labor law system is a set of legal norms and institutions that regulate individual and collective labor relations at the supranational level. Institutions of individual EU labor law include: legal regulation of labor migration; equality and non-discrimination; employment contract; working time and rest time; labor protection and industrial hygiene; legal regulation of employment; professional training, retraining and advanced training of employees. Institutions of collective labor law include: social dialogue; protection of workers' rights in case of collective layoffs; protection of the rights of employees in case of bankruptcy and change of the owner of the enterprise.

Norms of collective labor law ensure the right of workers to participate in production management, the right to information and consultations, and other collective rights of workers. EU directives regulate individual labor relations, issues of ensuring equal treatment between men and women in the labor sphere, social dialogue at the European level, conducting collective negotiations and concluding European collective agreements. The principles of labor law are the fundamental guiding principles enshrined in legislation, ideas that express the essence of labor law norms and the main directions of state policy in the field of legal regulation of social relations related to the functioning of the labor market, the use and organization of hired labor [9, p. 23].

The labor law of the European Union is the result of the activities of the member states in certain areas. It contains the proven legal experience of the EU member states regarding the legal regulation of labor relations. Since most European countries are members of the Council of Europe, it is natu-

ral that the main labor standards developed within the framework of this regional organization are reflected in its norms. In addition, EU labor law as a part of the regional legal system is influenced by the system of a higher order – international law, namely international labor law. It is also necessary to take into account the historical conditions of the formation and development of EU labor law. EU labor law is an integral part of European social policy. And it is natural that the main ideas and provisions formed in the process of evolution of European social policy are reflected in European labor law.

In addition, EU labor law is a branch of European Union law, so principles reflecting its characteristics are also characteristic of labor law. Therefore, the principles of EU labor law are fundamental, guiding principles, ideas, provisions that were formed in the process of evolution of European social policy, national labor law of EU member states, EU law, reflected in international and regional acts on labor and used to regulate individual and collective labor relations at the supranational level. The first group consists of principles that are reflected in international and regional acts on labor, in particular in the International Covenant on Civil and Political Rights [10], the International Covenant on Economic, Social and Cultural Rights [11], the Universal Declaration of Human Rights [12], the Convention on the protection of human rights and fundamental freedoms of 1950 [13], the ILO Declaration of Fundamental Principles and Rights in the World of Work of 1998 [14], the European Social Charter of 1961 [15] and the European Social Charter of 1996 [16], ILO conventions and recommendations ; and embodied in the labor law of the European Union.

These include the following principles: freedom of labor and prohibition of forced labor; prohibition of child labor; freedom of association; the right of social partners to negotiate and conclude collective agreements; equality and non-discrimination; the right to fair and safe working conditions, the right to fair remuneration that ensures a sufficient standard of living for the employee and his family members; the right to decent treatment at work; protection of workers' rights; the principle of facilitation.

The second group of principles consists of those principles that have received real fulfillment in EU labor law. These include: the principle of freedom of movement, equality of men and women in the field of work, the right of social partners to negotiate and conclude collective agreements. The third group includes: principles inherent in EU labor law as a component of European social policy: the principle of subsidiarity, proportionality, the basic minimum of social rights. The fourth group consists of principles inherent in EU law and EU labor law in particular, as part of this special legal system. This is supremacy over the national legal systems of the member states; direct action; integration into the national legal systems of member states; jurisdictional immunity.

The principle of freedom of labor and prohibition of forced labor. This principle is enshrined in clause 3 of Art. 8 of the International Covenant on Civil and Political Rights, Art. 6 of the International Covenant on Economic, Social and Cultural Rights, Art. 23 of the Universal Declaration of Human Rights, ILO Convention No. 29 on Forced Labor, Recommendation No. 35 on Indirect Forced Labor, Convention No. 105 on the Abolition of Forced Labor, in clause 4 of the Community Charter on the Fundamental Social Rights of Workers, Art. 1 of the European Social Charter, Art. 5, 15 of the EU Charter on Fundamental Rights. The essence of this principle is that the worker earns his living by work that he freely chooses or freely agrees to. This provision was supplemented in the EU Charter of Fundamental Rights. Yes, in accordance with Part 2 of Art. 15, every citizen of the Union has the right to look for a job, work, establish his own business or provide services on the territory of any member state. The expansion of the content of this principle is connected with the new policy of the Union in the field of employment, with the development of "flexicurity".

The second aspect of the implementation of this principle is the prohibition and abolition of forced labor. This principle is recognized by the ILO as a fundamental principle in the world of work in the ILO Declaration of Fundamental Principles and Rights in the World of Work. A number of ILO conventions and recommendations are also devoted to this issue. Thus, ILO Convention No. 29 on Forced or Compulsory Labor (1930) [17] in Art. 2 defines what should be understood by forced labor, and also establishes a list of works that do not refer to forced labor.

The principle of prohibition of child labor is also recognized by the ILO as a fundamental principle in the world of work. In the International Covenant on Social, Economic and Cultural Rights in Art. 10 declares that the States Parties to this Covenant must take special measures of protection and assistance for all children and adolescents without any discrimination on the basis of family origin or on any other basis. The Convention on the Rights of the Child dated November 20, 1989 [18] recognizes the right of children to be protected from economic exploitation, performance of any work that may harm education, health and affect the physical, spiritual, moral, and social development of the child. A number of conventions and recommendations have been adopted within the framework of the ILO to ensure this principle. These are, in particular, Convention No. 5 on the Minimum Age for Employment in Industry (1919), Convention No. 10 (on the Minimum Age in Agriculture (1921), Convention No. 33 on the Minimum Age for Non-Industrial Work (1932.), Recommendation

No. 146 on the minimum age (1973), Convention No. 182 on the worst forms of child labor (1999), the corresponding Recommendation No. 190 on the worst forms of child labor (1999). Article 3 of the Treaty on The European Union has declared that the European Union promotes the protection of children's rights Article 33 of the EU Charter of Fundamental Rights enshrines the prohibition of child labour.

The principle of freedom of association is recognized as a fundamental principle in the world of work in the ILO Declaration of Basic Principles and Rights in the World of Work. This principle is enshrined in Art. 8 of the International Covenant on Economic, Social and Cultural Rights, Art. 22 of the International Covenant on Civil and Political Rights, Clause 4 of Art. 23 of the Universal Declaration of Human Rights, Art. 11 Conventions on the Protection of Human Rights and Fundamental Freedoms, ILO Conventions and Recommendations, the most important of which are ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948), Convention No. 98 on the Right to Organize and Collective Bargaining (1949), Convention No. 135 on Workers' Representatives (1971) and the corresponding Recommendation No. 143 on Workers' Representatives (1971); §1 of Art. 12 of the EU Charter on Fundamental Rights.

The right of social partners to negotiate and conclude collective agreements. The ILO Declaration of Basic Principles in the World of Work proclaimed the principle of real recognition of the right to collective bargaining as a fundamental principle in the world of work. A number of ILO conventions and recommendations are also devoted to this issue. The main ones are Convention No. 98 on the Right to Organize and Conduct Collective Bargaining (1949), Recommendation No. 91 on Collective Agreements (1951), Recommendation No. 94 on Cooperation at the Enterprise Level (1952), Recommendation No. 113 on Industry and National Cooperation (1960), Convention No. 154 on Collective Bargaining (1981), the corresponding Recommendation No. 163 on Collective Bargaining (1981). Art. 28 of the EU Charter on Fundamental Rights guarantees the right of employees, employees, organizations, and their representatives to negotiate with employers and conclude collective agreements with them at the appropriate level. These rights are also enshrined in Art. 6 of the European Social Charter and Art. 12 of the Charter of the Community on the fundamental social rights of workers. The European Court of Human Rights interprets the considered rights as an integral part of the right to create trade unions and the right to join them to protect one's interests, proclaimed by Art. 11 Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 [19, p. 107].

The principle of equality (prohibition of discrimination) is enshrined in Art. 3 of the International Covenant on Civil and Political Rights, Art. 3 of the International Covenant on Economic, Social and Cultural Rights, Art. 7 of the Universal Declaration of Human Rights, in addition, in the ILO Declaration of Basic Principles and Rights in the World of Work, non-discrimination in the field of work and occupations is recognized as a fundamental principle in the world of work. A number of ILO conventions and recommendations are also devoted to this issue. The most important of them are Convention No. 111 on Discrimination in Employment and Occupation (1958), the corresponding Recommendation No. 111 on Discrimination in Employment and Occupation (1958), Convention No. 100 on Equal Remuneration (1951), Recommendation No. 90 on equal remuneration (1951).

The principle of equality (prohibition of discrimination) is one of the main principles of the functioning of the European Union (Articles 18 and 19 of the Treaty on the Functioning of the European Union). The right to fair and safe working conditions, the right to fair remuneration, which ensures a sufficient standard of living for the employee and his family members, is enshrined in Art. 23 of the Universal Declaration of Human Rights, Art. 7 of the International Covenant on Economic, Social and Cultural Rights. In accordance with the European Social Charter, member states undertake to establish a reasonable length of the working day and week in order to ensure the effective exercise of the right to fair working conditions; establish paid public holidays; establish an annual paid leave of at least four weeks; to eliminate the risks inherent in jobs with dangerous or unhealthy working conditions, and in cases where it is impossible to eliminate or sufficiently reduce such risks, to establish for workers employed in such jobs, reduced working hours or additional paid vacations; to ensure a weekly rest, which should, if possible, coincide with a day recognized as a day of rest according to the traditions or customs of the respective country or region; to ensure that employees are informed in writing as soon as possible and in any case not later than two months after the date of commencement of their official duties about the main aspects of the contract or employment relationship; to ensure that workers engaged in night-time work benefit from measures that take into account the special nature of such work. Article 31 of the EU Charter on Fundamental Rights enshrines the right to fair and equal working conditions, which include the right of everyone to work in conditions that ensure the protection of his health, safety, and respect for dignity. In addition, every worker has the right to limit the maximum duration of his working time, as well as to daily, weekly rest, and annual paid vacation.

The right to decent treatment at work. In Art. 31 of the EU Charter on Fundamental Rights enshrines

the right of every worker to respect his dignity. On April 26, 2007, ETUC, Business Europe, UEAPME and CEEP concluded the European Framework Agreement on oppression and violence at work [20]. The Agreement declares that mutual respect for the dignity of others at all levels, including the workplace, is one of the key elements for the success of organizations. Therefore, harassment and violence are unacceptable. It is recognized that any workplace and employee, regardless of the size of the company, field of activity or form of employment contract or relationship, is potentially subject to violence and harassment.

The principle of protection of workers' rights in the field of labor. This principle is enshrined in normative legal acts of an international nature, such as the Universal Declaration of Human Rights (Articles 7, 8), the International Covenant on Economic, Social and Cultural Rights (Articles 8, 9), the International Covenant on Civil and Political Rights (Article 2), as well as in the conventions and recommendations of the ILO. This principle includes social and legal protection of the rights of employees [21, p. 103]. Social protection of workers' rights is enshrined in Art. 10 Charter of Fundamental Social Rights of Workers, Art. 12 of the European Social Charter.

The principle of assistance ("in favorem") means preventing the employee's position from deteriorating compared to the level provided for by law. This principle is generally recognized and applies not only to the relationship between labor contracts and legislation. It has a universal meaning, refers to any regulatory act of a lower level, which can only improve the position of the employee compared to normative acts of a higher level [22, p. 103].

The principle of subsidiarity is one of the most important principles of EU activity, enshrined and defined in § 3 of Art. 5 of the Treaty on the European Union, in areas that are not the exclusive competence of the Union, it has the right to act on the basis of the principle of subsidiarity, only to the extent that the task and actions cannot be fully resolved by individual member states at the central or regional level and local levels, and therefore, given its scope and results, will be better implemented at the EU level.

The principle of proportionality is enshrined in § 4 of Art. 5 of the Treaty on the European Union, which states that the content and form of action of the Union should not go beyond what is necessary to achieve the goals of the Treaties. That is, proportionality means achieving a balance between the goal and the institutional level involved in achieving this goal.

The principle of basic minimum social rights is characteristic of European social policy and labor law. The essence of this principle is that a certain list of social rights is established at the legislative level – minimum social standards, which cannot be reduced in the future, but only expanded; and compliance with which is guaranteed by the state. The idea of a basic minimum of social rights was used in the development of the 1989 Community Charter on the Fundamental Social Rights of Workers. The EU Charter of Fundamental Rights contains the following list of basic social rights: freedom of association, freedom of professional activity and the right to work, the right to professional training and advanced training, the equality of men and women, the right of workers to information and consultation at the enterprise level, the right to conduct bargaining and collective action, the right to employment services, protection against wrongful dismissal, fair and equal working conditions, prohibition of child labor and the protection of young people, family life and work, social security and social assistance.

Conclusions. The labor law of the European Union is a unique legal phenomenon. It embodies the best examples, models in the regulation of labor relations. Member countries seem to transfer all their positive national legal experience to the European level. Currently, European labor law, although the process of its formation is still not complete, serves as a model for EU member states. In order to reach this level of development, the member states of the European Union have gone through a long path of contradictions and disputes. EU labor law can be called the "consensus law" that the member states of the European Union managed to achieve in the development of labor relations. EU labor law is a dynamic phenomenon, its formation has not yet been completed. Normative and legal acts are adopted that improve the existing labor law institutions of the EU. Thus, in recent years, directives have been revised concerning such issues as ensuring the rights of employees in the event of employer insolvency, the rights of employees of temporary employment agencies, determining the status of the European Works Council, or introducing a procedure for information and consultation with employees. EU labor law has always been an important part of European social policy, and therefore it is natural that its formation and evolution took place together with the development of EU social policy. EU labor law embodies important principles of international labor law, as well as principles that are the qualifying characteristics of EU law, since labor law is a branch of this specific law. Due to the fact that EU labor law is a component of social policy, it also embodies its principles.

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Summary

Voloshina S. M. **General principles of labor law of the European Union.** – Article.

EU labor law was formed simultaneously with the development and taking into account the peculiarities of communal law (the law of the European Communities) and the law of the European Union, as well as the national labor legislation of the Member States. It is clear that during its existence the European Union has made a significant step forward, including in terms of the evolution of law. EU labor law is considered based on the understanding of EU law as an independent autonomous system of legal norms governing relations within the EU, as well as created in connection with the formation and functioning of the European Communities and the European Union, acting and applied on the basis of and in accordance with the founding agreements and general principles of EU law. From this point of view, the labor law of the European Union is a set of interrelated legal norms that regulate an independent, qualitatively unique sphere of labor relations in the European Union and require special legally autonomous regulation. The norms of the EU labor law are represented by its corresponding sources regulating the relations of subjects in this area. EU labor law arose and was formed in accordance with the founding agreements and the general principles of EU law, taking into account the peculiarities of the latter. The principles of EU labor law are enshrined in acts of primary and secondary EU law. The principles determine not only the essence, but also the content of the legal norms on labor. For the labor law of the European Union, the most significant principles are the principle of social justice, the principle of equality, non-discrimination, the principle of equal pay for equal work. It is also important to note the generally recognized principles of international labor law. In particular, we are talking about the Declaration of the International Labor Organization "On fundamental principles and rights in the sphere of work and the mechanism for its implementation", adopted in 1998 at the 86th session of the ILO. It should also be noted that the EU labor law was formed under the influence of the national legal systems of the Member States and at the same time gradually began to influence the regulation of the labor sphere of the EU states. When analyzing the properties of the EU labor law norms, it is necessary to take into account the features characteristic of the EU law norms as a whole, as an independent legal system that is not identical to either national or international legal orders.

Key words: labor law of the European Union, employer, employee, labor, integration, labor and employment, the labor law, recognition of qualifications, individual labor law.

Анотація

Волошина С. М. **Загальні засади трудового права Європейського Союзу.** – Стаття.

Трудове право ЄС формувалося одночасно з розвитком та врахуванням особливостей комунітарного права (права Європейських Співтовариств) та права Європейського Союзу, а також національного трудового законодавства держав-членів. За час свого існування Європейський Союз зробив значний крок уперед, у тому числі й щодо еволюції права. Трудове право ЄС розглядається виходячи з розуміння права ЄС як самостійної автономної системи юридичних норм, що регулюють відносини в рамках ЄС, а також створюваних у зв'язку з утворенням та функціонуванням Європейських Співтовариств та Європейського Союзу, що діють та застосовуються на основі та відповідно до установчих договорів та загальними засадами права ЄС. З цього погляду трудове право Європейського Союзу – це сукупність взаємопов'язаних правових норм, що регулюють самостійну, якісно своєрідну сферу трудових відносин у Європейському Союзі та потребують особливої юридично автономної регламентації. Норми трудового права ЄС представлені відповідними джерелами, що регламентують відносини суб'єктів у цій галузі. Трудове право ЄС виникло та формувалося відповідно до установчих договорів та загальних принципів права ЄС, з урахуванням особливостей останнього. Принципи трудового права ЄС закріплені в актах первинного та вторинного права ЄС. Принципи визначають як сутність, а й зміст правових норм праці. Для трудового права Євросоюзу найважливішими принципами є принцип

соціальної справедливості, принцип рівноправності, недискримінації, принцип рівної оплати за рівну працю. Важливо також відзначити загальновизнані принципи міжнародного трудового права. Зокрема, йдеться про Декларацію Міжнародної організації праці «Про основні принципи та права у сфері праці та механізм її реалізації», прийняту 1998 року на 86-й сесії МОП. Слід також зазначити, що трудове право ЄС формувалося під впливом національних правових систем держав-членів і водночас саме поступово почало впливати на регулювання трудової сфери держав Євросоюзу. При аналізі властивостей норм трудового права Євросоюзу необхідно враховувати і риси, характерні для норм права ЄС загалом як самостійної правової системи, яка не ідентична ні національному, ні міжнародному правопорядкам.

Ключові слова: трудове право Європейського Союзу, роботодавець, працівник, охорона праці, інтеграція, сфера праці та зайнятості, норми трудового права, визнання кваліфікацій, індивідуальне трудове право.