

ЦИВІЛЬНЕ І ТРУДОВЕ ПРАВО

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CURRENT STATE OF MONITORING COMPLIANCE WITH INTERNATIONAL LABOUR LEGAL ACTS

This article provides a description of the main mechanisms for monitoring in compliance with international labour legal acts. The author examines the issues of shortcomings in the relevant structures and outlines their main development prospects.

Key words: international labour legal acts, monitoring bodies, compliance with international obligations.

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Сучасний стан контролю за дотриманням міжнародно-правових актів у сфері праці

У статті наводиться характеристика основних механізмів контролю за дотриманням міжнародно-правових актів у сфері праці. Автор досліджує проблемні питання недоліків у роботі відповідних структур та окреслює основні напрямки їх розвитку.

Ключові слова: міжнародно-правові акти у сфері праці, органи контролю, дотримання міжнародних зобов'язань.

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Современное состояние контроля за соблюдением международно - правовых актов в сфере труда

В статье приводится характеристика основных механизмов контроля за соблюдением международно-правовых актов в сфере труда. Автор исследует проблемные вопросы недостатков в работе соответствующих структур и определяет основные направления их развития.

Ключевые слова: международно-правовые акты в сфере труда, органы контроля, соблюдения международных обязательств.

Statement of the issue and its urgency. Strong competition of states for their investment attractiveness generates many negative phenomena that has its reflection in the state's compliance with international labour standards. More and more states act solely in the interests of investors while violating international labor standards, disregarding the rights and interests of workers, particularly by reducing the social and labor standards in legislation [5]. That is why the study of modern mechanisms for monitoring of implementation and compliance with the provisions of international labour legal acts is rather topical issue today.

The analysis of researches and publications. The issues of monitoring compliance with international legal acts and supervising the implementation of their provisions within the state legislation are investigated by many foreign and Ukrainian legal scholars such as: Fr. Aiuzava, J. Badd, D. Bekiashev, J. Beleiz, N. Valtikos, O. Volokhov, K. Husov, L. Zvaak, I. Kyselov, L. Kompa, Ye. Kordova, P. Laptiev, A. Liary, I. Lukashuk, L. Lukina, M. Liutov, I. Raisova, I. Mazitov, V. Mytsyk, J. Servais, V. Statsenko, S. Ivanov, D. Harris, B. Hepple, I. Shesteriakova and others.

The aim of the research is to analyze the basic mechanisms of monitoring compliance with acts of

international labour regulation, identifying shortcomings in the relevant structures and outlining the main development prospects for effective supranational control in this area.

Representation of the main research material. International legal regulation of labour takes an important place in international cooperation, development of which began in the beginning of XX century. Its formation and development were provided by various factors, including a desire of states to create a single legal space, which will ensure fair competition in the international market, and elaboration of common international standards for the protection of labour rights of employees. Activities of international organizations, acts of which appear in most legal systems around the world, played a special role in the development of such standards.

V. Statsenko said that appropriate mechanisms of monitoring not only ensure compliance with the undertaken international obligations by states but also create additional obstacles to deviate from legal norms already enshrined in legislation [6].

In the science of law it is common to distinguish between judicial and non-judicial monitoring bodies to comply with obligations by states. The judicial monitoring bodies in this area are only represented by the UN International Court of Justice and the European Court of Human Rights. Non-judicial monitoring bodies are represented by various committees and commissions that operate under international organizations.

The Belarusian scientist L. Lukina suggests classifying these monitoring bodies on the following criteria: the legal nature (bodies whose creation is stipulated by the statute of international organizations, bodies, established under the provisions of the international treaty); subject of regulation of monitoring agreement (monitoring over the state of association rights, monitoring over the state of social rights, etc.) [2, p. 24].

Typically, monitoring compliance with international labour regulation acts is carried out by relevant committees and commissions that operate under the international organizations, and consist of two procedures: receiving reports on governmental compliance with regulation acts of international labour and receiving complaints about violations of them by a state. In practice, the value and nature of

these procedures largely depend on institutional features of international organizations, content and objectives of acts, adopted by them [3, p. 203].

International legal labour regulation includes universal UN acts and International Labor Organization. Thus, the UN adopted a number of international documents relating, in particular, to the right to labour; freedom of association and collective bargaining; discrimination in the workplace; labour migration. These international acts have been adopted in the form of two pacts in 1966 (On Civil and Political Rights; On Economic, Social and Cultural Rights) and some universal UN conventions (The International Convention on the Elimination of All Forms of Racial Discrimination (1965); The Convention on the Elimination of All Forms of Discrimination against women (1979); The International Convention on the protection of the rights of all migrant workers and members of their families (1990); The Convention on the Rights of Persons with Disabilities (2006).

The monitoring bodies of these international documents are represented by certain committees, the creation and competence of which are directly determined in conventions or in separate protocols, as with the covenants.

V. Mytsyk notes that these conventional bodies have similar procedural powers of monitoring, in particular, the consideration of initial and periodic reports of states for the implementation of ratified conventions and ensuring the rights set forth in the covenants; consideration of reports of violations of obligations by one state party on the other; consideration of complaints of individuals and groups of individuals about violations of their rights by the state; investigation of violations of convention rights by states parties on their own initiative; consideration of periodic reports of states; involvement of specialized agencies and the competent UN bodies to submit expert opinions and reports on the implementation of the provisions of the act [1, p. 238].

N. Valtikosa points out that a well-developed system of monitoring compliance with the acts of International Organization works even better than similar control mechanisms in other international organizations [7, p. 143]. This system includes two components: the constant supervision carried out by periodic reports of the International Labour Organi-

zation Member States (hereinafter – ILO); consideration of complaints and specialized monitoring bodies of the ILO on violations of international labour standards.

According to Art. 22 of the ILO Constitution, each state party shall provide periodic reports to the Director-General of the International Labor Office, concerning measures taken for the application of the conventions which it has been joined to. The form and content of the relevant reports is established by the Governing Board of the ILO. To verify the facts contained in the report parallel copies are sent to relevant organizations of workers and employers. The ILO Director-General prepares and provides summary of governmental reports for the next session of the International Labor Conference.

Within the organization there are several bodies that consider complaints and submissions concerning monitoring compliance with the ILO acts by states. These include the Committee of Experts on the Application of Conventions and Recommendations; the ILO Committee on Freedom of Association; the Committee of the International Labour Conference. These structures are similar in their credentials; they receive complaints and provide information on the consideration of their reports addressed to the Member States.

There are also special arrangements to comply with the ILO Declarations of the years 1977, 1998 and 2008 by the Member States. Two main procedures are mentioned in the ILO Declaration of 1998, namely providing reports by states on the unratified fundamental ILO Conventions; providing general report on one of the four fundamental labour principles enshrined in the Declaration of 1998.

After analyzing international documents and activities of the ILO, we observe that despite the existence of a sufficient number of monitoring bodies, their activity still is criticized because it usually depends on the goodwill of Member States, which in turn not often occurs during severe violations of international labour standards. The same we can say about efficiency of mechanisms for oversight for the implementation of UN regulations in protection of labour, the efficiency of which depends on the powers granted to them by a state. Over its history

the ILO only once really managed to stop the violation of its acts, using all possible means of influence. These actions were directed against the government of Myanmar, which widely used forced labour prohibited by the fundamental ILO Convention No. 29. The situation in the country itself was improved only after 10 years of diplomatic and economic pressure of the ILO Member States on Myanmar [8, p. 45].

Thus, there is a need to introduce effective sanctions that would seriously affect a Defaulting State. Indeed, as A. Glickman rightly noted, absence of sanctions for violation of its obligations in the Constitution of the ILO shows that the ILO monitoring mechanisms are rather directed to assist in resolving of conflict than to real conviction [4, p. 56].

Monitoring procedures for implementation of regional labour acts have their pros and cons. Acts of the Council of Europe (hereinafter - CE) are particularly respected. These regional acts govern working conditions, namely the Convention for the Protection of Human Rights and Fundamental Freedoms (signed in 1950) and the European Social Charter (revised in 1996). The CE Convention provides a complex mechanism of implementation of its provisions carried out by the Secretary General of the Parliamentary Assembly and the European Court of Human Rights. This Convention has an important role for Ukraine, which included its provisions together with the European Court to sources of law [9].

Thus, the main problem of mechanisms of implementation and monitoring in compliance with international labour legal acts by states are their dependence on the Defaulting State's goodwill, lack of the operational capacity of effective application of economic sanctions against it. Part of the problem can be solved by the inclusion of the World Trade Organization (WTO) mechanisms to monitor compliance with international labour standards. This problem can be currently defined as perspective for interstate cooperation in this area.

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