



International
Labour
Organization

► ANNOTATED SUMMARIES OF COURT CASES

concerning court decisions in the field of labour re-
lations using ILO Conventions and other UN and
European regional human rights instruments

2025





International
Labour
Organization

Canada 

This publication has been translated into Ukrainian and printed as part of the International Labour Organization project “Promoting Fundamental Principles and Rights at Work in the Context of Reforms in Ukraine,” funded by the Government of Canada.

▶ **ANNOTATED SUMMARIES OF COURT CASES**

concerning court decisions in the field of labour relations using ILO Conventions and other UN and European regional human rights instruments

© International Labour Organization 2025.

First published 2025.



Attribution 4.0 International (CC BY 4.0)

This work is licensed under the Creative Commons Attribution 4.0 International. See: creativecommons.org/licenses/by/4.0. The user is allowed to reuse, share (copy and redistribute), adapt (remix, transform and build upon the original work) as detailed in the licence. The user must clearly credit the ILO as the source of the material and indicate if changes were made to the original content. Use of the emblem, name and logo of the ILO is not permitted in connection with translations, adaptations or other derivative works.

Attribution — The user must indicate if changes were made and must cite the work as follows: *Annotated summaries of court cases concerning court decisions in the field of labour relations using ILO Conventions and other UN and European regional human rights instruments*, Geneva: International Labour Office, 2025. © ILO.

Translations — In case of a translation of this work, the following disclaimer must be added along with the attribution: *This is a translation of a copyrighted work of the International Labour Organization (ILO). This translation has not been prepared, reviewed or endorsed by the ILO and should not be considered an official ILO translation. The ILO disclaims all responsibility for its content and accuracy. Responsibility rests solely with the author(s) of the translation.*

Adaptations — In case of an adaptation of this work, the following disclaimer must be added along with the attribution: *This is an adaptation of a copyrighted work of the International Labour Organization (ILO). This adaptation has not been prepared, reviewed or endorsed by the ILO and should not be considered an official ILO adaptation. The ILO disclaims all responsibility for its content and accuracy. Responsibility rests solely with the author(s) of the adaptation.*

Third-party materials — This Creative Commons licence does not apply to non-ILO copyright materials included in this publication. If the material is attributed to a third party, the user of such material is solely responsible for clearing the rights with the rights holder and for any claims of infringement.

Any dispute arising under this licence that cannot be settled amicably shall be referred to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of such a dispute.

For details on rights and licensing, contact: rights@ilo.org. For details on ILO publications and digital products, visit: www.ilo.org/publns.

ISBN: 9789220426364 (web PDF)

DOI: <https://doi.org/10.54394/FQGU0179>

Also available in Ukrainian: *Анотовані резюме судових справ, що стосуються судових рішень у сфері трудових відносин із використанням Конвенцій МОП та інших інструментів ООН і регіональних європейських механізмів захисту прав людини*, ISBN 9789220426371 (web PDF)

The designations employed in ILO publications and databases, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the ILO concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers or boundaries. See: www.ilo.org/disclaimer.

The opinions and views expressed in this publication are those of the author(s) and do not necessarily reflect the opinions, views or policies of the ILO.

Reference to names of firms and commercial products and processes does not imply their endorsement by the ILO, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

► Table Of Contents

ILO Convention 158_Ruling of Supreme Court 16.06.2021 case 357_13937_19.....	6
ILO Conventions 29, 105_Ruling of Supreme Court 04.10.2018 case 916_1503_17	8
ILO Convention 135_Ruling of Supreme Court 28.09.2022 case 686_4970_21	10
ILO Convention 154_Decision of Constitutional Court of Ukraine 10-p(II)_2024 13.11.2024.....	12
ILO Convention 132_Ruling of Supreme Court 13.10.2020 case 712_9213_18.....	14
ILO Conventions 111, 158_Decision of Constitutional Court of Ukraine 9-r(I)_2024 02.10.2024.....	16
ILO Convention 105_Ruling of Supreme Court 16.01.2024 case 910_644_22	18
ILO Convention 159_Decision of Dnipro District Administrative Court 25.09.2018 case 804_4343_18.....	20
ILO Convention 29_Ruling of Supreme Court 20.03.2024 case 343_155_122.....	22
ILO Convention 155_Ruling of Kropyvnytskyi Court of Appeal 404_7095_23	24
ILO Conventions 81, 129_Ruling of Supreme Court 280_3866_19	26
ILO Convention 95_Ruling of Supreme Court 501_1350_17	28
ILO Convention 153_Ruling of Supreme Court 200_7080_23.....	30
ILO Convention 131_Desicion of CCU 2-p_2021 15.07.2021	32
ILO Convention 100_Ruling of Supreme Court 202_5012_21	34

► Civil Cassation Court within the Supreme Court, Ruling dated June 16, 2021, case No. 357/13937/19 (proceedings No. 61-19617sv20)

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine "On International Treaties of Ukraine"

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant – PERSON_1, defendant - Bila Tserkva District State Hospital of Veterinary Medicine

Subject:

Dismissal

Role of International Law:

Reference to international law to strengthen a decision based on domestic law

Type of instruments used:

Ratified treaties¹

Key words:

Liquidation and reorganisation / Legal entity under public law / Dismissal / State institution / Reference to international law to strengthen a decision based on domestic law

The claimant, who worked as the head of the Bila Tserkva District State Hospital of Veterinary Medicine, was dismissed in connection with the complete liquidation of the institution on the basis of paragraph 1 of Article 40 of the Labour Code of Ukraine. The liquidation was justified by the need to optimise state institutions for the purpose of rational and effective use of labour resources, budget funds and property.

The claimant believed that in this case it was a reorganisation, not a liquidation, of the Bila Tserkva District State Hospital of Veterinary Medicine, since its responsibilities were assigned to the Bila Tserkva City State Hospital of Veterinary Medicine. Therefore, the claimant filed a claim to the court to cancel a dismissal order, reinstatement and recovery of average earnings for the period of forced absenteeism. The claimant argued that in the event of

¹ ILO Termination of Employment Convention, 1982 (No. 158), ratified by Decree of Verkhovna Rada of Ukraine "On Ratification of International Labour Organisation Termination of Employment Convention No. 158" dated 04.02.1994 No. 3933-XII.

reorganisation of the institution, legal succession occurs not only in terms of property and property rights and obligations, but also in labour relations, as a result of which the employees are transferred, with their consent, to the enterprise that is the legal successor.

The district court refused the claimant's claim and the appellate court left the said decision unchanged. The courts motivated their decisions by the fact that due to the complete liquidation of the institution, the defendant had the right to dismiss the claimant. No changes were made to the constituent documents of the liquidated institution, rights and obligations were not transferred, no institution, department, or structure was created, therefore no succession of the Bila Tserkva District State Hospital of Veterinary Medicine took place.

Considering the cassation appeal of the claimant against the above-mentioned decisions of the courts of first and appellate instances, the Supreme Court stated that according to Article 43 of the Constitution of Ukraine everyone shall have the right to labour. Citizens shall be guaranteed protection from unlawful dismissal.

Referring to Article 40 of the Labour Code of Ukraine, the Supreme Court emphasized that when considering labour disputes related to dismissal in the event of changes in the organisation of production and labour, including liquidation or reorganisation, courts are obliged to find out whether the defendant actually had changes in the organisation of production and labour, whether the owner or the body authorized by him complied with the norms of the legislation regulating the dismissal of an employee, what evidence is there regarding changes in the organisation of production and labour, that the employee refused to be transferred to another job or that the owner or the body authorized by him did not have the opportunity to transfer the employee with his consent to another job at the same enterprise, whether the dismissed employee did not exercise the preferential right to remain at work, and whether he was warned 2 months in advance about the upcoming dismissal.

The Supreme Court also noted that, in accordance with Article 13 of the ILO Termination of Employment Convention No. 158, when the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

In its previous legal positions, the Supreme Court indicated that liquidation of a legal entity under public law shall take place if the administrative act of a state authority or local self-government body provides justification for the expediency of the state's refusal to perform the tasks and functions of such an entity. If such justification is provided, then in such a case the liquidation of the legal entity under public law shall take place, and if not, then the only reference to the fact that the entity is being liquidated is insufficient, and in the case of entrusting the performance of the tasks and functions of the liquidated body to another body, it is actually a matter of reorganisation. Thus, the possibility established by the legislation of liquidating a state institution with the simultaneous creation of another one that will perform the powers of the entity being liquidated includes the employer's (state's) obligation to employ employees of the liquidated institution.

In this case, after the liquidation of the Bila Tserkva District State Hospital of Veterinary Medicine, its service area was assigned to the Bila Tserkva City State Hospital of Veterinary Medicine, the staff of which was significantly increased. In view of this, guided by the provisions of the Constitution of Ukraine, ILO Convention No. 158, the Supreme Court partially satisfied the cassation appeal of the claimant and sent the case for a new consideration to the court of first instance. The Supreme Court motivated its decision by stating that the courts of first and appellate instances did not fully clarify the specified circumstances of the case and the requirements of the law, did not clarify whether the justification for the state's refusal to perform the tasks and functions of a legal entity under public law or their transfer to other legal entities under public law was provided, and whether there were grounds for employing employees of the liquidated institution.

► Commercial Cassation Court within the Supreme Court, Ruling dated October 4, 2018, case No. 916/1503/17

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine "On International Treaties of Ukraine"

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant – arbitration manager Kolmykova T.O., defendant – PJSC «State Food and Grain Corporation of Ukraine»

Subject:

Protection of wages, Forced labour

Role of International Law:

Use of international law as a guide for interpreting domestic law

Type of instruments used:

Ratified treaties¹

Key words:

Reimbursement of expenses of the arbitration manager / Payment for liquidator services / Bankruptcy procedure / Creditor and debtor / Use of international law as a guide for interpreting domestic law

The arbitration manager Kolmykova T.O. was appointed by the court as the liquidator of the bankrupt - LLC «South Ukrainian Investment Company». The court, by its decision, approved the liquidator's report and the liquidation balance sheet of the company, liquidated the LLC, and also approved the report on the accrual and payment of monetary remuneration based on the results of the liquidation procedure of the bankrupt and recovered from the bankrupt's creditor - PJSC «State Food and Grain Corporation of Ukraine» - in favour of the arbitration manager the amount of payment for his services.

Upon the appeal of the creditor of PJSC «State Food and Grain Corporation of Ukraine», by the decision of the court of appeal, part of the payment for services and reimbursement of expenses of the arbitration manager

¹ ILO Forced Labour Convention, 1930 (No. 29), ratified by Ukraine on August 10, 1956; ILO Abolition of Forced Labour Convention, 1957 (No. 105), ratified by the Law of Ukraine "On Ratification of International Labour Organisation Abolition of Forced Labour Convention No. 105" dated 05.10.2000 No. 2021-III.

Kolmykova T.O. was cancelled due to the fact that the legislation does not provide for the possibility of reimbursement of the expenses of the arbitration manager (liquidator) at the expense of creditors' funds.

Disagreeing with the above decision of the court of appeal, the arbitration manager Kolmykova T.O. filed a cassation appeal with the Commercial Cassation Court within the Supreme Court with reference to the norms of Ukrainian legislation concerning the monetary remuneration of the arbitration manager, emphasizing that the arbitration manager carries out his professional activities on a paid basis, regardless of the debtor's available funds.

Considering the cassation appeal of the arbitration manager regarding her right to receive remuneration and reimbursement of expenses for the performance of her powers as a liquidator, the Supreme Court indicated that according to Article 43 of the Constitution of Ukraine everyone shall have the right to labour, including the possibility to earn a living by labour that he/she freely chooses or to which he/she freely agrees. Everyone shall have the right to proper, safe, and healthy labour conditions and to remuneration no less than the minimum wage determined by law. The right to timely payment for work performed shall be protected by law.

The Supreme Court emphasized that, according to bankruptcy law, an arbitration manager (property administrator, rehabilitation manager, liquidator) performs his/her powers for monetary compensation.

The Supreme Court also noted that the refusal to make an advance payment, the debtor's lack of property, or the lack of other sources to cover the costs of paying the arbitration manager's remuneration can be regarded as forced labour, which is prohibited and equated to slavery, in particular, in the context of the ILO Forced Labour Convention No. 29 and ILO Abolition of Forced Labour Convention No. 105.

Referring to the above provisions, the Supreme Court concluded that in the case where payment for the services of the arbitration manager is not made at the expense of funds received from the sale of the debtor's property or funds received as a result of the debtor's production activities due to the lack of such funds, payment for the services of the arbitration manager, in particular the liquidator, should be made at the expense of the creditors, based on the principle of proportionality to their monetary claims.

In addition, the Supreme Court emphasized that the legislation does not establish the procedure for distributing expenses for the services of an arbitration manager or administrator of property, liquidator depending on the scope of his activities (provided that these activities are sufficient and comply with the requirements of bankruptcy legislation), on the amount of satisfied creditors' claims, the property status of the creditor or its legal status (whether it is a person based on a private or state form of ownership, a state body, a public organisation, etc.), on the sources of financing of a particular creditor, as well as on the property results of the arbitration manager's work in the bankruptcy case.

Guided by the provisions of the Constitution of Ukraine, ILO Conventions No. 29 and No. 105, the Supreme Court satisfied the cassation appeal of the arbitration manager Kolmykova T.O. and upheld the court's decision to impose the obligation to pay for the services and reimburse the expenses of the liquidator of the LLC on its sole creditor - PJSC «State Food and Grain Corporation of Ukraine» due to the fact that the absence of property, other assets, or funds of the debtor in the liquidation procedure does not in any way affect the payment for the liquidator's services, provided that the court establishes that the liquidator has fully and properly fulfilled his duties in this procedure.

► Civil Cassation Court within the Supreme Court, Ruling dated September 28, 2022, case No. 686/4970/21 (proceedings No. 61-13079cB21)

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine "On International Treaties of Ukraine"

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant – PERSON_1, Defendant – JSC «National Public Broadcasting Company of Ukraine», The third party - branch of JSC «National Public Broadcasting Company of Ukraine» Khmelnytskyi Regional Directorate «Podillia-Center»

Subject:

Employment relationship, Dismissal

Role of International Law:

Direct resolution of a dispute on the basis of international law

Type of instruments used:

Ratified treaties¹

Key words:

Trade union organisation / Trade union member / Termination of employment contract / Consent of the primary trade union organisation to dismissal / Direct resolution of a dispute on the basis of international law

The claimant worked as a producer at a branch of JSC «National Public Broadcasting Company of Ukraine» and was dismissed on the basis of the expiration of the employment contract under clause 2 of part one of Article 36 of the Labour Code of Ukraine. Believing that the dismissal was carried out in violation of the requirements of the law, the claimant filed a claim with the district court to declare the dismissal illegal and cancel the order to dismiss, reinstate him at work and recover average earnings for the period of forced absenteeism.

¹ ILO Workers' Representatives Convention, 1971 (No. 135), ratified by the Law of Ukraine "On Ratification of Convention on Workers' Representatives No. 135" dated 15.05.2003 No. 798-IV.

The claimant considered that, since he was an active member of the elected trade union body of the trade union organisation operating in the branch, he had additional guarantees provided for by national law and Articles 1 and 3 of the ILO Workers' Representatives Convention No. 135. Therefore, the employer should have obtained consent to his dismissal from the primary trade union organisation and the highest body of the regional organisation of the trade union of cultural workers of Ukraine.

By the decision of the district court, left unchanged by the decision of the court of appeal, the claim was refused due to the fact that the current labour legislation of Ukraine does not provide for the mandatory obtaining of the consent of the trade union for the dismissal of employees due to the expiration of the employment contract, at the initiative of the employee or by agreement of the parties.

Considering the cassation appeal of the claimant against the above-mentioned court decisions, the Supreme Court noted that Article 252 of the Labour Code of Ukraine establishes the need to obtain prior consent from the elected body and the highest elected body of the trade union for the dismissal of members of the elected trade union body and is applied in conjunction with Article 43 of this Code, which provides for cases of obtaining prior consent from the elected trade union body upon dismissal at the initiative of the owner or a body authorized by him.

In its previous legal positions, the Supreme Court concluded that dismissal based on the expiration of the employment contract is not considered dismissal at the initiative of the employer, since the employee has already expressed his will to conclude a fixed-term employment contract when hiring. Accordingly, termination of an employment contract after the expiration of the term does not require a statement or any expression of will from the employee, just as the owner is not obliged to warn or otherwise inform the employee about the upcoming dismissal.

The Supreme Court also noted that, under Article 1 of ILO Convention No. 135 workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.

Article 3 of ILO Convention No. 135 defines the circle of persons who are guaranteed protection, including against dismissal: "For the purpose of this Convention the term workers' representatives means persons who are recognised as such under national law or practice, whether they are (a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions".

However, in the Court's opinion, in the present case there is no evidence that the claimant's dismissal was based on his membership in a trade union or participation in trade union activities. In view of this, the arguments of the cassation appeal referring to the violation of the provisions of the Convention No. 135 were rejected. In addition, the Court emphasized that the said Convention No. 135 and its provisions do not contain a prohibition on the dismissal of employees' representatives in accordance with the applicable law or collective agreements or other jointly agreed conditions.

Guided by the provisions of the Labour Code of Ukraine, its previous legal positions and ILO Convention No. 135, the Supreme Court dismissed the cassation appeal of the claimant and noted that his dismissal occurred without violating the requirements of labour legislation, and his rights as a trade union member protected by Convention No. 135 were not violated.

► Constitutional Court of Ukraine, Decision No. 10-p(II)/2024 dated November 13, 2024, case No. 3-120/2021(273/21)

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine “On International Treaties of Ukraine”

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

The Primary Trade Union Organisation of the All-Ukrainian Trade Union of Workers of Science, Production and Finance of the PJSC “ArcelorMittal Kryvyi Rih” v Law No. 137/98-VR

Subject:

Collective bargaining

Role of International Law:

Reference to international law to strengthen a decision based on domestic law

Type of instruments used:

Ratified treaties¹

Key words:

Guarantees of constitutional rights to judicial protection and a fair trial / The mandatory pre-trial procedure for settling a legal dispute / Collective bargaining / Decision on constitutionality / Reference to international law to strengthen a decision based on domestic law

The applicant filed a constitutional complaint with the Constitutional Court of Ukraine (the Court) regarding the compliance of individual provisions of Article 7 of the Law of Ukraine No. 137/98-VR “On the Procedure for Settlement of Collective Labour Disputes (Conflicts)” with the Constitution of Ukraine (constitutionality).

The contested provision of the Law No. 137/98-VR stated that “deliberation of a collective labour dispute (conflict) on the conclusion or amendment of a collective agreement, treaty is carried out by a conciliation commission, and in case of failure to deliver a decision within the terms established by Article 9 of this Law, by labour arbitration”.

¹ ILO Collective Bargaining Convention, 1981 (No. 154), ratified by Decree of Verkhovna Rada of Ukraine “On Ratification of International Labour Organisation Collective Bargaining Convention No. 154” dated 04.02.1994 No. 3932-XII;

ILO Collective Bargaining Recommendation, 1981 No. 163.

Based on this provision, the district court, whose decision was upheld by the courts of appeal and cassation, refused to initiate proceedings on the applicant's claim to declare the amendments to the collective agreement invalid due to its failure to participate as the primary trade union organisation in signing these amendments.

The Supreme Court, in particular, motivated its decision by the fact that collective labour disputes are resolved through conciliation and arbitration, the legal mechanism of which is defined in the Law No. 137/98-VR. The fact that the parties have already applied to the National Mediation and Conciliation Service to resolve the dispute and received a response stating that it is impossible to resolve the collective dispute does not indicate that this dispute should be resolved in court.

Taking this into account, in the constitutional complaint the applicant stated that, in his opinion, since certain provision of the Law No. 137/98-VR regulates only the extrajudicial procedure for resolving a collective labour dispute (conflict), it violates his constitutional rights to judicial protection and to a fair trial, a component of which is the right to access to justice.

Resolving the issue of the constitutionality of the contested provisions of the Law No. 137/98-VR, the Court emphasized that Article 8 of the Constitution of Ukraine guarantees the right to appeal to the court in defense of the constitutional rights and freedoms of the individual and citizen directly on the grounds of the Constitution of Ukraine. Under Article 55 of the Constitution of Ukraine, human and citizen's rights and freedoms are protected by courts.

In its previous legal positions, the Court indicated that the right of a person (citizen of Ukraine, foreigner, stateless person, legal person) to apply to the court for resolution of a dispute cannot be limited by law or other normative legal acts. The establishment by law or agreement of pre-trial settlement of a dispute at the will of the subjects of legal relations does not constitute a limitation of the jurisdiction of the courts and the right to judicial protection.

The Court also noted that according to Article 6 of ILO Collective Bargaining Convention No. 154, the provisions of this Convention do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions, in which machinery or institutions the parties to the collective bargaining process voluntarily participate.

Furthermore, ILO Collective Bargaining Recommendation No. 163 stated that measures adapted to national conditions should be taken, if necessary, so that the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves, whether the dispute is one which arose during the negotiation of agreements, one which arose in connection with the interpretation and application of agreements or one covered by the Examination of Grievances Recommendation, 1967 (Paragraph 8).

The Court found that the provision of the Law No. 137/98-VR regulates the procedure for settlement of a collective labour dispute (conflict), which has the features of a mandatory pre-trial dispute settlement procedure. The possibility of such procedure is established in Article 124 of the Constitution of Ukraine, according to which deliberation and settlement of a collective labour dispute (conflict), where the labour dispute (conflict) is a legal dispute, by a conciliation commission and/or labour arbitration are additional components of the mechanism for protecting the parties to a collective labour dispute (conflict), regardless of whether the resolution of such dispute by these bodies can provide an appropriate level of institutional and procedural guarantees for the parties to the collective labour dispute (conflict).

Guided by the provisions of the Constitution of Ukraine, ILO Convention No. 154 and Recommendation No. 163, the Constitutional Court of Ukraine declared the provisions of Article 7 of the Law No. 137/98-VR as compliant with the Constitution of Ukraine and stated that it do not deprive the primary trade union organisation or other party to a collective labour dispute (conflict) that is a legal dispute of the guarantees provided by the Constitution of Ukraine to exercise the right to judicial protection on the basis of the provisions of the relevant procedural law in case the labour dispute (conflict) that is a legal dispute has not been resolved in a mandatory pre-trial procedure in accordance with the Law.

► The Grand Chamber of the Supreme Court, Ruling dated October 13, 2020, case No. 712/9213/18 (proceedings No. 14-108tss20)

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine “On International Treaties of Ukraine”

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant – PERSON_1, Defendant – the Main Directorate of the National Police in Cherkasy region

Subject:

Holidays with pay, Dismissal

Role of International Law:

Reference to international law to strengthen a decision based on domestic law

Type of instruments used:

Ratified treaties¹

Key words:

Holidays with pay / Temporary incapacity for work / Absence without valid reasons / Unlawful dismissal and reinstatement / Reference to international law to strengthen a decision based on domestic law

According to the case, the claimant, who worked as a senior statistician at the Main Directorate of the National Police in Cherkasy region, wrote an application for the unused part of her annual leave, but the day before the planned leave, the claimant did not appear at work due to temporary incapacity for work. Upon completion of the period of temporary incapacity for work, the claimant provided the employer with a certificate of incapacity for work and notified of her intention to extend her annual leave in accordance with Article 80 of the Labour Code of Ukraine due to temporary incapacity for work.

Despite this, due to the claimant's failure to report to work after the end of the period of temporary incapacity for work and the absence of any applications for the extension of annual leave, the employer drew up absence

¹ ILO Holidays with Pay Convention (Revised), 1970 (No. 132), ratified by the Law of Ukraine “On Ratification of the International Labour Organisation Holidays with Pay Convention No. 132 (Revised), 1970” dated 29.05.2001 No. 2481-III.

certificates and dismissed the claimant for absenteeism without good reason. Considering the dismissal order unlawful, the claimant appealed to the district court with a claim for the cancellation of the order, reinstatement at work and recovery of average earnings for the period of forced absenteeism.

The district court, with whose decision the court of appeal agreed, refused to satisfy the claim. According to the courts, failure to appear for work due to the employee's unauthorized use of leave without notifying the employer or the body authorized by him is recognized as absenteeism and may be the reason for the employee's dismissal.

Considering the cassation appeal of the representative of the claimant against the above-mentioned court decisions in connection with their incorrect interpretation of Article 80 of the Labour Code of Ukraine, the Grand Chamber of the Supreme Court noted that in accordance with Article 45 of the Constitution of Ukraine everyone who is employed shall have the right to rest.

The Grand Chamber stated that under Article 3 of ILO Holidays with Pay Convention No. 132 every person to whom this Convention applies shall be entitled to an annual paid holiday of a specified minimum length. According to Article 10 of Convention, the time at which the holiday is to be taken shall, unless it is fixed by regulation, collective agreement, arbitration award or other means consistent with national practice, be determined by the employer after consultation with the employed person concerned or his representatives. In fixing the time at which the holiday is to be taken, work requirements and the opportunities for rest and relaxation available to the employed person shall be taken into account.

From the analysis of national legislation, the Supreme Court concluded that the specific period of leave is agreed upon before the start of the leave period between the employee and the employer, taking into account the interests of each party. And the specific dates of the start and end of the leave are agreed upon by the parties in the employee's application and the employer's order issued on its basis immediately before the granting of such leave.

The Supreme Court emphasized that Article 80 of the Labour Code of Ukraine provides for the extension of vacation in the event of temporary incapacity for work of an employee, certified in accordance with the established procedure, and does not provide for the employee to apply for an extension of vacation and the need to obtain the employer's consent to this. This conclusion is explained by the fact that the period of vacation has already been agreed upon by the parties, but the impossibility of using it on the dates specified in the order is caused by circumstances that do not depend on the will of either party. Thus, the employee's only obligation is to notify the employer of temporary incapacity for work, which is certified in accordance with the established procedure, i.e. by issuing a letter of incapacity for work.

The Supreme Court thereby departed from its previous legal conclusions regarding the need for an employee to apply for an extension of leave due to temporary incapacity for work and for the employer to issue a corresponding order. In the opinion of the Supreme Court, such a position narrows the rights of the employee and unreasonably expands the rights of the employer, which does not comply with the norms of the law, is not necessary in a democratic society and violates the balance of interests of the parties to the employment relationship.

The Grand Chamber of the Supreme Court concluded that the extension of annual leave in the event of temporary incapacity for work of an employee that occurred during the leave occurs automatically, is the employer's obligation, for the fulfilment of which it is sufficient for him to receive from the employee a notification of temporary incapacity for work, certified in the prescribed manner (i.e., the presence of a letter of incapacity for work), regardless of whether the employee submitted a corresponding application.

Guided by the Constitution of Ukraine, ILO Convention No. 132, the Grand Chamber of the Supreme Court granted the cassation appeal, given that the claimant duly notified the defendant of her intention to extend the leave immediately after the termination of temporary incapacity for work, provided the defendant with a certificate of incapacity for work and exercised her right to extend the annual leave.

► Constitutional Court of Ukraine, Decision No. 9-r(I)/2024 dated October 2, 2024, case No. 3-5/2023(5/23, 79/23)

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine “On International Treaties of Ukraine”

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Tymoshenkova Oksana Vasylivna, Tymoshenkov Volodymyr Ivanovych v. Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Priority Measures for the Reform of the Prosecutor’s Office» No. 113-IX dated 19.09.2019

Subject:

Dismissal, Protection against discrimination in employment and occupation

Role of International Law:

Reference to international law to strengthen a decision based on domestic law

Type of instruments used:

Ratified treaties¹

Key words:

Dismissal during temporary incapacity (being on sick leave) / Dismissal / Protection against discrimination in employment and occupation / Decision of unconstitutionality / Reference to international law to strengthen a decision based on domestic law

The applicants filed a constitutional complaint with the Constitutional Court of Ukraine challenging the compliance with the Constitution of Ukraine of certain provisions of Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Priority Measures for the Reform of the Prosecutor’s Office» No. 113-IX dated 19.09.2019 that amended Law of Ukraine “On the Prosecutor’s Office” No. 167-VII dated 14.10.2014, concerning the dismissal of prosecutors during periods of temporary incapacity.

¹ ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified by Ukraine on 04.08.1961; ILO Termination of Employment Convention, 1982 (No. 158), ratified by Decree of Verkhovna Rada of Ukraine “On Ratification of International Labour Organisation Termination of Employment Convention No. 158” dated 04.02.1994 No. 3933-XII.

The contested provision of Law No. 113-IX stated that “a prosecutor’s being on sick leave due to temporary incapacity, being on vacation or a secondment to the National Academy of the Prosecutor’s Office of Ukraine for participation in its work on a permanent basis shall not constitute an obstacle to their dismissal from the position of prosecutor pursuant to this clause.” Based on this provision, the applicants were dismissed from their positions as prosecutors during their temporary incapacity, namely, being on sick leave.

The Court emphasized that Art. 43 of the Constitution of Ukraine guarantees that everyone has the right to work, which includes the right to free choice of employment and provides for guarantees of protection of an employee from unlawful dismissal under any working conditions.

The Court stated that general legal principles and guarantees for the implementation of labour relations by citizens of Ukraine are defined in the Labour Code of Ukraine, which prohibits dismissal at the initiative of the employer during the period of the employee’s temporary incapacity.

Furthermore, the Court found that international labour standards also prohibit using temporary incapacity as a ground for dismissal. According to ILO Termination of Employment Convention No. 158, the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service (Article 4), whereas temporary absence from work because of illness or injury shall not constitute a valid reason for termination (Article 6(1)).

The Court also noted that the amendments introduced by Law No. 113-IX narrowed the scope of rights and specific safeguards for prosecutors regarding the preservation of their workplace during the period of their temporary incapacity, which had been guaranteed under Law No. 167-VII. Such narrowing contradicts the constitutional prohibition on the abolition or restriction of existing rights and freedoms when adopting new laws, as prescribed in Art. 22 of the Constitution, and violates the principle of non-discrimination in employment under Art. 21 of the Constitution.

In addition, such narrowing conflicts with the provisions of Art. 1 of ILO Discrimination (Employment and Occupation) Convention No. 111. According to this Article, any distinction, exclusion, or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination. Based on this provision, the Constitutional Court of Ukraine further formulated its legal position, noting that “the establishment of certain differences (requirements) in the legal status of employees must be substantial, and the differences (requirements) themselves, pursuing such a goal, must comply with constitutional provisions, be objectively justified, reasonable and fair.”

Guided by the provisions of the Constitution of Ukraine, the Labour Code of Ukraine, ILO Conventions Nos. 111 and 158, the Constitutional Court of Ukraine ruled on the unconstitutionality of a separate provision of Law No. 113-IX. The Court held that the legislature introduced unequal legal regulation of the dismissal procedure of prosecutors during their temporary incapacity, which violates the principle of legal certainty as part of the rule of law and contradicts the principle of equal legal status of prosecutors.

► Commercial Cassation Court within Supreme Court, Ruling dated October 16, 2024, case No. 910/644/22

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine “On International Treaties of Ukraine”

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant – Natural person_1, defendant – B.M.K.-Bilding LLC

Subject:

Forced labour

Role of International Law:

Reference to international law to strengthen a decision based on domestic law

Type of instruments used:

Ratified treaties¹

Key words:

Wages / Non-payment of wages / Forced labour / Reference to international law to strengthen a decision based on domestic law

The former director of B.M.K.-Bilding LLC file for bankruptcy of the company and for the recovery of the unpaid wages.

The court of first instance refused to satisfy the claim, however, the court of appeal partially satisfied the claims, recognising the defendant's debt to the claimant at the level of the minimum wage. The claimant filed a cassation appeal against the decision of the court of appeal with a demand to fully satisfy the monetary claims. The Supreme Court refused to satisfy an appeal and agreed with the conclusions of the court of appeal, considering the provisions of the national legislation of Ukraine and international standards in the field of labour.

¹ ILO Abolition of Forced Labour Convention, 1957 (No. 105), ratified by the Law of Ukraine “On Ratification of ILO Abolition of Forced Labour Convention No. 105” dated 05.10.2000 No. 2021-III; European Social Charter (Revised), ratified by the Law of Ukraine “On Ratification of European Social Charter (Revised)” dated 14.09.2006 No.137-V.

The Supreme Court indicated that according to the provisions of the Labour Code of Ukraine (Code) and the Law of Ukraine No. 108/95-VR “On Remuneration of Labour”, the principle of priority of payment of wages and protection of such payments established in Ukraine. This principle is consistent with the remuneration principle, enshrined in Art. 4, part I of the European Social Charter (revised), which prescribes that all workers have the right to a remuneration such as will give them and their families a decent standard of living.

The court also pointed out that the provisions of the Code and Law No. 108/95-VR stipulate that the accrual and payment of wages are carried out based on documents from the primary accounting documents of labour and wages, including staffing list, orders and instructions on the bonuses` payment, additional payments, and the payroll.

The Supreme Court noted that the courts of previous instances established that none of the defendant’s tax or accounting reports contained information about the accrual or existence of debt to the claimant, and the primary accounting documents, including the original employment contract, were provided by the claimant. The actual performance of the director’s duties is confirmed only by the witnesses’ statements, which, in accordance with part 1 of Art. 77 of the Code of Civil Procedure, cannot serve as an evidence to establish the circumstances, namely, to replace the employment contract between the claimant and the defendant, on the basis of which the fact of the defendant’s debt can be determined.

At the same time, the court emphasized that “non-payment of wages may be regarded as coercion to unpaid labour, which is prohibited and equated to slavery”, and contradicts the provisions of ILO Abolition of Forced Labour Convention No. 105 and the Constitution of Ukraine.

Taking into account the above, guided by the provisions of ILO Convention No. 105, the Constitution of Ukraine, the Labour Code of Ukraine, and the Law of Ukraine No. 108/95-VR, the Supreme Court agreed with the conclusion of the court of appeal that the actual performance of the director’s duties by the claimant was confirmed by witnesses` statements, however, due to the lack of documentary evidence regarding the agreed level of salary, the defendant’s obligations to the claimant can be recognised only in the amount of the minimum wage guaranteed by the State.

► Dnipro District Administrative Court, Decision dated September 25, 2018, case No. 804/4343/18

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine “On International Treaties of Ukraine”

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant – Dnipro Regional Branch of the Fund for the Social Protection of Persons with Disabilities, defendant – PJSC “DTEK Pavlohradvuhillia”

Subject:

Social security, Protection against discrimination in employment and occupation

Role of International Law:

Direct resolution of a dispute on the basis of international law

Type of instruments used:

Ratified treaties¹

Key words:

Disabled persons / Employment of disabled persons / Social security / Protection against discrimination in employment and occupation / Direct resolution of a dispute on the basis of international law

The Fund filed a claim with PJSC “DTEK Pavlohradvuhillya” with a demand to recover the amount of administrative and economic sanctions for failure to meet the standards of workplaces for the employment of disabled persons, which is provided for by the provisions of the Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine” No. 875-XII dated 21.03.1991.

The Court indicated that part 1 of Art. 17 of the Law No. 875-XII stipulates, that disabled persons shall be provided with the right to work on the enterprises, institutions, and organisations, as well as conduct business activities and other work not prohibited by law. Therefore, as per part 3 of Art. 18 of the Law No. 875-XII, defendant was obliged to allocate and create workplaces for the employment of disabled persons, provide other social and economic guarantees prescribed by the current legislation of Ukraine, and, among others, report on the

¹ ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), ratified by the Law of Ukraine “On Ratification of Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159” No. 624-IV dated 06.03.2003.

employment and placement of disabled persons.

Thus, according to the defendant's report on the employment and placement of disabled for 2017, the number of full-time employees who should work in workplaces created for disabled persons was 925 people. At the same time, it was expected to introduce in a separate production area only 624 units of relevant professions for the employment of disabled persons, which did not comply with the requirements of the Law No. 875-XII.

Furthermore, the Court paid attention to the fact that corresponding professions were also introduced in other production areas, however, they did not provide for the employment of disabled persons and had significantly higher wages than those for which disabled persons were employed.

The Court concluded that the defendants' actions constituted discrimination, as "at the stage of introducing workplaces for the employment of disabled persons, the defendant created unequal working conditions and opportunities for disabled persons compared to other employees."

The Court noted that international standards for the protection of the labour rights of disabled persons, which are part of the national legislation of Ukraine, contain reservations regarding discrimination against disabled workers in relation to other workers. Namely, the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159 stipulates that the national policy of each ILO Member State on vocational rehabilitation and employment of disabled persons shall be based on the principle of equal opportunity between disabled workers and workers generally, and it should provide for equality of opportunity and treatment for disabled workers by ensuring effective equality of opportunity and treatment between disabled workers and other workers.

The Court concluded that "it is expressly established at the legislative level that enterprises, institutions, and organisations that use hired labour are obliged not only to create real workplaces for the employment of disabled persons, but also to provide disabled persons with working conditions that ensure their social and economic guarantees, equality of all employees, prevention of discrimination on the basis of disability, and ensuring equal opportunities for disabled persons and other employees in general."

In the above circumstances, guided by the provisions of ILO Convention No. 159 and the provisions of Law No. 875-XII, the Court ruled that the defendant "by introducing the professions for disabled persons on such terms that do not comply with the social and economic guarantees of disabled persons, create inequality for all employees, and do not provide equal opportunities for disabled persons and other employees in general" in fact created discriminatory conditions and "failed to fulfill the obligations imposed on the enterprise to create real workplaces for the employment of disabled persons, for which disabled persons would wish to be employed, will be employed, and will not feel discriminated." Therefore, the Court satisfied the claim.

► Civil Cassation Court within the Supreme Court, Ruling dated March 20, 2024, case No. 343/1551/22 (court proceedings No. 61-11893sk23)

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine “On International Treaties of Ukraine”

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant – Natural person_1, defendant – PJSC Ukrnafta

Subject:

Forced labour, dismissal

Role of International Law:

Reference to international law to strengthen a decision based on domestic law

Type of instruments used:

Ratified treaties¹

Key words:

Dismissal / Forced labour / Martial law / Reference to international law to strengthen a decision based on domestic law

The claimant has worked in the Oil and Gas Production Department “Dolynaftogas” of PJSC Ukrnafta, Ivano-Frankivsk region, since 2009. During martial law, the claimant was transferred to the gas processing plant of PJSC Ukrnafta located in the village of Mala Pavlivka, Sumska region, to eliminate the consequences of hostilities. The claimant twice refused to comply with the order, motivating his position with a threat to his life, the family’s disagreement with the relocation and the lack of payment of funds for organising the relocation. Due to the systematic refusal, the defendant first announced a reprimand and later dismissed the claimant under clause 3 of part 1 of Art. 40 of the Labour Code of Ukraine – systematic failure to fulfil obligations without good reason.

The claimant challenged the legality of the transfer, reprimand and dismissal, insisting that the new place of work was dangerous, and his transfer was forced. The court of first instance and the court of appeal refused to satisfy the claim, recognising the transfer as legal.

¹ ILO Forced Labour Convention, 1930 (No. 29), ratified by Ukraine on 10.08.1956; International Covenant on Civil and Political Rights 1966, ratified by the Order of Presidium of the Supreme Soviet of the Ukrainian Soviet Socialist Republic No. 2148-VIII dated 19.10.1973.

The Supreme Court noted that the claimant's transfer took place in June-August 2022 during the legal regime of martial law in Ukraine in accordance with the Decree of the President of Ukraine "On the introduction of martial law in Ukraine" dated February 24, 2022, No. 64/2022, and, therefore, the analysis of the defendant's actions should be considered taking into account the legislation on the regulation of labour relations under martial law, namely Law of Ukraine "On the organisation of labour relations under martial law" No. 2136-IX dated 15.03.2022. Thus, taking into consideration the provisions of Art. 3 of Law No. 2136-IX, such a transfer was lawful given that it was forced and was carried out exclusively for the performance of work aimed at eliminating the consequences of hostilities; such work was not contraindicated to the claimant due to his health, which is confirmed by the conclusion of the medical commission; for the performance of the work, payment was guaranteed not lower than the average salary for the previous work, which is confirmed by the content of the transfer orders.

In addition, the Court established that the village of Mala Pavlivka, Sumsky region, to which the claimant was transferred, at the time of the transfer was not a territory of active hostilities in accordance with the List of territorial communities located in area of military operations (hostilities) or which are under temporary occupation, encirclement (blockade), approved by Order of the Ministry for Reintegration of the Temporarily Occupied Territories dated April 25, 2022, No. 75. Therefore, the Court concluded that the defendant had the legal right to transfer the claimant without his consent, since the transfer was carried out to eliminate the consequences of hostilities to an area in the territory of which there were no active hostilities.

The Court rejected the claimant's arguments that transfer to another job without his consent constitutes forced labour, guided by the provisions of international labour standards. Thus, in accordance with Art. 2 of ILO Forced Labour Convention No. 29, "the term forced or compulsory labour 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". However, "forced or compulsory labour" within the meaning of ILO Convention No. 29 shall not include any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity.

Moreover, the Court indicated that, as it is defined in Art. 8 of the International Covenant on Civil and Political Rights, "forced or compulsory labour" shall not include any service exacted in cases of emergency or calamity threatening the life or well-being of the community.

These provisions are reflected in part. 3 of Art. 43 of the Constitution of Ukraine, according to which work or service carried out by a person in accordance with the martial or state of emergency laws, shall not be considered forced labour.

Therefore, guided by the provisions of the Constitution of Ukraine, the Labour Code of Ukraine, ILO Convention No. 29, International Covenant on Civil and Political Rights, Law of Ukraine No. 2136-IX, Supreme Court ruled that the work in question complied with the current legislation of Ukraine on the regulation of labour relations under martial law, was not forced labour and did not require the employee's consent, therefore, refusal to perform it constituted a violation of labour discipline, and, therefore, the dismissal was lawful.

► **Kropyvnytskyi Court of Appeal, Ruling dated 25.02.2025, case No.404/7095/23 (proceedings No. 22-ts/4809/260/25)**

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine “On International Treaties of Ukraine”

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant (Appellant) – Natural person_1, Defendant (Respondent) - State Enterprise «Eastern Mining and Processing Plant»

Subject:

Occupational safety and health

Role of International Law:

Reference to international law to strengthen a decision based on domestic law

Type of instruments used:

Ratified treaties¹

Key words:

Loss of working capacity due to occupational disease/ Compensation for moral damage/ Dangerous and harmful working conditions/ Occupational safety/ Safe and healthy working conditions/ Reference to international law to strengthen a decision based on domestic law

The claimant started a legal action for moral damage compensation caused by the loss of working capacity due to an occupational disease. The claimant referred to the fact that he had worked in various positions at the defendant's enterprise, but due to harmful working conditions and imperfection of the workplace due to the employer fault, he developed a chronic occupational disease, was diagnosed with a loss of professional working capacity of 60% and third (3) group of disability indefinitely. As a result of the occupational disease, the claimant was forced to undergo numerous medical examinations and tests for a long time, which cost significant money. In this regard, the claimant asked the Court to recover from the defendant moral damage caused by the loss of working capacity due to an occupational disease, in the amount of 335,000 UAH. The Kirovsky District Court of the

¹ ILO Occupational Safety and Health Convention, 1981 (No. 155), ratified by the Law of Ukraine “On the ratification of the ILO Occupational Safety and Health Convention, 1981 (No. 155)” No. 3988-VI (3988-17) dated 02.11.2011.

city of Kirovograd partially found in favour of claimant, awarded the claimant with the reduced amount of moral damage (150,000 UAH). The claimant did not agree with the Court award and filed an appeal.

Giving a judgment in the case, the Court of Appeal proceeded from the fact that a moral damage is compensated to the employee by the employer subject to fact of violation of the employee's legal rights committed by the employer; in the event that the moral suffering occurs, or the employee loses normal life interconnections, or the employee needs to make additional efforts to organize his life; if there is a chain of causation between the preceding conditions.

Investigating the fact of violation of the rights of an employee, the Court of Appeal observed that Paragraph 4 of Article 43 and Paragraph 1 of Article 46 of the Constitution of Ukraine provide that everyone has the "right to proper, safe, and healthy labour conditions", as well as "the right to social protection including the right to financial security in cases of complete, partial, or temporary disability (working capacity)".

Upholding the findings of the Kirovsky District Court of the city of Kirovograd that the defendant was obliged to create safe and healthy working conditions, the Court of Appeal referred to Article 16 of ILO Occupational Safety and Health Convention, 1981 (No. 155) (hereinafter referred to as ILO Convention No. 155), which provides that:

"1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.

2. Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.

3. Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health".

Additionally, the Court has indicated that as per Article 153 of the Labour Code of Ukraine, ensuring safe and harmless working conditions is entrusted to the owner or their authorised body, except in cases of concluding a remote employment contract between the employee and the owner or their authorised body.

Furthermore, in its judgment the Court referred to Article 13 of the Law of Ukraine «On Labour Protection», which establishes the obligation of employer to create working conditions at the workplace in each structural unit in accordance with legislation, as well as to ensure compliance with the requirements of the law regarding the rights of employees in the field of labour protection.

Being guided by the Constitution of Ukraine, ILO Convention No. 155, the Labour Code of Ukraine, the Law of Ukraine "On Labour Protection", having examined the case materials, the Court of Appeal concluded that claimant's occupational disease arose due to health damage that led to moral suffering, as a result of the employer's (defendant's) improper performance of its duty to create and maintain safe labour (working) conditions. Due to his disability, the claimant requires constant treatment, which requires the claimant to make additional endeavours to organize his life.

Despite the fact that the Court of Appeal confirmed the fact of the employer's violation of the requirements of the legislation on the creation of safe labour (working) conditions, the Court of Appeal ruled that, based on the principles of reasonableness and fairness, the Court of first instance reached a well-founded conclusion that there were grounds for the defendant to compensate the claimant for moral damage only in the amount of UAH 150,000.

► Administrative Cassation Court within Supreme Court, Ruling dated 13.04.2022, case No. 280/3866/19 (proceedings № K/9901/13483/20)

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine “On International Treaties of Ukraine”

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant (Respondent in the Supreme Court) – Public organization of the garage collective of the Public Joint-Stock Company «Dniprospetsstal», Defendant (Appellant in the Supreme Court) - Main Department of the State Labour Service in Zaporizhia Region

Subject:

Employment relationship

Role of International Law:

Direct resolution of a dispute on the basis of international law

Type of instruments used:

Ratified treaties¹

Key words:

Public non-profit organization/Inspection in industrial workplaces/Inspection in agriculture/Imposition of fines/ Direct resolution of a dispute on the basis of international law

The Claimant started a legal action and requested to declare the Defendant’s order to conduct an inspection visit unlawful and to declare the Defendant’s resolution to impose a fine unlawful as well as to cancel it. In the contested order, the Defendant indicated that it was adopted in accordance with ILO Labour Inspection Convention, 1947 (No. 81) (hereinafter referred to as ILO Convention No. 81) and ILO Labour Inspection (Agriculture) Convention, 1969 (No. 129) (hereinafter referred to as ILO Convention No. 129). The Defendant failed to conduct an inspection visit to the Claimant, a corresponding report was drawn up, and a decision was made to impose a fine.

¹ ILO Labour Inspection Convention, 1947 (No. 81), ratified by the Law of Ukraine “On Ratification of the ILO Labour Inspection Convention, 1947 (No. 81)” dated 08.09.2004 N1985-IV; ILO Labour Inspection (Agriculture) Convention, 1969 (No. 129), ratified by the Law of Ukraine “On ratification of the ILO Labour Inspection (Agriculture) Convention, 1969 (No. 129)” dated 08.09.2004 N1985-IV.

The District Administrative Court dismissed the claim. The Court of Appeal overturned the decision of the District Administrative Court and found in favour of Claimant. The Defendant did not agree with the decision of the Court of Appeal, and therefore filed a cassation appeal with the Administrative Cassation Court within Supreme Court (hereinafter referred to as the Supreme Court).

Considering the case, the Supreme Court analysed the norms of the ILO Conventions and directly applied them to the dispute. The court noted that the Claimant is a public organization, not a business entity, which is confirmed by the relevant evidence. Courts established that the Claimant is a legal entity, a public organization, the main types of activity under the KVED-2010 are the activities of other public organizations, namely: protection and ensuring the interests of members of the garage collective, consulting members of the public organization; moreover, in accordance with the decision of the local tax authority, the Claimant was assigned the characteristics of non-profit organisation and it was included in the register of non-profit organizations. Regarding the reference in the Defendant's order to ILO Convention No. 81 and ILO Convention No. 129, the Court took into account the provisions of these instruments.

In its decision the Supreme Court observed that Paragraph 1 of the Article 2 of ILO Convention No. 81 stipulated that the system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors. By analysing the specified norm, the Court established that the provisions of the specified Convention apply to enterprises (business entities). At the same time, this Convention does not directly provide that its norms could be applied to a public organization.

Additionally, the Supreme Court indicated that as per Article 4 of ILO Convention No. 129 the system of labour inspection in agriculture shall apply to agricultural undertakings in which work employees or apprentices, however they may be remunerated and whatever the type, form or duration of their contract. Furthermore, Article 1 thereof stated that "in this Convention the term agricultural undertaking means undertakings and parts of undertakings engaged in cultivation, animal husbandry including livestock production and care, forestry, horticulture, the primary processing of agricultural products by the operator of the holding or any other form of agricultural activity". Based on the analysed norms of ILO Convention No. 129, the Court concluded that its norms could not be applied to a public organization (to the Claimant).

Therefore, being guided by the provisions of ILO Convention No. 81 and ILO Convention No. 129, the Supreme Court concluded that the Defendant, in issuing an order to conduct an inspection visit to the Claimant on issues of compliance with labour legislation, acted not within the limits and in the manner provided for by the Laws of Ukraine, since the legal norms with which the Defendant justified the need of this order adoption – ILO Labour Inspection Convention, 1947 (No. 81) and ILO Labour Inspection (Agriculture) Convention, 1969 (No. 129), Law of Ukraine «On the Main Principles of State Supervision (Oversight) in the Area of Commercial Activity» could not be applied to the Claimant, because of its status of a public non-profit organization. For these grounds, the Defendant's cassation appeal was dismissed.

► Civil Cassation Court within Supreme Court, Ruling dated 19.05.2021, case No.501/1350/17 (proceedings № 61-23196sv19)

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine "On International Treaties of Ukraine"

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant (Respondent in the Supreme Court) – Natural person_1, Defendant (Appellant in the Supreme Court) - EASTERN LOGISTICS CO LTD.S.A. (Republic of Panama)

Subject:

Protection of wages, Seafarers

Role of International Law:

Direct resolution of a dispute on the basis of international law

Type of instruments used:

Ratified treaties¹

Key words:

Wages/Debt Collection/Seafarer/Employment Relations/Arrest of Ship/Applicable Law/Private International Law/Jurisdiction/ Direct resolution of a dispute on the basis of international law

The Claimant filed a claim with the court to collect the arrears of wages and average earnings for the period of delay in payment, since after the expiration of the individual employment contract and the termination of his labour duties, the Defendant did not pay him the full amount of wages. The Defendant is a foreign legal entity and the owner of the tugboat «VASYL FRANKO», flag of the Union of the Comoros, IMO number 7325954, MMSI 616999079. During the term of the individual employment contract, the Claimant was on board of the specified vessel.

The court of first instance had fully found in favour of the Claimant, i.e., the court ordered the Defendant to recover the wage arrears in the amount of 11,985 US dollars. The court motivated its decision by referring to

¹ ILO Protection of Wages Convention, 1949 (No. 95), ratified by the Presidium of the Verkhovna Rada of the Ukrainian SSR on June 30, 1961. United Nations Convention on the Law of the Sea, 1982.

Paragraph 2 of Article 12 of ILO Protection of Wages Convention, 1949 (No. 95) (hereinafter referred to as ILO Convention No. 95), which stipulates that upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation, agreement or award, within a reasonable period of time having regard to the terms of the contract.

By the ruling of the Odessa Court of Appeal dated 5.11. 2019, the Defendant's appeal was dismissed, and the decision of the court of first instance was upheld.

Civil Cassation Court within the Supreme Court (hereinafter referred to as the Supreme Court), considering this case and deciding in favour of the Claimant, proceeded from the fact that, in accordance with Article 52 of the Law of Ukraine "On Private International Law", the law of a state in which the work is performed applies to labour relations, unless otherwise provided for by law or an international treaty of Ukraine. At the same time, the Court established that there is no international agreement between Ukraine and the Union of the Comoros that determines the law applicable to the resolution of a labour dispute. The Court indicated that the choice of law for regulating labour relations in transport, for instance, in maritime transport, determines «a typical conflict of laws - the law of the flag; in river and air transport - the place of registration of the vessel; in road transport - the personal law of the carrier». Furthermore, according to the Article 91 of the United Nations Convention on the Law of the Sea, 1982 ships have the nationality of the State whose flag they are entitled to fly.

The Supreme Court, being guided by Article 8 of the Law of Ukraine "On Private International Law", noted that the court of first instance instructed the Honorary Consulate of the Union of the Comoros in Ukraine to provide the texts of excerpts from the legislation that regulates labour relations in terms of the procedure for payment and collection of wages from the employer in favour of the employee. However, as of the time of adoption of the contested decision by the court of first instance (October 29, 2018), no response had been received from the Honorary Consulate of the Union of the Comoros. Since the content of the labour law of a foreign state was not clarified within a reasonable time, the court of first instance applied the relevant provisions of the laws and other regulatory legal acts of Ukraine to the disputed legal relations.

In this case, the Supreme Court directly applied the provisions of ILO Convention No. 95, which was ratified by both Ukraine and the Union of the Comoros. The Court indicated that as per Article 1 of ILO Convention No. 95, the term **wages** means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered.

The Court took into consideration that according to Article 5 of ILO Convention No. 95, wages shall be paid directly to the worker concerned except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to the contrary.

Moreover, the Court made a reference to the Paragraph 2 of the Article 12 of ILO Convention No. 95, which stipulates that upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation, agreement or award, within a reasonable period of time having regard to the terms of the contract.

In addition to referring to the norms of international law, the court also applied Article 43 of the Constitution of Ukraine, which stipulates that everyone shall have the right to labour, including the possibility to earn a living by labour that he/she freely chooses or to which he/she freely agrees, as well as Paragraph 1 of Article 116 of the Labour Code of Ukraine, which establishes that Upon dismissal of an employee, payment of all amounts due to them from the enterprise, institution, organisation, is made on the day of dismissal.

Ruling in favour of the Claimant and being guided by the provisions of the Constitution of Ukraine, ILO Convention No. 95, the Labour Code of Ukraine, and the Law of Ukraine «On Private International Law», the Supreme Court indicated that the contested court decisions (of the court of first instance and court of appeal) regarding the collection of wage arrears meet the requirements of the law, are based on the principles of the rule of law, and therefore there are no grounds for them to be overruled.

► Administrative Cassation Court within Supreme Court, Ruling dated 19.09.2024, case No. 200/7080/23 (proceedings № K/990/21074/24)

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine “On International Treaties of Ukraine”

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant – individual entrepreneur Person_1, Defendant – State Service of Ukraine for Transport Safety

Subject:

Hours of work, employment relationship

Role of International Law:

Reference to international law to strengthen a decision based on domestic law

Type of instruments used:

Ratified treaties¹

Key words:

Road transportation/Inspection/Hours of work/Hours of work of drivers of wheeled vehicles/Tachograph/Individual driver's logbook/Driver work control/ Reference to international law to strengthen a decision based on domestic law

The claimant carried out passenger transportation under the transportation contract No. 3 dated 03.01.2023, based on an order for a special route, since the evacuation of the population from the city of Bilozerske, Donetsk region to the city of Dnipro was carried out. During the execution of the contract, the State Service of Ukraine for Transport Safety conducted a raid inspection of the Claimant. During the inspection, the inspection body established that at the time of the inspection the driver of the vehicle did not have an individual driver's control book or a copy of the driver rotation schedule. In connection with the findings, a resolution was issued, dated 10.10.2023 No. 034825 on the application of an administrative and economic fine to the Claimant in the amount of 17,000 UAH, which became the subject of an appeal in this case.

¹ ILO Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153), ratified by the Law of Ukraine “On the ratification of ILO Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153)”.

According to the decision of the Luhansk District Administrative Court of February 19, 2024, the Court of first instance found in favour of the Claimant. The First Administrative Appellate Court by the decision dated 29.04. 2024 upheld the decision of the court of first instance. However, the Defendant, disagreeing with the aforementioned decisions, filed a cassation appeal.

The Administrative Cassation Court within Supreme Court (hereinafter referred to as the Supreme Court) considered the case and upheld the defendant's cassation appeal in view of the following.

According to the Article 39 of the Law of Ukraine "On Road Transport", road carriers, drivers, passengers must possess and present the documents by virtue of which passenger transportation is performed, to the persons authorised to control road transport and in the field of road traffic safety.

The Supreme Court has made a reference to the clause 6.3. of Regulations on working hours and rest periods of drivers of wheeled vehicles, which was approved by Order of the Ministry of Transport and Communications of Ukraine dated 07.06.2010 No.340 (hereinafter referred to as Order No.340), which was developed in accordance with ILO Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153) (hereinafter referred to as ILO Convention No. 153). According to this clause, a driver who drives a vehicle (road transport) that is not equipped with a tachograph must keep an individual driver's logbook or have a copy of the driver rotation schedule. In addition, the Court noted that the current legislation does not provide for the absence of control over working hours for a certain category of drivers.

While forming the legal position in the case, the Supreme Court applied the provisions of ILO Convention No. 153. The Court directly indicated that, in accordance with paragraph «a» of Part one of Article 10 of ILO Convention No. 153, the competent authority or body in each country shall provide for an individual control book and prescribe the conditions of its issue, its contents and the manner in which it shall be kept by the drivers. Part 3 of the Article 10 of ILO Convention No. 153 established that the traditional means of supervision referred to in paragraphs 1 and 2 of this Article shall, if this proves to be necessary for certain categories of transport, be replaced or supplemented as far as possible by recourse to modern methods, as for instance tachographs, according to rules to be established by the competent authority or body in each country. In the opinion of the panel of judges the provisions of paragraph «a» of Part 1 of Article 10 of the aforementioned ILO Convention No.153, are universal for any vehicle that uses the hired labour of a driver. At the same time, the maintenance of a tachograph is provided for some categories of transport, including those whose route length is more than 50 km.

The analysis of the abovementioned norms gave grounds for the conclusion that drivers who carry out transportation are required to have a valid and certified tachograph. If the vehicle (road transport) is not equipped with a tachograph, the driver keeps an individual driver's logbook.

The Court found that, contrary to the requirements of the law, during the inspection of the vehicle (road transport), the driver did not have a completed individual control book, which was not argued by the Claimant. Therefore, in the disputed legal relations, the carrier did not provide the driver with an individual control book, which reflects information about the duration of the variable driving period in accordance with the requirements of the law.

In such circumstances, being guided by ILO Convention No.153, Law of Ukraine "On Road Transport", Order No.340, the Supreme Court ruled that the Defendant's resolution which was subject of dispute in this case, is lawful and there are no grounds for its abolishment, at the same time, the Supreme Court found the decisions of the courts of previous instances baseless, since the conclusions set forth in them are refuted by the norms of current legislation.

► Constitutional Court of Ukraine, Decision dated 15.07.2021 No. 2-p/2021 case No. 1-157/2019(3593/19)

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine "On International Treaties of Ukraine"

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

47 People's Deputies of Ukraine v part 6 of Art. 6 of the Law of Ukraine "On Remuneration of Labour" No. 108/95-VR 24.03.1995 as amended by the Law of Ukraine "On Amendments to some Legislative Acts of Ukraine" No. 1774-VIII dated 06.12.2016, part 6 of Art. 96 of the Labour Code of Ukraine as amended by the Law of Ukraine "On Amendments to some Legislative Acts of Ukraine" No. 1774-VIII dated 06.12.2016

Subject:

Minimum wage

Role of International Law:

Reference to international law to strengthen a decision based on domestic law

Type of instruments used:

Ratified treaties¹

Key words:

Minimum wage / Minimum salary / Subsistence level / Decision on constitutionality / Reference to international law to strengthen a decision based on domestic law

The applicants appealed to the Constitutional Court with a constitutional complaint regarding constitutionality of part 6 of Art.6 of the Law of Ukraine "On Remuneration of Labour" No. 108/95-VR 24.03.1995 as amended by the Law of Ukraine "On Amendments to some Legislative Acts of Ukraine" No. 1774-VIII dated 06.12.2016, part 6 of Art. 96 of the Labour Code of Ukraine as amended by the Law No. 1774-VIII, namely on the establishment of a minimum salary (tariff rate) in an amount not lower than the subsistence level. The applicants argued that the subsistence level cannot be used to establish a minimum salary (tariff rate), since it is only a social guarantee that the minimum wage will not be set below a level sufficient to ensure an adequate standard of living.

¹ ILO Minimum Wage Fixing Convention, 1970 (No. 131), ratified by the Law of Ukraine "On Ratification of ILO Minimum Wage Fixing Convention No. 131" No. 2997-IV dated 19.10.2005; ILO Minimum Wage Fixing Recommendation, 1970 (No. 135); Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights 1967, ratified by the Order of Presidium of the Supreme Soviet of the Ukrainian Soviet Socialist Republic No. 2148-VIII dated 19.10.1973; European Social Charter (Revised), ratified by the Law of Ukraine "On Ratification of European Social Charter (Revised)" dated 14.09.2006 No.137-V.

In its decision, the Constitutional Court emphasises the importance of guaranteeing the right to work, which is enshrined in Art. 43 of the Constitution of Ukraine and refers to the legal positions previously formulated by the Constitutional Court. In particular, the court underlined that “remuneration for the work performed by an employee is the source of his existence and must ensure a sufficient, decent standard of living. This determines the State’s obligation to create appropriate conditions for citizens to exercise the right to work, to optimise the balance of interests of the parties to labour relations, in particular, through State regulation of wages.”

The Court indicated that the right to just and favourable remuneration that ensures an existence worthy of human dignity is one of the fundamental human rights and is enshrined in the provisions of the Universal Declaration of Human Rights (Art. 23), International Covenant on Economic, Social and Cultural Rights (Art. 7) and in European Social Charter (Revised) (I(4)).

The Court concludes that under the current legislation of Ukraine, which regulates relations on remuneration and social protection, the concepts of «wages not lower than specified by law (minimum wage)», «subsistence minimum» and «minimum salary (tariff rate)» are not identical phenomena, and that “minimum salary” is only a component of total income, which may include allowances, supplements, etc.

Furthermore, having analysed the provisions of the Labour Code of Ukraine, the Law of Ukraine “On State Social Standards and State Social Guarantees” No. 2017-III dated 05.10.2000, the court established that “minimum wage is a kind of state social guarantees, which has its own structure with a division into basic, additional and other incentive and compensation payments. The minimum salary (tariff rate) is not a kind of state social guarantees but is functionally used in the formation of the tariff system of remuneration and is the basis for the differentiation of salaries. At the same time, the size of the minimum wage and the size of the minimum salary (tariff rate) may not be lower than the size of the subsistence minimum. This difference between the essence of the wages not lower than specified by law (minimum wage) and the minimum salary (tariff rate) gives the grounds to conclude that their functional purpose is unequal.”

Moreover, the Court noted that the establishment of the minimum salary at the level of the subsistence minimum is consistent with international labour standards and does not constitute a violation of human rights. Thus, according to Art. 3 of ILO Minimum Wage Fixing Convention No. 131, when determining the level of the minimum wage, the State must take into consideration the needs of workers and their families, the general level of wages in the country, the cost of living. The court also noted that in para. 1 of the ILO Minimum Wage Fixing Recommendation No. 135, it is emphasised that the fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection as regards minimum permissible levels of wages.

The Court concluded that “everyone has the constitutional right to an adequate standard of living for him-/herself and his/her family, which does not provide as a prerequisite for the exercise of this constitutional right a person’s physical, intellectual or other ability to perform a job function, let alone actually perform such a function.” And that “the minimum number of benefits that everyone should receive as the main source of livelihood to guarantee the exercise of the constitutional right to a sufficient standard of living is the subsistence level, the amount of which, taking into account its essence and purpose, is determined by the Verkhovna Rada of Ukraine” in the relevant amendments provided by the provisions of the Law No. 1774-VII.

Considering the above, the Constitutional Court of Ukraine concluded that the relevant provisions of the Law of Ukraine No. 108/95-VR and the Labour Code of Ukraine comply with the Constitution of Ukraine and ensure the implementation of the constitutional right to remuneration and do not contradict the international obligations of Ukraine.

► Civil Cassation Court within Supreme Court, Ruling dated 05.06.2024, case No. 202/5012/21 (proceedings No.61-3914sv24)

Constitution of Ukraine

Article 9

International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Law of Ukraine “On International Treaties of Ukraine”

Article 19, paragraphs 1 and 2

1. Current international treaties of Ukraine, the consent to be bound by which has been provided by the Verkhovna Rada of Ukraine, are part of the national law and are applied in accordance with the procedure prescribed for the norms of national law.
2. If an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of Ukrainian legislation, then the rules of the international treaty shall be applied.

Country:

Ukraine

Parties:

Claimant (Appellant in the Supreme Court)– Person_1, Defendant (Respondent in the Supreme Court) – Joint-Stock Company «Interpipe Dnipropetrovsk Vtormet», third party - Primary Trade Union Organization «Free Trade Union «Spartak»

Subject:

Equal remuneration, protection against discrimination in employment and occupation

Role of International Law:

Reference to international law to strengthen a decision based on domestic law

Type of instruments used:

Ratified treaties¹

Key words:

Remuneration/Equal remuneration /Discrimination/Wages/Protection against discrimination in employment and occupation/ Reference to international law to strengthen a decision based on domestic law

The Claimant worked as a driver at the Defendant’s enterprise and was a member of a trade union. In 2020, he was unfairly dismissed, but later, by court decision, he was reinstated. In 2021, in accordance with the order, the employer notified him of a salary increase. At the same time, he learned that other employees working with him in the scrap processing shop, under the same conditions of tension and workload, were offered a significantly larger salary increase than he was. The Claimant the Defendant alleged in violation of the legislation on wages and of discrimination against employees based on their membership in a trade union. The Defendant objected to the claim.

¹ ILO Equal Remuneration Convention, 1951 (No. 100) ratified in 1956; ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Universal Declaration of Human Rights, 1948; International Covenant on Economic, Social and Cultural Rights, 1966, ratified by the Decree of the Presidium of Verkhovna Rada of the Ukrainian SSR No.2148-VIII dated 19.10.73.

The Industrial District Court of Dnipropetrovsk partially satisfied the claim. The Dnipropetrovsk Court of Appeal satisfied the Defendant's appeal and completely overturned the decision of the court of first instance. Disagreeing with the decision of the Court of Appeal, the Claimant filed a cassation appeal to the Supreme Court.

Finding in favour of the Claimant, the Civil Cassation Court within the Supreme Court (hereinafter referred to as the Supreme Court) proceeded primarily from the fact that the fact of discrimination must be proven. According to Article 81 of the Civil Procedure Code of Ukraine, in cases on discrimination, the plaintiff shall provide the actual data confirming that the discrimination has taken place. If such data have been provided, proof of their absence shall be entrusted to the defendant.

In its decision, the Supreme Court referred both to the norms of national legislation (Article 1 of the Law of Ukraine "On the Principles of Preventing and Combating Discrimination in Ukraine"), which define the notion of discrimination, and to the provisions of international acts in this area (ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (hereinafter referred to as ILO Convention No. 111).

The court decision stated that Article 1 of ILO Convention No. 111 defines "discrimination" as (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

Separately, the Court examined the norms that guarantee the right to equal pay. The Supreme Court pointed out that for the first time the principle of equal pay for equal work was enshrined in the Universal Declaration of Human Rights, where Article 23 states that everyone, without any discrimination, has the right to equal pay for equal work. The Court also referred to the International Covenant on Economic, Social and Cultural Rights of December 16, 1966, which defined the right to equal remuneration for work of equal value without any distinction as an integral part of the right of everyone to just and favourable conditions of work (Article 7).

The Supreme Court also took into account that the right to equal pay was enshrined in Equal Remuneration Convention, 1951 (No. 100) (hereinafter referred to as ILO Convention No. 100). In accordance with Article 2 of Convention No. 100, each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. The Court indicated that this principle may be applied either at the level of national legislation, or at the level of collective agreements between employers and employees, or at both levels. For Ukraine, as a Member of the International Labor Organization and a state that has ratified ILO Convention No. 100, it is mandatory.

In the opinion of the Court, the evidence available in the case confirms that the salary for the Claimant position from June 1, 2021 at JSC «Interpipe Dnipropetrovsk Vtormet» was different. Taking that fact into account, as well as taking into account the norms of the Constitution of Ukraine, the Universal Declaration of Human Rights, ILO Convention No. 111, ILO Convention No. 100, the International Covenant on Economic, Social and Cultural Rights of December 16, 1966, and the norms of national legislation of Ukraine, the Supreme Court concluded that the local court provided a substantiated legal assessment of the evidence in the case and reached a substantiated conclusion about the existing fact of discrimination committed by the defendant against the Claimant when calculating his official salary from June 1, 2021 in an amount lower than for employees working in the same shop and in the same positions. In view of the above, the Supreme Court satisfied the Claimant's cassation appeal, overturned the decision of the Court of Appeal, and upheld the decision of the court of first instance.



International
Labour
Organization

ilo.org

International Labour Organization
Route des Morillons 4
1211 Geneva 22
Switzerland