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Research Article

COMPARATIVE LEGAL ANALYSIS OF THE INSTITUTE OF SELF-DEFENSE BY EMPLOYEES OF LABOR RIGHTS IN THE EAEU COUNTRIES

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The problem of protecting the labor rights of workers definitely attracts the attention of labor /scientists not only within the framework of national legal, but also cross-border legal field. Thus, new issues arise in this area during the unification of labor legislation within the framework of the Eurasian Economic Union. If the jurisdictional ways of protecting labor rights are to some extent developed within the framework of the national legal order of the member states of the Union, then the institution of self-defense is deprived of the attention of the legislator in these legal orders. In this regard, it seems important to analyze such a way of protecting rights as self-defense, guided not only by the ideas of the national development of the institute in the legislation of the Eurasian Economic Union member countries, but also its implementation within the framework of Union labor law.

This work, as a scientific try to study the institute of self-defense by employees of their labor rights in the countries of the Eurasian Economic Union, takes as its basis a comparative legal scientific method. Applying this method, we can conclude that the legal model of self-defense of employees of their labor rights can be unified due to the uniform understanding of its nature by the legislation of most of the member countries of the Eurasian Economic Union.

Nevertheless, the defective and obviously insufficient elaboration of the regulation of labor and legal self-defense in the studied legal systems shows a number of practical and theoretical problems that will ultimately affect the consolidation of such a legal model¹ within the framework of the Eurasian Union labor law.

In this regard, it seems important to present a single legal definition of self-defense, comprising the fundamental features of this method of protection. The adoption of such a term will allow to form a uniform understanding not only among labor scientists, but also among law enforcement agencies, and will serve as a starting point for the further development of the institute of self-defense in the Eurasian Economic Union.

Key words: *self-defense, employee, institute, legal model, Eurasian Economic Union, unification*

Introduction

As A. M. Lushnikov notes, today there is a tendency towards regionalization of labor legislation rather than globalization (Lushnikov, 2022). Today, a similar trend is appearing within the framework of the Eurasian Economic Union. Within the framework of the formation of a single labor market, the desire

¹ In Russian legal meaning, the term 'legal model' means the same as the term 'legal construction'.

for the formation of free labor migration (Golovina, Ljutov, 2022: 530), established by the treaty on the Eurasian Economic Union, questions invariably arise related to the functioning and development of union labor legislation. As a result, the legislator will always deal with issues related to the unification of labor law institutions existing in the national legal systems of the participating countries.

Among such models, which will need to be adapted to the goals and objectives of the above agreement, is the self-defense of labor rights by employees. This institution, which is present in the Russian legal order, as well as the legal order of other member states of the Union, has a number of features that must be taken into account not only due to national specifics, but also in the context of creating a successfully functioning legal model. It is important to note that no studies have been undertaken on the unification of the institute of self-defense of labor rights by employees within the EAEU, which carries a separate problem. But such a situation is logical: for example, in-depth research on the described institution is also clearly insufficient in the Russian legal order. Although the important nature of the investigated method of protecting labor rights was noted by the Russian legislator, who pointed out self-defense first among other methods of protection (Reprintsev, 2009). Such location is not accidental, since the employee first of all independently seeks to resolve the conflict situation within or outside the legal field. In addition, it is very important to note the nature of the implemented method of protecting the rights of employees, namely its implementation by a non-professional subject of legal relations.

Thus, guided by the need to develop the institution of self-defense in the space of the Eurasian Economic Union, the purpose of the study is to form a conclusion about the possibility of unifying the labor law model of self-defense of workers' labor rights in the legislation of the Eurasian Economic Union. To achieve this goal, the following tasks are set: research, analysis and comparison of legal regulation devoted to the self-defense of employees of their labor rights, as well as the proposal of a unified legal definition of self-defense of labor rights by employees of the member countries of the Eurasian Economic Union.

The hypothesis of this work is the following thesis: the understanding of the institute of self-defense by workers of labor rights by the participating countries, as well as by the observer countries of the EAEU, although not fully enough, is uniform, which, ultimately, will allow the institution under study to be harmoniously regulated within the framework of Eurasian labor law.

Materials and Methods

In order to achieve the goal and implement the objectives of this work, it is necessary to use the comparative legal method of scientific research. This method consists in the study of foreign law order in order to compare the legal regulation of self-defense by employees of their labor rights. According to scientists (Doronina & Semilyutina, 2021), this method aims to develop national law and order, in the context of a separate problem. Such a thesis is true for most comparative legal studies, but in this work, the comparative legal method will allow us to conclude that it is possible to form a unified labor law model in union labor law.

It is important to note that this method is often found in labor law studies of well-known scientists (Ljutov, 2018; Murzina, 2017), which indicates its universality and effectiveness in the study of labor relations. In the end, a comparison of the legal order within the framework of the topic will not only take into account the disadvantages and advantages of each law, but also contribute to the analysis of national characteristics reflected in the law.

The materials of this study are the normative legal acts of the Eurasian Economic Union, as well as its member countries and observer countries.

Results

Despite the fact that not all EAEU countries recognize self-defense as an independent way to protect labor rights, each state contains mechanisms for its implementation. Thus, refusal to work, as the most obvious and effective form of self-defense, is reflected in most of the studied law and order. Such a refusal is most often associated with cases of violations of labor protection requirements, as one of the most important rights of an employee. Prompt response to this violation is the main goal of self-defense. It is

important to note that a number of labor acts of the countries of the Eurasian Economic Union contain guarantees and, in particular, the procedure for implementing self-defense.

The most detailed regulated procedure for the use of self-defense is the Labor Code of the Russian Federation. In addition to the expanded list of cases of refusal to work, Russian legislation contains the limits of the implementation of self-defense, as well as more detailed regulated guarantees and the procedure for its implementation. Nevertheless, the Russian legal regulation of the institute of self-defense by employees of labor rights has a number of significant disadvantages.

None of the studied legislation establishes the concept of self-defense and, as a result, the fundamental signs of self-defense are not defined.

Discussion

In 2006, Russian labor legislation introduced the institutionalized self-defense of employees of their labor rights. This institution was adapted to labor relations and implemented into legislation from criminal law self-defense, as evidenced by the first studies in this area (Koni, 1866: 42–58; Tal, 1918: 178–181). It should be noted that there were no highly specialized labor law studies of self-defense before the introduction of a new method of protecting labor rights in Russian labor legislation. This method of protection was more interesting to civil scientists, who returned to the topic since the middle of the twentieth century (Petrov, 2022: 260). It is important to say that such scientific inattention of labor scientists eventually resulted in a number of normative and legal implementation problems, which will be discussed later (Andrianovskaya, 2022).

As S. Y. Golovina notes, the considered method of protection is of an intersectoral nature (Golovina, 2019), since it is represented not only by labor legislation, but also by civil legislation. In particular, article 12 of the Civil Code of the Russian Federation determines self-defense among other ways of protecting civil rights, which is disclosed in more detail in article 14 of the Civil Code of the Russian Federation. Despite this circumstance, labor law self-defense differs significantly from civil law, which, as it seems, is explained by the specific nature of legal relations.

Unfortunately, chapter 59 of the Labor Code of the Russian Federation does not contain norms with a legal definition of the concept of self-defense, which is a significant mistake of the Russian legislator. Although, scientists spoke about the normative consolidation of such a term already at the end of the 20th century (Golovina, 1998). Today, there are quite a lot of different concepts given by labor scientists (Akulinin, 2018; Gladkov, 2013), but the closest, in our opinion, is the definition of A. A. Andreev. The scientist understands self-defense as ‘an independent legal activity of an employee aimed at restoring a violated right and (or) removing obstacles in its implementation, without contacting the bodies authorized to protect labor rights’ (Ljutov, 2017).

Self-defense can be implemented by the Russian legal order only in cases specified in the law. Russian law order implies three cases when an employee can refuse to perform work:

in case of a delay in payment of wages for more than 15 days (article 142 of the Labor Code of the Russian Federation);

if the work assigned to the employee is not provided for by a labor contract (article 379 of the Labor Code of the Russian Federation);

if the work endangers the life and health of the employee (article 379 of the Labor Code of the Russian Federation). It seems logical to attribute to this category of cases the possibility of an employee to refuse to perform work in violation of labor protection requirements (article 216.1 of the Labor Code of the Russian Federation).

As a specific way of protection, self-defense has a number of key features that, unfortunately, the above definition does not take into account. According to the researchers, such, in particular, are the legally established limits and guarantees for the implementation of this method of protection (Lushnikova, 2012).

Limits imply legally established restrictions that limit the sphere of application of self-defense. Among these limits, it is possible to note the closed list of grounds for the application of the studied method of protecting labor rights, as well as exceptions from it. It seems that such exceptions are mediated by public interest. For example, an employee does not have the right to refuse to perform work

duties during periods of martial law, state of emergency, in organizations directly servicing particularly dangerous types of production, equipment, if the employee is a civil servant and so on in accordance with article 142 of the Labor Code of the Russian Federation.

In order to ensure the implementation of self-defense, the legislator has provided a set of measures aimed at protecting the rights of employees. Among them, we can mention the general guarantee provided for by article 380 of the Labor Code of the Russian Federation, according to which the employer and his representatives have no right to prevent employees from exercising their self-defense of labor rights. It is also possible to single out special guarantees that are contained in individual institutional norms. For example, article 142 of the Labor Code of the Russian Federation provides that during the refusal of work, an employee has the right to be absent from the workplace during his working hours and average earnings are retained for him. It seems that such differentiation of guarantees is conditional, since, despite the dispersed consolidation of the above norms, these guarantees are universal and apply to all cases of self-defense. A kind of guarantee can be considered the order of implementation of self-defense. Analyzing the norms of art. 379, 142 of the Labor Code of the Russian Federation, it can be understood that self-defense is implemented in the order of written notifications, both on the part of the employee and on the part of the employer. Such an order implements not only the procedural function, but also helps to minimize the abuse of the parties to the legal relationship.

It is important to say that the Russian law order has a number of regulatory disadvantages in regulating the institute of labor law self-defense (Andreev, 2016; Khnykin, 2017), as well as clearly insufficient scientific research of the described method of protecting rights. In this regard, guided, among other things, by the need to improve Russian legislation, it seems appropriate to investigate the normative consolidation of self-defense in other legal systems.

To begin with, let's turn to the law and order of the Kyrgyz Republic. In article 398 of the Labor Code of the Kyrgyz Republic, self-defense is called one of the ways to protect labor rights along with state supervision and control bodies, trade unions and other representative bodies. Thus, the law order of Kyrgyzstan isolates the considered method of protection, giving it an independent character.

Institutionally self-defense is not represented in the Labor Code of the Kyrgyz Republic, but a separate case of its application is disclosed in more detail in article 215 of the Labor Code of the Kyrgyz Republic, devoted to the guarantee of workers' rights in labor protection. The specified norm indicates that an employee can refuse to work if there is a danger that clearly threatens his life and health, in connection with the requirements of labor protection. Moreover, such a refusal will not have any legal consequences for the employee, including negative ones. It is important to note that the employee has the obligation to notify the employer about the exercise of the right to refuse work. In addition, the employee retains the average earnings.

There are no other norms in the Labor Code of the Kyrgyz Republic that reveal in more detail the procedure for the implementation of refusal to work as a form of self-defense, which reveals a number of legal issues. For example, why such a mechanism does not apply to other categories of cases, for example, when wages are delayed, the procedure for resuming work by an employee and the procedure for mutual notification of the parties is not fixed.

Next, it is important to consider the legal regulation of self-defense in the Republic of Belarus. There is no concept of self-defense in the Labor Code of the Republic of Belarus, which, as scientists note, carries a number of negative aspects (Skobelev, 2020). Among other ways to protect labor rights, the Labor Code of the Republic of Belarus also does not mention self-defense. Accordingly, there is no need to talk about the development of this institution. Nevertheless, a special case of its application is presented in the legislation. In this case, we are talking about article 223 of the Labor Code of the Republic of Belarus, which, again, is devoted to labor protection. The specified norm grants the employee the right to refuse work in the event of an immediate danger to his life and health and those around him; failure to provide him with personal protective equipment that directly ensures labor safety; refusal and prohibition of work by bodies authorized to exercise control (supervision). Thus, a special case of self-defense is still represented in the legislation of the Republic of Belarus, but has not received its proper development, which would lead to the creation of a successfully functioning institutionalized legal model.

Judicial practice has tried to correct such disadvantages. For instance, the Supreme Court of the Republic of Belarus, in one of its rulings, legitimized the possibility of extending the refusal of work

to other cases not specified by law. In paragraph 17 of the Resolution of the Plenum of the Supreme Court of the Republic of Belarus No. 2 of 29.03.2001 'On certain issues of the application of labor legislation by courts', it is noted that the employee's refusal of work in connection with a transfer carried out in violation of the law is not recognized as truancy. Paragraph 34 of the above resolution is interesting. In this paragraph, the Supreme Court noted that an unauthorized refusal to work will not be considered truancy if the employer, contrary to the law, refused to provide rest days. Thus, the judicial body actually expanded the possibility of self-defense to another case of violation of rights. The position of the law enforcement body of the Republic of Belarus is definitely positive for the potential formation of the studied method of protecting labor rights within the framework of the Union labor legislation.

It is important to say that the institute of self-defense of employees of their labor rights in the Republic of Belarus is developing along the Russian path. According to O.L. Nihachik, the Ministry of Labor and Social Protection of the Republic of Belarus is developing a decree according to which an employee will be entitled to suspend work in case of a delay in wages for more than fifteen days (Nekhaychik, 2021). Moreover, the procedure for the implementation of this right is proposed to be established similar to what is in effect in the Russian legal order. Nevertheless, as the scientist notes, this innovation, unlike the Russian law and order, does not endow the employee with a key guarantee of self-defense, namely: the average earnings are not retained for the employee in case of refusal of work. Such an approach seems impractical and puts self-defense at a clear disadvantage compared to other ways of protecting workers' labor rights.

Let's turn to the legislation of the Republic of Kazakhstan. Like the Republic of Belarus, the legal order of Kazakhstan also does not directly fix such a way of protecting the rights of workers as self-defense. Nevertheless, the main form of self-defense – refusal to work, is contained in paragraph 19 of article 22 of the Labor Code of the Republic of Kazakhstan, among the basic rights of employees. This norm establishes the right of an employee to stop work in the event of a situation that will be threat to his health or life. In such a case, notification of the direct supervisor or representative of the employer is a necessity. The procedure for sending a notification, as well as going to work, is not legally fixed. It is interesting that the provisions of the above norm are repeated in paragraph 9 of article 137-1 of the Labor Code of the Republic of Kazakhstan, regulating the working conditions for the provision of personnel. It seems that in this way the legislator decided to protect employees who are in atypical labor relations.

In the context of the study of the rule of law of the Republic of Kazakhstan, it is important to note that there are proposals in the academic community aimed at developing the institute of self-defense, both in the state under consideration and in the Russian Federation. For example, scientists propose to expand the cases of refusal to work in the case of discriminatory violations of workers' labor rights (Golovina & Sychenko & Voytkovskaya, 2021).

The Labor Code of the Republic of Armenia recognizes self-defense as one of the independent ways of protecting the labor rights of employees listed in article 38. It seems that the legislator understands any lawful actions aimed at suppressing, protecting and restoring the violated right as ways of protecting labor rights. For example, among the ways to protect labor rights, the legislator, along with self-defense, indicates coercion to perform duties in kind, receiving compensation for damages, recognition of the right, restoration of the situation existing before the violation of the right, etc. Such a list is similar to the Russian civil understanding of self-defense methods, which are listed in article 12 of the Civil Code of the Russian Federation. Nevertheless, such a distinction does not correspond to the understanding of the Russian legislator, who differentiates the ways of protecting labor rights depending on the subject and the procedure for implementing the method of protecting the right. Such an aspect should be separately investigated when forming and integrating common ways of protecting labor rights within the framework of union agreements of the countries of the Eurasian Economic Union.

Let's turn to the rule of law of the EAEU observer states. For example, article 129 of the Labor Code of Uzbekistan establishes the procedure for refusing to work in the event of a threat to the life and health of an employee. The specified norm establishes the employee's right to be absent from the workplace until the elimination of the circumstances that served for the suspension of work. During this period, the average earnings remain for the employee, which by its nature can be attributed to the guarantees of self-defense.

The Labor Code of the Republic of Moldova also provides for the refusal of an employee from work in case of danger to the life and health of the employee. This provision is contained in article 225 of the Labor Code of the Republic of Moldova. This norm establishes a guarantee for such an employee, namely that during the period of self-defense, he cannot be brought to disciplinary responsibility.

Conclusion

Summing up the comparative legal analysis of the legal regulation of the institute of self-defense of labor rights by employees of the participating countries and observer countries of the Eurasian Economic Union, concluding that the goals and objectives specified in the introduction of this study have been achieved, it is worth noting the following. As M. A. Zhiltsov notes, today it is impossible to achieve full-fledged unification of labor-legal models, but it is necessary to strive for this due to labor migration (Zhiltsov, 2022). It is necessary to agree with this statement, but we believe that the legal model of self-defense is a particular example when unification is quite possible. The fact is that, despite the clearly insufficient legal regulation of the institution of self-defense in all the studied legal systems, it has common grounds. Every law and order recognizes, directly or indirectly, self-defense, fixes its most obvious form in the form of refusal to work. As noted above, a number of labor acts of the EAEU countries contain guarantees and, in part, the procedure for implementing self-defense. All these fundamental features are homogeneous, which indicates a common understanding of the essence and legal nature of labor-legal self-defense by the EAEU countries. Moreover, the lack of sufficient legal regulation will contribute to the construction of a single full-fledged legal model that will not contradict the studied method of protection in national legal systems, allowing to avoid legal implementation problems.

The most detailed regulated procedure for the use of self-defense is the Labor Code of the Russian Federation . Thus, when developing self-defense in the labor legislation of the EAEU, it is necessary to rely on the Russian model of self-defense. But the Russian way of protecting labor rights is not perfect either. It seems that the legal regulation of Russian labor self-defense is problematic due to the presence of a structural defect, which consists in an unreasonable arrangement of norms regulating the institution of self-defense², as well as the logical incompleteness of the labor-law model. As M. A. Zhiltsov notes, ‘with logical incompleteness, there is no thorough elaboration of legal models, that is, when the model of regulation of labor relations created by the rule-making body does not provide for all the possibilities for the development of these relations’ (Zhiltsov, 2011: 189–190). Using the example of Russian regulation, this problem is confirmed by both law enforcement practice and the scientific community (Kurennoy, 2015; Knyazeva, 2018). In this regard, relying on the Russian example of regulation of self-defense by employees of their labor rights, it is necessary to take into account the defective character of the Russian legal model.

As part of the unification of the studied method of protecting labor rights, of course, it is worth mentioning the absence of a legal concept of self-defense. Moreover, such problems are characteristic of any of the legislation of the EAEU states described above. The legally fixed concept of self-defense by employees of their rights is very important from the point of view of the application of this method of protection. Thus, the norms of this institute are aimed primarily at specific employees, who for the most part do not have the skills to work with legal texts. In this regard, it is necessary to form a clear idea of the method of protecting rights and the mechanism of its implementation and it is necessary to start with the concept containing the key signs of self-defense. In this case, it is advisable to propose the following legal definition: ‘self-defense of labor rights by employees is a legitimate independent activity of an employee to protect labor rights, carried out without contacting the labor rights protection authorities, under the conditions and limits established by agreements and other regulatory acts of the Eurasian Economic Union’. Such a legal definition, which contains the fundamental signs of self-defense, will serve as a starting point for the formation of an institutionalized way of protecting labor rights.

² Certificate on the results of the generalization of judicial practice in civil cases on disputes related to the termination of an employment contract at the initiative of the employer, considered by the courts of the Lipetsk region in 2016 (prepared by the Lipetsk Regional Court).

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