Section 13. Labour law

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*Boieva Olena Sergiyvna,
candidate of juridical sciences,
Judge Economic Court of Zaporozhye region
E-mail: elenaboeva1982@gmail.com*

Judicial protection of labor rights in terms of judicial integration: application of “Jurisdiction” and “Subordination” definitions

Abstract: It is noted that jurisdiction, subordination and competence are not identical concepts. The presence of the definition of “subordination” in the Economic Procedure Code contradicts the existing principles of the judicial system, and in the case of the protection of labor rights in economic proceedings, “subordination” narrows the guarantees of labor rights protection. Therefore, there is a favorable moment to introduce certain changes in the Economic Procedure Code of Ukraine – about bringing this procedure act in line with the constitutional provisions and European standards – in order to exclude the cases of unequal understanding by the European Court of Human Rights of the concepts “jurisdiction” and “subordination”, which are inherent in procedural law of our state.

Keywords: court, protection of labor rights, court jurisdiction, subordination, competence

The integration processes of Ukraine into the European Union were launched by signing the Partnership and Cooperation Agreement (ratified by the Verkhovna Rada of Ukraine in November 1994) in Luxembourg on June 16, 1994 between the European Union (EU) and Ukraine. According to the Agreement content suggests that citizens of member countries of the Agreement have common rights in the field of working conditions and social security coordination [1].

Thereafter main directions of cooperation between Ukraine and the EU were defined by the corresponding Decrees of the President of Ukraine, and the Strategy of Ukraine’s integration into the European Union was approved [2; 3].

Main provisions of these regulations stipulate commitment of Ukrainian society to the European values, in particular to the security and protection

of fundamental rights and freedoms, which requires the state to implement appropriate measures for the harmonization and adaptation of Ukrainian legislation to the legislation of the European Union.

Integration processes in our country, particularly as a part of European integration, cover various aspects of life (economy, science, education, culture, health, labor and social relations, etc.) and the state activity aspect. I. V. Yakoviuk indicated in his research that integration through the right, judicial integration appears to be a necessary approach for the harmonization of different legal systems and, in particular, the legal system of Ukraine and the one of European Community. [4, P. 29–42].

At the Yalta Ukraine – European Union Summit on October 7, 2003 consensus was reached. The consensus meant that one of the most effective ways to use these opportunities of the current European

Union enlargement for Ukraine is the intensification of work by it in the field of national legislation, regulations and standards corresponding to the EU norms. The European Union confirmed its readiness to continue cooperation and support of Ukraine in the adaptation process.

Taking into account the importance of judicial integration, in 2004 the Law of Ukraine “On the National Program for Adaptation of Ukrainian Legislation to the Legislation of the European Union” was adopted. In section I of this program it was noted that the goal of adapting Ukrainian legislation to the European Union legislation is to achieve compliance with the *acquis communautaire* legal system of Ukraine with taking into account the criteria set by the European Union (EU) for states that intend to join it. The adaptation of Ukrainian legislation to EU legislation is a priority component of the Ukrainian integration process into the European Union, which, in turn, is a priority direction of Ukrainian foreign policy [5].

As for the integration processes in the field of labor law and social security law, judicial integration is impossible without taking into account the principles of EU Social Charter, adopted in December 1989 by the European Parliament. The principles of the Social Charter are the fundamental principle of the European labor legislation: freedom of movement, employment and remuneration, working and living conditions; social protection; professional education; equality of women and men; health and safety at work; protection of children and adolescents, etc.

Specialists and scientists in the field of labor law paid attention in their publications to integration processes on issues of labor remuneration, working conditions, labor protection, employment, equality of women and men. The study of issues in the field of labor rights judicial protection and compliance with relevant procedural provisions in the integration processes aspect is absent at the moment. Taking into account the fact that in European legislation (and

not only in labor legislation) there is no such thing as subordination, but the definition of “jurisdiction” is used, it should be noted that the study of this problem is timely and relevant.

During the consideration of labor disputes, it is most often possible to erroneously determine jurisdiction, because labor disputes in accordance with the subject of the relationship (or subject of the dispute), the nature of the relationship, the subject composition can be considered both in the order of the Civil Procedure Code of Ukraine and in the Administrative Procedure Code of Ukraine, of the Economic Procedure Code of Ukraine.

It would not be an exaggeration to say that there is an imperfection of the procedural legislation in determining or delineating jurisdiction in the case of judicial protection of labor rights and the correlation between the concepts “jurisdiction”, “subordination”, “competence”.

On 30.09.2016, the Law of Ukraine “On Amendments to the Constitution of Ukraine (Regarding Justice)” came into force as of 02.06.2016 [6]. And the Law of Ukraine “On the Judicial System and Status of Judges” as of 02.06.2016 [7], according to the content of which the fundamental definition in the determination of “a court established by law” (as specified in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms) [8] is precisely the “jurisdiction of the court”.

Before the adoption of the Constitution of Ukraine in 1996, the term “subordination” had been used instead of the concept of “court jurisdiction” both in legislation and scientific legal sources.

Thus the definition of “subordination” is also fixed both in the title of Section III of the Economic Procedure Code of Ukraine: “The subordination of cases to economic courts. Jurisdiction of cases”, and in the context of this section. According to the Article 12 of Economic Procedure Code economic court subordinate disputes upon which property requirements to the debtor against whom proceedings on a bankruptcy case has been initiated, including

cases on disputes on wages recovery, reinstatement of the debtor's authorities and officials at work, are claimed [9].

It is quite common to interpret subordination as an established by law set of authorities of economic courts on consideration and solving cases referred to their competence. This definition has been used since the existence of arbitration courts — court subordination is treated as part of the judicial field, the range of cases that are subject to a solution in courts [10, P. 55–56].

Court jurisdiction determines the field of the judiciary and the multi-level differentiation of powers of various courts to review cases. According to V.V. Komarov, court jurisdiction, a new institution of constitutional and procedural law, should not be identified with the subordination [11, P. 477–481].

The presence in the Economic Procedure Code of the definition of “subordination” contradicts the existing principles of judicial organization, and in the case of the protection of labor rights in economic proceedings, “subordination” narrows the guarantees of labor rights protection.

Therefore, it is essential to make appropriate changes to the provisions of the Economic Procedure Code of Ukraine, bringing its regulations to a common denominator regarding the use of “jurisdiction” definition instead of the current and outdated term “subordination”. This would increase the effectiveness of labor rights judicial protection and, moreover, would facilitate judicial integration in the labor rights protection field – taking into account the fact that the legislation of the European Union does not have such term as subordination.

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