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МААЛЫМАТ КООПСУЗДУГУ АСПЕКТИСИНДЕ ЕАЭБ ӨЛКӨЛӨРҮНҮН ЭМГЕК МЫЙЗАМДАРЫН ШАЙКЕШТӨӨ

ГАРМОНИЗАЦИЯ ТРУДОВОГО ЗАКОНОДАТЕЛЬСТВА СТРАН ЕАЭС В АСПЕКТЕ ИНФОРМАЦИОННОЙ БЕЗОПАСНОСТИ

HARMONIZATION OF THE EEU'S LABOR LEGISLATION IN THE ASPECTS OF INFORMATION SECURITY

Аннотация: *Макалада Евразия экономикалык бирлиги (мындан ары ЕАЭБ) өлкөлөрүнүн эмгек мыйзамдарын шайкештөө, аны менен катар маалымат коопсуздугу жаатындагы маселелери каралат. Авторлор Казакстан, Россия, Беларусь, Армения жана Кыргызстандын эмгек мамилелер чөйрөсүндөгү улуттук мыйзамдарын жакындаштыруу маселелерин көтөрүп чыгып, улуттук мыйзамдарды салыштырып талдоо жүргүзүшөт.Изилдөөнүн натыйжасында ЕАЭБ өлкөлөрүнүн эмгек мыйзамдарын шайкештөө боюнча практикалык сунуштамалар берилет.*

Аннотация: *В статье рассматриваются вопросы гармонизации трудового законо-дательства стран Евразийского экономического союза (далее ЕАЭС), в том числе в обла-сти информационной безопасности. Авторами поднимаются вопросы сближения нацио-нальных законодательств Казахстана, России, Беларуси, Армении и Кыргызстана в сфере трудовых отношений, проводится сравнительный анализ национальных законодательств. В результате исследова-*

ния предлагаются практические рекомендации по гармонизации тру-дового законодательства стран ЕАЭС.

Annotation: *The article includes questions of the Eurasian Economic Union (EEU) labor legislation harmonization also in the sphere of information security. Authors bring up questions of Kazakhstan, Russia, Belarus, Armenia and Kyrgyzstan national legislation harmonization and carry out the comparative analysis of the national legislation. As a result of a research practical recom-mendations about harmonization of the labor law of the countries of the Eurasian Economic Union are offered.*

Негизги сөздөр: *маалымат коопсуздугу; шайкештөө; эмгек укугу; ЕАЭБ; эл аралык укук; унификация, укук принциптери.*

Ключевые слова: *информационная безопасность; гармонизация; трудовое право; ЕАЭС; международное право; унификация; принципы права.*

Keywords: *information security; harmonization; labor law; EEU; international law; unifica-tion; law principles.*

The Eurasian Economic Union has already developed a comprehensive regulatory framework on the basis of which the harmonization of tax legislation, customs legislation, international securi-ty.

In the field of information security support activities for the following directions are carried out: 1. participation in examinations of drafts of international treaties and other regulations regard-ing questions of information security. 2. complex information protection during creation and func-tioning of the integrated system. 3. organization of legally significant interstate electronic document management. 4. information security support and information protection, the Commission pro-cessed in information systems and information resources.

Works on complex information protection during creation and functioning of the integrated system are carried out within the actions for creation of IIS of the Union and include:

1. ensuring carrying out the research, developmental and other works concerning creation and development of a subsystem of information security of the integrated system;

2. ensuring development and a statement in accordance with the established procedure the organizational and technical requirements on information security imposed to integration and to national segments of the integrated system taking into account the following components: -legislative, normative, legal and scientific bases; - structure and tasks of bodies (divisions) ensuring safety of an integration segment of the integrated system and national segments of the integrated system; -organizational and technical and regime measures and methods of information protection; -program and technical ways and means of ensuring of information security.

3. ensuring development and acceptance in operation of a subsystem of information security of the integrated system.

Works in the field of the organization of legally significant interstate document flow include:

1. ensuring carrying out the research, developmental and other works concerning creation and development of cross-border space of trust of the CU and EES.

2. ensuring preparation of the information and technological and organizational and legal ac-tions, rules and solutions realized for the purpose of giving of validity to the electronic documents used within the CU and EES, including development of strategy and the concept of use at interstate information exchange of the electronic documents and services having validity.

3. ensuring development of model and methodology of safe data transmission with use of service of the entrusted third party of the integrated system;

4. ensuring creation and commissioning of service of the entrusted third party of the integrat-ed system.

Concerning Labor law harmonization, we think that, the harmonization of labor law should be understood as a convergence between national Labor Laws but not a unification as it only could be reduced to development uniform rules encompassed similar relations. Certainly, unification pro-cess of national legislations is considered as an interesting science of generalizing and uniting inter-national legal order structure which originates from legislator as harmonized legal models of labor law in the certain states. Further compliance of the unification process may, as a rule, take the form of separate

laws or structured contents of certain parts of legal framework, codes, provisions, char-ters of various branches of legislation including labor legislation.

Traditionally, unification (in translation from latin language means to do united) is under-stood as creation of unified rules in domestic law of different countries. Since law enters in areas solely within the exclusive jurisdiction of State and there is no supranational authority that can en-act legally binding "laws" for the domestic law of States, the only way to form unified rules is in the States cooperation. It is worth mentioning another legal institution such us implementation of the right that is close to the unification in content. In other words: implementation is the process of incorporation of the content of international law and its practical implementation into domestic leg-islation and subordinate legislation of certain States. In the broad context implementation can be understood as a fulfillment of international obligations at the inter-State relation level, whereas in case of unification it is about States voluntarily assuming proposals regarding recommendations of some international community. For example, CIS Inter-Parliamentary Assembly legislation models. However, harmonization is to bring together legislations of different States and reduce or eliminate differences. Unification that includes implementation of the identical rules of law to domestic legis-lation of different countries leads to domestic law systems convergence and blurring the distinction between them. However, harmonization is wider since the convergence is carried out outside unifi-cation.

Harmonization of labor legislation of the EurAsEC, as S.Y. Golovina rightly said, is aimed at creating an international standards in regulations of an employment and improving national legisla-tion [1]. S.Y. Golovina's recommendation that the harmonization should be based on international labor standards which may be considered as a model for the EURASEC Consolidated Labor Laws is non-contentious. On the one hand, important rules relating to employment contracts, work and rest periods, disciplinary and material responsibility must be harmonized, on the other hand, it would be feasible to leave opportunities for maintaining national peculiarities of labor regulation and legal traditions of the EURASEC States [2].

In N.L. Lyutov's opinion when it comes to the EurAsEC labor legislation harmonization it should be understood that there are two different phenomenon behind the content that can be hard-ly recognized:

a) Labor legislation unification with the aim of more convenient "using" of it on the the EURASEC territory;

b) The creation of the EURASEC common economic space and labor market

… EURASEC labor legislation unification, i.e. rationalization, is theoretically possible, how-ever the idea of such unification is minimized without making common labor market [3].

This approach of conceptualization the labor legislation harmonization differs from the pre-vious, including concepts of the EURASEC labor legislation harmonization. Supporting the idea of the EURASEC Consolidated Labor Laws researcher has a number of interesting proposals on the table regarding to solvation of the EURASEC labor legislation harmonization problems. From this point, S.Y. Golovina's suggestions about priority of Consolidated Labor Laws are not perfect.

At the same time, agreeing with many theoretical calculations of the called scientists, never-theless, it would be desirable to state the following.

The EEU labor legislation harmonization must be viewed from the perspective of its conver-gence, not unification provided in some country with a view to its development. In this sense, the EEU labor legislation harmonization and labor legislation unification that are carried out through national mechanisms in a single country should be considered as philosophical identification: gen-eral and private. The EEU states are independent and subjects of international law, so it proves pre-vious finding. International relations between the States are based on universally accepted interna-tional principles. The inviolability of the sovereignty of the EEU States is the key to future econom-ic alliances. And in this light, bearing in mind that the EEU States are subjects of international rela-tions and law, the EEU labor legislation harmonization can be built in another way. We reckon, that in the instant case it must proceed from the specific to the general, which means from national, domestic law to international. Which norms of modified domestic law can be used in international law? As R.A.Mullerson suggests, that these include norms of domestic law that can be transformed into international legal acts and regulate special activities of States such as contracting, aliens law, diplomatic and consular missions of the countries. Such kind of source of international law also includes norms of domestic law that regulate

relationship between subject of different countries national law and norms that regulate parts of domestic relations that can produce international rela-tions on its regulation. R.A.Mullerson adds "specific legal maxims that ensure internal coherence of legal systems and encountered under national law" to the list of legislative elements of domestic law with the potential of being "entered" into international law. With increased international coop-eration for the States the challenge is to unify a number of priority areas of domestic law through international law. That unification is implemented through international treaties and agreements.

The experience of international cooperation is reflected in various forms of its regulation unification. Considerable practical and theoretical interest attaches legal system of the EU, created in 1992. The European union's distinctive feature is the highest juridical force and direct effect on the entire territory of the Union [4]. Citizens of the EU member-countries are also European union's citizens. The citizenship of the Union is an addition to, not a substitute for national citizenship.

With a view to regulating domestic law provisions of the international legal instruments must be included to the legal system of the country, i.e. be implemented into domestic law. Transfor-mation that reveals itself in several ways (direct, indirect, mixed) is an important means of imple-mentation.

Direct transformation means that norms of ratified international treaties acquire authority di-rectly, and if there was an agreement, supersede law. Indirect transformation is viewed as an adop-tion of a specific law that transforms international law into domestic. It can be clearly seen, that legal status of the individual in international treaties needs domestic legal mechanism of support and care. For that, system of domestic law that could provide a set of juridical, social and economic guarantees of the status of individual should be developed. Mixed transformation is a mix of the previous two and also most widespread [5].

We tend to take Yu.A. Tikhomirov's point of view who maintains that "different countries legislations unification is a commitment of the State to harmonize principles of legal regulation based on international law and define the stages and cooperative domestic legislation development arrangements"[6]. Yu.A. Tikhomirov concludes that "In view of the increasing integration tenden-cies the process of coordinated development goes on a larger scale. Each national legal system re-flects States' independency and its various methods of linking own interests on the international scene. General rules of making business in world community are created by recognizing its regula-tive value for member-states. At the same time universally recognized principles and international law affect the national legal systems".

Nowadays there is no agreed definition of legal principles. The word "principle" is Latin for "basis", "leading idea", "origin", which philosophic meaning is at the core of legal principles definition. Set of authors, such as S.S.Alekseev, interprets legal principles in the following way: "Legal principles are the leading ideas characterizing the content of the right, its essence and society role" [7]. Kazakh jurists E.N.Nurgaliyeva and S.A.Bukharbayeva supporting the previous view also note that such kind of understanding of the term reflects the outside of its content [8]. However, despite scientists showing consensus on the definition of law, the question of objective and subjective na-ture of legal principles remains contentious. Some scientist hold an opinion at subjective character of legal principles and suggest principles as fundamental ideas that are abstract and not codified in the law, therefore, transforming it into theoretical category of legal awareness. Thus, R.Z.Livshitz with other researches (D.A.Kovachev, L.S.Yavich, O.V.Smirnov, A.M.Vasilyev) advocated for the "ideal" position saying that legal principles are fundamental ideas and origins that express the con-tent of law, ideas of justice and freedom [9]. On the contrary, V.S.Semenov pointed on objective character of legal principles that in turn reflect in the link between its development and material conditions of society lifestyle. We share theorists of law G.Kh.Shafikova's and M.S.Sagandykov's opinion that legal principles have both objective and subjective nature. They are objective because are resulted from the real social and economic characteristics, and are subjective as they are the re-sult of States legislative activities [10]. Thus, it is true for some researches which say that legal prin-ciples being leading ideas, fundamental origins of law and not codified in the law must not be equated with law itself, in other words, principles by its legal significance outweigh the norms of law [10].

We think that fundamental international principle – the principle of the right to work should be taken into account as its legal and scientific interpretation in the EEU States differs and in Ka-zakhstan are excluded from legislation.

In accordance with Article 24 of the Constitution of the Republic of Kazakhstan everyone shall have the right to freedom of labor, free choice of occupation and profession [11]. According to the Article 6 of the Republic of Kazakhstan's Labor Code everyone shall have the right to choose or accept work freely without discrimination and coercion, use his (her) labor skills and choose the type of activity and occupation [12]. The right to freedom of labor is enshrined in Arti-cle 32 of Armenian Constitution [13]. The same norm of law can be seen in the Constitution of Kyrgyzstan: "everyone shall have the right freely to choose or accept work, to use his (her) labor skills, to choose the type of activity and occupation, on occupational safety and working conditions that comply with safety and hygiene requirements and also pay for work not lower than that en-sured with the legal minimum wage [14]".

The Universal Declaration of Human Rights in the Article 23 says, that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. The Article 1 of the European Social Charter specifies the principle of the right to work and in order to ensure the principle requires parties: to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of em-ployment as possible, with a view to the attainment of full employment; to protect effectively the right of the worker to earn his living in an occupation freely entered upon; to establish or maintain free employment services for all workers; to provide or promote appropriate vocational guidance, training and rehabilitation. According to the International Covenant on Economic, Social and Cul-tural Rights, the States Parties recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appro-priate steps to safeguard this right [15]. Thus, the definition of the right to work in international documents wider than freedom to work and includes State guarantees of employment. The Repub-lic of Belarus and the Russian Federation established different from each other definitions of the principle of the right to work. In the Labor Code of the Republic of Belarus the principle of the right to work is seen as the worthiest means of self-affirmation in the economic, moral and social spheres of life, that is right to choice of occupation and workplace according to one's abilities, qual-ifications, training and in response to societal needs and also right to safe and healthy working con-ditions. The Labor Code of the Russian Federation enshrines the principle of labor freedom which is freely chosen or agreed, and the right to decide how to use one's aptitudes and to choose a pro-fession or type of activity.

Thus, the principle of labor freedom established in the Kazakhstan legal labor system far be-low the requirements of international human rights standards. The principle of labor freedom unlike the principle of the right to work does not acts as a guarantor of the right to get work, does not solve unemployment issues because these principle is mostly declaratory and gives priority to the natural human right to engage labor without necessary State guarantees.

In addition to fundamental principle of the right to work prohibition of forced labor is one of the basic principles of international labor law recognized in ILO Declaration of 1998. Considering it as one of the main principles of labor relations in the EEU and unified labor legislation must be started from its definition. According to the Convention concerning Forced or Compulsory Labor № 29 the term forced or compulsory labor shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily . According to comparative legal method used in the research the term "forced labor" in labor legislations of the EEU States differs. In this case only the Republic of Kazakhstan imple-mented the most exact definition of "forced labor" according to international document, whereas definition of "forced labor" in the remaining countries has an overbroad interpretation. Thus, in Labor Code of the Republic of Kazakhstan forced labor is understood as any work or service re-quired from any person, when that person has not volunteered his or services, under threat of some kind of punishment. The Labor Codes of Kyrgyzstan, Russia and Belarus give non-exhaustive def-inition of forced labor as it is to do work under threat of some kind of punishment. The Convention represents the term forced or compulsory labor through two linked elements: 1) work or service which is exacted from any person under the menace of any penalty and 2) for which the said per-son has not offered himself voluntarily. In definitions given by countries mentioned above forced labor is recognized only through the first element, whereas the second element is absent. The Labor Code of Armenia does not have the explanation of the term "forced labor" establishing any form or character of forced labor and violence against workers [16].

The EEU's States labor legislations must be harmonized without its unification but by bringing them closer together on the basis of transformation theory. The States without engendering supranational law-making legislatures should ratify designated by authorized bodies labor agreements that take into account national specificities of each country and on the basis of generally accepted international principles develop projects of solutions which suit all States. These projects each country of the EEU shall be legally admissible as law ratifying it by national parliaments.

The harmonization aim is to ensure uniformity in ways to national and international legisla-tion. The harmonization of legislation is to bring laws into line with their principles in legal insti-tutes, branches of law and systems and also between systems during the process of legislation im-provement especially codification and consolidation.

The legal principles and their hierarchies is juridical fundament of harmonization during legislation improvement.

The harmonization of labor legislations of the EEU States must be based on unified principles complied with international labor standards. Thus, the principle of the right to work must be reflect-ed in labor law of the EEU and national legislations of the member-countries through harmoniza-tion.

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