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Freedom of labor

Свобода праці

Nina Getmantseva

Key words:

labor freedom, right to work, state, employee, subjective right.

Ключові слова:

робоча свобода, право на працю, держава, працівник, суб'єктивне право.

Today, in today's economic conditions, the problem of labor freedom is one of the social problems, the solution of which is primarily connected with the provision of efficient employment of the able-bodied population by socially useful labor, the fight against unemployment. Though labor is mediated by a different kind of system of social relations, but it is, first of all, a personal volitional activity of a person. And hence, freedom is a natural quality of labor, which should be promoted by the state. The basis of social policy should be the person of labor, "everything else is derived from it". Therefore, a man of work must be provided with decent life and free development. Only in this case the progress of production is possible.

The very idea of freedom has a long history of its development, and hence, the notion of freedom has changed significantly, evolving along with the social ideology and ideological notions of society itself.

The question arises: what freedom is associated with? Since this category is multifaceted, it is considered, as a rule, in various aspects. For example, D.A. Kerimov points to the fact that it is impossible not only to proclaim, but also to imagine freedom without need. O.O. Kovalenko, considering the philosophical and legal aspects of the development of labor law, concludes that the objective basis of freedom is a necessity. In contrast to O.I. Protsevsky observes that freedom is more closely associated with the category of opportunity. And this can not be agreed. Cognition of the laws of reality, knowledge of the laws of social development is one of the conditions of free activity of the individual and society. But these laws in themselves, as objective contacts and relations do not make any society or person free. The law and the need open up only the possibility for such action, free action. Opportunity is realized, it becomes a reality through action, and ultimately, only an opportunity that coincides with the objective necessity of steady development is realized. On the other hand, "the realization of necessity involves the existence of various possibilities", in the most objective reality, various possibilities are laid down. Freedom is opened only on the basis of possible, possibilities define freedom. The notion of freedom is closely linked to the notion of freedom of the will. Thus, in philosophy, freedom of the will is often revealed through the existence of choice, and vice versa – freedom of choice is seen as the real scope of the manifestation of freedom of the will, as its practical expression. The problem of free will is fully revealed through the notion of freedom, which, in its turn, implies the existence of a choice. Freedom is the ability to do or not to do. That is, any freedom involves a choice. This is also evidenced by the current existentialism: freedom is always a situation of choice between different possibilities; it is primarily about the choice of values, and not concrete actions, because the latter are determined first. Freedom is the ability and ability of a person to act on his own accord, guided by subjective principles, values and interests, realizing his ideas about the meaning of life. Human life becomes content only under conditions of real freedom. Only in the conditions of freedom, the individual gets an opportunity to reveal and develop his abilities and talents, for the manifestation of initiative and volitional aspirations. It is from these positions that the principle of freedom of labor is clearly highlighted, is covered in the content of Art. 43 of the Constitution of Ukraine and Art. 2 Labor Code, where the right to work means the freedom to choose a profession, a kind of labor activity, in the absolute freedom to dispose of his ability to work. The analysis of these two normative acts allows us to conclude that the term "freedom" emphasizes the unlimited possibilities of an individual choice. The Labor Code quite clearly reflects the balance between the principle of the right to work and freedom of work. It should be emphasized that the distinction between the concepts of the right to work and freedom of work has some practical meaning. If the state enshrines the right to work in the Constitution (Article 43), then it is logical that it must assume the duty not only to recognize the right to work, but also to create the necessary conditions for its maintenance. In other words, the right to work indicates the possibility of obtaining any social benefits from the state side. After all, "the human right to work is a category

that reflects the human need for labor, existing in the form of ideas, the requirements of a person to society, the state, and in the form of legally stipulated possibilities to meet this need". The International Covenant on Economic, Social and Cultural Rights (ratified by the Presidium of the Verkhovna Rada of the USSR on October 19, 1973) obliges states to recognize the right to work and to take measures to ensure and implement this right. Among the measures to be taken by States to fully implement this right, the Covenant provides vocational education and training programs, ways and means of achieving economic, social and cultural development and full productive employment in conditions that guarantee the basic political and economic freedoms of man.

After proclaiming the freedom of work through its "free election", the state must assume control functions in order to ensure that the person can not use this freedom to the detriment of others, including the state. That is why the proclamation of freedom of work and, let's say, freedom from labor, which is relevant in the new conditions of management, shows the possibility of avoiding certain restrictions on the part of the state itself. At the same time, one can not underestimate the relationship between labor freedom and the right to work, the similarity of which is determined by the legal possibility. In modern conditions, O. B. Smirnov observes that freedom of work and the right to work should be regarded as objectively necessary categories that mutually complement each other and determine the legal basis for the life and work of able-bodied citizens.¹

But the question arises: the right to work covers labor freedom, or vice versa – labor freedom covers the right to work? Indeed, both the Constitution of Ukraine (Article 43) and the Code of Labor Law (Article 2), establishing the right to work, include this right in freedom, by means of the possibility of earning a living for work, which a person freely chooses (including the right to free Choice of profession, type of occupation and work) or which is freely agreed upon.

Speaking about the right to work, first of all, it is necessary to proceed from the constitutional principle of freedom of work and the prohibition of forced labor. Indeed, the right to liberty provides for a priority action, which envisages the right to freely dispose of their capabilities, including ability to work. Freedom as an opportunity receives a real expression in practice. Ultimately, it acts as a deed of the subject, an appropriate act of human behavior. In fact, it is deprived of action, it exists as an opportunity or its fruit. Freedom is "within us", and we need some daring to show it outwardly. The realization of the right to work involves, first and foremost, the consolidation of this right, which implies the right to free choice of profession, type of occupation and work. The right to work is just as natural, inherent in a person as the right to life, to dignity, freedom and personal integrity.

Freedom of work is a "central principle of legal regulation of labor relations", since it is endowed with all the features that are inherent and necessary for the category of the principle of law:

- it is objective;
- it defines and permeates the content and direction of legal prescriptions;
- it is the idea of a conceptual level of generalization;
- it expresses the essence of law in a particular field of social relations;
- it finds its expression in the sources of both national and international law.

The right to work is a subjective right, one of the elements of the legal status of a citizen. In its content freedom is a broader concept, in addition, the principle is a broader category in terms of content than law, therefore the principle of freedom of labor includes not only one right, but a whole set of rights. Freedom of work also covers the right to work. However, the right to work, in the opposite sense, will never be wider than freedom of work. After all, freedom is wider than law and it is difficult to disagree with it, at least for the reason that freedom may well exist beyond the law, namely, to use regulators that are different from legal ones.

Right is a system of norms, created by the legislator (man), freedom – a state, laid down in man by nature. The essence of "freedom" is expressed in the absence of restrictions in the behavior of the subject, in the unhindered realization of the opportunity provided. The term "right" is defined as the legal possibility of doing something, exercising. From these positions, the principle of freedom of labor, enshrined at the constitutional level, is a guarantee that a person independently disposes of his capabilities as an instrument for achieving his goals and realizing his own interests. It is therefore clear that freedom of work covers the right to work, which everyone freely chooses or freely agrees to, and the right to dispose of their abilities to work, to choose a profession, occupation and work. It is this circumstance that clearly reflects the ratio of the principle of freedom of work and freedom from labor and the right to work in modern economic conditions. At first, a person chooses

¹ Трудовое право : [учебник] / Н.А.Бриллиантова и др.; под. ред. О.В.Смирнова, И.О.Снигиревой. – 4-е изд., перераб. и. доп. – Москва : Проспект, 2011 – С. 28 .

whether to work for it or not, and if she is ready and able to work, she is given a job or finds help in finding a job. The right to work now needs to be interpreted as equal right to work, the right to free work. Notwithstanding the fact that the right to work is now deprived of the property of generality, this does not mean that the right of every able-bodied citizen does not correspond to the duty of the state to actually provide him with work, to provide him with a work place. After all, as rightly emphasizes O.I. Protsevsky, freedom of work has its basis, which is based primarily on the duty of the state to give each person, every citizen an opportunity to freely dispose of his ability to work or to refuse to participate in work activities.²

Anthropological source of labor freedom is the needs and interests, the meaning of existence and development of the very person himself. She also serves as a criterion for assessing the level of freedom. From this point of view, labor freedom is filled with social humanitarian content. This determines the primacy of labor freedom in relation to the state, the duty of the state to provide it. But freedom of work does not mean the independence of the subjects in the labor relations themselves. The choice of the subject is voluntary, but the process of work is subordinated to many technological, legal and other requirements and conditions.

Freedom of work, as previously noted, as a common law principle, includes certain requirements addressed primarily to the state, which creates conditions for the full exercise by citizens of the right to work: the use of forced labor is prohibited (Part 3 of Article 43 of the Fundamental Law of Ukraine); the right to proper, healthy and safe working conditions (Article 43 of the Fundamental Law of Ukraine, Article 2 of the Labor Code of Ukraine); with the remuneration of labor which is not lower than the statutory (Part 4, Clause 43 of the Fundamental Law of Ukraine), established by the state (Article 2 of the Labor Code of Ukraine). In addition, the purpose and main areas of public policy in the field of employment are: promoting employment of citizens, although the Law "On Employment of the Population" in general defines that the state guarantees the protection of the rights of citizens to work and the realization of their rights to social protection against unemployment. Indeed, protection from unemployment is a direct obligation for the state to create conditions for economic development and help create new jobs; Improvement of the system of professional training taking into account the interests of the individual, the needs of the economy and the labor market; assistance to enterprises, institutions and organizations irrespective of the form of ownership, type of activity and management in the professional development of employees; the return of the unemployed to productive employment, etc. (Article 15). It should be noted that this state policy certainly contributes to the employment of the population, but its effectiveness depends not only on legislation, but on the economy, that is, on the economic situation of society. Consequently, the specific social and legal feature of the principle of freedom of labor is that it expresses a definite relationship between a citizen and the state with regard to labor. These relations arose because of the awareness that the unique natural ability of man to work, through which material and spiritual values are created for the life of the whole society, requires a different approach than an exclusively contractual employer-employee. It is in this fact that one should look for the appearance of a state legal policy in the field of labor and directions of its development.³

The principle of freedom of work is aimed at stimulating a permanent and purposeful coordinated work of the state, in the person of its bodies, on the path to creating conditions for the smooth exercise of the right of every citizen to work. It is clear that the sphere of labor activity is one of the most dynamic, therefore the state is obliged to pay constant attention to this direction. By giving freedom, the state focuses on a free, self-sufficient self-determination. It seeks to minimally regulate the behavior of citizens, ensuring their freedom, first and foremost, by non-interference, both by their own and from all other social actors. The basis of the category of "right", in this case, the right to work, is to provide a certain social benefit. In this case, we use the term "right" in its subjective sense: as the legitimate ability of a particular person to commit any action, namely: "to have the right to work, including the possibility of earning a living". The law always provides for a guarantee from the state, and the correspondent responsibility of other persons. If this obligation is absent, then there will be no subjective right, but the usual permission: "the opportunity to earn a living by work, which he freely chooses or freely agrees". Consequently, the will is not legally supported and does not imply an appropriate legal obligation. However, it is not accidental that many acts often encounter the phrase "rights and freedoms". For example, Section 2 of the Constitution of Ukraine is entitled "Rights and freedoms and duties of a person and a citizen". This suggests that the right and freedom are closely interrelated, inseparable from each other: it is in the right "freedom receives the necessary support and the guarantor, and the person – the opportunity to meet their interest. Without the right, outside of the right freedom could be "empty sound", remain unrealized and unpro-

² Процевський О.І. Методологічні засади трудового права : монографія / О.І.Процевський. – Х: ХНАДУ, 2014. – С. 178.(260с).

³ Процевський О.І. Методологічні засади трудового права: монографія / О.І. Процевський Х : ХНАДУ, 2014. – С. 182.

tected". Without right comes the tyranny, the human life is devalued. It is universally accepted that the social right is never abstract. There is no right in general. It is always concrete and real⁴.

Concerning the problems of labor law, human freedom as a potential employee and as a status of an individual's independence may include such aspects as objective freedom, which is the content of law and subjective freedom, which are the conditions of existence of law. At the same time objective freedom is expressed in the possibility of human-work to understand and realize the objective need for a particular or possible mode of behavior (work, or not work) and act in accordance with such behavior. It is in this sense that objective freedom must be regarded as the content of law. Subjective freedom of man as a potential employee will constitute the realized freedom of his will, in which he fully understands the correspondence of objective conditions to the reality that surrounds him: the opportunity to fall under the reduction of the number of employees, be released, in time not receive salaries, To be sent on vacation at his own expense, but nevertheless the advantage of her behavior is the subjective will. Therefore, the limits of freedom should be limited not only by the objective (legal) framework, but also by the subjective (internal), as the moral points of reference of the person, based on the moral values of society.

Freedom of work is unthinkable outside of human ties with the state, without its state support. A specific feature of the principle of freedom as a natural quality of labor is that it expresses the relevant relationship between a citizen and the state over the active social policy of the state, which takes into account national interests, aimed primarily at creating conditions for the provision and free realization of human natural ability to work, in order to ensure its decent life, social security, without which it is impossible to feel the freedom, and the disclosure on this basis of the creative and physical potential of human labor as an individual.

Summary

The article reveals the essence of labor freedom as the central principle of labor law, which is unthinkable outside the connection of a person with the state, without its state support. Freedom of work is filled with social humanitarian content, since it is the person who acts as a criterion for assessing the level of freedom. This determines the primacy of labor freedom in relation to the state, the duty of the state to provide it.

Анотація

У статті висвітлюється сутність свободи праці як центрального принципу трудового права, що неможливо уявити за межами зв'язку особи з державою без її державної підтримки. Свобода праці наповнена соціальним гуманітарним змістом, оскільки саме людина виступає як критерій оцінки рівня свободи. Це визначає примат свободи праці стосовно держави, обов'язок держави забезпечити її.

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