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Research Article

UNITY AND DIFFERENTIATION OF LABOUR DISPUTES AND CONFLICTS OF INTEREST: PRIVATE AND PUBLIC BEGINNINGS

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The article examines the issues of correlation of labour disputes and conflicts of interest in labour legislation and regulations on the civil service. The main positions on the inclusion or non-inclusion of service relations in the area of labour law are presented, based on this, the conclusion is reproduced that contracts on labour (service) with public employees are special classes of labour contracts, and the passage of public service is, as it were, in a state of bifurcation, branching, division into parts (bifurcation). This article contains a discussion about whether it is possible to justify the emergence of labour disputes (conflicts) in official relations affecting private and public interests, in this regard, common features, principles inherent in labour disputes and conflicts of interest are analyzed, their differences in subject composition are revealed. Finally, the author concludes that it is possible to combine labour disputes and conflicts of interest in a single definition of the concept – labour disputes (conflicts), with their subdivision into labour disputes (conflicts) of certain categories of workers and labour disputes of public employees.

Key words: *labour dispute, conflict of interests, unity and struggle, labour dispute (conflict) in service relations, private and public interest*

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ЕДИНСТВО И ДИФФЕРЕНЦИАЦИЯ ТРУДОВЫХ СПОРОВ И КОНФЛИКТОВ ИНТЕРЕСОВ: ЧАСТНОЕ И ПУБЛИЧНОЕ НАЧАЛА

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В статье рассматриваются вопросы соотношения трудовых споров и конфликтов интересов в трудовом законодательстве и нормативных актах о государственной службе. Представлены основные позиции по включению или невключению служебных отношений в сферу трудового права, на основании чего воспроизводится вывод о том, что договоры о труде (службе) с государственными служащими являются особыми классами трудовых договоров, а прохождение государственной службы находится как бы в состоянии раздвоения, разветвления, разделения на части (бифуркации). В статье проводится дискуссия о том, можно ли обосновать возникновение трудовых споров (конфликтов) в служебных отношениях, затрагивающих частные и публичные интересы, в связи с чем анализируются общие черты, принципы, присущие трудовым спорам и конфликтам интересов, выявляются их различия по субъектному составу. В заключение автор приходит к выводу о возможности объединения трудовых споров и конфликтов интересов в едином определении понятия «трудовые споры (конфликты)» с подразделением их на трудовые споры (конфликты) отдельных категорий работников и трудовые споры государственных служащих.

Ключевые слова: *трудовой спор, конфликт интересов, единство и борьба, трудовой спор (конфликт) в служебных отношениях, частный и общественный интерес*

Introduction. The objective of this study is an attempt to analyze the relationship between labour disputes and conflicts of interest, which involves identifying their common features, features and nature of interaction. Labour disputes is a phenomenon and a concept in labour law that has long been known and studied by many authors in various aspects [Avdey et al., 2015; Yasinskaya-Kazachenko, 2019].

A labour dispute has at least two types of interpretation: relations over disagreements and disagreements themselves. The first meaning is rather doctrinal and describes a labour dispute as an interaction of the parties. The second meaning reflects the essence of such legal concepts as 'dispute arising from labour relations' and 'labour dispute about law' [Yasinskaya-Kazachenko, 2022: 31].

The term 'conflict of interest' as a special legal category, enshrined in legal acts, appeared relatively recently and, above all, in legislation that establishes the foundations of state policy in the field of combating corruption in different types of service.

The Law of the Republic of Belarus 'On fighting against Corruption'[1] (hereinafter – Law No. 305-Z) contains a definition of the concept of conflict of interest. A conflict of interest is a situation when the personal interests of a public employee, his spouse, close relatives or in-laws affect or may affect the proper performance by a public employee of his official (labour) duties when he makes a decision or participates in making a decision or committing other actions related to the service (work).

The study of theoretical and methodological issues of resolving labour disputes and managing conflicts of interest, the choice of elements of a resolution and management mechanism based on a proactive approach correspond to the general trends in shifting priorities in the public service towards the application of ethical regulators and provisions, which seems to be relevant both for the theory and practice of public management.

Methodology. Modern scientific ideas about public service, as well as scientific works and developments of national and foreign scientists on methodological, theoretical and applied problems of managing labour disputes and conflicts of interest in the public service. The study is based on the conceptual apparatus developed within the framework of labour legislation and in the field of public service. Methods

[1] Law of the Republic of Belarus of July 15, 2015 No. 305-Z 'On fighting against corruption'.

of structural-functional, typological, comparative-historical, as well as the methodology of system analysis and synthesis were used in the process of research.

Results. It is noted in the scientific literature that a conflict of interest should be understood as 'a conflict between official duties and personal interests of a public employee, when his personal interests can affect the performance of his official duties, as a result of which negative consequences may occur in the form of damage to the interests of citizens, organizations, society…' [Tsybikova, 2011: 12–13]. In the proposed definition, we support the point of view that the term 'official duties' reflects the functional purpose of the public service, that is, the implementation of the public interest.

Failure to present by public employees notification of a conflict of interest or its possibility, if he was aware of the occurrence of a conflict of interest or its possibility, is the basis for refusing to appoint a public employee to another public position or to bring him to disciplinary responsibility up to dismissal from his position (layoffs).

The meaning of these provisions relates to disciplinary liability for the commission of so-called corruption offenses, which, in particular, include the failure of an official to take measures to prevent and (or) resolve a conflict of interest to which he is a party. In this case, disciplinary measures may be applied[2], in addition, how disciplinary measures work – dismissal due to loss of confidence. All this indicates the expansion of the area of conflicts of interest in the light of labour legislation and the increased responsibility associated with them. An analysis of these legal provisions allows to conclude that conflicts of interest are inherent in the scope of service relations and may arise in connection with the passage of a particular service. And if we proceed from the fact that service relations are not the subject of regulation of labour and closely related relations (this position is expressed in the legal literature), then the study of conflicts of interest is not among the tasks of the science of labour law.

But on the issue of the inclusion or non-inclusion of service relations in the scope of labour law, a point of view has been expressed and there is such a point of view that these relations are regulated by labour legislation, but with the features established by the relevant acts. Thus, in the area of modern legal relations in the recruitment of the public service, relations related to labour relations, in particular, with the contractual (contractual) form of admission to it, are developing in a peculiar way, which allowed a number of authors to classify them as labour relations [Chupris, 2011: 105].

So, according to T. A. Nesterova, the decisive influence of labour law norms on the regulation of relations regarding the admission, performing and leaving of public service is proved, and the existence of contractual (contract. – *A. Ya.-K.*) public service relations contradicts the very essence of administrative law as a law regulating executive managerial activity, not contractual relations [Nesterova, 1999: 28].

This opinion is based primarily on the fact that the solution of the issue under consideration is connected with the transition from a positivist, normative ('narrow') understanding of law to a sociological ('broad') one, because the definition of the sources or forms of the existence of law naturally follows from what right. According to the sociological doctrine, law includes not only legal norms, but also individual legal acts, as well as legal relations.

This approach is based on the dialectical law of unity and struggle of opposites. Rules of law are abstract, and individual acts and legal relations are concrete. These opposites cannot exist separately from each other, otherwise they are only abstractions. Only their unity turns them into reality and makes them valid: the rule of law as a rule of behaviour becomes such only if it is embodied in the behaviour of specific subjects, which is carried out in the light of the adoption of individual acts and legal relations. In this regard, the ideal abstract passes into the concrete. At the same time, the individual act and the actual behaviour of subjects are based on a general norm. The unity of both gives life to these opposites. Thus, an employment contract in the form of a contract with a public employee should be included in the system of sources of labour law.

It seems that with this approach, conflicts of interest should be in the area of attention of scientists – labour law specialists, but practically nothing is said about them in the scientific literature. This paper

[2] For failure to perform or improper performance of labour duties, the following disciplinary measures may beapplied to public employees: reprimand; rebuke; warning of incomplete service compliance; deprivation of all or part of incentive payments for up to twelve months; demotion in the class of public employee for up to six months; dismissal from a position (Law of the Republic of Belarus of June 1, 2022 No. 175-Z 'On public service').

will present two main positions on the inclusion or non-inclusion of public service relations in the subject of labour law, the most justified are the following positions.

So, L. Yu. Bugrov analyses this issue in its specific interpretation of the relationship between individual labour contracts and other labour (service) contracts [Bugrov, 2013: 143]. A.A. Grechenkov, analysing the adoption of the Law of the Republic of Belarus of June 1, 2022 No. 175-Z 'On Public Service'[3] (hereinafter – Law No. 175-Z), indicates mainly that the basis of the legal status of public employees is the norms of Law No. 175-Z and other acts on public service. At the same time, he concludes that a significant part of the norms of labour legislation and other legislation applies to public employees [Grechenkov, 2022: 23].

From this follows the conclusion that working in the public service is, as it were, in a state of bifurcation, branching, division into parts (bifurcation), on the one hand, the foundations of the legal status of public employees are the norms of the legislation on public service, and on the other hand, it is regulated by labour legislation with relevant features, which means that this area is an integral part of the labour law.

So, if the action of the conflict of interest was limited exclusively to the area of service relations, which, as noted, is interpreted differently by scientists from the point of view of attributing it to the area of labour law, then the insufficient attention to this problem among labour law specialists would somehow be explained. But the adopted provisions of departmental acts demonstrate otherwise, they also talk about a conflict of interests of public employees, from the point of view of a situation where the personal interest of this employee affects or may affect the proper performance of his official (labour) duties when he makes a decision or participates in making a decision or performing other actions related to the service (work).

Further, according to the Decree of the President of the Republic of Belarus[4] public employees are subject to dismissal from service to the reserve on the basis of failure to submit a notification of a conflict of interest, log books have been introduced for notifications of a conflict of interest or the possibility of its occurrence[5]. The term 'conflict of interest' in accordance with Law No. 305-Z and other legislative acts, including the Model Regulations on the Anti-Corruption Commission, apply to certain categories of employees. In this sense, it would be appropriate to propose the approval by the head of the public service organization of the provision on a permanent commission for the settlement of labour disputes (conflicts) in employment relations, in which issues of compliance with the requirements for official behaviour of public employees[6] can be considered as conflicts of interest themselves, arising from labour relations.

An analysis of the above-mentioned provisions indicates that conflicts of interest as a special legal concept and phenomenon are currently not limited to the area of only public-service relations, even if we assume that they are outside the area of labour law, but relate to labour relations and closely with them related, since the above-mentioned provisions on conflicts of interest are included in the legislation of the Republic of Belarus, they apply to employees, are related to their labour duties, which undoubtedly indicates the introduction of relations on conflicts of interest into the area of labour law and, in general, with the expansion of these conflicts. In this regard, a lot of questions arise, which it is obviously impossible to even formulate with sufficient completeness, not to mention giving exhaustive answers to them.

Nevertheless, the problem has been posed and needs to be studied. In this part of the work, we turn to the study of the relationship between labour disputes and conflicts of interest, which requires the definition of their features, common features, nature of interaction and, possibly, unification in a single general concept.

There are common features of labour disputes and conflicts of interest, but there are few of them: both disputes and conflicts represent the legal nature and content of labour relations, legal principles relate to both the unity and differentiation of the elements of an employment contract (contract), partly similar principles, quasi-judicial bodies, limited outside of a particular permanent group.

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[3] Law of the Republic of Belarus of June 1, 2022 No. 175-Z 'On public service'.

[4] Decree of the President of the Republic of Belarus of January 7, 2013 No. 292 'Issues of the State Committee of Forensic Examinations of the Republic of Belarus'.

[5] Decree of the Ministry of Justice of the Republic of Belarus of August 30, 2022 'On the list of standard documents'.

[6] For example, according to Art. 35 of the Code of the Republic of Belarus on Education, there is a commission to resolve the conflict of interests of a teacher, the procedure for organizing its work, making decisions and their implementation is established by the Ministry of Education of the Republic of Belarus.

The definition of a conflict of interest was given above, labour disputes are defined in the Labour Code of the Republic of Belarus (hereinafter – LC)[7]: individual – in Art. 233 LC; collective – in Art. 377 LC; these are phenomena of reality that exist in the sphere of labour and service relations, if the latter are singled out especially; both phenomena are associated with conflict situations in the broadest sense of the word, especially since labour disputes were once called conflicts in the law, and in the literature they can still have such a name [Gontsov, 2013: 76–77]. Thus, both labour disputes and conflicts of interest are connected: by the existence of an employment contract (contract), the permanence of labour relations; the status of a public employee as a citizen who applies for, works and leaves public service and performs his labour function for remuneration.

Parties difference. The parties of labour disputes in the most general form are the employees and the employer. The party of an individual dispute may be an employee who was refused to conclude an employment contract and a person who is no longer an employee, a dismissed employee and an employer. It is important to emphasize that the parties of disagreement in this case can be any category of employees. In collective labour disputes, the parties are employees and (employers, associations of employers). Since conflicts of interest are individual in nature, in the future they will be compared only with individual labour disputes, and excluding collective.

In a conflict of interest, on one side is a person who has a personal material interest, and on the other – a person who may be harmed. If this general provision is specified, then in the area of official relations a person with a personal interest is a public employee, and the one to whom he can harm are citizens, organizations, society or the state. Thus, it can be said that on one side of the conflict of interest in official relations there is a public employee, and on the other – persons who can act in relation to him as an employer, for example, for a public employee, the state is an employer represented by public authority. In case of a conflict of interest from the point of view of labour legislation, on one side is a public employee with a material personal interest, and on the other – an organization, his employer, which may be harmed.

Summing up the above, we conclude: in labour disputes, the parties are any categories of employees (and some other persons) and the employer, and in a conflict of interest – public employees and the state as a whole and certain categories of workers (if public employees are included).

By the content, labour disputes and conflicts of interest differ as follows. Labour disputes in this term are divided into disputes on the application of labour legislation, a collective agreement, an agreement, other local legal acts, compliance with the terms of an employment contract containing labour law norms (disputes about the law), and disputes on the establishment or changing the terms of the employment contract (disputes of interest).

The content of the conflict of interest is the material interest of a public employee and certain categories of employees, which may conflict with the interests of the relevant subject and harm him. When comparing these provisions, first of all, a comparison of labour disputes about interest and conflicts of interest suggests itself. At first glance, one can see the similarity between them, at least terminologically, since in both cases the term ‘interest’ appears. But in fact, we are talking about completely different phenomena and a different understanding of interest.

In the event of a labour dispute, the interests of the employee and the employer clash over the establishment or change of working conditions. It must be emphasized that in this case the interests of both parties do not violate the rule of law, in this regard, they are legitimate in nature. A conflict of interest does not mean a difference of interests in connection with working (service) conditions, but the opposition of the interests of the employee and the employer, in which the employee wants to receive material personal benefit, which can lead to certain harm. This benefit is associated with the labour (official) duties of the employee, which means they will be performed improperly, so the employee’s interest in this case will be unlawful. So, labour disputes about interest and conflicts of interest do not coincide in their content [Gontsov, 2013: 78].

In this part, as a conclusion, we refer to the opinion of V. N. Tolkunova, who notes that ‘in labour disputes about the right, the violated right of the employee is protected and restored...’ [Tolkunova, 2017: 21]. The content of a conflict of interest is the unlawful interest of an employee. This interest affects

[7] Labour Code of the Republic of Belarus of July 26, 1999, No. 296-Z.

or may affect the proper performance by the employee of his labour (service) duties, may lead to violation of labour legislation, other regulatory legal acts, may lead to the emergence of a labour dispute (conflict). But in this case, the violation is not on the part of the employer, but on the part of the employee.

This, in turn, may lead to bringing the employee to disciplinary responsibility (in particular, to dismissal for loss of confidence, paragraph 2 of art. 47 LC). These actions can be appealed by the employee in the proper manner, which may give rise to a dispute (conflict) about the right in labour (service) relations. Thus, disputes about law and disputes about interest and conflicts of interest are fundamentally different in their content, but a conflict of interest can cause a dispute (conflict) about law and a dispute (conflict) about interest in labour (service) relations. From the point of view of the classification of labour disputes and conflicts of interest, the following can be noted.

The question of the types of labour disputes has been studied in detail in the scientific literature, therefore, we will note only the most common of them, without going into their detailed explanation. Almost all authors identify three main grounds for classifying labour disputes: by the disputing subject; by the nature of the dispute; by the type of disputed legal relationship [Tolkunova, 2017: 21]. N. I. Gontsov believes that in terms of ways to resolve labour disputes, one can distinguish between disputes resolved in a general manner and disputes considered in a special manner. General manner means that an individual labour dispute is considered by the commission on labour disputes and the court. A special one applies to certain categories of employees and includes a court and another (quasi-judicial. – *A. Ya.-K.*) dispute resolution body – for example, this applies to prosecutors, judges, etc. [Gontsov, 2010: 133].

Individual labour disputes, as a rule, are resolved by the labour dispute committee and the court. For certain categories of employees, the law may establish specifics in the settlement of labour disputes. This usually means that the court always remains among the dispute resolution bodies, but instead of the labour dispute committee, another quasi-judicial body appears. According to the law on the prosecutor's office, in the event of a dispute, an employee has the right to apply to a higher authority and (or) to the court[8].

A similar way for handling and considering labour disputes involving a public employee is regulated by Law No. 175-Z[9]. At the same time, the right of a public employee to protect his rights and legitimate interests in public administration in relation to the implementation of this right in his specific legal relations begins from the moment he enters the public service. It should be noted that the list of cases when a public employee has the right to apply for protection is open. In this regard, it should be recognized as justified the emergence of labour disputes (conflicts) in official relations affecting both private and public interests.

Recognizing the right of a public employee to apply to higher state bodies and (or) to the court to resolve disputes related to public service, one should specifically emphasize the need to understand private and public interests not only in disputes over the establishment, change of working conditions or the application of labour legislation, but also in disputes over the application of legislation on public service and adopted regulatory legal acts.

Individual labour disputes are considered directly in the courts: on refusal to hire; on employee discrimination; on compensation by an employee for damage caused to the employer, unless otherwise provided by federal laws [Goltsov, 2023: 266].

The initiators of a service dispute may be a public employee; a person who has tried to enter the public service; a person who has previously been in the public service. The legislation regulates the issues

[8] A prosecutor's worker has the right to appeal to a higher body of the prosecutor's office (superior head of the prosecutor's office) and (or) to the court the decision taken against him to impose a disciplinary sanction, to dismiss him or remove him from office, to transfer him to another position, to deprive him of his class rank or to dismissal from the prosecutor's office (Law of the Republic of Belarus of August 5, 2007 No. 220-Z 'On the Prosecutor's Office of the Republic of Belarus'. Art.56).

[9] A public employee has the right to apply to higher state bodies and (or) the court to resolve disputes related to public service, incl. on issues of applying for civil service, working, exercising the rights of a public employee, transferring to another public position, disciplinary or material liability, non-compliance with guarantees of legal and social protection, dismissal from a position (dismissal), in other cases provided for by law (part 3 art. 24 of Law No. 175-Z).

of appealing against imposed disciplinary sanctions. When they are resolved, in most cases, the procedure established by the part 4 Art. 202 and ch. 17 LC, and for certain employees – the procedure established by the disciplinary charters. The procedure for resolving other disputes (conflicts) in official relations is regulated only fragmentarily for certain types of public service. With regard to the administrative service, the existence of quasi-judicial bodies for the consideration of disputes (conflicts) of certain categories of employees is not provided for by the legislation of the Republic of Belarus. However, we consider it expedient to create such bodies[10].

Thus, the general procedure for resolving labour disputes is established by the Labour Code and the Code of Civil Procedure of the Republic of Belarus, conflicts of interest – by the legislation on public service. Labour disputes and conflicts of interest differ from each other, and although they represent different legal categories and phenomena of legal reality, an important conclusion is obvious – ensuring an adequate level of legal protection for public employees.

Discussion. According to the tasks set in the work, it is necessary to formulate one more question and try to answer it, which logically, follows from the previously built arguments, is it possible to combine labour disputes and conflicts of interest: in a single concept and what it might make sense; unify them, but with the condition of a differentiated approach to the specific manifestations of the legal regulation of various types of disputes (conflicts) in the service.

Let's start with the meaning of such an association. The problem is related to a broader one – the ratio of unity and differentiation in labour law, which goes at the philosophical level of generalization, to the interaction of the universal, particular and singular. Interesting considerations in this regard were formulated by L. Yu. Bugrov [Bugrov, 2013: 166–169]. The task of any science is, on the one hand, to single out any phenomena from the mass of others, determining their specific features, and on the other hand, to combine homogeneous phenomena into the corresponding types (classes), deriving for this broader categories that make it possible to make such an association. All this makes it possible to classify the relevant phenomena, to systematize them, which makes it possible to study them not randomly, but sequentially, according to a certain logic. This indicates the formation of a scientific approach to the phenomena under study, the formation of science. Therefore, from a scientific, theoretical point of view, an attempt to combine labour disputes and conflicts of interest in one concept is well founded. The solution to this issue is very problematic and may have various options. Let us offer one of them, far from indisputable.

As noted by L. A. Chikanova, disagreements in the public service may arise not only over the conditions of professional service activities, but also over other rights that make up the legal status of a public employee and go beyond the relationship between him and the public authority where he works [Chikanova, 2005: 40]. A disagreement may arise from a violation of obligations both in a service (labour) relationship, to which the representative of the employer is a party, and in a public-service relationship, to which the state is a party as such, but the legislation lacks a clear understanding of the mechanism for extrajudicial and judicial protection of the rights of public employees.

In this regard, it seems necessary to decide on the concept of considering a dispute (conflict) in official relations, taking into account private and public interest. Its consideration in specially created commissions without taking into account the specifics of the dispute and employment relations cannot be considered justified. A special procedure for considering disputes of public employees should be established taking into account those legal models that have been successfully used abroad [Chikanova, 2005: 40–41]. As non-judicial bodies for the consideration of disputes (conflicts) in official relations, where a public employee, if he wishes, could apply, the following can be proposed: quasi-judicial bodies, as a kind of alternative to the judicial mechanism based on principles and standards similar to those of the courts.

All this will serve the development of the institution of appeal, which can be transformed into an independent institution of a labour dispute (conflict) in official relations.

[10] It should be noted that in the Republic of Belarus there is a large practice of work of similar quasi-judicial bodies in the Armed Forces – courts of honor, in the bodies of the Ministry of Internal Affairs – comrades' courts. An important feature of such bodies is that they can include independent experts: representatives of scientific and educational organizations.

In this regard, the question arises of establishing additional criteria that combine various types of labour disputes (conflicts) into a single whole, which can be largely absorbed by the area of private and public interests. The answer to this question follows from the essence of legal regulation, which implies 'its implementation in accordance with the principles of law' [Drobyazko, 2007: 7]. The defining direction here is the principles based on a proactive approach to conflict of interest management, synthesized from various fields[11] of activity in order to further extend them to the sphere of private and public interests in labour disputes.

Conclusion. As a single generalizing concept in relation to labour disputes and conflicts of interest, the term 'labour disputes (conflicts)' can be used, meaning by them unresolved disagreements that arise or may arise between an employee (on issues of establishing, changing working conditions or applying labour legislation), a public employee (on issues of application of legislation on the public service and adopted regulatory legal acts) and an employer about their labour (service) duties, which can lead to a violation of the terms of an employment contract (contract) and causing harm.

Labour disputes (conflicts), absorbed to a large extent by the area of private and public interests arising from an employment contract (contract), which can be divided into two varieties – labour disputes (conflicts) of certain categories of employees and labour disputes of public employees.

If we translate these theoretical judgments into a practical level, we can propose the following changes in labour legislation. The LC can include section, highlight a chapter on labour disputes (conflicts), where are formulated concept and basic principles. The existing chapters on individual and collective labour disputes will follow, after them – a chapter on conflicts of interest. All these provisions need to be discussed and clarified.

The dialectical approach and methods of system analysis served as the basis for proving the unity and differentiation of labour disputes and conflicts of interest.

Labour disputes (conflicts) of certain categories of employees and labour disputes of public employees, as a general systemic and structural legal phenomenon, labour disputes (conflicts) requiring a unified, but with the condition of a differentiated approach to specific manifestations of legal regulation, may include the following preventive principles: sufficiency; privacy; minimal intervention; individual approach; priority application of general prevention and prevention measures.

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