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МІЖНАРОДНО-ПРАВОВІ МЕХАНІЗМИ ЗАБЕЗПЕЧЕННЯ СОЦІАЛЬНИХ ТА ТРУДОВИХ ПРАВ ЛЮДИНИ

Анотація. *Формування сучасної наукової концепції про значення і роль міжнародно-правових основ забезпечення соціально-трудова прав людини є актуальною правовою проблемою, вирішення якої сприяє формуванню в Казахстані правової і соціальної держави, реформуванню національного правового регулювання в контексті міжнародно-правових зобов'язань країни. Метою статті є проведення комплексного аналізу системи міжнародно-правових основ забезпечення соціально-трудова прав людини в Казахстані на сучасному етапі. Специфіка та складність тематики дослідження зумовили використання цілого комплексу загальнонаукових та спеціальних наукових методів пізнання, таких, як: діалектичного, структурно-функціонального аналізу, системного аналізу, формально-догматичного тощо. В результаті проведеного дослідження автором встановлено, що інституційний аспект міжнародно-правової бази виступає в якості «ядра» взаємодії між міжнародним і національним правом у сфері забезпечення соціальних і трудових прав людини. Обґрунтовано, що міжнародні стандарти в досліджуваній сфері відіграють роль детермінант уніфікації і консолідації внутрішнього законодавства, визначають рівень гарантій в соціально-трудова сфері, а також виконують функцію розробки національного законодавства, стають найважливішими параметрами його реформування. Проведено аналіз процесів реформування національного законодавства Республіки Казахстан в соціально-трудова сфері в контексті впливу міжнародно-правових зобов'язань, взятих на себе цією державою. Автором також констатовано, що головним напрямком законодавчого процесу в соціально-трудова сфері публічних правовідносин на короткострокову перспективу стане послідовна імплементація в національне законодавство Республіки Казахстан європейських стандартів з урахуванням їх прогресивного характеру, орієнтації на побудову соціальної держави та необхідності збереження національної ідентичності.*

Ключові слова: регіональні стандарти, міжнародні зобов'язання, конституційне право, гармонізація міжнародних норм, національна правова система.

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INTERNATIONAL LEGAL MECHANISMS OF ENSURING SOCIAL AND LABOR HUMAN RIGHTS

Abstract. *The formation of a modern scientific concept on the significance and role of international legal fundamentals for ensuring social and labour rights is a pressing legal issue, the solution of which contributes to the formation of a legal and social state in Kazakhstan, the reform of national legal regulation in the context of the country's international legal obligations. The purpose of the article is to perform a comprehensive analysis of the system of international legal framework for ensuring social and labour human rights in Kazakhstan at the present stage. The specificity and complexity of the research subject conditioned the use of an entire complex of general scientific and special scientific methods of cognition, such as: dialectical, structural-functional analysis, system analysis, formal-dogmatic and others. As a result of the research, the author established that the institutional aspect of the international legal framework acts as the "core" of the interaction between international and national law in the field of ensuring social and labour human rights. The reasoning is provided that, in the researched field, the international standards play the role of determinants of unification and consolidation of domestic legislation, determine the level of guarantees in the social and labour sphere, and also perform the function of developing national legislation and become the most important parameters for its reform. The processes of reforming the national legislation of the Republic of Kazakhstan in the social and labour sphere in the context of the influence of international legal obligations undertaken by this state are analysed. The author also states that the leading direction of the legislative process in the social and labour sphere of public relations for the short term will be the consistent implementation of European standards in the national legislation of the Republic of Kazakhstan, with consideration of their progressive nature, orientation towards development of a social state and the need to preserve national identity.*

Keywords: regional standards, international obligations, constitutional law, harmonization of international norms, national legal system.

INTRODUCTION

The relevance is due to the interests of the state and society in the qualitative consolidation and regulation of social and labor human rights in the modern legal system and social relations. The timeliness of the research is due to the theoretical lack of development of the system of international legal foundations for ensuring social and

labor human rights in Kazakhstan, the relevance of the practice of forming and developing social and labor legislation as the fundamental basis of generally accepted norms and standards in this field.

In recent years, the field of social and labor legislation of Kazakhstan has undergone fundamental changes, the system of relevant regulatory legal acts has become more qualitative and effective due to codification and unification, the implementation of organizational reform to ensure guaranteed social protection measures for the population [1]. At the same time, despite a significant improvement in the quality of ensuring of social and labor rights of a person, Kazakhstan's legislation in this area does not sufficiently meet generally accepted standards, international obligations undertaken by the republic are not fully implemented. In addition, scientific interest in the topic of this study is due to the fact that legal support of social and labor human rights is carried out not only by domestic law, but also international, as a rule, more progressive, consolidating recognized standards and norms of realization of human rights in the social and labor sphere [2; 3]. However, the specifics of this area of public relations does not allow in most cases the direct impact of international rules in the realization of social or labor rights, implementation measures are needed to consolidate and introduce generally accepted standards in national legislation. This determines the complexity of the mechanism of execution by Kazakhstan of its international obligations to ensure social and labor human rights.

It should be noted that the international legal foundations of wage labor and social protection of the population were the objects of scientific research in legal science. So, in the thesis of E.M. Ametistov notes: "International labor regulation is one of the oldest and most developed areas in the international protection of human rights [4]. For many years of existence of this area, within its framework, a large number of international labor standards were established and an extensive system of multilateral and bilateral treaty obligations of states was established for the intra-legal implementation of these norms, and a great practical experience of such implementation was accumulated". At the same time, in Kazakhstan there were no comprehensive scientific studies of the problems of the international legal foundations of ensuring social and labor human rights [5; 6]. The statement of the problem in the proposed perspective of the scientific analysis of human rights in the social and labor sphere in Kazakhstan from the point of view of their provision through mechanisms of an international character is new and has not previously had a place in the domestic legal science.

The formation of a modern scientific concept of the significance and role of the international legal foundations for ensuring social and labor human rights is an urgent legal problem, the solution of which contributes to the formation in Kazakhstan of a legal and social state, the formation of national legislation and the social and labor sphere corresponding to generally accepted international standards.

Despite the fact that the problems of ensuring and content of human rights and freedoms, as well as issues of establishing the correlation of international and national

law, the implementation of generally accepted standards in the domestic legal system are some of the “popular” areas of theoretical research in constitutional law, comparative law science, international law, in the field of scientific research of international legal orientation there was not a single monograph specifically devoted to the international legal support of social labor rights, which seems to be a significant gap in this area of scientific research [7]. Existing studies of regional associations in the post-Soviet space are represented by works of scientists from various branches of knowledge: economic, historical, political, legal orientation. After the collapse of the USSR, enough scientific literature has been published, including monographs on the areas and aspects of this study [8].

These works and other works related to the countries of the former USSR, their formation in political, economic and social terms, their need for economic associations and steps in this direction, are of considerable scientific interest.

1. MATERIALS AND METHODS

The specificity and complexity of the topic of scientific research led to the use of a whole complex of general scientific and special scientific methods of cognition, such as: dialectical, analysis, synthesis, historical, comparison, analogy, deduction, induction, abstraction, as well as comparative legal, formal legal, method of political and legal modelling, structural and functional analysis, system analysis, logical, formal dogmatic and others. The general scientific dialectical method of cognition was the main one in this system of methods used and allowed to fulfil the scientific tasks defined in the article in the unity of their social content and legal form. In particular, the dialectical method of cognition of reality made it possible to analyse international legal mechanisms for ensuring social and labour human rights, which reflected Western European basic civilisational values, as well as to study the influence of European doctrine, politics, and international legal obligations in the field under study on national legal system of the Republic of Kazakhstan.

The use of analysis and synthesis methods contributed to the study of problems in the field of protecting social and labour human rights and directions for improving the relevant legislation. The historical method contributed to determining the role of interstate cooperation in the development of mechanisms for ensuring social and labour rights in a transboundary context. The formal legal method allowed revealing the peculiarities of law enforcement of the provisions of the national legislation of the Republic of Kazakhstan in the field of protection of social and labour human rights. The comparative legal method provided an opportunity to conduct a thorough analysis of the problems of protecting social and labour human rights, as well as outline the prospects for overcoming them. In addition, this method was used to identify similar and fundamentally opposite norms in the legal regulation of ensuring social and labour human rights in the Republic of Kazakhstan and other countries, international organisations, as well as when comparing scientific views on the indicated issues.

The methods of induction and deduction have provided a definition of the nature and effectiveness of the mechanism for protecting and ensuring social and labour rights as a priority area for adapting the national legislation of the Republic of Kazakhstan to international standards and requirements. Structural and functional analysis was used to comprehensively characterise social and labour rights of a person, to determine and study the structure of national legislation governing relations in this area. The method of system analysis provided the opportunity to highlight the relationship between the substantive nature of social and labour rights and the specific mechanism of their protection. The formal dogmatic method was used in the interpretation of legal categories, as a result of which the conceptual and categorical apparatus for protecting social and labour human rights in the international legal context was deepened and refined. The logical method was used as a universal means of argumentation of scientific conclusions in the indicated problems.

The theoretical basis of the article was the scientific works of domestic and foreign scientists, based on the key theories of interstate integration: federalism, neo-functionalism, intergovernmentalism (intergovernmental approach), neo-regionalism. The empirical base of the study is a wide range of regulatory legal acts and official documents adopted in the field of ensuring social and labour human rights both in the Republic of Kazakhstan and in other states and organisations. Based on the principle of comprehensiveness, the study takes into account both political and socio-economic aspects of the formation and development of international legal ensuring the standards of social and labor human rights, their relationship with legal regulation and practice of implementing of national social and labor relations. The study of the problems of international legal regulation of the research object is carried out in a systematic connection with the analysis of the problems of the organization and activities of the international institutional system.

Since the author's concept concerns the identification and understanding of the regularities of transformation of international standards for ensuring social and labor human rights in the national legislation of Kazakhstan, the main ones are the methods of describing and analyzing situations caused by socio-economic features of the geopolitical national space, methods of comparative analysis.

2. RESULTS AND DISCUSSION

The international legal framework for ensuring social and labor human rights is a combination of the most important fundamental international norms governing the basic foundations of international institutions operating in this field and international relations aimed at securing standards, ensuring, guaranteeing and realizing social and labor human rights that gives grounds for its separation into an independent international legal institution in the system of the branch of international human rights law. This institution is of a public legal nature, due to the specifics of social relations that are governed by the established international social and labor legal system –

these are relations of cooperation and interaction between states and international organizations in this field [9–11]. The public nature of the institution is determined by the particular subject composition of these social relations, which are states, international organizations, bodies; by special method of legal influence, characterized by the processes of harmonization of the will of the states; as well as the peculiarities of the formation and consolidation of the sources of the legal framework for ensuring social and labor human rights system of the international legal framework for ensuring social and labor human rights.

The leading role in creating and providing guarantees for the realization of social and labor human rights belongs to international organizations, whose goal of operation is to develop, consolidate and implement international human rights standards, which is aimed at creating stable security foundations throughout the world. The institutional aspect of the international legal framework for ensuring social and labor human rights acts as the “core” of interaction between international and national law in this area, which defines and establishes appropriate mechanisms for interpenetration and addition in the legal regulation process [12]. The institutional system of international law in the social and labor field of social relations includes a set of institutions that ensure, on the one hand, that states comply with international obligations in the social and labor sphere, and on the other, through lawmaking, create and consolidate relevant generally accepted standards [13; 14]. It is the factor of participation in institutional systems that obliges the state to join and use the generally accepted recognized tools and mechanisms for ensuring social and labor human rights.

The significance of international social and labor standards is to develop national law in the direction of its compliance with generally accepted and universal norms; standards play the role of determinants of unification and consolidation of domestic legislation, define the level of guarantees in the social and labor sphere, as well as carry out the function of developing national legislation, become the most important parameters of its development; act as parameters of domestic social policy; international tools and mechanisms for the protection of social and labor human rights are an integral part of the legal, economic and organizational security systems, the effectiveness of their application is ensured by the basic, fundamental nature of universal norms.

2.1 Universal tools and mechanisms for the protection of social and labor rights

Modern conditions for the development of international and interstate relations have proved the effectiveness of universal norms, provided by their basic, fundamental character in the system of international law. Scientific sources rightly point out that the priority of national regulation of human rights is giving way to international control. There is a need to develop common human standards in the field of human rights, as well as to create international mechanisms and procedures for their provision and protection. Distinctive features of universal norms can be reduced to the following provisions: global action, universal binding force, the creation and aboli-

tion of them by international community as a whole. Universal norms form general international law, in which law in the social and labor sphere can be distinguished.

Custom in international law has an immeasurably greater importance than in domestic law. It can be argued that the treaty has become the main source of international law relatively recently. For almost the entire history of the development of relations between states, custom has been one of the most important sources of international law. This statement is true not only for Asian countries, including the states of the Central Asian region, but also for all European states. And at present, custom continues to play an important role as a source of international law and a form of consolidation of universal norms. Customs can be modified, subsequently transferred in a contractual form or canceled by means of contracts of interested parties [15]. Treaty and custom are the main sources of modern international law and a form of consolidation of universal norms. And while at the first stages of development international law indirectly influenced the legislation of the states-participants of the international community, now the international treaty and international custom have become direct sources of national law. The treaty as a universal norm of international law is an explicit agreement between its subjects on the creation of internationally binding legal norms for them, defining their mutual rights and obligations.

In the process of creating international law, intergovernmental and international public organizations participate. The result of their activities are resolutions, that is, recommendations that have a significant impact on the creation of international legal norms both in a contractual and usual order. Since the resolutions of intergovernmental organizations are the result of the coordination of the interests of the member states of these international intergovernmental organizations, especially those relating to the behavior of states in the sphere of competence of this international organization, they serve as sources of modern universal norms of international law [16–18]. In any case, the resolution of an international organization adopted by a majority vote becomes binding on almost all members of this organization. And the more universal this organization is, the more states accept the resolution as a generally binding norm.

International labor and social law belong to the field of public international law as regulating the relations between subjects of international law regarding the consolidation, implementation of the standards of human rights in the social and labor sphere, and their implementation in national law. The inaccuracy of the term international labor law lies in the fact that the sphere of relations regulated by it is not a hiring relationship with an international element (not a relationship between an employer and an employee), but a relationship between the subjects of a small business regarding export-import of labor force, internal legal regimes, “Meeting” and “seeing off” labor migrants. In connection with this, a more accurate term would be the term international migration (labor resource) law. In international labor (migration) law, methods of bilateral and regional regulation are also actively used. Moreover, within the framework of integration associations, there is a tendency to replace the method of multilateral regulation

by the method of supranational regulation [19]. The public nature of international social and labor law, we believe, proceeds from the circle of social relations that are regulated by the existing international social and labor legal system – these are relations of cooperation, interaction between states, international organizations in this field. The subject composition, which includes states, international organizations, these public relations also determines the public legal nature of international social and labor law. As additional features, it is worth highlighting a specific method of legal impact, characterized by the processes of coordination of the will of states, as well as the particular sources of the legal system under consideration. International law in the social and labor sphere as a relatively new phenomenon of reality develops mainly in the form of international treaties, both multilateral and bilateral (agreement, pact, convention).

The Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948¹, secured the right of everyone to such a standard of living, including food, clothing, housing, medical care and the necessary social services, which is necessary to maintain the health and well-being of himself and his family, and the right to security in the event of unemployment, illness, disability, widowhood, old age or another loss of livelihood due to circumstances beyond its control. The International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly on December 16, 1966, developed these provisions, securing the right of everyone to social security, including social insurance. In addition, UN acts are sources for the formation of acts of international law in the social and labor sphere, as they define basic ideas. These UN acts containing the basic principles of social protection of the population, the realization of human rights in labor are the Universal Declaration of Human Rights, the Declaration on Social Progress and Development, the Declaration of the Rights of the Child, the Declaration on the Elimination of All Forms of Racial Discrimination, the Declaration on the Elimination of Discrimination against Women, Convention on the Elimination of All Forms of Racial Discrimination, Declaration on the Rights of Mentally Retarded Persons, Declaration on the Rights of Disabled Persons, International Covenant on Economic, Social and cultural rights, International Covenant on Civil and Political Rights, Copenhagen Declaration on Social Development.

A special place in the international system of universal mechanisms for ensuring human rights is occupied by the Conventions of the International Labor Organization, as well as acts of a recommendatory nature – the ILO Recommendations, but with respect to these documents a universal scope has been established. Both the ILO Conventions and Recommendations are adopted at the ILO Conference. The ILO Convention usually requires ratification by the state that has accepted it. The provisions of the Convention shall take effect by the adoption of legislative or administrative measures, collective agreements or any other legislative means. Any state that has signed the ILO

¹ The Universal Declaration of Human Rights, adopted by the UN General Assembly. (1948, December). http://www.consultant.ru/document/cons_doc_LAW_120805/

Convention must translate its provisions into national law. But the norms of international labor and national labor law are interdependent. This means that the ILO has a significant impact on the labor laws of various states. An ILO recommendation can also be made into law. In addition to submitting a recommendation to the competent authority or authorities, the ILO member does not have any other obligations to the ILO, with the exception of the obligation to inform the Director-General of the International Labor Office, at appropriate times, when required by the Governing Body, about the status of legislation and existing practice in his country on that the recommendation relates to, what measures have been taken or planned to give effect to any provisions of the recommendation, as well as about such changes to these provisions, which are or may be necessary for the purpose of adopting or applying them. ILO recommendations detailing the fundamental principles of international labor law are binding on ILO member states based on their membership in the ILO.

Thus, the legal nature of ILO Conventions and Recommendations is significantly different. Since ratification of the Convention, as a rule, introduces it into the system of sources of national legislation. Regarding the Recommendation, its ratification is not required, which somewhat formally detracts from its legal force for states that have signed it. At the same time, membership in the ILO makes the Recommendations binding on participating states.

The ILO acts define the types of domestic sources of law and legislation, determine the form and content of national regulations. Article 2 of 1969 Convention No. 129¹ clarifies that the term “legislation” means, in addition to laws and regulations, arbitral awards and collective bargaining agreements. The ILO acts define the types of domestic sources of law and legislation, determine the form and content of national regulations. Other ILO acts characterize the structure of domestic sources of law, highlighting the usual norms, the views of prominent scholars, and common features. However, international acts do not establish an exhaustive list of legal sources, since the system is in constant development. Social partnerships, employment contracts, and social protection are highlighted as priority areas for the development of national law-making.

ILO activities in Kazakhstan are carried out through the operation of the ILO Subregional Office for Eastern Europe and Central Asia. The Office coordinates ILO activities in ten countries – Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, Turkmenistan and Uzbekistan. The main areas of activity of the Subregional Office are the promotion of national decent work programs in the countries of the region, the development of social dialogue, social protection, employment development, labor protection, gender equality in the world of work, HIV / AIDS in the workplace, the eradication of child labor and other areas. The interaction of the Republic of Kazakhstan and the Bureau is carried out in the framework of joint

¹ International Labor Organization Convention No. 129 of 1969 on Labor Inspection in Agriculture. (2004, September). Retrieved from https://zakon.rada.gov.ua/laws/show/993_114

programs in the field of labor and social protection of the population, the development of draft regulatory legal acts, their concepts, as well as program documents for the development of the social and labor sphere [20–22].

Universal mechanisms for the protection of social and labor human rights penetrate the legal systems of states through various international institutions of which the country is a party. It is the participation factor that obliges the state to join and use the developed universally recognized tools and mechanisms for ensuring social and labor human rights, which together can be defined as a universal system of international cooperation in the field of ensuring social and labor human rights. We considered universal tools and mechanisms for protecting social and labor human rights as an organic part of the legal and organizational security systems, the effectiveness of their application is ensured by the basic, fundamental nature of universal norms. The main forms of the existence of universal norms are custom, contract, acts of international organizations, which should be considered as sources of international and national law [23].

Universal norms are the most important mechanism for ensuring social and labor rights and freedoms of a person, in their totality they form the international legal basis for regulating this sphere of public relations. Universal norms set the bar for guarantees of the considered human rights, act as a determinant of national law-making, become the most important parameters of its development, and are determined by the standards of domestic social policy. The universal level of labor regulation and social protection is aimed at expanding the scope of public relations covered by legal mediation. Universal mechanisms penetrate the legal systems of states through the relevant international institutions to which the country is a party. It is the participation factor that obliges the state to join and use the developed universally recognized tools and mechanisms for ensuring social and labor human rights.

2.2 Regional mechanisms and standards for ensuring social and labor rights

Along with the existing system of universal cooperation of states in the field of social and labor human rights, such activities are carried out at the regional level, that is, on the basis of existing regional cooperation organizations, on the basis of interstate (multi-, bilateral) agreements. Regional cooperation cannot be opposed to universal cooperation and, in our opinion, should be considered from two perspectives: on the one hand, as a way to complement universal cooperation, to specify it towards the national conditions, and on the other, as a method of creating more effective and efficient mechanisms and ways to ensure fundamental human rights and freedoms, including in the social and labor sphere. The region created by states is, along with the states themselves and international governmental organizations, one of the most important factors conducive to solving modern global problems. It contributes to the formation of a community of interests, affects the security of the region, contributes to the emergence of new ways of mutual relations between states. It creates the need

for new international legal norms and new institutions. Regional norms historically preceded universal. The latter were created on the basis of the former, using their experience [24; 25]. This process continues to this day. At the same time, universal international law promotes the progress of regional systems by transferring to them the experience of both more developed regional systems and the universal system.

If universal international legal documents that enshrine personal human rights and freedoms form the UN international legal acts on human rights and freedoms, which are of a recommendatory nature and the UN conventions developed on their basis, then a system of regional international legal acts on human rights are formed by: European, American, African, Asian-Pacific systems, as well as systems of acts regulating human rights in Islamic society, the system of acts within the OSCE and the system of acts in CIS [26]. The acts adopted by the European regional associations of states: the Council of Europe (CE) and the European Union (EU), act as sources of international legal regulation of the social and labor sphere, together they form the so-called regional law in this area. Among the fundamental acts of inter-regional cooperation, the Convention on the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, should be highlighted at the level of the Council of Europe. The Charter not only proclaims the basic social and labor human rights as priorities of the social policy of states, but also establishes a set of measures to ensure the enumerated rights, measures to establish guarantees for their implementation.

Kazakhstan seeks an active partnership with the European Union. One of the promising, in our opinion, areas of the legislative process in the social and labor field of public relations is the implementation of European standards in national legislation, taking into account their progressive nature and focus on building a social state. In the analysis, regional cooperation was studied as a method of supplementing the universal level of international legal interaction of entities, a way of differentiation in relation to national conditions, which has more effective mechanisms for ensuring human rights and freedoms. One of such promising, in our opinion, directions of the legislative process in the social and labor field of public relations is the implementation of European standards of a regional character in national legislation, taking into account their progressive nature and focus on building a social state. The lack of a uniform approach to the legal regulation of social and labor rights of citizens in the EAEU states leads to an insecurity of mechanisms for their guarantees enshrined in relevant international obligations, this conclusion is based on the fact that the EAEU member countries have chosen individual ways of developing social systems, identified various sources of financing funds for their financial support [27].

In Kazakhstan, certain minimum requirements of the Charter of Social Rights and Guarantees of Citizens of Independent States of the EAEU remain unfulfilled, namely, the right guarantee for full social security regardless of place of residence, full pension provision in old age, in case of illness, disability, loss of a breadwinner, in other cases provided for by national legislation is not fully provided, regardless of the territory of

which state the right to pension provision is acquired, as well as the payment of government benefits to families with children; requirements for the social security system to provide material and other assistance to dependent family members of the unemployed, as well as to citizens who have lost the right to unemployment benefits due to the expiration of the specified period for its payment; the provision that the temporary disability benefit should be paid in the amount of at least 60 percent of the employee's earnings and its amount should not be lower than the minimum wage level prescribed by national legislation; provisions on determining the amount of cash benefits for child care not lower than the minimum wage established by national legislation [28].

In our opinion, one of the effective mechanisms for the EAEU member states to fulfill their regional standards of social and labor rights is the rapprochement and harmonization of national legislations in this area, which, in our opinion, provides for several aspects of the solution and requires an integrated approach. Firstly, we believe that the effectiveness of the regional level of cooperation can be achieved, along with other mechanisms, by establishing direct acts and applying them on the territory of states, taking into account the possibilities of national constitutional law. We believe that only fundamental and basic documents should possess such an action. Secondly, the adoption of legislative acts that facilitate the phased approximation of the regulatory framework of the EAEU member states in the social and labor sphere, which include model laws. Thirdly, the development and adoption of conceptual acts recommended for use in national legislation.

2.3 Coordination of Kazakhstan's international obligations in the social and labor sphere and domestic law

The process of real fulfillment by states of their international obligations is the logical result of participation in international relations, adherence to universally recognized norms and standards for ensuring social and labor human rights. This process of execution can be considered as a state-sanctioned direct enforcement of international norms in the internal legal system, as well as in the framework of the harmonization of international and national legal norms. Coordination is a form of convergence of international and national law and is expressed in the adoption of a set of measures to implement the norms of international law. The need for coordination is dictated by the following factors: awareness of the priority of universal values, respect for human rights and fundamental freedoms, the need to maintain international peace, security and justice, stability and democracy; secondly, the harmonization of domestic and international law is dictated by economic factors, in particular, the ever-increasing internationalization of production and exchange, technology and science. The above factors ensuring the significance of harmonization should be supplemented with the following provisions: firstly, the achievement of a common goal, which is the fulfillment by the state of its international obligations, and secondly, the approval of the status of the state in the international community, committed to universally

recognized values and principles, and thirdly, coordination provides real opportunities for state participation in international lawmaking, the formation and dynamics of the international legal system.

Not being categorical, in the question of the types, content and essence of the methods of coordination, we note that all available theories on this problem have a right to exist. In our opinion, the most effective in the approval process are sending, incorporation and legitimation, which allow creating the most harmonious conditions for the coexistence of international and national law. The prerequisites of the approval process under consideration are not only the above aspects of the status of the state as a subject of international law, but also the conflicts that take place. The so-called conflicts of norms of international and domestic law often arise not because of dishonesty in the execution of international treaties, but because of the technical inconsistency of the requirements of domestic laws and international law. The inconsistency of international and national legal norms is also explained by the fact that the state-subjects of international relations are often at different stages of socio-economic, political and cultural development. There are always conflicts between the norms of international and domestic law, they are overcome and reappear in order to be overcome. In addition, conflicts arise, as a rule, on the basis of a higher level of universally recognized principles and norms enshrined in international law and the norms of certain spheres of public relations relative to the internal legal system, which requires the implementation of a number of domestic measures. The Ministry of Foreign Affairs acts as the coordinating body for compliance with international obligations of the Republic of Kazakhstan, which is entrusted with the task of coordinating the international activities of other central government bodies of Kazakhstan in order to ensure a common foreign policy, foreign economic policy and investment policy in relations with foreign states and international organizations, as well as the organization conducting negotiations and concluding international treaties of Kazakhstan; preparation of proposals on the conclusion, implementation, amendment, suspension and termination of international treaties, their introduction in the prescribed manner for consideration by the President or the Government; participation in the development of measures to ensure the rights and freedoms of citizens, its defense and national security, law enforcement, the development and expansion of trade, economic, financial, scientific, scientific, technical, cultural, as well as other relations of Kazakhstan with foreign states and international organizations; the implementation of general monitoring and coordination of activities of state bodies in the implementation of international treaties to which Kazakhstan is a party. The judicial authorities in the field of legal support of international treaties, coordination of foreign legal assistance are vested with the functions of preparing, organizing the conclusion and execution in accordance with the legislation of international treaties on legal assistance and legal cooperation with foreign states; on the analysis of harmonization, unification of the legislation of Kazakhstan and foreign countries, as

well as the implementation of international standards recognized by Kazakhstan in the legislation, are endowed with the function of carrying out a legal examination of draft international treaties.

At the same time, our analysis of the existing conflicts of international and national law in the field under consideration allows us to conclude that the activities of these authorized bodies are not fully coordinated with other interested state bodies, there is no relationship between the MFA, MJ and MLSPP in the framework of ensuring social and labor rights. In our opinion, it is a demanded and reasoned practice to assign to the Ministry of Labor and Social Protection the functions of a special coordinating body that monitors and prepares proposals for legislative activities aimed at implementing and fulfilling Kazakhstan's obligations in the field of ensuring social and labor human rights.

The specifics of the harmonization of international norms and the internal legal system, which guarantee the existence and full realization of social and labor rights, is due to the fact that international guarantees cannot for the most part be applied directly, requiring a set of legislative, organizational, social, financial and economic measures in the relevant national public relations. Mandatory financial support for the implementation of social and labor rights determines the implementation of a set of measures to secure sources of financing rights in domestic law, as well as measures to ensure their functioning. Despite the determination by national law of the general order of the domestic application of international norms, in deciding on the applicability of a specific norm in the field in question, it all depends on the normative consolidation of guarantees of the necessary social and financial and economic conditions for its implementation.

CONCLUSIONS

The international law is considered in the study in two aspects: as an independent legal basis for consolidation and mechanisms for the implementation of social and labor human rights, as well as a structural element of the national law of Kazakhstan, which has specific levers of application and streamlining regulation. This point of view is based on the property of international norms, which consists in the fact that, on the one hand, international norms establish the basic parameters of social and labor human rights, which are an organic part of international law, on the other hand, acts of international law-making that establish a fundamental list and mechanisms the implementation of social and labor rights are an integral and most important element of the national legal system, the latter is determined by the constitutional directive on the inclusion of international treaties and other obligations of the republic in the system of existing law. At the same time, labor and social human rights have a constitutional level of guarantee and consolidation. The Constitution, by virtue of its specific quality, the main legislative act of the country, which defines the state's characteristics, goals and objectives in a legal form, establishes the forms by which

citizens exercise their abilities to work, as well as state guarantees of social protection upon the occurrence of socially significant legal facts.

The activities of the International Labor Organization and Kazakhstan in the processes of implementing universally recognized social and labor standards in the legal system of Kazakhstan are carried out in several areas: incorporation of ILO acts in the legislative system, by expressing Kazakhstan's consent to be bound by an international treaty by signing an agreement, exchanging documents, ratifying an agreement, its adoption, approval, accession to the contract or by any other means agreed upon by the contracting parties; implementation of guarantees of social and labor human rights, enshrined in the ILO Recommendations during the transformation of the relevant sphere of public relations, the legislative process; development and implementation of strategic cooperation programs between Kazakhstan and the ILO. Universal tools and mechanisms for the protection of social and labor rights are defined as an organic part of the legal and organizational security systems, the effectiveness of their application is ensured by the basic, fundamental nature of universal norms.

The universal level of labor regulation and social protection is aimed at expanding the scope of public relations covered by legal mediation. Universal mechanisms penetrate the legal systems of states through the relevant international institutions to which the country is a party. It is the participation factor that obliges the state to join and use the developed universally recognized tools and mechanisms for ensuring social and labor human rights.

In the analysis, regional cooperation was studied as a method of supplementing the universal level of international legal interaction of entities, a method of differentiation in relation to national conditions, which has more effective mechanisms for ensuring human rights and freedoms. One of such promising, in our opinion, directions of the legislative process in the social and labor field of public relations is the implementation of European standards of a regional character in national legislation, taking into account their progressive nature and focus on building a social state.

REFERENCES

- [1] Bejou, A. (2016). Human rights, corporate social responsibility, and fortune companies. *Journal of Relationship Marketing*, 15(1–2), 81–91.
- [2] Verschueren, H. (2018). Employment and social security rights of third-country nationals under the EU labour migration directives. *European Journal of Social Security*, 20(2), 100–115.
- [3] Ruiz Moreno, Á.G. (2016). The human right to work of migrants. *Revista Latinoamericana De Derecho Social*, 22, 265–291.
- [4] Ametistov, E.M. (1983). *Factors of the implementation of international law (on the example of international labor standards)*. Moscow: Ametistov, E.M. Factors of the implementation of international law (on the example of international labor standards).
- [5] Sepúlveda Carmona, M. (2017). Ensuring inclusion and combatting discrimination in social protection programmes: The role of human rights standards. *International Social Security Review*, 70(4), 13–43.

- [6] Baumann-Pauly, D., Nolan, J., van Heerden, A., & Samway, M. (2017). Industry-specific multi-stakeholder initiatives that govern corporate human rights standards: Legitimacy assessments of the fair labor association and the global network initiative. *Journal of Business Ethics*, 143(4), 771–787.
- [7] Alferts, L., Lund, F., & Moussié, R. (2017). Approaches to social protection for informal workers: Aligning productivist and human rights-based approaches. *International Social Security Review*, 70(4), 67–85.
- [8] McPhail, K., & Adams, C.A. (2016). Corporate respect for human rights: Meaning, scope, and the shifting order of discourse. *Accounting, Auditing and Accountability Journal*, 29(4), 650–678.
- [9] Khamzin, A.S., & Khamzina, Zh.A. (2009). *Problems of government activities to ensure social human rights in Kazakhstan: constitutional and legal research*. Astana: Nauka.
- [10] Kirkham, K. (2016). The formation of the Eurasian Economic Union: How successful is the Russian regional hegemony? *Journal of Eurasian Studies*, 7(2), 111–128.
- [11] Thornthwaite, L. (2016). Chilling times: Social media policies, labour law and employment relations. *Asia Pacific Journal of Human Resources*, 54(3), 332–351.
- [12] Bareeva, I.A., Vasin, S.M., Sugrobova, G.A., & Korchagina, L.N. (2017). Social partnership in human resources management. *Journal of Advanced Research in Law and Economics*, 8(8), 2339–2353.
- [13] Tarr, D.G. (2016). The Eurasian Economic Union of Russia, Belarus, Kazakhstan, Armenia, and the Kyrgyz Republic: Can It Succeed Where Its Predecessor Failed? *Eastern European Economics*, 54(1), 1–22.
- [14] Kahn, E. (2019). A structural approach to the human right to just and favourable working conditions. *Critical Review of International Social and Political Philosophy*, 22(7), 863–883.
- [15] Dukes, R. (2017). International labour rights: Legitimizing the international legal order? *University of Toronto Law Journal*, 67(4), 544–568.
- [16] Galvin, D.J. (2019). From labor law to employment law: The changing politics of workers' rights. *Studies in American Political Development*, 33(1), 50–86.
- [17] Passaniti, P. (2018). Labour law and political representation. a reflection on historicity of social rights. *Lavoro e Diritto*, 32(2), 291–306.
- [18] Mukhamadiyeva, G.N., Kussainova, A.K., Baisalova, G.T., Apakhayev, N., Khamzina, Z.A., & Buribayev, Y.A. (2017). Labour law of the modern kazakhstan. *Journal of Legal, Ethical and Regulatory Issues*, 20(1), 1–7.
- [19] Branco, M.C. (2019). Economics for the right to work. *International Labour Review*, 158(1), 63–81.
- [20] Kaltenborn, M. (2017). Overcoming extreme poverty by social protection floors – approaches to closing the right to social security gap. *Law and Development Review*, 10(2), 237–273.
- [21] Levashova, Y. (2018). The accountability and corporate social responsibility of multinational corporations for transgressions in host states through international investment law. *Utrecht Law Review*, 14(2), 40–55.
- [22] Vavzhenchuk, S.Y. (2019). Legal doctrine of compliance with labour law. *Journal of the National Academy of Legal Sciences of Ukraine*, 26(2), 127–134.
- [23] Kuznetsova, Y., Yalcin, B., & Priestley, M. (2017). Labour market integration and equality for disabled people: A comparative analysis of nordic and baltic countries. *Social Policy and Administration*, 51(4), 577–597.

- [24] Sadovaya, E.S. (2018). Digital economy and a new paradigm of the labor market. *World Economy and International Relations*, 62(12), 35–45.
- [25] Wang, Z. (2018). Economic competition, policy interdependence, and labour rights. *New Political Economy*, 23(6), 656–673.
- [26] Cabrelli, D. (2019). The role of standards of review in labour law. *Oxford Journal of Legal Studies*, 39(2), 374–403.
- [27] Morkovina, S.S., Serebryakova, N.A., Sirotkina, N.V., & Dorokhova, N.V. (2018). Labor market regulation policy: Methodological aspects. *European Research Studies Journal*, 21, 946–953.
- [28] Doslaliyeva, B., Karenova, G., Rakhimova, G., Tleuzhanova, M., Kasenova, A., & Popova, L. (2017). Sustainable development of human resources of the eu countries in the integrated labor market. *Journal of Advanced Research in Law and Economics*, 8(6), 1740–1744.

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