CHAPTER 1. GENERAL LEGAL DESCRIPTION OF THE CONCEPT "GROSS BREACH OF WORK DUTIES"

1.1. Work Duties of an Employee: Legal Nature and Types

Each sector of law (labour law is no exception) is characterized by its own set of subjects, which together with the subject, method, functions, sources and principles determine its place and specific features in the general system of law.

Formation of the legal competence of labour law is characterized by objectivity and is related to the parties' acquisition of specific functions that require legal regulation of mutual behaviour, taking into account the interests of each of them, in their relations. According to L. A. Syrovatskaia, ignoring the specificities of labour law as an independent sector in developing the concept of its influence on labour relations cannot be positive [1].

The accelerated development of economic, political, labour and other relations has led to the occurrence of numerous, and therefore, unordered or insufficiently ordered by provisions of law in force situations, whereby, according to V. V. Lazarev, it is difficult to "manage" even under the ideal rulemaking activity [2].

We advocate the perspective of S. K. Zagainova that it is fundamentally false that law is impeccable, since every life

[1] Syrovatskaia, L. A. *Labor law*. 2nd ed. M.: Yurist, 1998. 312 p.

[2] Lazarev, V. V. *Gaps in law and ways to address them*. M.: Yurid. lit., 1974. 263 p.

situation finds its proper statutory determination, while life always outstrips regulatory provisions that enshrine social relations only in statics [1].

Due to the lack of clarity and consistency in the regulation of labour relations, employees often find themselves in a certain legal vacuum. In turn, the social and legal insecurity of the employee does not contribute to their being interested in the results of their work and in the stability of such relations. The challenge for the labour law of Ukraine is to create the legal framework required in modern conditions and aimed at achieving a balance of interests of the parties to the employment contract, economic growth, productivity enhancement and human well-being. The labour law provides for principles such as social justice, equality, promotion of progressive changes in conditions and content of work, creation of optimal organization of work and favourable production conditions for attraction of employees and development of the worker's personality, stimulation of labour and public activity, ensuring of employment.

Considering the labour law in general, not only the role of labour in public life, but also the substantial specificity of this sector of law should be taken into account. It derives from the specificities of the object of legal regulation, that is labour, the activity of a person who markets his/her workforce as a capacity for work. These goals can be achieved only in the conditions of high internal organization of the system of labour law, smoothness and consistency of the legal framework. The new Labour Code of Ukraine should unify all the rules and principles of labour law both Ukrainian and international, all general and universal rules of this sector of law. Gaps in legal regulation and duplicate rules should be eliminated.

[1] Zagainova, S. K. *Judicial precedent: Problems of law application*. M.: NORMA, 2002. 176 p.

However, there is no need to change everything in the law right now, to discard and forget all previous experience and achievements. The establishment of new provisions and concepts should be in association with the preservation of the former ones, justified and capable of acting effectively in the new environment. O. M. Yaroshenko argues that consistency must become an indispensable qualitative characteristic of the legal system being created. Nevertheless, it should be of an analytical and creative nature, rejecting only of legal provisions, which have not justified themselves, legalize command-administrative methods of management, restrict human and citizen's rights and freedoms [1].

P. B. Bazhanova advocates that the subjects of labour law are participants of public relations regulated by this sector of law, who possess rights proclaimed by labour law, fulfil their obligations and are responsible [2]. Moreover, V. L. Kostiuk argues that the subjects of labour law are the participants of social and labour relations, who, according to its norms, are empowered to have, exercise (acquire, enjoy) labour rights and responsibilities, as well as to bear legal responsibility for the failure or improper performance of the latter [3]. The subject of labour law is transformed into the subject of labour relations at the moment when his potential opportunity to participate in legal relations begins to be realized in reality. At this point, the abstract legal links turn into concrete ones.

Incoherent social relations that make up the target of labour law (labour, working conditions, on ensuring their contractual regulation, employment, organization

[1] Yaroshenko, O. M. *Sources of Labour Law of Ukraine*. Doctor's thesis. Yaroslav Mudryi National Law University. Kh., 2007. 476 p.

[2] Bazhanova, P. B. *Commercial organizations and entrepreneurs without the formation of a legal entity as subjects of Labor Law*. Ph.D.'s thesis. Academy of Labor and Social Relations. M., 2004. 208 p.

[3] Khutoryan, N. M., Inshyn, M. I., Prylypko, S. M., Yaroshenko, O. M. (Eds). *Codification of the labour legislation of Ukraine*. Kh.: FINN, 2009. 432 p.

and management of work, vocational training, retraining and advanced training, in relation to the responsibility of employers supervising and controlling the observance of labour law, etc.), require a plurality of subjects inherent in this field.

Each individual subject has a specific set of rights and responsibilities, occupies a special place in the system. The internal legal relations of the subjects of labour law, by their objective content, together with the target and method of legal regulation of the sector determine the qualitative originality of its provisions and principles.

Considering the importance of resolving these issues at the regulatory level, V. L. Kostiuk proposes to include in the draft LL of Ukraine a separate section on the subjects of labour law, which shall determine: a) provisions on the list of subjects of labour law and social and labour relations or the conditions of their formation (occurrence); b) the framework for their legal status (labour legal personality); c) the main structural elements of the latter; d) the conditions for the acquisition of legal personality and its exercise; e) the general principles for the implementation, provision, guarantee and protection of the labour rights (labour powers) of participants of public relations and the promotion of proper performance of work duties by them; e) general rules for the interaction of these participants [1].

We agree with A. M. Slusar's value approach to the classification of subjects of labour law, which points to the primary basis of law, to its true source, that is, the person whose legal qualities are the real substance from which all substances are formed, including the State and its bodies. From the scientist's perspective, the subjects of labour law of Ukraine are: (a) an employee as a primary subject of labour law, (b) an employer as a main subject of labour law,

[1] Khutoryan, N. M., Inshyn, M. I., Prylypko, S. M., Yaroshenko, O. M. (Eds). *Codification of the labour legislation of Ukraine.* Kh.: FINN, 2009. 432 p.

(c) derivative subjects of labour law from an employee (a job seeker; a disabled person who has received employment or professional injury illness; plaintiff or defendant in court, etc.), (d) officials of labour law (public bodies, trade unions, private employment agencies, labour disputes commissions, conciliation commissions, labour arbitrations, etc.)[1].

Each individual subject of labour law has a certain set of rights and responsibilities, occupies a special place in a system consisting of potential participants in legal relations and systemic two-level links, of the sector (internal relations) and of all positive law in general (external relations), the latter providing the necessary interaction of labour law with related sector es. Internal legal relations of the subjects of labour law by their objective content together with the subject and method of legal regulation of the sector determine the qualitative originality of its rules and principles, thus forming the entire labour law of Ukraine.

According to Art. 43 of the Constitution of Ukraine[2] everyone has the right to work, which includes the opportunity to earn a living by labour, which he/she freely chooses or to which he/she freely agrees (Part 1), and the State creates conditions for citizens to fully realise the right to work, guarantees equal opportunities in the choice of profession and of types of labour, implements programs of vocational education, training and retraining of personnel in accordance with social needs (Part 2).

At the beginning of the XXI century, V. M. Andriiv includes labour rights, in general, and rights to work, in particular, to the main development trends:

– orientation of the international community and developed countries towards the fullest recognition and consolidation of natural labour rights;

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[1] Slusar, A. M. *The subjects of Labour Law of Ukraine.* Doctor's thesis. Yaroslav Mudryi National Law University. Kh., 2011. 407 p.

[2] Constitution of Ukraine. (No. 254k/96-VR of 28 June 1996). *Vidomosti Verkhovnoi Rady Ukrainy*, no.30, 1996. Art. 141.

– increase in the trend not only for recognising but also for ensuring labour rights;

– unity of public and private principles in recognising and ensuring labour rights;

– global universalization of labour rights;

– strengthened value of world-wide (universal) and European labour rights standards and their impact on national labour law;

– increase in the level of labour rights protection;

– strengthened role of social dialogue in the mechanism of realization of labour rights;

– acquisition of new qualities by labour rights in the form of deepening and expanding their content;

– – increase in flexibility (differentiation and individualization) in the legal regulation of labour relations in combination with the provision of labour rights [1].

In the framework of the right to work exercise, a person acquires a legal status of "employee". The latter is a natural person who works under an employment contract at an enterprise, institution or organization, regardless of the form of ownership and type of activity, or a natural person who, in accordance with the law, employs hired labour. The term "employee" applies equally to an employee who has already taken up a job and to a person seeking or about to start a job, already agreed upon, regardless of whether he/she accepted a job offer or concluded an employment contract. We advocate V. V. Lazor's conclusion that the subject of labour law is not just a citizen, but an employee [2]. Employees are the most numerous category of population. With regard

[1] Andriiv, V. M. *The system of labour rights of employees and the mechanism of their provision*. Extended abstract of Doctor's thesis. National University Odessa Law Academy. O., 2012. 40 p.

[2] Lazor, V. V. Problems of definition of the concept and legal status of the subjects of labour law in the modern labor legislation of Ukraine. *Actual Problems of Law: Theory and Practice*. Luhansk: SNU of V. Dal. 2006. No. 8. P. 22–30.

to the legal situation, among the other categories of the latter, they are distinguished by employment relations with other subjects, that is employers, who are intended to properly organize and/or guarantee their ability to hired labour (job performance).

It is the employee who is the bearer of labour, while employment relations are a legal mediation of his/her labour activity. In turn, labour is the human essence, in fact, the very person for whom the State exists. O. V. Romashov argues that labour is an expedient activity of people aimed at creation of material and cultural values. It is a foundation, a prerequisite for their vital activity. Affecting the environment, changing and adapting it to their needs, people not only ensure their existence, but also create conditions for the progress of society[1]. Therefore, Art. 43 of the Basic Law of Ukraine provides for the right to manifest this human essence. Everything that goes after the word "includes" is outside the right to work, although it usually actively influences the will of the owner of the work. It concerns other rights and freedoms of man and citizen, duties of the State and citizen aimed at encouraging the exercise of the right to work, the development of human abilities, the creation of conditions for their improvement, their fair assessment, etc.

In addition, O. M. Akopova argues that employees should be recognised as bearers of hired labour[2]. The specificities of the latter are: (a) it is not self-determining, but dependent, performed on the basis of a voluntary agreement with the employer; (b) it is related to the performance of the intended work and to the appropriate remuneration for the work performed, as referred to in the contract with the employer. In its content, according to O. I. Protsevskyi, the concepts

[1] Romashov, O. V. *Sociology of labour*. M.: Gardarika, 2001. 320 p.

[2] Akopova, E. M. *The modern labour agreement (contract).* Rostov: Mart, 1998. 352 p.

of "labour" and "work" are similar but far from being interchangeable. Labour is an integral function of human being, and work is, so to speak, an external form whereby labour is realized and which is created by the State. Work is created by social conditions, the level of development of machinery and technology [1].

The employee, his/her legal status is the starting point for the construction of the system of labour law. Labour law by its nature and social purpose is humanistic. It is aimed at creating favourable conditions for labour and life of the working person. Therefore, the fundamental area of the labour law study is the emphasis on the employee as the central subject of labour law, the determination of his/her interest presumption, the constant development of legislation on the protection of his/her rights and interests.

Social relations, governed by law, between the employee and the employer regarding the use of hired labour of the former in the interests of the latter take on the form of employment relations. O. I. Protsevskyi sums up that relations between people in the process of labour, manifested in specific, constantly repeated actions, require legal regulation. Law is essential in regulation of these actions. The State enforces legal regulation by the establishment of specific rules of law for the conduct of subjects of public relations [2].

In the 70s of the twentieth century, in the textbook *Soviet Labour Law*, N. G. Alexandrov defined labour relations as friendly cooperation of people free from exploitation, as legal relations whereby one party (employee) is obliged to apply his/her labour force, being involved in the personnel

[1] Protsevskyi, O. I. The new content of the right to work is the basis of reforming the labour legislation of Ukraine. *Pravo Ukrainy*. 1999. No. 6. P. 101–105.

[2] Protsevskyi, A. I. *The subject of Soviet Labour Law*. M .: Yurid. lit., 1979. 209 p.

of the enterprise (institution, business) and complying with the latter's internal labour arrangements, and the latter (the employer) is obliged to pay remuneration for work and to provide conditions of work that are safe for workers' health and favourable for productivity[1]. In general, this approach has not changed so far.

An employment contract is the legal basis for employment relations and the exercise of the right to work. As long as this contract is in force, the employment relations function and the right to work is exercised. Moreover, the dismissal terminates these legal relations and the exercise of the right to work at the enterprise, institution, organization. That is why the cases of termination of the employment contract at the request of the employer or a person who is not a party to the employment relations are strictly defined in law, and provisions regarding them are not subject to extensible interpretation. We advocate the perspective of M. M. Purei that the employment contract, as the most important legal form for the citizen to exercise his right to work, establishes the parties' agreement on the employment function, place and time of exercising this right, allows to specify the measure of work and other rights and obligations of the worker and employer[2].

H. I. Chanysheva argues that individual labour relations are primary and supreme, because labour law derives from them, that is, from the conclusion of an employment contract between the employer and the employee. She states that this contract is a legal basis for the occurrence of individual labour relations regarding working time, rest time, discipline, regulation and remuneration, health protection of workers in the labour process, training and improvement

[1] Aleksandrov, N. G. *Soviet Labour Law*. 3rd ed. M.: Gosyurizdat, 1963. 414 p.

[2] Purei, M. M. *The right to work in Ukraine under market economy.* Ph.D.'s thesis. H. S. Skovoroda Kharkiv State Pedagogical University. Kh., 2002. 173 p.

of their qualification, financial liability of the parties to the contract, etc. [1].

Individual labour relations determine and course all other types of relations that make up the target of labour law. They are justified and appropriate to the extent that the development of labour relations in general requires. The employment relations establish a legal connection between the employee and the company. According to L. Ya. Gintzburg, this connection is always concrete, and arises between the employee concerned and the particular enterprise [2].

According to ILO Recommendation No. 198 "On Employment Relationship" (2006) [3], the national policy of the State should include measures to combat disguised forms of employment, other relationships that may include the use of other forms of contractual arrangements that hide the true legal status of the worker. Whereas disguised employment relationships occur when the employer treats an individual as other than an employee in a manner that hides his/her true legal status. The situations can arise where contractual arrangements have the effect of depriving workers of the protection they are due. For the purpose of facilitating the determination of the existence of an employment relationship, States should, within the framework of the national policy, consider the possibility of the following: (a) allowing a broad range of means for determining the existence of an employment relationship; (b) providing for a legal presumption that an employment relationship exists where one or more relevant indicators is present; (c) determining, following prior consultations with the representative organizations of employers and workers,

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[1] Chanysheva, H. I. *Collective relations in the sphere of labour: Theoretical and legal aspect*. A.: Yuryd. lit. 2001, 280 p.

[2] Ginzburg, L. Ya. *Socialist Labour Relations*. M.: Nauka, 1977. 310 p.

[3] *ILO Recommendation on employment relations* No. 198. (May 31, 2006). http://zakon4.rada.gov.ua/ laws/show/993_529.

that workers with certain characteristics, in general or in a particular sector, must be deemed to be either employed or self-employed.

States should consider the possibility of defining in their laws and regulations, or by other means, specific indicators of the existence of an employment relationship. Those indicators might include:

– the fact that the work: (a) is carried out according to the instructions and under the control of another party; (b) involves the integration of the worker in the organization of the enterprise; (c) is performed solely or mainly for the benefit of another person, personally by the worker, within specific working hours or at a workplace specified or agreed by the party requesting the work; (d) is of a particular duration and has a certain continuity; (e) requires the worker's availability (f) involves the provision of tools, materials and machinery by the party requesting the work;

– periodic payment of remuneration to the worker;

– the fact that such remuneration constitutes the worker's sole or principal source of income;

– provision of payment in kind, such as food, lodging or transport;

– recognition of entitlements such as weekly rest and annual holidays;

– payment by the party requesting the work for travel undertaken by the worker in order to carry out the work;

– absence of financial risk for the worker.

D. V. Sychov analyses the theoretical and sectoral developments concerning the nature and content of the legal relationship to distinguish the most important features of an individual employment relationship: (a) a bilateral volitional relation exists between the worker and the employer or his authorized body; (b) it is of legal nature because it is governed by labour law; (c) a voluntary volitional relation arises as a result of an employment contract; (d) individual

employment relationships are a form, consequence or condition of actual individual employment relationships; (e) the conclusion of an employment contract has the effects of arising reciprocal rights and obligations for the parties to an individual employment relationship, under which the worker undertakes to perform a specific work function, in compliance with internal labour regulations, and the employer shall pay for his/her work and create conditions for worker's efficient performance [1].

The will of the employee and the employer as participants in the employment relationship is realized through the exercise and fulfilment of their reciprocal rights and obligations. O. V. Smirnov argues that establishment of employment relations is regulation of the effective worker's performance, on the one hand, and the organization on whose behalf the administration acts, on the other. This activity concerns various aspects of relations in the field of labour: workers' performance of a specific labour function, remuneration for the results of their work, provision of normal conditions for work by the administration, etc. [2]. In this case, subjective labour law and the corresponding obligation form a legal link between the authorized and obliged parties to the employment contract. According to A. R. Matsuk, the basis of the worker's duty to perform a specific job function, which is the main content of individual labour relations, is industrial relations in the social division of labour, which are reflected in assigning workers to various fields of its application. Whereas, the employer's obligation to pay for the work according to its quantity and quality is based on industrial distribution, which is the opposite of production and is a form of labour reproduction. The link of the basic fundamental rights and obligations of the worker and

[1] Sychov, D. V. *Legal regulation of individual labour relationship.* Ph.D.'s thesis. National University of Internal Affairs. Kh., 2005. 182 p.

[2] Smirnov, O. V. (Ed.). *Labour Law*. M.: Prospect, 1997. 448 p.

the employer, i.e. the performance of a labour function in compliance with the internal labour regulations and remuneration with the provision of proper conditions, is the main employment relationship that determines the content of individual labour relationships [1].

Under formation of an innovative society and globalization of the world economy, the issue of establishing and ensuring basic labour rights with all signs of social and other fundamental rights of the individual, is of special relevancy. At the same time, they also have signs of legal identity. E. V. Krasnov argues that labour rights are less universal and apply only to subjects of individual and collective labour relationships. Their realization depends on the level of economic development of the State and is connected with fulfilling by the latter certain obligations in the field of social policy [2]. According to the contest, basic labour rights can be classified as providing and regulating working conditions, protective procedures, vocational guidance and training, public obligations regarding work and employment, equality of rights and opportunities, prohibition of discrimination and forced labour, social dialogue.

The central idea of objective law is the recognition that a person, as a subject of social activity, possesses individual freedom through the legitimization of the legal remedies of realizing his/her essential abilities, inclinations and needs, expressed mainly in his/her subjective rights, as well as in other legal options. Subjective law forms an energetic nodal ideological centre, a pole, or in other words, a layer of legal matter and naturally serves as a source of law in general. In legal life, according to M. I. Matuzov, it determines the type and extent of behaviour of subjects, empowers them to

[1] Matsiuk, A. R. *Labour relations of a developed socialist society.* K.: Naukova dumka, 1984. 280 p.

[2] Krasnov, Ye. V. *Basic labour rights: International standards and legislation of Ukraine*. Odessa National Law Academy. O., 2008. 206 p.

gain certain social benefits and enjoy them, is a prerequisite for personal freedom of the individual, serves as a form of mediating the most important interests of citizens, a means of satisfying their material and spiritual needs, promotes the development and improvement of the individual, enhances his/her social and legal activity, provides a combination of individual, collective and public interests, is a legal expression of the relationship between the State and the individual, a means of implementing legal rules in specific and general legal relations[1]. Ye. M. Chernykh argues that performing important functions in society, subjective law is a key element of the mechanism of legal regulation, the largest and most important classification system of the law system, the most secured and guaranteed form of legal freedom, a legal remedy of access to and enjoyment of all social goods[2].

Subjective labour law is a measure of possible behaviour, provided for the authorized subject of labour law in order to satisfy his/her interests ensured by the legal duties of other subjects of this law[3]. In other words, subjective law has an inherently binding nature, which is expressed not only in giving a person legal capacity but also in compelling him/her to behave properly.

Similar to other subjects of labour law, the employee has own rights. Article 2 "Fundamental Labour Rights of Workers" of the Labour Code of Ukraine[4] primarily recognizes and establishes the right of citizens of Ukraine

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[1] Matuzov, N. I. *Legal system and personality*. Saratov: Saratov University, 1987. 294 p.

[2] Chernykh, Ye. M. *Objective and subjective law: Theoretical and legal aspects of correlation.* Ph.D.'s thesis. Kyiv National University of Internal Affairs. K., 2008. 235 p.

[3] Prylypko, S. M., Yaroshenko, O. M., Zhyhalkin, I. P. et al. *Labour Law of Ukraine*. 5th ed. Kh.: Pravo, 2014. 760 p.

[4] Labour Code of Ukraine approved by Law of the USSR No. 322-VIII of 10 December 1971. *Vidomosti Verkhovnoi Rady of the USSR*, no. 50 (Appendix). 1971. Art. 375.

to work, that is, to receive work with remuneration not less than the minimum established by the State, including the right to free choice of profession, occupation and work. These rights are guaranteed by the State. According to this article, workers also have the right: to rest in accordance with the laws on working day and week restriction and annual paid vacations, to healthy and safe working conditions, to trade unions and to the resolution of collective labour conflicts (disputes) in statutory procedure, to participation in the management of an enterprise, institution or organization, to financial support in the old-age social security procedure, as well as in cases of sickness, total or partial disability, to financial assistance in case of unemployment, to appeals to court to resolve labour disputes, regardless of the nature of the work performed or the position held, except in cases provided for by law and other rights established by law.

Moreover, an extended approach to the issue under consideration is observed in Art. 21 of the draft LC of Ukraine (registration No. 1658, text of December 27, 2014)[1], where the basic rights include the right of a worker:

– to the work he/she freely chooses or to which he/she freely agrees, and to the termination of employment relationship;

– to equal opportunities and equal treatment of him/her in resolving the issue of employment, to equal work for equal pay, professional growth or dismissal;

– to respect for his dignity and honour, confidentiality of personal information and its protection;

– to unemployment protection, vocational training, retraining and advanced training;

– to special protection for underage persons against physical and moral risk in connection with employment relationship;

[1] Draft Labour Code of Ukraine (Registration No. 1658 of 27 December 2014). http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511 = 53221.

– to special maternity protection for working women;

– to labour rehabilitation and professional adaptation for disabled persons;

– to protection of labour rights for migrant workers;

– to protection for workers with family responsibilities against discrimination and to reconciliation, insofar as possible, of their work with family responsibilities;

– to adequate, safe and healthy working conditions, including the right to receive information on working conditions and occupational safety requirements, as well as the right to withdraw from work in conditions that do not meet the safety requirements;

– to a fair remuneration not lower than the minimum wage established by law, and its timely payment in full;

– to proper working and living conditions, related to the performance of the worker's obligations under the employment contract;

– to State guarantees and compensations provided by this Code, laws and other legal regulations in the field of labour;

– to compulsory state social insurance;

– to rest;

– to request of observance by the employer of the conditions of labour law, collective and employment contracts;

– to trade unions;

– to participation in collective negotiating;

– to strike;

– to compensation for damage to health or property in connection with the performance of work duties;

– to protection against unlawful discharge;

– to protection of their labour rights, including in court.

Considering the topic of the study, the employee's work duties will be under special focus.

According to H. Grotius, natural law requires an individual to comply with the principle of "treaty compliance" as a basis

for the existence of a proper order of mutual obligations between people. In any case, from this perspective, a duty is necessary because advice or other non-binding instructions do not deserve the title of "law" or "right" [1].

Describing interrelation between the State and the individual will of the citizen, J.-J. Rousseau argues that duty and benefit encourage equally both parties to help each other. The philosopher recognises the use of human rights by a person without proper performance of public duties as the cause of the destruction of a political organism. Consequently, the need for a coercive moment in the relationship between the State and the citizen arises [2]. Therefore, the thinker interprets duty as a guarantee of the existence of the individual's rights and freedoms, because the rights, freedoms and obligations cannot exist separately, since it is impossible for one person to have only rights and the other only duties.

In the dogmatic doctrine, the categories "legal obligation" and "subjective law" are regarded as correlative. Furthermore, this connection makes some experts to recognise the obligation not only as a necessary companion of legal capacity, but also as a justification and even a reason for the existence of the latter, while a subjective right takes place only if the subjective obligation corresponds to it. Analytically the concept of "subjective law" is explained as a mere reflection of a duty where law is merely a reflection of the latter. According to H. Kelsen, the reflexive right of one is only the duty of another [3].

On the one hand, obligation as a concept is general in nature, because it sets out requirements that have the same meaning

[1] Grotius, H. *On the Law of War and Peace. Three books explaining natural law and the law of peoples, as well as the principles of Public Law.* M.: Ladomir, 1994. 848 p.

[2] Rousseau, J.-J. *On a social contract, or Principles of political law.* M.: Politizdat, 1969.

[3] Kelsen, H. *Pure Theory of Law*. K.: University, 2004. 496 p.

for most people and, on the other, more specific, because it reveals the content of the actions envisaged, indicating what the person should do, and what to refrain from.

The legal duties of the individual are a requirement established and guaranteed by law in regard to the individual's behaviour. They (as well as rights) are a necessary means by which legal impact on social relations is exercised. Neither right nor obligation exists alone. A person can enjoy any right only if it is respected and complied by others. In regard to the priority between rights and obligations, we prefer the former, since the internal logic of the construction of legal matter is mainly subordinated to subjective rights, which at the level of the abstract idea of law is, by its very definition, an active nodal centre of its own legal content.

S. P. Kotaleichuk characterises a legal duty that: (a) determines the extent of the individual's necessary behaviour in the form of retention or performance, (b) is conditioned by the needs of the existence and development of the subjects of law, (c) is a way of ensuring rights of the individual, (d) has a specific form of expression of legal responsibility[1].

Therefore, we consider that work duties of an employee as a party to the employment relationship is a system of requirements established by legislative and local regulations in the field of work regarding certain behaviour of a worker during his/her performance under an employment contract, which is caused by the interests of the employer and guaranteed by possible legal coercion application by the State.

These responsibilities are a complex legal phenomenon that has a specific system.

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[1] Kotaleichuk, S. P. *Theoretical and legal issues of underage persons' legal status in Ukraine and ensuring its realization as one of the main areas of police activity.* Ph.D.'s thesis. National Academy of Internal Affairs. K., 2004. 235 p.

A systematic approach to them should be discussed as the only area in the development of modern scientific knowledge. The main reason for this is that all the research carried out under this approach is in one way or another aimed at examining the specific characteristics of complex objects, that is, systems. Taking into account the basic principles of the general theory of systems, V. Kovalskyi argues that any object should be considered as conforming to the requirements of the system, which: contains interrelated and interacting structural elements (developed structure), has relative independence compared to other social objects (developed organization), internal integrity (developed core of the system), etc.[1]. A systematic approach to the legal duties of the worker enables to identify properly their place in the legal status of this subject of labour law.

The main specificities of a system distinguished by law study include: (a) integrity, that is, the primacy of the whole in relation to parts; (b) structural properties, that is, possible decomposition of the structure into components, establishment of relations between them; (c) non-additivity, that is, the fundamental impossibility of reducing the properties of the system to the sum of the properties of its components; (d) hierarchy, that is, each of its components is a subsystem of the wider global system[2].

The system of employees' work duties includes:

1. General work duties for all, without exception, workers, no matter their legal form, ownership, sectoral affiliation, subordination and other characteristics of the employers requesting the work under the terms of an employment contract.

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[1] Kovalskyi, V. Security function of the State as a system. *Yurydychna Ukraina*, no. 11, 2003: 26–30.

[2] Tzurikov, M. O. *The system of transactions subject to public registration*. Ph.D.'s thesis. Yaroslav Mudryi National Law University. Kh., 2011. 223 p.

Article 3 of the Labour Code of Ukraine provides that the labour relationships of employees of all enterprises, institutions and organizations, regardless of ownership, type of activity and sectoral affiliation, as well as persons who work under an employment contract with natural persons, are regulated by the labour legislation. We advocate the perspective of L. Sirovatskaya that in modern labour law, the obligation to perform all work duties, and therefore the rules of law that provide them for, is formulated in the form of an obligation to observe labour discipline [1]. Therefore, Chapter X "Labour Discipline" of the Labour Code of Ukraine should include Article 139 "Worker Duties". According to its provisions, employees are obliged to work honestly and fairly, in a timely and exact manner, to obey the owner or his authorized body, to observe labour and technological discipline, the requirements of the legal regulations on labour protection, to treat properly the property of the owner, with whom an employment contract is concluded.

Another approach is found in Art. 22 of the previously mentioned draft LC of Ukraine, which is included in Chapter 3 "The Subjects of Labour Relations" of Section 1 "General Terms." The article describes the basic duties of the worker:

– personal and honest performance of duties under an employment contract;

– observance of labour discipline and rules of internal labour order;

– fulfilment of the established labour standards and tasks of the employer;

– compliance with labour protection standards;

– proper custody of the employer's property;

– immediate notification of the employer about the threat to the life or health of workers, to their property;

[1] Syrovatskaya, L. A. *Responsibility for violation of labour legislation*. M.: Yurid. lit., 1990.175 p.

– notification of the employer about the reasons for absence from work;

– respect for the honour, dignity and other personal non-proprietary rights of the employer;

– compensation for the damage caused to the property of the employer by the acts of guilty while performing work duties;

– non-disclosure of State or trade secrets and other legally protected information.

2. Specific industrial work duties of workers engaged in work activities in enterprises, institutions and organizations that perform a certain type of economic activity in the field of tangible or intangible production.

Article 260 of the Economic Code of Ukraine[1] interprets the term "sector" as the set of all production units performing mainly the same or similar economic activities. The field of material production includes sectors characterized by business activities aimed at creation, restoration or finding material benefits (goods, energy, natural resources) and continuation of production in turnover sector (sales) by transportation, storage, sorting and packing of goods, or other activity types. All other activities make the field of non-material production (non-production sector).

General classification of economic sectors contributes a part of the uniform system of classification and encoding of technical-economic and statistical data used by economic entities and other participants of economic relations, as well as public bodies and local self-government authorities in the process of managing economic activity. In 1999 the United Nations Statistical Commission revised the International Standard Industrial Classification of All Economic Activities. It was initiated in connection with the rapid development

[1] Economic Code of Ukraine (approved by Law of Ukraine no. 436-IV of 16 January 2003). *Vidomosti Verkhovnoi Rady Ukrainy*. 2003. No. 18–22. Art. 144.

of technologies, especially in the field of information and telecommunication activities, the occurrence of new company specialization types, the division of labour, new conceptual approaches to differentiate professional and administrative services. Moreover, an increase in demand for more complete and meaningful information in some sectors of particular interest to international organizations in the implementation of international programs and public policies, such as environmental programs, the provision of drinking water, and human health etc. was considered.

In Ukraine, the Classification of Economic Activities, approved by the Order of the State Committee of Ukraine for Technical Regulation and Consumer Policy no. 457 of October 11, 2010 is in force[1]. Its objects are the types of economic activity of legal entities, separate subdivisions of the latter and individual entrepreneurs. Economic activity refers to the process of production of goods and services, carried out using certain resources, such as raw materials, equipment, labour, technological processes, etc. (section 2 of the Methodological provisions for determining the main type of economic activity of the enterprise, approved by the Order of the State Statistics Committee of Ukraine No. 607 of December 14, 2006[2]). Therefore, it should be emphasized that this activity is characterized by the production cost, process, outputs (goods and services) and is classified according to these factors.

Due to the fact that the enterprise can carry out not one, but several types of different economic activities, for their differentiation (grouping) the basic, secondary and auxiliary

[1] Classification of Economic Activities DK 009:2010. (Approved by the Order of the State Committee of Ukraine for Technical Regulation and Consumer Policy No. 457 of 11 October 2010). http://search.ligazakon.ua/l_doc2.nsf/link1/FIN19567.html.

[2] Order of the State Statistics Committee of Ukraine on approval of methodological provisions for determining the main type of economic activity of the enterprise No. 607 of 14 December 2006. http://search.ligazakon.ua/l_doc2.nsf/link1/FIN25473.html.

types of activity are established. The basic economic activity of the enterprise is the largest contribution to gross value added. A secondary type of economic activity is any other type of economic activity of the enterprise (except the basic one) for manufacturing products, goods or providing services. For example, international statistics usually studies a secondary type of economic activity, provided that the volume of such activity is more than 10% of the total indicators of activity of the enterprise, or at least 5% of the total activity in the corresponding type of economic activity in the region. Auxiliary economic activities are activities that are used by the enterprise for the purpose of providing its basic and secondary economic activities. An activity is auxiliary if it is: a) aimed at providing services or producing intermediate goods that are not part of the end products of the enterprise; b) associated with the current costs of the enterprise, that is, does not lead to the formation of fixed capital; c) aimed at servicing only the enterprise, that is, products, goods and services produced as a result of this activity are not marketed; d) typical of such enterprises. Auxiliary activities include management, accounting, transportation, warehousing, purchasing, sales, repairs, maintenance etc. The typical auxiliary activities are: own transportation services; storage, purchase of own production; accounting, administrative and economic activity. The classification of economic activities enables to conclude that each of these activities determines the specifics of legal activity in the corresponding field of economy, the specific of rules of law, as well as sectors of law.

The second level of the worker's legal duties is formed depending on the economic sector of their employment. This is reflected in the current legislation.

For example, according to the Article 56 of Law of Ukraine on Education[1] pedagogical and scientific-pedagogical

[1] Law of the USSR on Education No. 1060-XII of May 23, 1991, *Vidomosti Verkhovnoi Rady of the USSR*, no. 34, 1991. Art. 451.

employees shall be required: to raise constantly their proficiency level, pedagogical skills and general culture; to provide conditions for mastering by pupils, apprentices, students, cadets, attendees, probationers, clinical interns, postgraduates of training programs at the level of compulsory requirements as per the contents, level and volume of education, to cause the development of abilities of children, pupils, students; by instructing and personal example to strengthen the respect to human morality principles: truth, justice, devotion, patriotism, humanism, kindness, tolerance, diligence, reasonableness and other virtues; to train children and young people to respect parents, women, elderly people, national traditions and customs, national, historical and cultural values of Ukraine, its government and social system, proper custody of historical, cultural and natural environment of the country; to prepare pupils and students to intelligent life in the sense of mutual understanding, peace, consent between all the nations, ethnic, national and religious groups; to observe pedagogical ethics, morality, to respect the dignity of a child, pupil, student; to protect children and young people from any form of physical or psychological violence, to prevent them from abusing alcohol, drugs and other bad habits. This approach is detailed in the special educational legislation. For example, Art. 58 of the Law of Ukraine "On Higher Education"[1] requires academic teaching, academic, and teaching staff of higher educational institutions: to provide teaching at the high scientific-theoretical and methodological level of the disciplines of the corresponding educational program in the specialty, to carry out scientific activity (for academic teaching staff); to raise proficiency level, pedagogical skills and scientific qualification; to observe pedagogical ethics, morality, to respect the dignity of individuals, who

[1] Law of Ukraine on Higher Education No. 1556-VII of 1 July 2014. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 37-38, 2014. Art. 2004.

study in higher educational institutions, to promote a love for Ukraine, to nurture them in the spirit of Ukrainian patriotism and respect for the Constitution of Ukraine and the national symbols of Ukraine; to develop autonomy, initiative, creativity in persons studying at higher education institutions; to adhere to the statute of higher education institution, laws, other legal regulations.

Article 10 of the Law of Ukraine on public service[1] requires a public servant: to adhere to the Constitution and laws of Ukraine; to ensure efficient work and performance of tasks of public bodies within their competence; to prevent violations of human and citizen's rights and freedoms; to fulfil directly their duties, to execute timely and accurately decisions of public bodies or officials, orders and instructions of their managers; to preserve State secrets, information about citizens that they have become aware of in the course of performing public service duties, as well as other information which is not subject to disclosure under the law; to improve constantly his/her work arrangements and professional competence level; scrupulously perform his/her work duties, initiative and creativity. Moreover, the official must act within his/her authority. In case of receipt of an order that is contrary to the current legislation, a public servant is obliged to report immediately in writing to the official who has given the order, and in case of insisting on its execution, to report to the higher official.

3. Direct production and functional work duties are the duties assigned to the worker within the scope of the employment function by the employer in accordance with the employment contract concluded between them.

In each employment contract, its parties must specify a number of mandatory conditions, including the worker's job function. V. I. Shcherbyna concludes that the establishment

[1] Law of Ukraine on Public service No. 3723-XII of 16 December 1993. *Vidomosti Verkhovnoi Rady Ukrainy*, no.52, 1993. Art. 490.

of a worker's job function is a specification of the type of work with respect to his/her ability to work [1]. Determination of the job function is one of the main pillars of the concept of the employment contract. An important axiom, reflected in Art. 31 of the Labour Code of Ukraine, derives from it, in particular: "The owner or the body authorized by him has no right to request the worker's performance of work not stipulated in the employment contract." Otherwise, it is a forced labour, which according to Part 3 of Art. 43 of the Constitution of Ukraine is prohibited in our country.

V. V. Zhernakov and V. V. Eremenko advocate that the worker's job function should be considered in 2 basic statuses:

a) static, that is, the direct agreement of the parties to the employment contract on the nature of the work assigned to the employee, that is, a set of rights and obligations, agreed by the parties, to ensure the performance of work in a specific specialty, qualification or position. Since the conclusion of the employment contract, the labour function is formed, it exists, but its implementation will be carried out only in the course of the work, and may not begin at all, for example, if the employee does not start work;

b) dynamic, that is, the practical implementation of the established rights and obligations of the parties to ensure the performance of work in the course of labour relations [2].

The consolidation of direct work duties of employees is in the local acts of the enterprise, in particular job descriptions. For example, according to the Standard job description of the chief media relations specialist (spokesperson), approved by the Order of the State Judicial Administration of Ukraine

[1] Inshyn, M. I., Shcherbyna, V. I. (Eds.) *Labour Law*. Kh.: Nika Nova, 2012. 560 p.

[2] Zhernakov, V. V., Eremenko, V. V. On the concept and content of the labour function. In *Issues of firming social legality and the rule of law, strengthening the protection of the rights and legitimate interests of citizens in the context of restructuring socialistic society*. K.: UMK VO. 1989: 61–65.

No. 145[1] of 6 November 2013, this specialist: coordinates the process of developing a communication strategy of the court in order to build effective relationships with the target audience of the court, to raise awareness of the court; analyses the target audience of the court, studies public opinion in order to solve communicative problems; ensures the development of information links between the court and court visitors, public authorities, enterprises, institutions and organizations, the media, promotes the formation of objective public opinion about the activities of the court; provides, within competence, preparing press releases, booklets, brochures, materials for press conferences, briefings, audio-visual presentations regarding court activities using computer technology, periodicals; provides information content of the court's website and analyses the effectiveness of this work; participates in preparing responses to media inquiries, materials aimed at refuting publications that contain inaccurate information, provides prompt response to inquiries and critical publications, reports; participates in preparing responses to citizens' appeals and considering requests for information, under the competence; studies materials and prepares draft texts of articles for publication in national, regional and local print media, as well as Internet resources and draft reports, certificates and other materials for speeches of court senior officials; coordinates interviews with judges and court staff with regards to court activities, arrangements of proceedings; prepares and submits to court senior officials a selection of information materials on the activities of the judiciary, express analysis (digests) of media materials; sends to the media press releases and copies of official documents, announcements of events and activities, programs and plans of the court with the prior consent

[1] Order of the State Judicial Administration on approval of the standard job description of chief media relation specialist (spokesperson) No. 145 of 06 November 2013. http://dsa.court.gov.ua/dsa/ 14/4564563khgkjgg/.

of the court senior officials; develops, in agreement with the court senior officials, action plans for prompt informing the public and the media regarding the consideration of high-profile court cases; participates in preparing and holding press conferences, briefings, in organizing thematic meetings on court activities; organizes methodological assistance to employees of the court staff on the application of information laws; accredits media representatives in court during court proceedings; monitors publications in the media on the activities of courts of general jurisdiction, comments on cases that have been considered in the courts; coordinates the media representatives' availability in court proceedings; analyses and summarizes the experience of the court's interaction with the public and the media; constantly increases the level of his/her professional competence; performs other instructions of the court management.

Therefore, the results of a comprehensive study in this subsection enable to make conclusions of significant theoretical and applied significance.

1. Characterizing labour law in general, not only the role of labour in public life, but also the significant specifics of this sector of law should be considered. It derives from the specificities of the object of legal regulation. Such an object is labour, namely the activity of a person who realizes his ability to work, that is labour.

In connection with the right to work, a person acquires the legal status of "worker". The latter is a natural person who works under an employment contract at an enterprise, institution or organization, regardless of their form of ownership and type of activity, or a natural person who, in accordance with the law, employs. It is the worker who is the bearer of labour, while labour relationships are the legal mediation of his/her labour activity.

2. Due to the lack of clarity and coherence in legal regulation, employees often find themselves in a certain legal

vacuum. In turn, the social and legal insecurity of workers does not contribute to their being interested in the results of their work and the stability of labour relationship. Under modern conditions, the labour legislation of Ukraine faces a challenge of providing legal conditions required to achieve a balance of interests of the parties to the employment contract, economic growth, improving production efficiency and welfare. These goals can be achieved only in case of a high internal organization of the labour law system, as well as the integrity and consistency of the regulatory framework.

3. The will of the worker and the employer as participants in the employment relationship is realized by fulfilling their reciprocal rights and obligations. The establishment of these legal relations means the regulation of the worker's performance, on the one hand, and the employer, on the other.

Legal duties of a person, as well as rights, are necessary means by which legal influence on public relations is exerted.

Legal duties of a person, as well as rights, are necessary means of legal influence on public relations. Neither law nor duty exists without each other. A person can enjoy any right only if it is respected and adhered by others. With regards to the priority between rights and responsibilities, we prefer the former, because the internal logic of the legal matter construction is subordinated mainly to subjective rights, which at the level of the abstract idea of law, are by definition an active nodal centre of its own legal content.

Work duties of the worker as a party to the employment relationship is a system of requirements defined by legislative and local acts in the field of labour regarding specified behaviour of the employee in the course of the work under the employment contract, due to the interests of the employer and state-guaranteed coercive measures.

4. The system of work duties of employees includes:

a) general work duties for all without exception, employees, regardless of the legal status, ownership, industry affiliation, subordination and other features of employers for whom they work under an employment contract;

b) special sectoral ones for workers employed in enterprises, institutions and organizations engaged in a particular type of economic activity in the sectors of tangible or intangible production;

c) direct production and functional ones for the worker within his/her employment function by the employer in accordance with the employment contract concluded between them.

1.2. Definition and Significant Features of the Concept "Gross Breach of Work Duties"

Though the current labour legislation of Ukraine actively uses the construction "of work duties", it does not provide its normative definition. Only paragraph 27 of the Resolution of the Plenum of the Supreme Court of Ukraine "On the practice of consideration of labour disputes by courts" No. 9 of November 6, 1992 [1] provides for that the court consideration of whether a breach of work duties is gross, should proceed on the basis of (a) the nature of the misdemeanour, (b) the circumstances under which it has been committed and (c) the damage that has been caused (could have been caused). Moreover, according to O. F. Cherdantsev, "definition is a form of concepts. They enable the legal study achieves conceptual accuracy [2].

[1] The Resolution of the Plenum of the Supreme Court of Ukraine on the practice of consideration of labour disputes by courts: No. 9 of 06 November 1992. *Biuleten zakonodavstva i yuridicheskoi praktiki Ukrainy*, no. 2, 2006. P. 154.

[2] Cherdantsev, A. F. *Logic-linguistic phenomena in jurisprudence*. M.: Norma: INFRA-M, 2012. 320 p.

The existence of legal definitions in general and their subsequent legalisation (from the Latin definitio "a concise logical definition that contains the most essential features of the denoted concept" [1]), is one of the features of legislative technique.

The expediency of legal definitions is promotion of the effective implementation of legal provisions, the implementation of the principles of legal certainty, the legal system stability. The principle of certainty, accuracy, clarity of the legal provision is a guarantee of the rule of law, because if each member of society understands his/her rights and responsibilities, he/she has a certain freedom of action and decision within the legal space.

According to Yu. A. Ushakova, to formulate a concept is to single out, to emphasize its most essential features, typical for all situations without exception, the essence that should be defined. Individual features should not be in the definition. Legal interpretation of the concept is a difficult task. While it is possible to realise clearly what it means, the definition will be unsuccessful. It is much easier to describe a specific concept of law than to interpret it universally [2]. V. B. Dresviankin argues that although the definition indicates the most common essential features of the subject and does not give an absolute idea of it, but it should not allow mixing of different concepts, and it should provoce logical thinking, allow to distinguish the subject under consideration, to clarify the meaning of a term already introduced into science, etc. [3].

Therefore, before formulating the definition of the category "gross breach of work duties," the following

[1] Apt, L. F. *Legal definitions in the legislation.* In Problems of legal technics. V. M. Baranova (Ed.). Nizhny Novgorod, 2000: 301–315.

[2] Ushakova, Yu. A. *Concept, content and forms of ownership.* Ph.D.'s thesis. I. Franko Lviv National University. Lviv, 2011. 224 p.

[3] Dresviankin, V. B. *Gaps in the Russian labour law.* Ph.D.'s thesis. Perm State University, Perm, 2001.163 p.

essential features of this phenomenon should be identified and described.

1. This breach has caused or could have caused significant material or moral damage to the rights and interests of workers, employers or the State. The legal doctrine recognises damage as a set of negative effects of the offense. Therefore, any breach of the law causes one or another damage to public relations, because without it there is no offense. Damage is also a social phenomenon, i.e. the result of the offense against public relations, an effect of the breach of legally protected rights and interests of the State, organization or citizen [1]. The law regulation of any action or inaction as an offense is its recognition as socially dangerous. In reality, no such offenses exist that cause no harm to public relations. Otherwise, according to V. E. Sevriugin, the existence of an offense in state and public life would not cause any concern in society about the normal conditions of existence of the latter. Therefore, the State would not need a developed system of law enforcement institutions. The presence of an offense in the law-making mechanism is a sign of social damage that requires the occurrence of legal prohibitions [2].

N. S. Malein argues that the social essence of damage is in a set of negative effects of the offense, which are: (a) breach of law and order, (b) disorganization of social relations and humiliation of individuals, (c) destruction of any good, value, subjective right, (d) restriction of their use, (e) unlawful interference with the freedom of conduct of other individuals [3]. In this case, it is a combination

[1] Malein, N. S. *Compensation for damage caused to a person.* M.: Yurid. lit., 1965. 228 p.

[2] Sevriugin, V. E. *The concept of an offense under administrative law.* M.: Gosyurizdat, 1988. 216 p.

[3] Malein, N. S. Delinquency: *Concept, reasons, responsibility.* M.: Yurid. lit., 1985. 192 p.

of social and legal aspects, because every breach of social norms has a negative impact on social relations, i.e. causes social damage. As a result, unlawful actions breach both the rules of objective law and the subjective rights of the individual.

Gross breach of labour duties (as well as any other unlawful behaviour of the worker) causes or can cause damage both pecuniary and non-pecuniary. Such damage is significant. Gross breaches can be: (a) financial or tax breaches, (b) irrational disposal of property, (c) organization of significant material damage, etc. Moreover, an example of such a situation is a significant breach of the requirements of labour protection legislation by the head of the enterprise, institution or organization (suboffice, representative office, branch, other separate division), his deputies. In addition, this is natural, because Art. 4 of the Law of Ukraine "On labour protection"[1] provides for that the key principle for the national policy in the field of labour protection is the priority of life and health of workers, full responsibility of the employer for creating proper, safe and healthy working conditions. Guarantees of safe and healthy working conditions, prevention of occupational diseases and occupational injuries, elimination of harmful production factors are the priority tasks of the State. The legal nature of labour protection is based on the recognition by the State of its obligation to protect the employee as the weakest party to the employment contract in order to preserve his/her life, health and ability to work.

D. O. Karpenko classifies legal and economic significance of labour protection. The legal one is provided by the legal regulations on labour protection that enable: a) to work according to abilities (taking into account working conditions, physiological features of working women, underage persons,

[1] Law of Ukraine on labour protection No. 2694-XII: of 14.10.1992. *Vidomosti Verkhovnoi Rady Ukrainy*. 1992. No. 49. P. 668.

persons with reduced working capacity, etc.); b) to determine the legal status of the worker, including the right to labour protection, guarantees and safety; c) to approve labour protection as an important element of the worker's labour relations with the employer (administration) in ensuring labour protection at the workplace. The economic significance is in the processes as follows: a) reduction of working time losses and savings of the social insurance fund, because proper labour protection ensures fewer occupational injuries, occupational diseases, etc.; b) increase in the productivity of workers, and the growth of production and economic development [1].

The State requires the employer to create working conditions at the workplace in each structural unit in accordance with regulations, as well as to ensure compliance with the provisions of laws on workers' rights and protection of their labour. To this end, the employer ensures the functioning of the labour protection management system, namely:

– creates appropriate services and appoints officials who solve specific issues of labour protection, approves instructions on their duties, rights and responsibilities for the performance of their functions, as well as monitors their compliance; with the participation of the parties to the collective agreement, develops and implements comprehensive measures to achieve the standards established and to increase the existing level of labour protection;

– ensures the implementation of preventive measures required in accordance with changing circumstances;

– initiates advanced technologies and achievements of science and technology, means of mechanization and automation of production, ergonomics requirements, positive experience in labour protection, etc.;

[1] Karpenko, D. O. *Fundamentals of Labour Law*. K.: A.S.K., 2003. 656 p.

– provides proper maintenance of buildings and structures, production equipment and facilities, monitoring of their technical condition;

– ensures the elimination of the causes that lead to accidents, occupational diseases, and the implementation of preventive measures determined by the commissions following the investigation of the causes of these cases;

– organizes the audit of labour protection, laboratory studies of its conditions, assessment of the technical condition of production equipment and facilities, certification of workplaces for compliance with regulations on labour protection and accordingly, takes measures to eliminate production factors that are dangerous and harmful to health;

– develops and approves regulations, instructions, other acts on labour protection effective within the enterprise and establishes rules of performance and behaviour of workers in the territory of the enterprise, in production rooms, on construction sites, workplaces according to regulations on labour protection, provides workers free of charge with legal regulations and acts of the enterprise on labour protection;

– monitors the worker's compliance with technological processes, rules of handling machines, mechanisms, equipment and other means of production, the use of collective and individual protection, the work performance in accordance with the requirements of labour protection;

– organizes the promotion of safe labour methods and cooperation with workers in the field of labour protection;

– takes urgent measures of aid to victims, if necessary, involves professional rescue teams in case of accidents or emergencies at the enterprise.

Therefore, the concept of labour protection includes provisions: (a) on the rules of safety and industrial sanitation, (b) on the planning and organization of labour protection, (c) on labour protection of certain categories of workers,

(d) governing the activities of public authorities and other subjects on supervision and control of labour protection.

For the breach of laws and other legal regulations on labour protection, for obstruction of the activities of officials of labour protection public supervision, as well as representatives of trade unions, their organizations and associations, the offenders are subject to disciplinary, administrative, material or criminal liability under the law. Although many of these provisions go beyond labour law, they are to ensure healthy and safe working conditions. For example: a) the civil law provisions are applied in determining material or moral liability in case of accidents at work; b) administrative – in establishing the procedure and conditions for the application of administrative penalties for a breach of labour protection rules; c) economic – in deciding on additional measures in the field of labour protection in individual types of economic activity; d) criminal – in establishing liability for a breach of norms on labour protection; e) constitutional – in the presence of the provisions in the Constitution of Ukraine as a regulation of direct action, guaranteeing the right to labour protection; f) environmental law – in defining the boundaries of anthropogenic impact on the environment [1].

However, not every breach of the requirements of labour protection laws is gross. For example, such breach is the case of the head of the enterprise's disregard of the job certification under working conditions, i.e. a comprehensive assessment of factors of the production environment and labour process, related socio-economic factors that affect the health and efficiency of workers in the course of their performance. In accordance with the Procedure for attestation of workplaces under working conditions, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 442 of 01 August

[1] Obushenko, O. M. *Legal regulation of labour protection in Ukraine*. K.: Hi-Tech Press, 2014. 372 p.

1992[1], and Methodical recommendations for attestation of workplaces under working conditions, approved by the Resolution of the Ministry of Labour of Ukraine No. 413 of 1 September 1992[2], the main purpose of this measure is to regulate the relationship between the owner or his authorized body and workers regarding the exercise of the rights to healthy and safe working conditions, preferential pensions, benefits and compensation for work in adverse conditions, etc. The head of the enterprise or organization is in charge of timely and high-quality certification of jobs. Moreover, according to Part 1 of Art. 41 of the Code of Ukraine on Administrative Offenses[3], a breach of the terms and procedure for certification of jobs under working conditions entails the imposition of fines on officials of enterprises, institutions and organizations, regardless of ownership and on citizens, who are business entities, from 30 to 100 non-taxable minimum incomes. According to Part 2 of Art. 41 of the Code of Administrative Offenses, a breach of the requirements of laws and other legal regulations on labour protection entails the imposition of fines on workers from 4 to 10 non-taxable minimum incomes and officials of enterprises, institutions and organizations, regardless of ownership and citizens, who are business entities, from 20 to 40 non-taxable minimum incomes of citizens.

2. Gross breach of work duties is an evaluative concept. The evaluative character of this concept challenges law enforcers, as evidenced by case law. S. M. Chernous argues that these challenges are due to the specific logical and legal

[1] Resolution of the Cabinet of Ministers of Ukraine on the procedure for attestation of workplaces under working conditions No. 442 of 01 August 1992. http://zakon1.rada.gov.ua/laws/show/442–92-%D0%B.

[2] Methodical recommendations for attestation of workplaces under working conditions (approved by Resolution of Ministry of Labour of Ukraine No. 41 of 01 September 1992). *Ukr. Invest. Gas*. 2008. No. 28.

[3] Code of Ukraine on Administrative Offenses (approved by Law of Ukraine No. 8073-X of December 7, 1984). *Vidomosti Verkhovnoi Rady USSR*. No. 51. (Appendix). P. 1122.

properties of the evaluative concepts of law and are the issues of their specification, interpretation, creation and application of provisions that contain them[1]. Definitely, the presence of evaluative concepts in the legal provision enables the subject of law application to resolve a situation, partly by their own discretion. However, the different levels of legal awareness of law enforcers, as well as the possibility of abuse of the right granted to them, require deciding on the limits of such discretion, so that the breach thereof enables the party concerned to have a chance to revoke the decision. At the same time, both the shortage of law and the use of evaluative concepts are exceptions to rule-making techniques, one of the reasons for which is in the impossibility (including subjective order) to predict the change of relations regulated by the normative act. When formulating evaluative concepts, this impossibility is recognized as an objective reality by the legislator, as a result, an attempt is made to cover suitable cases with indefinite or partially defined wording.

According to V. V. Lazarev, formulating a provision with evaluative features, the legislator means it to be influenced by a certain group of social relations, but due to the variety of relevant cases, he cannot describe them accurately[2]. Indeed, the phenomenon under study is not a gap of law, but a conscious assumption of the possibility for the performer to act proactively, taking into account the conditions, place and time. Therefore, the phenomenon under study is not a gap of law, but a conscious assumption of the possibility for the executer to be proactive, taking into account the conditions, place and time. A gap means a lack of a legal provision that regulates the current situation and requires the involvement

[1] Chernous, S. M. *Evaluative concepts in Labor Law of Ukraine*. Ph.D.'s thesis. T. Shevchenko Kyiv National University. K., 2008. 212 p.

[2] Lazarev, V. V. *Application of Soviet law*. Kazan: Kazan University, 1972. 200 p.

of a provision of the same law sector (analogy of statute) or consideration of general legal principles (analogy of law).

M. I. Baru classifies evaluative concepts as a special way of expressing the will of the legislator for the convergence of law-making and law-application practice. The scholar identifies the following features of these categories: (a) not specified by the legislator or other competent authority, (b) specified in the process of law application, (c) enabling the enforcer of the law provision to freely assess the facts [1].

According to O. V. Kobzeva, the functions of evaluative concepts are: (a) evaluative function, (b) functions inherent in the use of evaluative features as an independent method of legislative technique, such as the function of saving legislative material, substitution, compromise, dialectical-prognostic, consolidating and regulatory; (c) auxiliary functions of evaluative features, such as the function of initiating the activities of higher judicial bodies and linguistic [2].

Evaluative terms play, so to speak, a "softening role" between the formal definition of legal regulation and evolving social relations.

First, S. M. Chernous formulated a definition of the construction "evaluative concept of labour law of Ukraine, interpreting this category as abstract idea of the properties, quality and value of phenomena, actions, persons, etc. that is used in the form of common words or phrases in the texts of labour law, characterizes any element of labour and closely associated relations and due to its logical features, is not specified fully and definitively in any legal regulation either by the legislator himself or by the subjects authorized by him, while finally it is specified by the

[1] Baru, M. I. Evaluative concepts in labor legislation. *Soviet State and Law*, no. 7, 1970: 104–108.

[2] Kobzeva, E. V. *Evaluative features in criminal law*. Saratov: SEI HVE Saratov State Acad. Law, 2004. 228 p.

subject in the course of applying the rule, which contains it in each case, determined by objective and subjective factors, resulting in individual under-regulation of labour relations [1].

O. A. Stepanova argues that evaluative concepts in labour law are characterized by logical, linguistic and legal features. The latter are: a) as a rule, the concept not specified in the legal regulation containing labour law provisions; b) the one specified in the course of law application, law-making or derived from scientific research; c) providing the subject of law-specifying activity with the opportunity to independently assess the facts of the case under mandatory compliance with the functional purpose of the regulatory requirement [2].

According to New Explanatory Dictionary of the Ukrainian Language, word "hrubyi" [Engl. gross, rough] has different meanings, such as (a) large in volume and cross-section; thick; (b) hard, rigid, with an uneven surface; (c) poorly equipped, decorated; very simple, without elegance; (d) low, often unpleasant to the ear, sharp; (e) bad-mannered, impolite, indifferent, unkind, rude, brutal; which contains an insult; (e) not quite accurate, approximate; (g) which goes beyond the basic rules, deserves condemnation, offensive [3]. S. I. Ozhegov and N. Yu. Shvedova interpret this term as: a) insufficiently cultural, non-delicate, insensitive, unsubtle; b) insufficiently processed, unsophisticated, simple; c) hard, unsmooth, uneven; d) bout the voice, laughter, that is, deaf, low, unpleasant; e) preliminary, approximate, not developed in detail; f) about a mistake, breach of something, that is,

[1] Chernous, S. M. *Evaluative concepts in Labor Law of Ukraine*. Ph.D.'s thesis. T. Shevchenko Kyiv National University. K., 2008. 212 p.

[2] Stepanova, E. A. *Evaluative concepts of Labor Law*. Ph.D.'s thesis. Rostov State Un-ty. Rostov, 2005. 187 p.

[3] New Explanatory Dictionary of the Ukrainian Language. – [У 3-х т. – Т. 3: А–К; – вид. 2-ге, виправл.] / уклад.: В. В. Яременко, А. М. Сліпушко. К.: Вид-во Аконіт, 2008. – 926 с.

serious, essential[1]. Therefore, the context of interest to the study is only in the variants, such as serious, important, which goes beyond the basic rules, deserves condemnation, offensive. However, these options lack clarity and certainty. Furthermore, the current labour legislation and law application lack clarity. Accordingly, the scope of the evaluative concept "gross breach of work duties" is not defined from the beginning.

Therefore, that the inclusion of evaluative concepts in the provisions of labour law should make the legal regulation of labour and associated relations in market conditions more flexible. However, to avoid the features of permissiveness due to this flexibility, it is necessary to outline the limits of the use of the relevant evaluative categories both in the legislation and in the practice of its application. The way to do this is specification, which in general is the provision of a particular object, phenomenon or process with maximum certainty and clarity. The main purpose of specification is to find a connection between the general legal rule and the circumstances of the actual reality. The interpreter should transfer the abstract content of legal provision to a more specific level, because after that the provision should become more meaningful. Specification is a special form that enables the abstract provision to become concrete, and therefore, its content becomes more accurate and clearer because of interpretation.

A significant contribution to the development of this phenomenon was made in the 70–80s of the twentieth century. M. M. Voplenko proposed to interpret the specification of law as a generic concept, which means the result of law-making or law application process, which reflects the maximum certainty and comprehensiveness of the meaning

[1] Ozhegov, S. I. *Explanatory dictionary of the Russian Language.* (80000 words and phraseological expressions; 4th ed). S. I. Ozhegov, N. Yu. Shvedova (Eds.) M.: Ltd A TEMP, 2006. 944 p.

of legal provisions, due to interpreting, detailing, clarifying or developing certain elements of provisions for the purpose of full and accurate legal regulation [1].

The study of the epistemological essence and logical mechanism of law specification enables G. G. Shmeleva to conclude that the category under consideration is lawful activities of State and other authorized bodies, objectively determined, aimed at improving the accuracy of legal regulation, in relation to transferring the abstract content of legal provisions to more specific level by determination, the results thereof are recorded in legal regulations [2].

The specification of legal provisions is similar to their interpretation. According to Yu. L. Vlasov, the essence of legal specification is the initiation of the law, which does not go beyond the content of the legal provision but contains a new element of detailing the regulation of social relations, not conveyed in this legal provision. The interpretation only clarifies, reveals, substantiates parts of the content of the legal provision, but no new elements of legal regulation are established [3].

S. V. Pryima advocates the idea of distinguishing these concepts, that is, the interpretation of legal provisions differs from their specification, because: (a) the interpretation is based on cognition, intellectual activity, while the core of specification is the narrowing of the scope of considering an individual rule, phenomenon, process; (b) the purpose of the interpretation is to reveal the content of the legal provision, while the specification is to increase its clarity and certainty; (c) the interpretation is broader in scope than the specification, since it includes not only description in details,

[1] Voplenko, N. N. *Official interpretation of provisions of law*. M.: Yurid. lit., 1976. 118 p.

[2] Shmeleva, G. G. *Specification of legal provisions in legal regulation.* Lvov: Higher school, 1988. 104 p.

[3] Vlasov, Yu. L. *Problems of interpretation of provisions law.* Extended abstract of Ph.D.'s thesis. ISL NAS of Ukraine. K., 2000. 17 p.

clarification of the legal provision, but also determination of the historical and social conditions of the legal regulation adoption, the purpose of its publication, functions and place in the legal system, etc., while the specification is only one of the means of interpreting legal provision; (d) the interpretation is an activity required for any legal regulation, the specification in general is also applied, but not always [1].

Therefore, in case of gross breach of work duties, the worker's wrongful acts cause or may cause significant pecuniary and non-pecuniary damage to the rights and interests of employees, the employer or the State.

In order to specify the evaluative concept under study, and therefore to facilitate the law application, it should be legislated that gross breach of work duties occurs in the cases when pecuniary damage caused by illegal behaviour of the worker exceeds a certain minimum legally fixed (for example, 10 minimum wages), and non-pecuniary one – if the violation of rights and interests not only led to moral suffering, loss of normal life connections and for additional efforts to organize the life of an individual employee, but also caused a deterioration of the image and credibility of an individual enterprise, institution or organization and the relevant service in general.

While the content of pecuniary damage is generally clear, the matter of non-pecuniary will be revealed on the example of public service. As is known, the behaviour of public servants shall meet the expectations of the public and ensure the confidence of society and citizens in the public service, promote the realization of human and civil rights and freedoms proclaimed by the Constitution and laws of Ukraine. The official should promote the positive authority of public establishments and public service bodies, cherish

[1] Pryima, S. V. *Principles of interpretation of provisions of law.* Ph.D.'s thesis: Yaroslav Mudryi National Law University. Kh., 2010. 194 p.

his/her name and status. In this regard, O. V. Petryshyn emphasizes that the main difference between civil and militarized public service is the use of civilian (non-military) management methods, based mainly on authority and not on coercion. Public servants are not military officers, but civilians, are not in military or militarised service with all its attributes [1]. In the course of performing official duties, these persons are obliged to strictly adhere to the requirements of the law and generally accepted ethical rules of conduct, to be polite in relations with citizens, managers, colleagues and subordinates.

According to Chapter VI of the Law of Ukraine "On Prevention of Corruption" [2], ethical conduct rules of public servants should cover certain guidelines such as:

a) priority of interests, that is, representing the State or territorial community, these persons shall act solely in their interests;

b) political neutrality, that is, in the performance of their official duties they are obliged to adhere to political neutrality, to avoid in any form the demonstration of their own political beliefs or views, not to use official powers in the interests of political parties or their branches or individual politicians;

c) impartiality, that is, to act impartially, regardless of private interests, personal attitude to any person, their political, ideological, religious or other personal views or beliefs;

d) competence and efficiency, that is, conscientiously, competently, timely, effectively and responsibly perform official duties and professional duties, decisions and instructions of bodies and persons to whom they are

[1] Petrishin, A. V. *Civil service. Historical and theoretical preconditions, comparative legal and logical-conceptual analysis*. Kharkov: Fakt, 1998. 168 p.

[2] Law of Ukraine on prevention of corruption No. 1700-VII of 14 October 2014. *Ofitsiinyi visnyk Ukrainy*, no. 87, 2014. Art. 2474.

subordinated, accountable or controlled, to prevent abuse, inefficient use of public and communal property;

e) non-disclosure of information, that is, not to disclose and not to use in any other way confidential and restricted information, which became known to them in connection with the performance of their official duties and professional duties, except as provided by law;

f) refraining from executing unlawful decisions or instructions, that is, notwithstanding private interests, to refrain from executing decisions or instructions of management, if they contradict the law, independently assess their legality and possible damage that may be caused in case of execution of such decisions or instructions.

The specification of the evaluative concept of "gross breach of work duties" directly in the local acts of the enterprise or in the employment contract does not contradict the current labour legislation. The contractual form of the latter is usually used for this purpose. According to O. M. Duiunova, the occurrence of the contract is due to the country's transition from a planned to a market economy. Freedom of entrepreneurship is associated with free choice of workers, with greater freedom of action for the employer in determining the terms of employment, which entails the need to expand the contractual framework in labour relationship legal regulation. The contract seems to be opposed to the employment agreement, which is attributed to such shortcomings as the narrow limitation of job responsibilities, their strict regulation, due to current job descriptions, qualification directories and other local acts[1]. I. Yusypiuk argues that the contractual form of employment is designed to ensure the combination of interests of the employee, the owner of the property of the enterprise and the workforce, i.e. it is an important element of social

[1] Duiunova, O. M. *Labor agreements under the labor legislation of Ukraine*. Ph.D.'s thesis. T. Shevchenko Kyiv National University. K., 2003. 194 p.

partnership. Under the strict market laws, the initiation of a contract employment system allows the employer to relatively easily get rid of unpromising and dishonest, in his/her view, workers. The contract has become especially popular with employers of all forms of ownership, as it empowers them to manoeuvre labour resources freely [1].

According to the Standard form of the contract with the head of the state-owned enterprise, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 597 of 2 August 1995 [2], the head may be dismissed, and the contract is terminated at the initiative of the Property Management Authority before its termination, in cases:

– one-time gross breach of the law or obligations under the contract by the manager, resulting in significant negative consequences for the company (incurred losses, paid fines, etc.);

– non-performance of obligations to the budget or the Pension Fund regarding the payment of taxes, fees and mandatory payments, insurance premiums, as well as regarding the payment of wages to employees or non-compliance with the schedule of repayment of wage arrears, by the enterprise; non-submission of the annual (with a quarterly breakdown) financial plan of the enterprise for approval or adjustment to the Property Management Body, breach of the procedure for expenditures by business entities of the public economic sector in case of non-approval (disagreement) of the annual financial plan;

– non-payment of restructured tax arrears within 3 months due to the fault of the head;

– breach of the procedure for settlements in foreign currency;

[1] Yusypiuk, I. Contract is stylish. But is it effective? *Pravovyi Tyzhden*, no. 50 (71), 2007: 6.

[2] Resolution of the Cabinet of Ministers of Ukraine regarding Standard form of the contract with the head of the state-owned enterprise No. 597 of 2 August 1995. *Ukr. Invest. Gas*, no. 50, 2007: 286.

– permitting of growth of overdue accounts payable;

– when in 3 reporting quarters during the calendar year there is an increase in receivables of the enterprise, which in the general result of these quarters is not accompanied by a corresponding increase in sales of its products (goods, works, services);

– failure to submit quarterly and annual financial statements, as well as quarterly and annual reports on the enterprise's financial plan implementation together with an explanatory note on the performance;

– breach of legislation in the use of finances of the enterprise, including the public procurement of goods, works and services.

These grounds for termination of contact should be considered as cases of gross breach of the law or responsibilities under the contract by the head of the enterprise.

A slightly different but fundamentally similar approach is provided for in the Contract with the Chairman of the Board of the Open Joint Stock Company[1], under paragraph 6.3 of which the manager may be dismissed, and the contract with him/her may be terminated at the initiative of the Supreme Body (privatization body) before its expiration, if the head (a) has committed one-time gross breach of the law or responsibilities under the contract, which had negative effects for the company (damages, fines, damaged authority of the company, etc.), (b) conceals information about the unfinished construction objects to be privatized.

The subjects committed gross breach of work duties are special categories of employees established by law. According to the current labour legislation of Ukraine (para. 1, part 1 of Article 41 of the Labour Code), the

[1] Letter from the State Property Fund of Ukraine regarding Contracts with the Chairman of the Board of the Open Joint Stock Company No. 10-17-11495 of 05 November 1999. *Biul. pro pryvatyzatsiu*, no. 1, 2000: 250.

subjects of one-time gross breach of work duties are the head of the enterprise, institution, organization of all forms of ownership (sub-office, representative office, branch, other separate division), his deputies, chief accountant, his deputies, officials of the revenue and duties bodies nominated for special ranks, and officials of central executive bodies implementing national policy in public financial control and price control. Similarly, para. 1, part 2 of Art. 92 of the Draft LC of Ukraine (registration No. 1658, text of December 27, 2014) provides for that the employment contract may be terminated at the initiative of the employer in case of one-time gross breach of work duties by the head of the entity (sub-office, representative office, branch, other separate division), his deputy, chief engineer, chief accountant, his deputy, as well as officials of the Customs Service of Ukraine and the State Fiscal Service, nominated for special ranks, and officials of central executive bodies implementing national policy in public financial control and price control.

Another perspective, that is, the recognition of one-time gross breach of work duties in all cases of a worker's misconduct, entailing possible discharge at the initiative of the employer, is reflected in the labour legislation of some foreign countries.

For example, according to the Labour Code of Turkmenistan [1], the grounds for dismissal of an employee are his/her one-time gross breach of work duties (Article 42) and one-time gross breach of work duties by the head of the enterprise (unit), his deputies and employees disciplinary responsible as provided by the statutes (Article 43). However, the Code does not contain a specific list of cases when these grounds are used. According to Art. 81 of the Labour Code

[1] Labour Code of Turkmenistan (approved by Law of Turkmenistan No. 30-IV of 18 April 2009). *Vedom. Medzhlisa Turkmenistana*, no. 2 (996), Part 4, 2009. Art. 30.

of the RF [1], an individual ground for discharge is one-time gross breach of work duties by the worker of the head of the organisation (sub-office, representative office), his deputies. In regard to the employee: (a) truancy, i.e. his/her absence from the work without reasonable excuse throughout the working day (shift) regardless of its duration, as well as absence from work without reasonable excuse for a period longer than four consequent hours during a working day (shift); (b) appearing on working place in a state of alcoholic, narcotic or other intoxication; (c) disclosure of a secret, protected by law, that has been learned by an employee because of his job functions, including personal data on another worker; (d) commission of a theft (including minor theft), embezzlement or intentional damage or destruction of property, established as such under court verdict, entered in force, or decision of a judge, body, official, authorized to consider cases of administrative offenses; (e) worker's breach of labour protection regulations established by the commission or the commissioner for labour protection if it has coursed disastrous consequences or could certainly lead to these consequences.

It should be noted that the Transnistrian Moldavian Republic has completely reproduced this legal provision in its LC.

According to the Labour Code of the Kyrgyz Republic [2] that distinguishes one-time gross breaches by the head of the organization (sub-office, representative office), his deputies of their work duties, one-time gross breaches by employees of their work duties are: (a) truancy, i.e. the absence from the work without reasonable excuse

[1] Labour Code of the Russian Federation (approved by Law of the RF No. 197-FZ of 30 December 2001). *Collection of RF legislation*, no. 1, Part 1, 2002. Art. 3.

[2] Labour Code of the Kyrgyz Republic (approved by Law the Kyrgyz Republic No. 106 of 04 August 2004. *Vedom. Zhogorku Kenesha Kyrgyzskoy Resp.*, no. 4, 2006. Art. 392.

throughout the working day for a period longer than three consequent hours; (b) appearing on working place in a state of alcoholic, narcotic or other intoxication; (c) commission of an intentional damage or theft of property of the organisation; (d) breach of labour protection regulations if it has coursed disastrous consequences, including injuries and accidents; (e) disclosure of State, job, commercial or other secret, protected by law, that has been learned by him her because of his job functions, if its non-disclosure is provided by employment contract.

A legislative and scientific-theoretical distinction into (a) one-time gross breach of work duties by employees in general and (b) individual categories of employees (the head of the organization (sub-office, representative office), his deputies, officials who are subject to the requirements of disciplinary statutes, etc.), recognizes all cases of one-time commission of unlawful behaviour by these persons, which can entail dismissal at the initiative of the employer as gross breach of work duties by employees.

However, this scientific and regulatory approach is inappropriate, because it implies a substitution of categories, a basis for confusion and, in the end, law application suffers. More logical and balanced further use of two legal categories (both in labour law study and in labour law) should be as follows: (a) one-time substantive breach of work duties, in relation to employees in general and (b) one-time gross breach of work duties, in relation to special categories of employees.

According to Art. 121 of the Labour Code of the Republic of Armenia [1], the employer shall have the right to terminate the employment contract with the employee, if he/she has at least once committed a gross disciplinary breach. Art. 221 of the

[1] Labour Code of the Kyrgyz Republic (approved by Law the Kyrgyz Republic No. 106 of 04 August 2004. *Vedom. Zhogorku Kenesha Kyrgyzskoy Resp.*, no. 4, 2006. Art. 392.

Code provides for that such breaches are: (a) committing acts that violate the constitutional rights of citizens; (b) disclosure of state, official, commercial or technological secrets or informing to a competing organization thereon; (c) the abuse of official position for the purpose of obtaining illicit income for oneself and others, for other motives, as well as the abuse of discretion; (d) violation of equality between women and men or sexual harassment of employees, subordinates or beneficiaries; (e) appearing on working place under the influence of alcoholic beverages, narcotic or psychotropic substances; (f) failure to come to work throughout the entire working day (shift) with no good reason; (g) rejection from mandatory medical examination. However, the labour law of the country under consideration does not contain any special provisions enabling to discharge certain categories of workers in case of a gross breach of work duties.

The issue of subjects of discharge in case of one-time gross breach of work duties will be under focus in Section 3.1 of the monograph.

Gross breach of work duties is a disciplinary offense. One of the most important social characteristics of a person is his/her behaviour. Legal behaviour is social behaviour (action or inaction) of a consciously volitional nature, which is regulated by law and has legal effects. Generally, it has 2 main forms, such as lawful behaviour (socially useful, in compliance with legal requirements) and unlawful (socially harmful, contrary to law).

The only appropriate human behaviour is lawful behaviour, which is an activity conditioned by cultural and moral views and human life experience in the field of social action of law and based on the conscious performance of the tasks and requirements of the latter. Such behaviour is socially useful because it is aimed at satisfying state and legal, public and personal interests. Legitimate behaviour is especially valuable for the law, because it is human being,

his/her rights and freedoms that are the highest social value. The value of such behaviour for the State can be defined as the expected activity of citizens, directed rightly and usefully, while generally the behaviour is planned and expected. In other words, such behaviour is easier to control by the State.

Legal regulation is aimed at ensuring the implementation of subjective rights and legal duties in the forms of performance, use, observance and application. The lawful behaviour of the subjects, as a result of such realization, is a necessary condition for the normal functioning of any society. S. A. Kapitanska argues that lawful human behaviours does not require constantly increasing punishment, but provisions that follow from the already existing social relations, and therefore will be broken with the least probability. Then society itself will realize the high value of lawful behaviour and adhere to it as an important factor of stability[1].

The consideration of lawful behaviour is the basis for the legislator to establish provisions in Art. 139 of the Labour Code of Ukraine as follows: "Employees shall perform his/her work duties in good faith, timely and accurately comply with the instructions of the owner or his authorized body, comply with labour and technological discipline, labour protection regulations, take due care of the property of the employer under the employment contract".

Employee responsibilities regarding employment discipline are set out more broadly in the statutes and regulations on discipline. In particular, in accordance with Art. 7 of the Disciplinary Statute of the bodies of internal affairs of Ukraine[2], official discipline is based on high

[1] Kapitanska, S. A. *Legitimate inactivity as a form of legal conduct*. Ph.D.'s thesis. National Academy of Internal Affairs. K., 2005. 220 p.

[2] Law of Ukraine on the Disciplinary Statute of the bodies of Internal Affairs of Ukraine No. 3460-IV of 22 February 2006. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 29. 2006. Art. 245.

consciousness and requires each person of the rank and file and commanders:

– to observe the laws, to steadily fulfil requirements of the Oaths of a police officer, statutes and orders of commanders;

– to protect and defend from unlawful encroachments on life, health, rights and freedoms of citizens, property, the environment, the interests of society and the State;

– to respect human dignity, show concern for citizens and be ready to help them at any time;

– to adhere to the provisions of professional ethics and official conduct;

– to keep the state secret;

– to be honest, objective and independent from any influence of citizens, their associations and other legal entities in the course of official performance;

– to endure all difficulties and hardships associated with the service;

– to improve constantly their professional and cultural level;

– to assist superiors in strengthening official discipline, ensuring legality and statutory order;

– to show respect to colleagues and other citizens, to be polite, to follow the internal rules, the authorised uniform for wear, greetings and etiquette;

– to behave with dignity and honour during off-duty hours, to be a model in the observance of public order, to stop unlawful actions of persons who commit them;

– to protect and maintain in proper condition the transferred firearms, special means, property and equipment.

Thus, in labour law, contrasting other sectors of law, the obligation to comply with all work duties, and therefore, the legal provision that establishes them, is explicitly stated in the form of a direct obligation to adhere to labour discipline.

The legal nature of labour discipline is twofold; whereas it provides for mutual obligations of the parties to the employment contract: (a) the employer is obliged to create the working conditions necessary for the employee to perform his/her job function most effectively, and (b) the employee is obliged to strictly comply with the rules of conduct established by local regulations and agreements of the parties.

The determination of the essence of labour discipline requires to consider that it is an integral part of labour relations, the subjects of which are the employee and the employer with mutual rights and responsibilities. The analysis of the powers of the employee enables Yu. M. Poletaev to argue that similar to the administration, the employee is an active participant in the formation of lawful order at the enterprise, having only a few other legal means. It is clear that the exercise of his/her power, both an independent right to claim when the administration performs its duties properly and requirements that come into force in the event of non-performance by its representatives, is not only the satisfaction of a particular employee' interests. The daily exercise of these powers forms the legal order in the organization and returns it to the framework of labour legislation in cases when individual managers of the labour process go beyond these limits [1].

Breach of work duties, and hence labour discipline, by an employee is unlawful conduct. The generalized basis of responsibility in labour law is the unity of its factual and legal preconditions, without which it cannot be realized. The legal ground is the provision of law, which indicates the level of legal liability for the offense and establishes the possibility of its occurrence. The factual ground is an offense, without which the occurrence of a legal relationship of liability is impossible.

[1] Poletaev, Yu. N. *Law and responsibility in Labour Law*. M.: Prospekt, 2001. 184 p.

F. F. Skakun interprets the offense as a socially dangerous or harmful illegal (unlawful) guilty act (action or inaction) of a tort person, which entails legal liability [1]. K. L. Buhaichuk classifies the main features of this negative phenomenon into: (a) unlawful, that is, contrary to the law, a violation of prohibitions provided for by laws and regulations, failure to comply with the obligations arising from the legal regulation, the act of application of the provisions of the law or the contract concluded on the basis of law; (b) a socially dangerous or socially harmful phenomenon; (c) reflected in behaviour, in unlawful action or inaction; (d) conscious and volitional, i.e. the moment of the offense depends on the will and consciousness of the person; (e) guilty, i.e. it is an act that contains guilt and expresses the negative internal attitude of the offender to the interests of others; (e) punishable, that is, entails the application of remedial or legal liability to the offender [2].

Labour discipline has a dual nature and involves mutual obligations of the parties to the employment contract: (a) the employer is obliged to create the working conditions necessary for the employee to perform the job function most effectively, and (b) the employee is obliged to strictly follow the rules of conduct, established by legislative regulations, local provisions and agreements of the parties. It is a complex, comprehensive phenomenon, as it is not limited to the proper performance of any single duty.

A disciplinary misdemeanour is a guilty, unlawful, but excluding criminal liability, failure to perform work duties, failure to exercise or exceeding the powers that ensure the labour process, by a person who is in an employment relationship with a particular organization.

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[1] Skakun, O. F. *Theory of state and law*. Kharkov: Konsum, 2000. 704 p.

[2] Bugaichuk, K. L. *Administrative misdemeanour: Essence and organizational-legal actions of their prevention*. Ph.D.'s thesis. National University of Internal Affairs. Kh., 2002. 243 p.

The analysis of the different approaches (of both scientists and lawmakers) to the definition of "disciplinary misconduct", enables V. S. Kovryhin to identify its main features as follows: (a) the subject of this misconduct can only be an employee who is in an employment relationship with a particular employer; (b) this misdemeanour is in case of the breach of work duties by employees as established by labour law, collective and employment agreements; (c) its forms may be non-performance or improper performance of work duties and excess of power; (d) the disciplinary misdemeanour is unlawful; (e) it occurs when the employee commits guilty acts; (e) its commission entails the application of disciplinary actions, provided for by labour law[1]. Gross breach of work duties meets all these characteristics, so it is a disciplinary offense.

5. Gross breach of work duties may entail a dismissal of the employee at the initiative of the employer. The employee's failure to perform his/her job descriptions entails legal liability. According to O. S. Yoffe and M. D. Shargorodskiy, liability should be specific negative effects for the subject compared to his/her status before the offense[2]. In its direct manifestation, legal liability is a certain deprivation, that is, the offender has negative effects of a personal, property or organizational nature. S. M. Bratus interprets the essence of legal liability as the implementation of sanctions of a law provision, as the same duty, but performed compulsorily, if the person (citizen or organization) subject to perform this duty, does not do it voluntarily[3].

The concept of liability in law is a systemic regulatory entity that has the appropriate goals, objectives, structure and scope. The subject of its regulation is a certain kind

[1] Kovryhin, V. S. *Disciplinary liability in Labour Law*. Ph.D.'s thesis. T. Shevchenko Kyiv National University. K., 2012. 221 p.

[2] Yoffe, O. S. and Shargorodskii, M. D. *Issues of the theory of law*. M.: Yurid. lit., 1961. 421 p.

[3] Bratus, S. N. *Legal liability and legality.* M.: Yurid. Lit., 1976. 311 p.

of protective public relations that arise due to committing an offense. It is a relationship between a State and a person who has committed an offense, the content of which is his/her failure or improper performance of a special duty imposed in accordance with the law. V. I. Popov formulates rather appropriately the ratio of legal relations and liability in law. The jurist emphasizes that labour relations and the legal liability of workers are ancillary: they have a certain legal relationship, embodied through the rights and responsibilities that are common components of both phenomena. Nevertheless, these components perform different functions, that is, differ in levels of rights and responsibilities. The legal status of the subject undergoes a quantitative change. The altered ratio of rights and responsibilities within or outside the employment relationship is a qualitatively new legal relationship with a special function. The latter is based on public coercion, which means that the occurrence and development of liability is associated with the implementation of the sanction of legal provision, which is not true about the employment relationship [1].

Disciplinary liability is the worker's obligation to be punished for unlawful non-performance or improper performance of work duties imposed on him, provided by the labour law provisions. According to I. I. Veremeenko, the sanction is an element of the legal provision established by the State for its protection, specifying the measures of public coercion applied to the person for breach of this provision for the purpose of correction and re-education him/her (as well as other persons) in spirit of compliance with the law, respect for the rules of communal life, as well as to prevent new offenses [2].

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[1] Popov, V. I. *Legal liability of workers and employees under Soviet Labour Law*. Extended abstract of Ph.D.'s thesis. Sverdlovsk Law Institute. Sverdlovsk, 1974. 20 p.

[2] Veremeenko, I. I. *Administrative and legal actions.* M.: Yurid. lit., 1975. 180 p.

Article 147 of the Labour Code of Ukraine provides for that breach of labour discipline entails application of only one of punishment measures to the employee by the employer, such as reprimand or dismissal. In case of gross breach of work duties by an employee that causes or may cause significant pecuniary and non-pecuniary damage to the rights and interests of employees, the employer or the State, the offender may be subject to a labour sanction such as dismissal (Art. 41 of the LC).

The legal constructions of "dismissal of an employee" and "termination of the employment contract" are similar in the content and scope. V. M. Tolkunova argues that since the termination of the employment contract and dismissal have a single basis and procedure, they are synonymous, although the termination applies to the employment contract, and the dismissal concerns the employee [1].

Dismissal is an extreme disciplinary measure when the perpetrator is subjected to a personal and property oppressive measure. From the moment of termination of employment, a person loses the status of "employee," is deprived not only of legal responsibilities but also of numerous labour rights, including the right to: (a) remuneration, not less than the statutory minimum wage, and its timely payment in full; (b) appropriate working and living conditions related to the worker's performance of his/her duties under the employment contract; (c) guarantees and compensations provided for by State legal regulations in the field of labour; (d) a leave, etc. According to Art. 47 the LC of Ukraine, on the day of dismissal, the owner or his/her authorized body is required to issue the employee a duly executed employment record book and make a settlement with him/her within time limits as provided for in Art. 116 of the Code. The settlement is the payment all due amounts, salaries and compensation for unused leave, severance pay, to the employee, if it is

[1] Tolkunova, V. N. *Labour Law*. M.: Prospect, 2004. – 651 p.

provided by Art. 44 of the LC or other regulations, etc. It is due on the day of discharge. If the person did not work on the day of dismissal, these amounts must be paid no later than the day next after the submission of a claim for payment by a person dismissed. Before paying the amounts accrued upon dismissal, the employer is required to notify the employee in writing.

This type of disciplinary action is applied only when other measures have been exhausted and have not had a positive effect or if the committed disciplinary offense is incompatible with the employee's continued tenure.

Moreover, dismissal is a legal fact, consisting of a set of concerted actions of the employer and employee, resulting in termination of employment relationship between them, settlement of mutual labour rights and responsibilities, the socio-legal status change of the latter, who ceases to be an employee of this employer, and the employer loses disciplinary power over him/her. Dismissal is carried out within a space limited by the enterprise, institution or organization and at the time, from the first day of the dismissal procedure till the last working day of the person. According to P. D. Pylypenko, the concept of "dismissal" corresponds to the technical registration of the procedure for termination of employment[1]. According to Art. 47 of the LC of Ukraine, the dismissal of a person on the initiative of the owner or his authorized body, the latter is obliged to issue a copy of the dismissal order on the same day. In other cases, a copy of the order is issued at the request of the employee. Therefore, gross breach of work duties is the unlawful conduct of the categories of workers, established by law, as a result of which other workers of the enterprise, institution, organization, the employer or the State have suffered or could have suffered substantial pecuniary and non-pecuniary damage; such conduct may entail the application, in the prescribed

[1] Pylypenko, P. D. *Labour Law of Ukraine*. L.: Vilna Ukraina, 1996. 159 p.

manner, of disciplinary action, including dismissal, to the guilty person.

Therefore, a comprehensive study in this section of the monograph enables to make conclusions of significant theoretical and practical significance.

1. While the current labour legislation actively uses the concept of "gross breach of labour duties", it does not contain a statutory definition. Only paragraph 27 of the Resolution of the Plenum of the Supreme Court of Ukraine "On the practice of consideration of labour disputes by courts" No. 9 of November 6, 1992 provides for the prescription as follows: the court consideration of whether a breach of work duties is gross, should proceed on the basis of (a) the nature of the misdemeanour, (b) the circumstances under which it has been committed and (c) the damage that has been caused (could have been caused). The existence of legal definitions in general and their further legal consolidation is one of the signs of proper legislative technique. The expediency of legal definitions is to promote the effective implementation of legal requirements, ensuring the principles of legal certainty, the legal system stability. The principle of certainty, accuracy, clarity of a legal provision is a guarantee of the rule of law. After all, if every member of society understands his rights and responsibilities, he/she has a certain freedom of action and decision within the legal framework.

2. The essential features of the category "gross breach of work duties" as a labour law phenomenon include:

– this breach has caused or could cause substantial pecuniary and non-pecuniary damage to the rights or interests of employees, employers or the State;

– this category is an evaluative concept;

– subjects of this breach are special categories of employees defined by law;

– this breach is a disciplinary misdemeanour;

– breach can entail dismissal of the employee at the initiative of the employer.

3. Gross breach of work duties is the unlawful conduct of categories of workers defined by law, as a result of which other workers of the enterprise, institution, organization, the employer or the State have suffered or could have suffered substantial pecuniary and non-pecuniary damage; and which may entail the application, in the prescribed manner, of disciplinary action, including dismissal, to the guilty person.

We argue that scientific and regulatory approaches to a legislative and scientific-theoretical distinction into one-time gross breach of work duties by employees in general and individual categories of workers (the head of the organization (sub-office, representative office), his deputies, officials who are subject to the requirements of disciplinary statutes, etc.), as well as to recognition of all cases of one-time commission of unlawful behaviour by these persons, which can entail dismissal at the initiative of the employer, as gross breach of work duties by workers, are inappropriate. This due to the fact that it implies a substitution of categories, a basis for confusion and, in the end, law application suffers. More logical and balanced further use of two legal categories (both in labour law study and in labour law) should be as follows: (a) one-time substantive breach of work duties, in relation to employees in general and (b) one-time gross breach of work duties, in relation to special categories of workers.

4. The inclusion of evaluative concepts in the provisions of labour law should make the legal regulation of labour and associated relations in market conditions more flexible. However, to avoid the features of permissiveness due to this flexibility, it is necessary to outline the limits of the use of the relevant evaluative categories both in the legislation and in the practice of its application. The way to do this is specification, which in general is the provision

of a particular object, phenomenon or process with maximum certainty and clarity. The main purpose of specification is to find a connection between the general legal rule and the circumstances of the actual reality. The interpreter should transfer the abstract content of legal provision to a more specific level, because after that the provision should become more meaningful. Specification is a special form that enables the abstract provision to become concrete, and therefore, its content becomes more accurate and clearer because of interpretation.

In order to specify the evaluative concept of "gross breach of work duties," and therefore to facilitate the law application, it should be legislated that gross breach of work duties occurs in the cases when pecuniary damage caused by illegal behaviour of the worker exceeds a certain minimum legally fixed (for example, 10 minimum wages), and non-pecuniary one – if the violation of rights and interests not only led to moral suffering, loss of normal life connections and for additional efforts to organize the life of an individual employee, but also caused a deterioration of the image and credibility of an individual enterprise, institution or organization and the relevant service in general.

It is not contrary to the current labour law if the evaluative concept under study is specified directly in the local acts of the enterprise or in the employment contract by stating the specificities established, such as (a) losses incurred by the employer, payment of fines; (b) breach of law in financial utilization; (c) failure to pay taxes, fees and mandatory payments; (d) breach of the procedure for settlements; (e) permitting of growth of overdue accounts payable; (f) failure to submit financial statements.

Conclusions to Chapter 1

The study of the legal nature and types of work duties of workers, as well as the essential features of the category "gross breach of work duties" enabled to make certain scientific and theoretical conclusions and formulate proposals as follows:

1. Due to the lack of clarity and consistency in the regulation of labour relations, employees often find themselves in a certain legal vacuum. In turn, the social and legal insecurity of the employee does not contribute to their being interested in the results of their work and in the stability of such relations. The challenge for the labour law of Ukraine is to create the legal framework required in modern conditions and aimed at achieving a balance of interests of the parties to the employment contract, economic growth, productivity enhancement and human well-being. These goals can be achieved only in the conditions of high internal organization of the system of labour law, smoothness and consistency of the legal framework.

2. The will of the worker and the employer as participants in the employment relationship is realized by fulfilling their reciprocal rights and obligations. The establishment of these legal relationship means the regulation of the worker's performance, on the one hand, and the employer, on the other.

Legal duties of a person, as well as rights, are necessary means of legal influence on public relations. Neither law nor duty exists without each other. A person can enjoy any right only if it is respected and adhered by others. With regards to the priority between rights and responsibilities, we prefer the former, because the internal logic of the legal matter construction is subordinated mainly to subjective rights, which are by definition an active nodal centre of its own legal content at the level of the abstract idea of law.

Work duties of the worker as a party to the employment relationship is a system of requirements defined by legislative and local acts in the field of labour regarding specified behaviour of the employee in the course of the work under the employment contract, due to the interests of the employer and state-guaranteed coercive measures.

3. The system of work duties of employees includes:

a) general work duties for all without exception, employees, regardless of the legal status, ownership, industry affiliation, subordination and other features of employers for whom they work under an employment contract;

b) special sectoral ones for workers employed in enterprises, institutions and organizations engaged in a particular type of economic activity in the sectors of tangible or intangible production;

c) direct production and functional ones for the worker within his/her employment function by the employer in accordance with the employment contract concluded between them.

4. The essential features of the category "gross breach of work duties" as a labour law phenomenon include:

– this breach has caused or could cause substantial pecuniary and non-pecuniary damage to the rights or interests of employees, employers or the State;

– this category is an evaluative concept;

– subjects of this breach are special categories of employees defined by law;

– this breach is a disciplinary misdemeanour;

– breach can entail dismissal of the employee at the initiative of the employer.

5. Gross breach of work duties is the unlawful conduct of categories of workers defined by law, as a result of which other workers of the enterprise, institution, organization, the employer or the State have suffered or could have suffered substantial pecuniary and non-pecuniary damage;

and which may entail the application, in the prescribed manner, of disciplinary action, including dismissal, to the guilty person.

We argue that scientific and regulatory approaches to a legislative and scientific-theoretical distinction into one-time gross breach of work duties by employees in general and individual categories of workers (the head of the organization (sub-office, representative office), his deputies, officials who are subject to the requirements of disciplinary statutes, etc.), as well as to recognition of all cases of one-time commission of unlawful behaviour by these persons, which can entail dismissal at the initiative of the employer, as gross breach of work duties by workers, are inappropriate. This due to the fact that it implies a substitution of categories, a basis for confusion and, in the end, law application suffers. More logical and balanced further use of two legal categories (both in labour law study and in labour law) should be as follows: (a) one-time substantive breach of work duties, in relation to employees in general and (b) one-time gross breach of work duties, in relation to special categories of workers.

6. The inclusion of evaluative concepts in the provisions of labour law should make the legal regulation of labour and associated relations in market conditions more flexible. However, to avoid the features of permissiveness due to this flexibility, it is necessary to outline the limits of the use of the relevant evaluative categories both in the legislation and in the practice of its application. The way to do this is specification, which in general is the provision of a particular object, phenomenon or process with maximum certainty and clarity. The main purpose of specification is to find a connection between the general legal rule and the circumstances of the actual reality. The interpreter should transfer the abstract content of legal provision to a more specific level, because after that the provision should become more meaningful. Specification is a special form

that enables the abstract provision to become concrete, and therefore, its content becomes more accurate and clearer because of interpretation.

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