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THE PERSONAL NON-PROPRIETARY LABOUR RIGHTS: A CONCEPT, THE FEATURES AND A CLASSIFICATION

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*The purpose of the article is to define a concept, the features, a classification of the personal non-proprietary labour rights in Ukraine. **Research methods:** the methods of comparative and documentary analysis, documentary synthesis and generalization and the cognitive-analytical method are used. **Results:** the authors provide a definition of a concept of the personal non-proprietary labour rights, characterizes their features and makes a classification of the mentioned rights. In addition, the authors emphasise a need for the further scientific substantiation of the possibility of independent regulation and protection of the personal non-proprietary labour rights of the employees by the labour law means and methods. **Discussion:** the point of views of the well-known scientists in the field of labour law of Ukraine concerning definition of a concept, the features and a classification of the personal non-proprietary labour rights were reviewed and analysed in the article.*

***Key words:** the personal non-proprietary labour rights; a natural person; the employer; the employee; civil legal relations; labour legal relations; a classification.*

Problem statement and its relevance. Nowadays the personal non-proprietary labour rights are an important aspect of labour law as just such rights contribute to the development of the fair labour relations and strike a balance between the interests of the employers and the employees. Researching the concept and the peculiarities of the personal non-proprietary labour rights will allow to understand better the mechanisms of their protection and their role in ensuring the human rights in labour relations.

Studying this theme also covers a need for a deep understanding and a clear definition of the classification of the personal non-proprietary labour

rights, since these rights occupy an important place in the labour law system and are directly related to ensuring the dignity and freedom of the employee in the modern process of globalisation and development of the new forms of labour.

Analysis of recent research and publications. This problem has been already researched by the following scientists: O. Dzera, V. Luts, O. Pidprygora, R. Stefanchuk, Ya. Shevchenko, S. Vyshnovetska, I. Lagutinova, G. Chanysheva, R. Chanyshch and others.

Presentation of the main material of the research. An institute of the personal non-proprietary rights has been a subject matter of scholarly interest

for many decades. However, the impacts of modern globalization and digitalization have substantially altered the nature of these rights, necessitating the new research and updates to the legal norms that govern the personal non-proprietary relations, as well as the legal protection and security of their participants [1].

The personal non-proprietary rights were separated from the fundamental human rights [2]. A significant step in the development of this institution in Ukraine was the adoption of the Constitution of Ukraine [3], which, in Article 3, consolidates a completely new fundamental principle prioritizing the human and his/her internal (spiritual) goods over other social values. In line with this provision, Section 2 of the Constitution of Ukraine outlines a list of the fundamental human and civil rights and freedoms, which is arguably the most extensive compilation of the basic rights and freedoms in Europe. Incorporating the key elements of the Universal Declaration of Human Rights [4], the International Covenant on Civil and Political Rights [5], the International Covenant on Economic, Social and Cultural Rights [6] and other international human rights instruments, the Constitution of Ukraine has created its own catalogue of the fundamental and inviolable rights, ensuring the effective legal guarantees for their exercise and protection. Furthermore, the Civil Code of Ukraine [7] offers the most detailed branch development of these constitutional provisions [8].

For a long time, the legal community has viewed the personal non-proprietary relations as a subject matter of regulation within the civil law branch, regardless of whether they pertain to civil or labour legal relations. According to the generalized definition of modern civil law, the personal non-proprietary right is the subjective right arising from non-material goods or the results of intellectual activity that could not be monetarily valued. It is closely connected to the personality of a human entitled to it, aims at expressing and developing his/her individuality, and has specific grounds for its arising and termination [2].

Scholars frequently discuss the peculiarities of the personal non-proprietary relations in which these rights are exercised, in particular: 1) a personal nature; 2) they arise in relation to a specific ob-

ject – a non-material good with a distinct personal character; 3) non-proprietary character without economic content and they are directly connected with proprietary relations; 4) an inability to be accurately monetarily valued, and their exercise could not be accompanied by proprietary equivalents from others. R. Stefanchuk proposed a broader perspective on the features of the personal non-proprietary rights, identifying the following ones: 1) a personal nature; 2) non-proprietary character; 3) an object of these rights is personal non-proprietary or other non-material good; 4) they focus on fulfilling the physical (biological), spiritual, moral, cultural or social needs [1].

Due to the gradual development of the human's personality and self-esteem, ensuring the personal non-proprietary labor rights during the human's work activity is becoming increasingly important [9].

A concept of the personal non-proprietary rights of the employees has neither its own consolidation in national legislation (in particular, nowadays Article 2 of the effective Labour Code of Ukraine [10] does not properly defines these rights), nor the completed doctrinal developments in this field [2].

For the first time in Ukraine, a problem of the personal non-proprietary labour rights as a legal category was the focus of research by such well-known labour scholars as: S. Vyshnovetska, I. Lagutina, G. Chanysheva, R. Chanyshch and others.

Thus, I. Lagutinova believes that the personal non-proprietary labour rights arising in the course of work are the subjective rights of citizens which are absolute in nature, and their distinctive features are: firstly, they could not be monetarily valued, i.e. they are non-material by their nature; secondly, they are inseparable from a person (these benefits could not be gifted, sold, inherited or otherwise separated from such person) and they are aimed at identifying and developing the individual abilities of a person; thirdly, their arising and termination is not associated with the mandatory presence of a certain legal basis [2].

G. Chanysheva and R. Chanyshch note that the personal non-proprietary labour rights of the employee are based on a personal dominance, the pro-

nounced character of the non-material human goods protected by the law.

S. Vyshnovetska believes that these rights have significant differences from the personal non-proprietary rights not related to the proprietary rights protected by civil law. Thus, the holders of the personal non-proprietary labour rights are mainly the employees, while only persons with labour legal capability have the right to work. The personal non-proprietary labour rights are always exercised within the framework of relative legal relations, the subjects of which, as a general rule, are the employee and the employer. They are also active in nature, as the employee has the right to demand from the employer to refrain from any actions that violate his/her rights, and also to take active steps to exercise and protect these rights. At the same time, in labour relations with the employer, the employee continues to be an independent person who has the entirety of the personal rights, whose sphere of private life remains outside the workplace. For example, in the course of employment, each person realises himself/herself as a creative person and seeks not only decent remuneration, but also opportunities to demonstrate his/her abilities, talents and unleash his/her potential. Such personal non-proprietary labour rights belong to the fundamental labour rights. They are protected as from encroachment by the employer, as in the process of interpersonal communication related to the performance of labour duties, as well as in interaction within the team of the employees [11].

To I. Kravchenko's point of view, the "economic power" of the employer makes the employee a dependent party in the labour relations from the very beginning. Just the employee's personal rights are in a vulnerable position and just they require prior legal regulation and protection, while the employer's personal non-proprietary rights are regulated and protected like the rest of the civil rights of this entity (the right to business reputation, the right to protect a corporate information, a copyright, etc.). Thus, the personal non-proprietary rights of the employee are his/her non-proprietary benefits (values) regulated by the provisions of constitutional, labour and civil law, arising in the employee from the moment of beginning the labour relations, and directly related to the employee's personality

and privacy in the course of performing his/her labour function and which could be violated by the limited number of subjects.

The most of the personal non-proprietary rights of the employees could not be regulated by civil law, since labour law, as a separate branch of law, has a number of features that differ from civil law. Therefore, a category of the personal non-proprietary rights has different meanings in different spheres of existence of natural persons. Such distinction could be made on the following grounds:

Firstly, there are specific grounds for arising and termination of the personal non-proprietary rights. Labour law, unlike civil law, is dominated by strong public law principles (civil law is primarily characterised by dispositive legal regulation, while labour law is primarily characterised by imperative and dispositive regulation, and only then – by contractual regulation).

Secondly, as a general rule, only the employees could be holders of the personal non-proprietary rights. In labour law the employee's work has exclusively personal nature, and labour relations are strictly individualised in relation to the employee's personality (unlike civil law, which contains the institutions of representation, sub-contracting, etc.)

Thirdly, in civil law the personal non-proprietary rights arise with the onset of civil legal ability (from birth), while in labour law the employee's personal non-proprietary labour rights arise from the moment of concluding the employment agreement and actual admission of the employee to his/her work.

Fourthly, the personal non-proprietary labour rights have a predominantly "active" content.

Fifthly, a method of legal equality of the parties of legal relations is not applied to the personal non-proprietary rights of the employee. Civil legal relations are built on the basis of formal and actual equality of their subjects, and full equality between the parties of labour relations is impossible, since the relations between the employee and the employer are exclusively "vertical" in nature, with an inevitable element of subordination (performing the labour functions and/or being at the disposal of the employer, the employee is under its "masters" authority).

Sixthly, civil legal relations are based on the autonomy of the will of the parties of the legal relations, while after beginning the labour relations a will of the employee and the employer is limited solely by the employment agreement. Moreover, the parties of labour relations inevitably incur (could incur) liability for arbitrary behaviour.

Seventhly, civil legal relations are based on property independence, while in labour relations the employee performs his/her functions at the expense of the employer's funds and property (a separation of property has a specific nature).

Eighthly, in civil law the personal non-proprietary right of a natural person could be violated by the unlimited number of subjects (absolute nature of civil legal relations). At the same time, in labour law only the employer or another employee could violate the employee's personal non-proprietary right (limited circle of subjects is inherent in relative legal relations) [2].

Reserching the issue of the personal non-property rights of the employees, it is quite logical to determine their structure as a certain systemic formation and a separate group in the general system of the labour rights. This set (group) of the rights, like any other complex systemic formation, contains numerous elements and their types, which are combined according to certain criteria into separate subsystems (subgroups).

R. Stefanchuk provides the detailed and quite convenient for an application classification (system) of the personal non-proprietary rights of natural entities:

1. The general (universal) personal non-proprietary rights of natural entities:

1.1. The personal non-property rights ensuring biopsychic (natural) existence of natural entities: a) personal non-proprietary rights ensuring the biopsychic (natural) integrity of natural entities (the right to life, the right to health); b) the personal non-proprietary rights ensuring the reproduction of natural entities (the reproductive rights); c) the personal non-proprietary rights ensuring the separation of natural entities (the right to freedom, the right to inviolability, the right to dignity, the right to security);

1.2. The personal non-proprietary rights ensuring the social existence of natural entities: a) the

rights "for the sake of society": (a) the personal non-proprietary rights ensuring the individualisation of natural entities (the right to name, the right to individuality); (b) the personal non-proprietary rights ensuring the social status of natural entities in society (the right to honour, the right to reputation); (c) the personal non-proprietary rights ensuring the freedom of social existence of natural entities (the right to freedom of movement, choice of place of residence, occupation, etc.); (d) the personal non-proprietary rights ensuring the social awareness of natural entities (the right to information); b) the rights "from society": the personal non-proprietary rights ensuring the non-interference in the privacy of natural entities (the right to privacy).

2. The special personal non-proprietary rights of natural entities:

2.1. The personal non-proprietary rights of natural entities in the field of intellectual (creative) activity;

2.2. The personal non-proprietary rights of natural entities in the field of family relations;

2.3 The personal non-proprietary rights of natural entities in the field of medical activity (the patient rights);

2.4. The personal non-proprietary rights of children and other persons with defects of legal capacity (the rights of custody and care character);

2.5. The post-tatutory personal non-proprietary rights of natural entities.

Such classification is only partially consolidated in the effective Civil Code of Ukraine, as only the most important and typical compositions (structures) of social relations in the basic and core areas that determine a need to ensure and protect the private interest of natural entities should be subject to such regulation.

It is obvious that not all types of the personal non-proprietary rights of natural entities from the classifications proposed by the civil law scholars are inherent in the labour relations. For example, I. Lagutina believes that a system of the personal non-proprietary labour rights of the employees is formed by the following rights: a) the right to vocational training, retraining and the advanced training; b) the right to information from the parties to the employment agreement; c) the right to the

fair working conditions; d) the right to the safe and healthy working conditions; e) the right to moral incentives; f) the right to privacy and personal data protection; g) the right to protection of labour honour and dignity and protection from mobbing; h) the right to equality and protection from discrimination in the field of labour.

I. Kravchenko conditionally classifies the personal non-proprietary rights of the employees depending on different functional properties of these elements as follows:

1. The personal non-proprietary rights ensuring the natural well-being and autonomy (individualisation) of the employee:

- a) the right to the employee's own name;
- b) the employee's right to personal safety (the right to life and elimination of danger threatening the employee's life and health);
- c) the employee's right to medical care and confidentiality of data on his/her health;
- d) the right to inviolability of the employee's appearance;
- e) the right to personal freedom and physical, psychological and moral inviolability of the employee from actions of the employer and other persons;
- f) the employee's right to honour, dignity and business reputation;
- g) the employee's right to equal opportunities for promotion and protection from discrimination in the field of labour.

2. The personal non-proprietary rights ensuring the employee's social existence:

- a) the right to work and to choose the sphere of its application;
- b) the right to protection from unemployment and assistance in finding a job;
- c) the right to professional development;
- d) the right to labour mobility (freedom of movement);
- e) the right to rest;
- f) the right to professional associations.

3. The personal non-proprietary rights ensuring the inviolability of private life during the performance of labour function:

- a) the right to inviolability of the employee's means of personal communication and correspondence;

- b) the right to inviolability of private documentation of the employee;

- c) the right to non-using the audiovisual control over the employee's behaviour in the workplace;

- d) the right to non-application of special control means regarding the reliability of information provided by the employee;

- e) the right to inviolability of their own home used as the employee's workplace;

- f) the right to protection of the employee's personal data.

4. The special (separate) personal non-proprietary rights arising in the field of intellectual activity of the employees:

- a) the right to a name and pseudonym (the right of authorship of the employee's work for hire);

- b) the right to preserve the integrity of the employee's work for hire;

- c) the right to an individual appearance of the employee (the right to his/her own image and its publication);

- d) the right of the employee to his/her voice and its reproduction [9].

It is difficult to disagree with the opinion of S. Vyshnovetska that a system of the personal non-proprietary labour rights of the employee enriches by appearance of the new personal non-proprietary rights, and their list is steadily expanding, that depends on the development of national labour legislation under the influence of the international and European standards, on the life development level, on the cultural development of a human, his/her self-awareness and self-esteem. Hence, a classification of the personal non-proprietary labour rights as a theoretical construction is modified, improved, developed, reflecting the achievements of theory, legislation and practice [12].

Conclusions. Thus, our research shows that a doctrine of the personal non-proprietary rights, in particular, of the employees is not sufficiently developed at present. Given the steady trend towards the emergence of the new personal non-proprietary rights of the employees under the influence of the international standards, a level of development of personal and social life, their list will objectively expand.

The modern state of development of labour law suggests a need for further scientific substantiation

of the possibility of independent regulation and protection of the personal non-proprietary rights of the employees by the labour law means and methods.

In addition, introduction of a classification of the personal non-proprietary labour rights into the effective and future legislation of Ukraine will contribute to the development of national labour legislation on the organisation of the labour process and the practice of its application.

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ОСОБИСТІ НЕМАЙНОВІ ТРУДОВІ ПРАВА: ПОНЯТТЯ, ОЗНАКИ ТА КЛАСИФІКАЦІЯ

Державне некомерційне підприємство
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Мета статті – визначити поняття, ознаки, класифікацію особистих немайнових трудових прав в Україні. **Методологічна основа дослідження:** використано методи порівняльного та документального аналізу, документального синтезу та узагальнення, а також когнітивно-аналітичний метод. **Результати:** надано визначення поняття особистих немайнових трудових прав, охарактеризовано їх ознаки та здійснено класифікацію зазначених прав. Крім того, наголошується на необхідності подальшого наукового обґрунтування можливості самостійного регулювання та захисту особистих немайнових трудових прав працівників засобами та методами трудового права. **Обговорення:** у статті розглянуто та проаналізовано точки зору відомих вчених у галузі трудового права України щодо визначення поняття, ознак та класифікації особистих немайнових трудових прав.

Автори дослідження зазначають, що вчення про особисті немайнові права, зокрема, працівників, на даний час є недостатньо розробленим. Враховуючи стійку тенденцію до появи нових особистих немайнових прав працівників під впливом міжнародних стандартів, рівень розвитку особистого та суспільного життя, їх перелік об'єктивно розширюватиметься.

Сучасний стан розвитку трудового права зумовлює необхідність подальшого наукового обґрунтування можливості самостійного регулювання та захисту особистих немайнових прав працівників засобами і методами трудового права.

Крім того, впровадження класифікації особистих немайнових трудових прав до чинного та майбутнього законодавства України сприятиме розвитку національного трудового законодавства щодо організації трудового процесу та практики його застосування.

Ключові слова: особисті немайнові трудові права; фізична особа; роботодавець; працівник; цивільні правовідносини; трудові правовідносини; класифікація.

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