

VALORILE CONSTITUȚIONALE ȘI REGLEMENTAREA LEGALĂ A RELAȚIILOR DE MUNCĂ

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Articolul examinează aspecte individuale ale influenței principiilor și prevederilor constituționale ca și garanții de implementare a drepturilor omului, asupra legislației actuale a muncii. În baza înțelegerii constituționale și juridice a valorilor se determină trăsăturile conținutului normelor de garanție din Constituția Republicii Moldova și o comparație a normelor; valorilor și principiilor constituționale. Pe această bază, se analizează conținutul legislației muncii, inclusiv normele Codului muncii al Republicii Moldova, care stipulează principiile reglementării legale a raporturilor de muncă. Valorile constituționale sunt considerate și în interdependență cu conținutul normelor individuale ale standardelor europene și internaționale, ce reglementează drepturile omului cu privire la muncă. Se formulează o serie de concluzii referitor la importanța luării în considerare a valorilor constituționale în elaborarea regulilor în domeniul muncii și a protecției muncii. Au fost făcute propuneri de îmbunătățire a eficienței legislației actuale, ținând cont de influența normelor și valorilor constituționale asupra legislației sectoriale a muncii.

Cuvinte-cheie: valori constituționale, relații de muncă, garanții de muncă, protecția drepturilor lucrătorilor; principiile reglementării legale a muncii.

CONSTITUTIONAL VALUES AND LEGAL REGULATION OF LABOR RELATIONS

The article examines individual issues of the influence of constitutional principles and constitutional provisions - guarantees of the implementation of human rights on the current labor legislation. Based on the constitutional and legal understanding of values, the features of the content of guarantee norms in the Constitution of the Republic of Moldova are determined, and a comparison of constitutional norms, constitutional values and constitutional principles. On this basis, the content of labor legislation is analyzed, including the norms of the labor code of the Republic of Moldova, which enshrines the principles of legal regulation of labor relations. Constitutional values are also considered in interdependence with the content of individual norms of the European and international standards governing human labor rights. A number of conclusions are formulated regarding the importance of taking into account constitutional values in rule-making in the field of labor and labor protection. Proposals have been made to improve the effectiveness of current legislation, taking into account the influence of constitutional norms and constitutional values on sectoral labor legislation.

Keywords: constitutional values, labor relations, labor guarantees, protection of workers' rights, principles of legal regulation of labor relations.

VALEURS CONSTITUTIONNELLES ET RÉGLEMENTATION JURIDIQUE DES RELATIONS DE TRAVAIL

L'article examine des questions individuelles concernant l'influence des principes constitutionnels et des dispositions constitutionnelles - garanties de la mise en œuvre des droits de l'homme sur la législation du travail en vigueur. Sur la base de la compréhension constitutionnelle et juridique des valeurs, les caractéristiques du contenu des normes de garantie dans la Constitution de la République de Moldavie sont déterminées ainsi qu'une comparaison des normes constitutionnelles, des valeurs constitutionnelles et des principes constitutionnels. Sur cette base, le contenu de la législation du travail est analysé, y compris les normes du Code du travail de la République de Moldavie, qui consacre les principes de la réglementation juridique des relations de travail. Les valeurs constitutionnelles sont également considérées en interdépendance avec le contenu des normes individuelles des standards européens et internationaux régissant les droits humains du travail. Un certain nombre de conclusions sont formulées concernant l'importance de prendre en compte les valeurs constitutionnelles dans l'élaboration des règles dans le domaine du travail et de la protection du travail. Des propositions ont été faites pour améliorer l'efficacité de la législation actuelle, en tenant compte de l'influence des normes constitutionnelles et des valeurs constitutionnelles sur la législation sectorielle du travail.

Mots-clés: valeurs constitutionnelles, relations de travail, garanties du travail, protection des droits des travailleurs, principes de réglementation juridique du travail.

КОНСТИТУЦИОННЫЕ ЦЕННОСТИ И ПРАВОВОЕ РЕГУЛИРОВАНИЕ ТРУДОВЫХ ОТНОШЕНИЙ

В статье рассматриваются отдельные вопросы влияния конституционных принципов и положений как гарантий реализации прав человека в сфере труда, на действующее трудовое законодательство. На основе конституционно-правового понимания ценностей определяются особенности содержания гарантийных норм в Конституции Республики Молдова, а также проводится сравнение конституционных норм, конституционных ценностей и принципов. На этой основе, анализируется содержание трудового законодательства, в том числе норм Трудового кодекса Республики Молдова, закрепляющих принципы правового регулирования трудовых отношений. Конституционные ценности также рассматриваются во взаимозависимости с содержанием отдельных норм европейских и международных стандартов, регулирующих трудовые права человека. Сформулирован ряд выводов относительно важности учета конституционных ценностей при нормотворчестве в области труда и охраны труда. Внесены предложения по повышению эффективности действующего законодательства с учетом влияния конституционных норм и конституционных ценностей на отраслевое трудовое законодательство.

Ключевые слова: конституционные ценности, трудовые правоотношения, гарантии в сфере труда, защита прав работников, принципы правового регулирования труда.

Introduction

Constitutional law occupies a leading place in the system of national law, is the basis for the formation and development of sectoral legislation, and also determines the prospects and possibilities for the implementation of international norms into the national legal system of the Republic of Moldova. There is no doubt about the importance of the Constitution

and its place in the legal system of any state. The basis of legal regulation in various spheres of public relations are constitutional norms. Considering the scope of legal regulation of labor relations, first of all, it should be said about the specification in sectoral legislation of the provisions of Article 43 of the Constitution of the Republic of Moldova - The right to work and labor protection [2].

In this regard, constitutional values are of prac-

tical interest and significance for the regulation of labor relations. Taking into account that one of the features of the legal regulation of labor relations is the presence, along with legal norms, of a whole set of social norms through which the regulation of relations that develop in the process of labor activity takes place. Constitutional values in this understanding should be considered as the basis for determining the scope of social norms that are not enshrined in the norms of labor legislation, i.e. non-legal norms in the process of regulating labor relations.

At the same time, taking into account that a specific feature of the labor law framework is the recognition in the system of sources of legal regulation of labor relations of acts of social partnership and local legal acts, it should be noted the role of constitutional values as the basis of the legal consciousness of law enforcement officials - representative bodies of workers and employers.

Based on this, the purpose of the research presented within the framework of the scientific article was to determine the meaning of constitutional values for the regulation of labor relations, taking into account the fundamental role of constitutional norms for sectoral labor legislation.

Research methodology

The methodological basis of the study is an interdisciplinary approach, determined by the purpose of studying the issue under consideration. The legal analysis of the norms of the current constitutional legislation and labor legislation is carried out by the author on the basis of general legal and special legal research methods. The author uses comparative historical, systemic logical and comparative legal research methods. Since the category of "legal values" and "constitutional values" is considered by a number of authors on the basis of philosophical approaches and general scientific understanding, we draw conclusions and generalizations taking into

account the broad understanding of the category of "values". When considering research questions, an integrated methodological approach is used. Fundamental constitutional rights and guarantees in the sphere of labor are considered as the basis of legal regulation at the level of labor legislation of the Republic of Moldova. An important place in the process of studying scientific and legal material is given to legal acts of European law and international legal norms.

Results obtained and discussions

The Basic Law of the Republic of Moldova names human dignity, human rights and freedoms, the free development of the human personality, justice and political pluralism as the highest values guaranteed and protected by the state (Part 3 of Article 1 of the Constitution of the Republic of Moldova). It is obvious that these values, being declared in the Constitution, can and should be the basis for the regulation of social relations. However, the formal legal approach to understanding values allows, in our opinion, to talk about constitutional values not in general, but in relation to specific relationships in which the subject enters and which are subject to legal regulation. Therefore, the legal category "value" should be considered taking into account the applied methods of legal regulation of public relations within the framework of industry regulation, mainly distinguishing between imperative and dispositive methods, i.e. without absolutizing constitutional values. Considering the importance of the constitution in the legal consolidation of guarantees of freedom of society and its members in various spheres of life, I. Guček, who is noted by scientists as having made a significant contribution to the promotion of constitutional values and the development of research in this area [4], notes such an important characteristic as guarantee against excessive organization and regulation [3, p. 43].

When determining the understanding of constitutional values, we should also pay attention to the wording of the constitutional norm, where the person – a human, is not directly indicated as the highest value, but a different linguistic construction is used. In other words, the question arises: what is the highest value - the person or his rights, dignity and freedom? Without considering it necessary to conduct a discussion regarding the content of this norm and the scope of its legal understanding, we agree with the opinion on this issue expressed in the legal literature. So, G. N. Komkova, speaking about constitutional values, correctly, in our opinion, noted that “... the highest value is a person, without whom the absence or lack of rights and freedoms becomes unimportant” [10, p. 220]. We should agree with S. Turcan, who defines human rights and freedoms «...as the abilities, prerogatives of the individual, which are consecrated and guaranteed by regulations, to have a certain behavior or demands certain behavior from others» [6]. Noting that the basis of human rights are fundamental rights and freedoms which are subjective human rights necessary for life, dignity and free development of the human person, consecrated and guaranteed by the Constitution and international treaties, the author also notes that human rights are recognized as the highest value, but not fundamental human rights, since this is a means of mandatory constitutionalization of all rights and all freedoms [6]. Considering the hierarchical character of the legal system, it follows that the most important, determining and primary legal and non-legal values are included in the Constitution, as the fundamental legal establishment of any state. The supreme constitutional values are a constant of the legal system, even if they are at the same time they may undergo changes [7].

When considering constitutional values in connection with labor legal relations, it is necessary to determine the content and types of legal relations

that belong to this group of legal relations. The labor code of the Republic of Moldova does not contain a definition of labor relations. However, Article 2 of the Labor Code of the Republic of Moldova indicates its scope of action, including the set of individual and collective labor relations, as well as other relations directly related to labor relations (clause 1). Moreover, in. cl. 2 of this article also indicates labor relations, which are subject to the labor code, organic laws and other regulations [9].

As part of the research topic in this scientific paper, in conjunction with constitutional values, labor relations will be considered as social relations regulated by the norms of labor legislation, individual and collective. Since individual labor relations arise when a person implements his constitutional right to work (clause 1, article 43 of the Constitution), and collective labor relations arise through the exercise of the right to negotiate on labor issues (cl. 4, article 43 of the Constitution), in conjunction with the right to form and joining trade unions (Article 42 of the Constitution) [2], it is in context to legal relations arising and implemented on the basis of labor legislation that constitutional values will be considered.

When considering constitutional values and legal regulation of labor relations, we should, in our opinion, focus on the following provisions.

Firstly, the relationship between constitutional values and constitutional principles in relation to the constitutional right to work.

Secondly, understanding and demonstrating constitutional values in the legal regulation of labor relations principles.

Thirdly, the constitutional values' elaboration in the norms of labor legislation when regulating certain types of individual labor contracts and collective labor contracts and agreements.

As for the relationship between constitutional values and constitutional principles in relation to labor relations, we consider it appropriate to con-

sider them through the prism of classifying labor rights as social human rights. We have provided a rationale for classifying the right to work and human rights in the world of work specifically as part of the group of social rights [21, p. 108]. Based on the above, as well as taking into account the proposed classification of the principles of social human rights into three groups: principles of securing rights; principles of implementation and principles of protection of social rights [22, p. 152], it should be noted that constitutional values are manifested differently in each of these groups of principles. Since the principles of legal regulation of mining relations are enshrined in a separate article of the Labor Code of the Republic of Moldova, we can give examples of the branch of labor law principles in relation to this classification. We propose to include among the principles of securing rights: ensuring the right of workers to participate in the management of the enterprise, carried out in the forms provided for by law (p. i); a combination of state and contractual regulation of labor relations and other relations directly related to them (p. j); establishment of state guarantees to ensure the rights of workers and employers, as well as monitoring their compliance (p. l) [9]. Guaranteeing human rights and freedoms as a constitutional value displays in these sectoral principles. among To the principles of the implementation of labor rights in labor legal relationship we propose to include the following: freedom of work, including the right to work, which everyone freely chooses or agrees to without coercion, the right to manage one's ability to work, choose a profession and occupation (p. a); prohibition of forced (compulsory) labor, discrimination on any basis and sexual harassment in labor relations (p. b); ensuring the right of every employee to fair working conditions, including those that meet the requirements of health and safety, and the right to rest, including regulation of working hours,

provision of annual paid leave, daily rest, days off and non-working holidays (p. d); equality of rights and opportunities for workers (p.e); equal pay for equal work or work of equal value (p. f') [9]. In this case, we are talking about human dignity, as a value protected by the constitution, the free development of the individual, as well as justice.

And speaking about the principles of protection of social rights, we can say that constitutional values are expressed through the following sectoral principles of labor law: guaranteeing the right of every employee to timely, full and fair wages, ensuring him and his family a decent existence (p. f); ensuring the right of every employee to protect their labor rights and freedoms, including the right to directly appeal to supervisory and control bodies and labor jurisdiction bodies (p. m); ensuring the right to resolve individual labor disputes and collective labor conflicts, as well as the right to strike in the manner established by this code and other regulations (p. n); ensuring the right of employees to protection of honor, dignity and professional reputation during their work (p. r) [9]. The relationship between constitutional values and human rights in the labor sphere and their significance was considered as part of the study of cases of restriction of human labor rights. "In this capacity, the balance of constitutional values, rights and legitimate interests of subjects in the sphere of labor should be recognized not only as a condition for the implementation of freedom of labor, but also as a constitutional value subject to independent constitutional protection" [5, p. 104].

Of course, the division of the principles of law into groups is very conditional, especially when it comes to the sphere of labor, where within the framework of an individual employment legal relationship, the rights and obligations of the parties are mutual and relations are established based on the need to maintain a balance of interests of the employee and the employer. As A. Sosna correctly

pointed out, the second section of the Constitution is a capacious and integral system of political, economic, socio-cultural rights, which are based on the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights and a number of other international documents [19, p. 51]. Constitutional principles as fundamental normative and value provisions, guidelines, guiding principles of legal reality, expressing the spirit, essence of the constitution itself, objective laws of life and development of society and the state, act as the basis for the formation and provision of consent, political unity of the people, a criterion for the legal regulation of the most important social relations, a vector for the development of other constitutional norms and legal institutions [20].

As noted above, another important factor regarding constitutional values in the field of labor relations is their consolidation/development in the current legislation norms'. Collective labor relations in this case are of interest along with individual ones, since through the implementation of the right to unite in trade unions, as well as other public organizations, workers receive the opportunity to express their interests in the social and labor sphere. This means that when entering into collective labor relations, workers and their representatives also perceive constitutional values. In this regard, one should agree with the opinion that there is a category of constitutional rights-values and include the constitutional right to association among them (articles 41, 42 of the Constitution of the Republic of Moldova) [2].

For individual labor relations and individual labor contracts (Section 3 of the Labor Code of the Republic of Moldova), constitutional values appear as the basis for the emergence and development of individual labor relations. The Labor Code and other laws of the Republic of Moldova normatively establish certain requirements for an employee to be hired, for example, the absence of a criminal record

to occupy teaching positions (clause 2 of Article 296 of the Labor Code of the Republic of Moldova), as well as compliance with a number of restrictions for performing work under an employment contract, for example, restrictions on part-time work for the head of a state, including municipal, enterprise (Article 261 of the Labor Code of the Republic of Moldova) [9]. In addition, the grounds for termination of an individual employment contract at the initiative of the employer, enshrined in Article 86 of the Labor Code of the Republic of Moldova, also provide grounds for speaking about the relationship between these norms and values, including constitutional ones.

Considering the grounds for dismissal at the initiative of the employer, the close connection and dependence of the employee's actions, primarily illegal, and adverse consequences, in the form of disciplinary punishment - dismissal, is undeniable. In this regard, there is an interesting dependence of constitutional values and spiritual-narrative values, which act as a prerequisite for a certain strategy of employee behavior and can lead to unlawful behavior in the labor relationship.

In legal relations, norms of morality, morality, and especially religious norms can influence the emergence and development of legal relations. Despite the principle of prohibition of discrimination in labor law, it is obvious that in collective work psychological factors and characteristics of the subjects are important. Therefore, the study of spiritual values and the influence of moral norms on the employee as a subject of labor relations is of interest in a broad sense, in terms of reflection of constitutional values in their behavior. Among extra-legal norms, moral norms and moral principles should be highlighted. In turn, the conditionality of these norms and spiritual and moral values seems indisputable.

Spiritual values as moral guidelines in the spiritual and cultural development of the people are a condition for the preservation of human civilization.

The concepts of good and evil, ideas about justice and equality, personal dignity, moral assessments of human actions form a certain system of views of each person and society as a whole. The formed social standards contribute to the strengthening of unity, the search for social dialogue and, thus, cement the social structure [17, p. 103].

From a formal legal point of view, the consolidation in legal texts of concepts that correlate with traditional spiritual and moral values implies the possibility of turning to them in “difficult cases” of interpreting the law and developing models of legal argumentation [12, p. 301].

One of the directions of the legal regulation’ differentiation of labor relations is to increase the number of norms that define the features of the labor legal regulation, taking into account moral requirements and ethical principles. At the level of legislative norms, as well as at the contractual level, the circle of workers to whom moral and moral requirements may be imposed is specified. In legal science and in the science of labor law, the issue of criteria for differentiating the legal regulation of labor, including taking into account the religious beliefs and beliefs of the employee, is relevant. Freedom of conscience and freedom of religion are among the personal rights and freedoms of a person, the protection of which is increasingly sought by workers or job seekers. Today, taking into account the growing religiosity of the population, researchers note the increasing role of such a factor as the employee’s subordination of his behavior in the labor legal relationship simultaneously to at least two normative and regulatory systems (legal norms and religious norms) [14, p. 44]. At the same time, both the employee and the employer, need clear legal guidelines for their behavior in case of any subjective reactions and objective capabilities of the employer.

The needs of the employee as an individual include various spiritual needs, including adherence

to religious norms or instructions of other spiritual beliefs. An employee who complies with religious norms simultaneously realizes mainly two constitutional freedoms - freedom to fully dispose of his ability to work (Article 43 of the Constitution of the Republic of Moldova) and freedom of conscience and freedom of religion (Article 31). The constitutional provisions are specified in the provisions of the Law of the Republic of Moldova “On Freedom of Conscience, Thought and Religion”, in particular, Article 4 and Article 5 establish the equality of rights of citizens regardless of their attitude to religion [8].

In the field of legal regulation of labor relations, a number of issues directly related to spiritual and moral values are of practical interest and deserve attention and study. Thus, the subjects of labor law and labor relations are directly influenced by spiritual and moral principles through the principles of labor law. Since the latter are enshrined in norms (for example, Article 5 of the Labor Code of the Republic of Moldova), this allows them to be used in direct legal regulation, including at the local level.

Moral norms containing moral values are applied in the process of establishing specific rules of conduct, at various levels of law enforcement, as well as in the process of local law-making.

Since today the legislator and law enforcement practice pay more attention to the relationship between moral norms, spiritual and ethical norms and principles and norms of law, the issue of applying legal sanctions for violation of moral and ethical requirements seems important. In this regard, it is also of interest to analyze the problems of realizing the right to protection of one’s dignity during working life.

We adhere to the position that there is an exhaustive list of grounds for termination of an employment contract and morality, ethics and religious norms in themselves cannot serve as a basis for assessing the

legality or illegality of an employee's actions. Exclusively in cases listed in the law (for example, an immoral offense incompatible with the continuation of teaching work, the use of physical or mental violence by a teacher against students), an analysis of a disciplinary offense from the standpoint of morality and morality is acceptable as a basis for punishing an employee.

In this case, an interesting example is the practice of the Republic of Kazakhstan in the field of constitutional jurisdiction. Thus, in its Resolution, the Constitutional Court notes "that legal regulation in the field of labor relations, the procedure and conditions for their emergence and termination, restrictions and differentiation leading to differences in rights and obligations, must ensure a balance of constitutionally protected values, public and private interests; use not excessive, but only reasonable, strictly determined measures; meet the requirements of justice; be proportionate, commensurate and necessary for the protection of constitutionally significant values" [15].

In relation to cases of restriction of human labor rights, which include cases of dismissal due to a disciplinary offense, a position was expressed on constitutional values and their significance: "In this capacity, the balance of constitutional values, rights and legitimate interests of subjects in the sphere of labor should be recognized not only a condition for the implementation of freedom of labor, but also a constitutional value subject to independent constitutional protection" [5, p. 103]. Constitutional values, mediated by philosophical, sociological and legal aspects, represent a universal and multidimensional category that includes all spheres and levels of life of subjects of any social relations, and act for these subjects as an indicator that determines the nature of the relationship between them [16, p. 115].

Thus, the implementation of constitutional values in the regulation of labor relations is one of the

existence of the principle of legality in the sphere of labor, on the other hand, it ensures, as noted by V.V. Nevinsky "...directions for the universalization of the value of the constitution itself, possible limits for the universalization of constitutional values as a whole" [13, p. 117].

Speaking about constitutional values in the field of labor relations, it is impossible not to mention the focus of Moldovan legislation on rapprochement with the EU. The Association Agreement between the Republic of Moldova and the European Union and the European Atomic Energy Community and their member states, signed in 2014, contains in the preamble, as one of the principles of cooperation, an indication of recognition by the parties "that the common values on which the EU is founded, namely democracy, respect for human rights and fundamental freedoms, as well as the rule of law, also constitute the very essence of the political association and economic integration provided for in this Agreement..." [1]. The granting by the European Council to the Republic of Moldova the status of a candidate for EU membership' country on June 23, 2022 implies further approximation of legislation and bringing it into line with pan-European values. In this regard, as noted by Professor G. Costachi and R. Sultanov, "the rule of law is also recognition of the traditional values of European legal culture and the connection of certain institutions with constitutional law" [11, p. 6].

If at previous stages of legislative development it was noted that "in the Republic of Moldova there is a significant disconnection of fundamental constitutional values and principles from reality," today there is a closer dependence in the content of sectoral legislation and constitutional principles and values [18, p. 83]. This connection can also be traced in the legal regulation of labor relations, which is confirmed by materials from judicial practice and the practice of control and supervisory activities.

Conclusions

The research, within the framework of the presented scientific paper, of issues of constitutional values and their impact on labor relations allows us to state that the legal regulation of labor relations, like other relations regulated by industry legislation, will not occur in isolation. Constitutional foundations, provisions, principles and values act as a mandatory basis for legal regulation. The specifics of labor relations presuppose a significant influence of constitutional values, in their connection with universal human values, moral standards and moral norms and principles.

Constitutional values are revealed in constitutional principles, as well as in the principles of legal regulation of labor relations. In addition, the content of an individual employment contract, as well as the grounds for its termination (for example, in the event of a disciplinary offense), contain the meaning of constitutional values.

Constitutional values allow for a comprehensive approach to the application of international norms when regulating labor relations; for the Republic of Moldova, as a member of the ILO and a participant of international interstate agreements in the social - labor sphere, this is another mechanism for increasing the level of protection of human rights.

Taking into account the status of the Republic of Moldova as a candidate for EU membership, constitutional values should be viewed through the prism of the declarative provisions of the EU-Moldova Agreement, which consolidate European values. In relation to labor relations, expanding employment opportunities for Moldovan citizens is one of the perspective areas of action.

The presented positions and reflections regarding the influence of constitutional values on the regulation of labor relations are not indisputable and affect only some aspects from a wide list of re-

lations in which constitutional provisions are taken into account, as well as constitutional values as basic concepts.

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