



INTERNATIONAL LEGAL OBLIGATIONS OF STATES ABOUT THE PROVIDING OF REALIZATION OF INTERNATIONAL LABOR STANDARDS FOR SEAFARERS

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Summary

This thesis deals with the features of the implementation of international standards in the sphere of sailors labor. Were analyzed the conditions of implementation of international labor law into national legislation at both the international and national level. Special attention is paid to the features of effective control systems of surveillance and monitoring of compliance with international labor standards for sailors. Highlighted the conditions of implementation of international labor law in the national legislation of states. It is proved that the fulfillment of international commitments depends on the consistency between the international and national legal systems, which calls for necessity of law-making and law enforcement efforts on the implementation of international law at the national level and the establishment of an effective mechanism for the realization of international law in the state.

Key words: international public labor law, implementation of international labor law, international-legal mechanisms for implementation, surveillance and monitoring systems.

Аннотация

Статья посвящена исследованию особенностей имплементации международных стандартов в сфере труда моряков. Показаны особенности эффективности контроля над системами надзора и соблюдением международных стандартов в сфере труда моряков. Значительное внимание уделено определению роли международных организаций как особого субъекта международного трудового права в международно-правовом регулировании труда моряков. Выделены условия имплементации норм международного трудового права в национальное законодательство государств. Обосновывается, что исполнение международных обязательств зависит от согласованности международной и национальной правовых систем, что обуславливает необходимость исполнения правотворческих и правоприменительных усилий по имплементации норм международного права на национальном уровне и созданию эффективного механизма реализации норм международного права в государстве.

Ключевые слова: международное трудовое право, имплементация международного трудового права, международно-правовые механизмы имплементации, системы надзора и контроля.

Problem definition. International law is constantly develops, which involves the review and adaptation of the existing rules on the new terms of the relationship between the states, including those, caused by changes in the international labor law. The value of international control for law enforcement and justice as a new institution of international law is increasingly growing. This is due to the expansion of cooperation between states in all spheres of political, economic and socio – cultural lives.

At the present stage of development of international relations, relations of states based on conscientious fulfillment of their obligations, nevertheless to achieve efficiency of international – law norms

of states, are referred specific measures ensuring the principle of *pacta sunt servanda*, among which a special place is given to international control.

Task of the article is to determine the specifics of supervision and monitoring of international labor standards of seafarers and their classification for various reasons. An aim of the article is to identify and study effectiveness of the system of provision of realization of international labor standards for sailors.

Analysis of the extent of the problem research. Issues related to the international legal obligations of states with regards to the realization of international standards in the field of seafarers labor have been the subject

личные приемы законодательной техники, разнообразную терминологию, а иногда употребляет оценочные понятия. Это обусловлено разнообразием проявлений способа в конкретных составах административных проступков. Однако разнообразие проявлений способов в конкретных составах проступков не исключает общее правило, что если способ закреплен в диспозиции нормы Особенной части КУоАП, то он является обязательным признаком соответствующего состава проступка.

Под способом совершения административного проступка следует понимать форму, в которой получили свое выражение общественно опасные деяния, приемы и методы, которые использовал правонарушитель при совершении проступка. Способ совершения административного проступка как признак объективной стороны состава характеризуется следующими признаками: неотделим от противоправного деяния; характеризует как противоправное действие, так и противоправное бездействие; присущ как умышленным, так и неосторожным деяниям.

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of research of many scientists, including: V.N. Denisov, S.Y. Marochkin, B.I. Osminin, O.S. Savich, A.N. Shemyakin. Some interest to the implementation of international norms of labor law into the national law of states is seen in the works of foreign researchers, such as: N. Valtikos, J.-P. Kembi, L. Svebston, E. Shvelb.

The presentation of the base material. An important role among the means of promoting the realization of international labor standards for sailors, plays international control, which operates in the international regulation of labor [1, p. 67]. International legal control mechanism establishes certain international – legal obligations of States in connection with their implementation of International Labor Organization (the ILO) conventions, and other multilateral agreements that contain certain international standards on labor of sailors.

The process of development of international labor standards for sailors, increasing the role of international instruments in their ensuring indicate the formation of international protection of seafarers rights at the present stage. Concerning international protection of labor rights of seafarers, international cooperation in this area, there are always arise problems in the relationship between international and domestic law, international labor standards for seafarers and domestic jurisdiction of States, international and national legal personality of individual.

The concept of control in international law is mainly used to describe methods of checking the realization of the obligations assumed by the state. Control is used in cases where other means virtually impossible to establish whether the states officiate their obligations. This is accomplished by coordinated actions of nations and built so that its realization does not violate the sovereignty of states, and the control can not be used to interfere in their internal affairs. In fact, international control as a structural element of the implementation mechanism of the Convention covers the following links: ensuring the verification of compliance of States activity with adopted international obligations; establishment of possible violations of state assumed international obligations; facilitation of optimum realization of international law norms.

Of course, in the sphere of social – labor rights protection and social security of sailors, the priority is given to domestic agencies and organizations, mechanisms and procedures. «The main thing – is, as says the R.A. Müllerson, socio-economic level of state development, development and stability of its political institutions and structures» [2, p. 93]. In practice of the control mechanisms activity of international human rights, they are most effective when and where states themselves are ready to care about human rights [3, p. 35].

At the same time it should be indicated, that the issue of the system of supervision and control over compliance with international labor standards of seafarers may be considered only in relation to sources of public international labor law, which are binding. Such systems can be roughly classified on various grounds. Thus, on the basis of the exercise order of supervision and control, systems of supervision and control are divided into autonomous and proactive.

Autonomous systems do not require the intervention of third parties to begin their implementation. Control and supervision in accordance with such systems start automatically on the fact of adoption or official recognition of provisions of any international standard by specific primary subject of public international labor law. This type of control – supervision system is provided, in particular, by the ILO Charter concerning ratified by the states Conventions.

Initiative systems suggest that for the control – supervisory measures it is necessary treatment to control – supervisory agencies whichever interested subject. This system is provided, in particular, by art. 26 of the ILO concerning complaints received from states – members, and art. 24 concerning protests of associations of workers and employers. As a result of such appeals, state – offender is requested for relevant comments and issue is carefully studied by the specialized Committee of Inquiry of the ILO. Under the terms of art. 26–34 of the ILO Constitution, end-stage procedure may become the exercise of ILO recommendations by the state or proceedings in the International Court of Justice.

The level of implementation of all systems to ensure the implementation

of international labor standards can also be divided into two groups: interstate systems, that are carried out by the internal control – supervision institutions, and the international legal systems, that are realized through the international – legal instruments.

Exploring the control and supervision mode of international labor standards for seafarers, should be indicated the judicial constitutional control in respect of international agreements. Such control is carried out with respect to international treaties that are not effective for the state yet, but the conclusion of which is considered by relevant bodies (preliminary control), and against international treaties entered into force for the state (further control).

In addition, considering the system of implementation of international labor standards, it should be indicated the features of the Constitutional Court influence on the realization of international treaty obligations. The Constitutional Court may inaugurate impact on the implementation of international treaty obligations with the help of – first, the check of constitutionality of dialed into force for the state international agreements; in – the second, follow-up check of constitutionality of acts which authorize international agreements and determine the order of their use; and – thirdly, verification of compliance with laws and bylaws that came into force for the state by international agreements (conventional control).

Determining the impact of the Constitutional Court on the realization of international treaty obligations B.I. Osminin notes, that if the first and second procedures «can respectively directly or indirectly impede the realization of international treaty obligations in the national legal system in the case of recognition of the unconstitutionality of international treaties and acts authorizing the conclusion of international agreements and determine the order of their application, the latter procedure, by contrast, is aimed on the ensuring without prejudice realization of international treaty obligations in the domestic sphere» [4, p. 298].

At the same time we should recognize that in the constitutions of most states are not foreseen the possibility of judicial constitutional control in relation to



international agreements which became effective for the state. Constitutions of many countries prohibit directly check the constitutionality of such agreements. Thus, the US Supreme Court, exercising judicial constitutional control regarding the regulations of other branches of government, as well as laws, does not consider the constitutionality of international treaties, despite the fact that according to the US Constitution, federal laws and treaties have the same legal force and turn by «Supreme law of the country» [5, p. 287].

Some other countries (Germany, Italy, Belgium, Russia) suggest the possibility of follow-up check only in relation to acts, which authorize international agreements and determine the order of their application in the national legal system. We shall note, that the Constitutional Court of Ukraine has the right to exercise in respect of international treaties not only the previous, as well as subsequent constitutional control. According to art. 151 of the Constitution of Ukraine Constitutional Court of Ukraine by the Presidents of Ukraine presentation or the Cabinet of Ministers of Ukraine, provides an opinion on the constitutionality of existing international agreements of Ukraine.

An important place in the system of supervision and control over compliance with international labor standards also takes the verification of the compliance of laws and bylaws of international agreements. So, in those states where the constitution set the priority of international treaties before national laws, checking the conformity of laws with international agreements can be made by the Constitutional Court (conventional control). «Clearly consolidation of the primacy of international agreement in relation to domestic legislation, that is the legislation below the constitutional level, – said V.V. Maklakov – suggests the occurrence of institute of conventional control, i.e. control over the compliance of any law or administrative act of an international agreement» [6, p. 22].

Internal supervision and control systems are provided for in the labor law of a particular state and apply only to international standards, officially recognized, that formally integrated by that State in its labor legislation. In this case the mode of control and

supervision of their observance usually is no different from the control and supervisory regime, established for domestic labor standards. Realization of such supervision and control is the responsibility of the relevant supervisory and control authorities in the sphere of labor – the various government agencies and services, as well as government and labor inspections. Supervisory and control activities have common goals and objectives. However, the difference lies in the competence, functions, the methods of identifying the violations and ways of responding to them. In Ukraine, the rules of supervision and control over the observance of labor legislation, contained in Chapter XVIII Labor Code of Ukraine, as well as in special normative legal acts. These rules reinforce the system of supervision and control, the principles of their activity, interaction with other bodies and organizations, the main tasks and positions.

International legal system of supervision and control in regard to compliance with specific international labor standards are generally provided in statutes issuing by the international community, or directly in the relevant international instruments of bilateral and multilateral nature. It should be noted that the supervisory and control systems in public international labor law greatly resemble domestic ones. For example, as in the labor law of majority states, at the international level may be divided into two main forms of supervision and monitoring for compliance with international labor standards – and non-governmental mixed (tripartite).

As you know, within the state non-state supervision and control in respect of compliance with labor standards is usually carried by representative organizations of workers and other public (generally, human rights) organizations. At the international level, this form of control is implemented within the framework of certain international non-governmental communities activity.

International non-governmental communities can review and control an enforcement of international labor standards by both employers and workers associations, and by any other non-state actors. But the major powers in this area have trade unions of workers. Such associations are usually legally authorized

to do trade union control domestically – including the question of compliance of employers and government agencies with international labor standards – and then bring the information to the attention of various international non-governmental communities.

Mixed (tripartite) form of supervision and control over compliance with international labor standards is carried out by control and supervisory procedures of the ILO. These procedures are almost at all stages involve government officials, and national associations of employers and employees from each of the member States of the ILO. This principle finds its realization in the insurance of democratic control over the activities of the ILO. Thus, the development of a special mechanism for monitoring compliance with the obligations of States adopted by the ILO Constitution and Conventions of the ILO today is a major contribution of the ILO in the international protection of human rights in the workplace.

Control and supervisory procedure carried by ILO, includes two main stages: granting reports regarding recognition of States and their compliance with ILO regulations and subsequent study of these reports. In fact, according to art. 22 ILO Constitution, each state, which is a part of the ILO shall provide the International Labor Office by the annual report regarding measures adopted by this state in order of implementation of the conventions ratified by it. Requirements to specific content of the reports are established by the Governing Body of the ILO. In practice, the work associated with periodic monitoring of the application of ratified and not ratified Conventions and recommendations is made by two supervisory bodies of the ILO Committee of Experts on the Application of Conventions and Recommendations of the Administrative Council, and the Committee on the Application of Conventions and Recommendations of the International Labor Conference, whose functions are in order to analyze the periodic reports of governments on the application of conventions in countries cite in their reports, conclusions regarding the actual compliance of national law with the provisions of conventions and to look for the Member States on the presence in their domestic law discrepancies to these conventions. Simultaneously committees



are turning to governments with a request to eliminate such inconsistencies.

Ratification of ILO conventions – is not only a significant step in its implementation, but also an act, that opens up opportunities for international control over such implementation. States' obligation to provide the competent authority to consider the newly adopted Convention and provide the International Labor Office on request of the Governing Body, reports on the state of their law and practice with regard to unratified conventions is certain motivating factor towards implementation of the state treaty rules, as such reports are discussed at the Conference and can get there a particular political assessment. The ratification itself triggers the control mechanism that exists in the ILO, in all its volume.

The second stage of control and supervisory ILO procedure, which consists of the study report, is also carried out in two stages. First, the Committee of Experts on the Application of Conventions and Recommendations examine the relevant reports submitted by the Members. Following the study committee creates a personal report on the compliance of issue to these acts. Then on the annual International Labor Conference the report of the Committee of Experts is studied by the special tripartite Committee concerning the Application of Conventions and Recommendations.

In addition, a special place has another control procedure for the practical application of conventions – consideration of specific complaints received from national and international professional and other public organizations and states. Due to the great value provided by the ILO principle of freedom of association, to monitor compliance with this principle in the ILO is provided a specialized ILO Freedom of Association Committee and already mentioned above ILO Commission of Inquiry.

Thus, in the aggregate, the characteristics above made the ILO control unique. The effectiveness of the monitoring mechanism of the ILO has been the subject of studies, conducted in the last century as part of the ILO [7]. And some authors, who came to positive conclusions [8]. N. Valticos claims that the «control mechanism of the ILO is the most developed and remains a model for

other international organizations» [9]. L. Svepston is sure, that the «procedures that exist within the ILO, are the part of a larger international system for the implementation of international standards on human rights, as well effective, even despite of the frequent recourse to complaints procedures» [10, p. 100]. So, we could argue that the measure of the effectiveness of the control mechanism is not the degree of appeal procedures of individuals who believe that the state adheres to the commitments and agree with other researchers in the field of international law.

Conclusion. The features of international relations in the sphere of work determine the nature and scope of international labor law, which causes the direction of building a mechanism of implementation of its rules and contains a mechanism of monitoring their compliance with both international and national level. However, it should be clear state possibilities to enforce international obligations in this field, including the adherence to certain international labor standards with a view to implement them in real life.

To ensure the realization of international labor standards for sailors it is characteristically to create control mechanisms at both the domestic and international levels, which are intended to ensure the implementation of the relevant standards and contribute to the implementation of international law in the national legislation of States.

In accordance with the principle of good faith of realization of international commitments, each state must adopt the most effective domestic measures for which the state may establish special bodies and give them control functions.

International – legal science, summarizing accumulated experience, must develop and recommend to the international practice new forms, methods and means of international control – as an important tool to ensure compliance of international obligations by the states.

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