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## **IDEOLOGY OF LABOUR LAW OF UKRAINE: MODERN PROBLEMS OF GENERATION**

*The main problems of modern labour law ideology have been described and revealed in given scientific article, the meaning of this category for legal regulation of labour has been developed. Social, political and legal regulation basics by market economy between an employer and employee, usage of measures, provided by labour law for realization of rights and performance of duties have been analyzed by authors in given article due to new viewpoints. Utterly new opinion on the labour law ideology concept as a basic category for forming this branch and its system favours these viewpoints. Revelation of main labour law ideologemes is fulfilled by the learning of their connections with concrete legal norms systems. The meaning of ideological basics for increasing of labour law norms effectiveness has been researched also. Special emphasis has been given to salvation of problems of balancing the first possibilities of an employee in relations with employer, to strengthening of the social component within the labour law norms.*

**Keywords:** ideology, doctrine, production solidarity, humanism, democratism, social justice.



Ideology means the system of consolidated ideas and opinions formed into a certain integral theoretic concept that expresses ideological and value basics of the social organization, purposes and interests of its subjects, provides social activity programs, realizes into social life and lays to real guide to action. Despite the fact that at the end of the XX century Ukrainian term «ideology» was treated negative, it has fairly retaken its right to exist, as far as communist ideology is not the sole ideology and misunderstanding of the ideological value for stable social development is anti-productive. The Ukrainian civil, political and scientific thought's directive concerning deideologization and pluralism which was announced in the early 1990's soon turned to the worst variant of ideology — the ideology of unhidden imitation, adoption of other experience — coupled with rather strong inertia of soviet stereotyped way of thinking and activity. This situation has been called anomia.

The Constitution of Ukraine [1] doesn't forbid the development, reasoning and realization into social relations of different political, economy, social ideas and theories which can bring good to society, which join it and consolidate. It is necessary to build up absolutely personal ideological system with generally valid core in Ukraine — the ideology of state-making as a well founded program of social development with clearly signified social directivity. One needs to develop utterly personal ideological system which should give the essence to changes happening in society, explain and approve them, revealing the links with national treasures and treasures common to all mankind. The ideology should determine main approaches of state development, basic moral and mental values which should become the reference points for society and principles of defense of the social interests and the state itself from destroying. New ideological system must consolidate Ukraine spiritually, put an end to political controversy and promote the forming of political nation, social integration and consensus. It is about so-called «basic» or «frame» ideology. Taking into consideration social and especially ideological situation in modern Ukraine, tendencies of world civilization development and geopolitical significance of Ukraine as well, it is necessary to admit that the only appropriate ideology for our country can be the ideology of humanism. A person, his financial prosperity, development of spiritual potential, creative skills and physical perfectness must become the core of its ideology. The Constitution of Ukraine has proclaimed fundamentally new governmental role in relations with a person, formalized the switch from former prevailing ideology of «government ruling» over a person to a new one — the ideology of «state service» of human interests. The last is that spiritual strength which will turn our degraded society into a really human society of social humanism.

Legal ideology is based on dominating political ideology. Political ideology becomes the base for economy ideology as well. The axiom of conditionality of economy and law is indissoluble through centuries. Every social and political doctrine at its core provides ideological, political, economy, social and cultural parts. In different periods of the political



thoughts development and state-making practice these parts fill with the different essence and vision of the ways of salvation of the problems of the existence of human community.

Appeal to these problems is caused by the fact that all social-democratic and socialistic ideas one way or another had an influence on the forming of the labor law at all stages of its coming-to-be and development. It is not serious to reject socialism as a basic social and economic model of modern Ukraine. The experience of many countries of European Union allows properly analyzing this model of building of modern Ukrainian state.

The problem of development vector remains actual for Ukraine till now as it permanently stays out of political and economic distinctness and continues to be in constant selection. Even the Ukraine–European Union Association Agreement [2] doesn't give the answers to the current questions: which development state model has been chosen; how will state, its bodies and law change? Besides, the role of non-labour factors within increasing wealth has been raising lately in modern society and the waged labour stops being the objective need for its able-bodied members if it doesn't satisfy the socially acceptable income level. This results in degradation of man power, forming of the labour drift of able to work society members and low quality of customer demand. While defining the value of man power services it is important not to underestimate both spending on man power reproducing (employee's needs), and the results (usefulness) of the service (employer's interests).

Labor law ideology — is the system of consolidating ideas and opinions which have been formalized into a certain entire theoretic concept (doctrine), that expresses ideological and value basis of social system, provides the opportunity for development of effective social activity algorithms of labour law subjects, realizes into social life, influences and lays to real guide to action through the labour norms. Labour law ideology is determined by the essence of the standard acts, their preambles, law discussion results, deputies' statements in legislative bodies, conclusions and summarizing of Supreme and Constitutional Courts. Moreover, partial revelation of ideology while lawmaking lays in working out of a law concept, the preparation of its preamble, concordance with existing labour legislation, international labour law norms.

The strategic goal for any political regime is in aspiration for creating the system of basic values and focusing the bigger part of population on them. If the values of political regime become the motives of its activity, a person will certainly search and find the means (including administrative) for their realization. If the values which have been proclaimed in society conflict with motives, they will only be the instrument for reaching another, maybe diametrically opposite aim. One of the basic values of our society will be solidarity itself. The permanent attempts to describe the Ukrainian society as a society of exceptionally individualists may be observed. However the latest events in Ukraine prove the opposite — the aspiration of the Ukrainians for consolidation and mutual assistance which are the classic essentials of solidarity. At that such categories like «patriotism»,



«solidarity» and «dignity» run out as indivisible, complementary components of modern Ukrainian ideology which is being formed yet.

The central matter of the ideology of the labour law is forming of the doctrine of «production solidarity» — creation and normative fixation of the ideal model (construction) of social links between employees and employers within the framework of enterprises, institutions, organizations (production community) which is close to European standards and in which the national collectivist traditions have been realized and the general context of society knowledge has been taken into consideration. The main subject of this links is the production community. The production community has to obtain the several qualities to possess its rights and obligations such as: subjects which are freely consolidated, temporary or permanently, collectively or individually realize their ability to work; organization that possess personal names and limits; authority that acts accordingly to principles of self-government. The core of solidarity is the social relation participants' unity. The production community can't exist if consolidation process doesn't take place, if there is no unity of social relation participants: employees and employers, their representatives and sometimes — local self-government body. The doctrine of «production community» which combines the several self-dependent key concepts, has to become the core or kernel of the labour law. Not dropping out the humanistic values which labour law has been possessed during the long-term period, to be exact, such as: «labour is not a good», «labour freedom» «prohibition of forced labour» we can't say that it has reach the apogee of its social value. The necessary supposition for establishment of Japanese model, (for it is in some extent related to doctrine of «production solidarity») is social changes in the character of distributing relations according to which results have to be fairly divided between the participants of production process for prevention of the social instability risks rising and demotivation of employers.

Speaking of normative fixation of the doctrine of «production solidarity», the preconditions for possibility of building of complete system of norms and relations which they will regulate. Further we may talk of methods and means of influence on social relations. In particular, when it comes to idea of production solidarity, the core of the labour law norms which will regulate the relations of subjects within organization, use and protection of labour will be the willing of their subjects for common understanding, active communication and minimization of compulsion. Minutely such approach can be shown through such components of production solidarity idea as humanization and democratization of occupational environment, social justice guarantees in relations which create the object of labour law as well.

The principle of humanism is concentrated at part one of the 21 paragraph of Constitution of Ukraine [1]. The idea that «all people are equal in their dignity and rights» shows its essence in labour law through the fixation of the next ideas: attitude towards to a human like a personality but not a mean of production; inadmissibility of neglect to



human dignity; inadmissibility of any human discrimination, assured possibility of personality development in labour relations, provision of equality for women and men, comfort of labour activity, government protection (intercession) of those who can't themselves compete as equals within the labour market (handicapped people, workers with family duties, young professionals etc). The effectiveness of this law branch totally depends on realization of the principle of humanism into the norms of labour law as the most effective method of provision of efficacy of labour norms is the affirmance of the human social value, respect towards a human from law and other subjects of law, absolute observance of the rights and legal interests in legal conscience of every person.

In western countries labour law there is a turning back to the concept of legal anthropology (a human is in the center of scientific ideas). Although, the paradoxical situation exists in Ukraine: the process of «humanization» of labour law and labour legislation in practice is turning, at best, to liberalization of human exploitation, at worst, to turning back to civil regulation of labour. In this case humanization of labour relations and working environment are necessity that directed not only to partial overcoming of alienation but to general development of the labour sphere also. Secular humanism in labour sphere has to be directed to elevation of working environment, satisfaction of needs, connected with labour, provision of social benefits, realization of the right of taking part in enterprise activity. Secular humanism has to become the basis of working environment which gives an opportunity for a human to act like personality, like subject of labour but not like just a labour force, an employee.

Gradual development of human labour rights — is the key idea of development of labour law in modern conditions, however its realization is possible only on the basis of admission of the human dignity as the basic priority if legal regulation of labour relations. The citizen who is willing to develop abilities and to grow his productive potential, to be so called «agent of development» has to be an object of stimulating politics. It concerns mainly youth, employees of development priorities — education, science, small business. The fiscal, hypothecary, credit, grant measures have to become the main incentives.

Today democracy is characterized by progressive globalization and integration processes. They place to agenda the problems of tolerance guaranteeing in mutual relations between separate individuals and social groups. Tolerance is based on the unity of the concepts to all irrespective of national, ethnic, religious and other features.

Sovereignty of the people is the model of co-existence and self-expression of different categories of population in modern free and developed society. The main form of democracy being is a civil society availability, that is organized communities of citizenry or institutes of civil society. The basic activity principles of non-government subjects are their self-determination, independence from the government bodies and management. When it comes to the sphere of social and labour relations



the main institutes of civil society are workers' association, trade unions, and other associations of professional citizenry, employers' organizations.

Social partnership is considered to be the one of the support mechanisms of social and political stability in modern western states. The experience of the developed countries assures that a human as an object of social politic takes the main place in the system of partnership, social and labour relations.

Principles of tolerance and pluralism which are the basic of ideology of solidarity are also the main points of democratic society. The dialogue is the element within the democratic procedures of decision-making, and the social dialogue is the corresponding element in social and labour relations. Key assertions of modern concept of social dialogue originates in the solidarity ideas of antique philosophers. The statement about wider dialogue meaning than «dialogue forms of communication» such as conversation, talk, debates is fundamental for the understanding of the essence of dialogue. The dialogue is the highest form of communication and it results in co-operation. The co-operation between employers, employees and their organizations is the basic point of stable functioning of enterprises, institutions and organizations.

Democracy in enterprise management, namely, in management of its personnel means the industrial democracy in the broad sense. Employees' shareholding in cases of enterprises, joint-stock companies and transnational companies is its core. The optimal use of professional possibilities of workers' association members, growing of labour productivity competitive possibilities of companies depend on extent and organizational forms the personnel will be engaged in management functions of business entities.

The salvation of the problem of social justice has to be based on the right choice. Even our close neighbor such as Republic of Poland has chosen the way of social justice but not a speculation of national level as it is in Ukraine. Bridging the gap between rich and poor, between those who creates material and spiritual values and receive inadequate pay for that and those who doesn't take part in process of production but gets rather «unequal» pay for this activity hasn't been observed till now. For solving the problem of poverty the goal-oriented policy is needed that is based on the state economic and financial possibilities and maximum effectiveness of its use. In particular, in Western countries the realization of the principle of equal pay for equal work becomes one of the factor that provides the economy growth due to the culling of unprofitable production. This happens because the owner of the enterprise doesn't have the possibility to risen his income due to lowering the employees' salaries.

The idea of social justice in labour law of Ukraine comes out of the Constitutional provisions. For legal labour law regulations in modern conditions liberal ideas which disrupt the labour law fundamentals are harmful.

Deepening the labour law socializing process is the necessary and absolutely important essential of realization of idea of social justice in labour law. This idea comes out from the social aim of labour law which



lies in society consolidation through the unification of employees, employers and state efforts, their association for reaching of the high level of public welfare. On the contrary, washing the social essence out of the labour law will lead to losing the social value and as a last resort — to withering the labour law away.

Decent work, its government guaranteeing — is the key essence of modern understanding of social justice in democratic society. The Concept of decent work government policy has to be legally adopted and organizational and legal fundamentals of productive public employment, adequate pay for conscientious work in decent conditions and promotion of social partnership at all levels have to be its absolute essentials. Growth of human potential, permanent resource investments into an employee are the main elements of social justice in the norms of modern labour law. At the level of the Concept of decent work government policy it is necessary to admit that the most acceptable model for Ukraine is the model of «economically stable and socially fair development» of society, the main driving forces of which are education, science and newest technologies. The basis of this model is people and their potential. Human potential is the main instrument of social and economic progress of the state and society in Ukraine. For years of Ukrainian independence the main thing hasn't been accomplished — evaluation of the real cost of labor force. The goal-oriented policy of underestimation of its cost is keeping on that way. Ukraine doesn't have the other possibility to turn the place among the van of world pace than to turn to the way of development, reach the growth of the volumes of produced output and rising its competitiveness not due to increase of spending sprees of resources but due to active use of new knowledge and their materialized results.

Lisbon strategy stated objective to turn EU to the «most dynamic and competitive economy of knowledge» by 2010 [3]. For nowadays Ukraine — it is the strategy approach of its development. Provision of the stable gait of society in this direction will base on the acceptance education and science the national priority. Education — is the basis of science. Science is the base of innovative development of economy. It is necessary that at all levels of state power the unity of education and science have to be proclaimed and legally pronounced for potential development of the country.

Education is the strategic priority for state policy, its role in progressive development of the country is colossal. The experience of developed countries shows that on equal conditions of the labour productivity the incomes increase with the increase of expenses to general and special education. For these purposes it is necessary to rise the university education prestige, urgently reanimate vocational schools with the help of entrepreneurial scopes, raises the standard of training in secondary schools and colleges and to turn the post-graduate course to the center of science and innovations. Innovation in a largest scale and at different levels will allow to establish different novations, to develop scientific and technological progress in the context of national economy of Ukraine.



Thus, it is possible to observe that the absolutely correct definition of priorities of society development, government and state at level of ideology will allow faithfully chose the way of legal regulation of public relations in the process of its reformation and improvement.

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#### Щербина В. І., Кузьменко Г. В. Ідеологія трудового права України: сучасні проблеми формування

*Виявлено та окреслено основні проблеми ідеології сучасного трудового права, розкрито значення цієї категорії для правового регулювання праці. З нових позицій досліджуються суспільно-політичні та правові основи регулювання відносин працівника і роботодавця в умовах ринкової економіки, використання ними засобів, передбачених трудовим правом, для забезпечення реалізації прав і виконання обов'язків. Цьому сприяє принципово новий погляд на поняття ідеології трудового права, як базової категорії для формування цієї галузі та її системи. Розкриття основних ідеологем трудового права провадиться через їх зв'язок із конкретними системами правових норм, досліджується значення ідеологічних основ для підвищення ефективності норм трудового права. Особливу увагу приділяється вирішенню проблем урівноваження правових можливостей працівника у взаєминах із роботодавцем, посиленню соціальної складової норм трудового права.*

*Ключові слова: ідеологія, доктрина, виробнича солідарність, гуманізм, демократизм, соціальна справедливість.*



**Щербина В. И., Кузьменко Г. В. Идеология трудового права Украины: современные проблемы формирования**

*Выявлено и обозначено основные проблемы идеологии современного трудового права, раскрыто значение этой категории для правового регулирования труда. С новых позиций исследуются общественно-политические и правовые основы регулирования взаимоотношений работника и работодателя в условиях рыночной экономики, использования ими средств, предусмотренных трудовым правом, для обеспечения реализации прав и исполнения обязанностей. Этому способствует принципиально новый взгляд на понятие идеологии трудового права как базовой категории для формирования этой отрасли и ее системы. Раскрытие основных идеологем трудового права осуществляется посредством выявления их связи с конкретными системами правовых норм, исследуется значение идеологических основ для повышения эффективности норм трудового права. Особое внимание авторы уделяют решению проблем уравнивания правовых возможностей работника во взаимоотношениях с работодателем, усилению социальной составляющей норм трудового права.*

**Ключевые слова:** идеология, доктрина, производственная солидарность, гуманизм, демократизм, социальная справедливость.

