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GENERALLY RECOGNIZED PRINCIPLES OF INTERNATIONAL LABOUR LAW AND THEIR REFLECTION IN THE NATIONAL LEGISLATION OF EASTERN PARTNERSHIP STATES[1]

Açar sözlər: *ümumqəbuledilmiş prinsiplər, beynəlxalq hüquq, əmək hüququ, azadlıq, qanunvericilik, Şərq Tərəfdaşlığı ölkələri, BMT, BƏT.*

Ключевые слова: *общепризнанные принципы, международное право, трудовое право, свобода, законодательство, страны Восточного партнерства, ООН, МОТ.*

Keywords:*generally recognized principles, international law, labor law, freedom, legislation, Eastern Partnership countries, UN, ILO.*

Introduction

One of the leading roles in establishing international labor standards is played by the generally recognized principles of international labor law.

The problem of generally recognized principles of international law has been deeply studied from theory by such scientists as G. I. Tunkin, V. L. Tolstykh, relating them to the norms of customary international law, the norms of *jus cogens* [1, p. 140; 2, p. 227]. Ather scholar A. Kh. Abashidze comes to the conclusion that an analysis of international judicial practice, mainly of the International Court of Justice, confirms that the courts do not distinguish between applied principles. All of them - both those enshrined in the UN Charter and called in the domestic doctrine of international law "generally recognized principles" (for example, *Pacta sunt servanda*) or "general principles of international law" (for example, *uti possidetis juris*), and others (for example, the principle of humanism) are called "general principles of law". Moreover, the International Court of Justice and the doctrine of international law can be qualified as general principles of law and moral norms [3, p. 29].

In the first part of the article, we will try to understand the concept and range of generally recognized principles of international labor law, and in the second, we will analyze how these principles are reflected and implemented in the national labor legislation of the six Eastern Partnership countries.

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1. The concept of generally recognized principles of international labour law and their enshrinement in UN and ILO acts

The generally recognized principles of international law are also similar to the so-called general principles of the law of civilized nations, which are mentioned in paragraph 1 of Art. 38 of the Statute of the International Court of Justice. The difference between general principles of law and generally recognized principles of international law lies precisely in the fact that the former are of an intersystem and civilizational nature ("no one can be a judge in his own case," etc.), while the latter are a "product" of international law, which, however, may have one or another influence on the national legal system.

The normative basis for determining the meaning of generally recognized principles of international law for the national legal system, as a rule, is constitutional norms. So, according to Art. 8 of the Constitution of Belarus, this state recognizes the priority of generally recognized principles of international law and ensures that legislation complies with them. In accordance with Part 2 of Art. 3 of the Constitution of Armenia, the state ensures the protection of fundamental rights and freedoms of man and citizen in accordance with the principles and norms of international law.

According to Article 10 of the Constitution of Azerbaijan, the latter builds its relations with other states on the basis of the principles provided for in the generally recognized norms of international law. In this case, we are not talking about generally recognized principles, but about generally recognized norms of international law, which is not entirely correct terminologically, because norms are a broader concept than principles.

Article 10 of the Constitution of Georgia provides that the legislation of Georgia complies with the generally recognized principles and norms of international law, and not contrary to the Constitution of Georgia or the constitutional agreement, international treaties have prevailing legal force compared to internal state normative ones acts.

According to Part 1 of Article 8 of the Constitution of Moldova, the Republic of Moldova undertakes to comply with the UN Charter and treaties to which it is one of the parties, and to build its relations with other states on generally recognized principles and norms of international law.

In Art. 9 of the Constitution of Ukraine speaks only about the binding nature of international treaties ratified by The Supreme Council (Verkhovnaya Rada), but nothing is said about the recognition of binding nature and compliance with generally recognized principles of international law. As we see, in the Eastern Partnership countries various models of legitimation of generally recognized principles of international law are used: from recognition of the supremacy and (or) compliance as in Belarus, Georgia and Moldova to the use of other terms ("principles and norms of international law" in Armenia, "generally recognized norms of international rights" in Azerbaijan). In Ukraine, the option of excluding mention of these principles in the text of the Constitution has been chosen.

There is no legal definition of generally recognized principles of international law either in the sources of international law or in the legislation of the member states of the Eastern Partnership. Let us briefly consider the views of modern labor law specialists on this legal category.

I. K. Dmitrieva, not without reason, notes that the interaction of international labor standards and the principles underlying them is manifested in the fact that "they can act not only within the framework of their own legal system" [4, p. 87]. This conclusion is also relevant for the Eastern Partnership countries.

In relation to the interaction of international and national legal systems, generally recognized principles and rights are formed, as a rule, first within the framework of international law (in the form of legal customs, norms and principles in constituent documents, declarations), developed in international treaties and only then implemented in national legislation.

According to G.A. Vasilevich, "the principles of international law are characterized by the highest degree of normative generality, that is, generally recognized principles are those norms of international law that are shared by the world community, have the highest degree of generality and normativity, which means they predetermine the content of other norms of international law" [5, pp. 90-91]. M. V. Lushnikova came to a similar conclusion, who summarized the following features of these principles: "1) legal recognition in international legal sources; 2) recognition by the international community as a whole; 3) imperative (obligatory) and provided with international legal guarantees" [6, pp. 49-51]. Noting the fruitfulness and scientific value of the above generalization, we note that this author focused only on the formal features of these legal principles, without touching upon the essential ones. Let us further consider the above signs, and also highlight additional features of this phenomenon.

The generally recognized principles of international law were initially formed in the form of international customs, then recorded in the constituent documents, declarations and some other documents of universal international organizations (UN and ILO), and later detailed in international treaties (covenants, conventions, etc.). Thus, the generally recognized principles of international law in public international law went from being formed in the form of customary law, then some of them were reflected in the UN Charter, later supplemented and disclosed in the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by resolution 2625 (XXV) of the UN General Assembly on October 24, 1970.

According to E. A. Ershova, "generally recognized principles of international law primarily reflect stable, well-established and long-term basic, initial legal provisions, general fundamental principles, developed and recognized by the international community of states, applied in law enforcement practice, deviations from which in law enforcement practice are unacceptable "[7, pp. 24-25]. In the proposed understanding of the generally recognized principles of international law, such a feature as "used for a long time in law enforcement practice" raises an objection.

A logical question arises: what kind of law enforcement practice can there be in relation to generally recognized principles concerning fundamental rights in the world of work, if in the ILO system there are no law enforcement bodies at all, but only rule-making, control and information-analytical ones? There is also no long-term and extensive domestic law enforcement practice on the application of these principles in the Eastern Partnership countries, although their priority is enshrined in some constitutions.

As S. I. Kobzeva writes, "the system of generally recognized principles of international law can be built according to different criteria, for example, by scope (universal, intersectoral, sectoral), essential orientation (states, human rights), etc." [8, p. 21]. Continuing this idea, we can talk about generally recognized principles of international law in the field of labour, social security, etc.

A. I. Semeshko proposed the following legal definition: "Generally recognized principles and norms of international law in the sphere of labor are fundamental imperative norms regulating

fundamental issues of labor and other directly related relations, expressing the agreed will of the subjects of international law, enshrined in the UN Charter, the Charter ILO and the ILO Declaration on Fundamental Principles and Rights at Work" [9, pp. 10, 25]. Noting the fruitfulness of the attempt to formulate a legal definition of the concept under study, we point out several of its shortcomings. Firstly, it is unclear what the author means by fundamental issues: unsettled areas of social relations or something else. Secondly, the generally recognized principles and norms of international law do not directly regulate labor relations and relations directly related to them, but only express the fundamental principles that form the basis of international labour standards. Thirdly, the fact that these principles (harmonization of will) are recognized not just by "subjects of international law", but by the world community, i.e., by the overwhelming majority of states, is important.

The generally recognized principles of international labor law, representing the legal foundation of international labor law, are also intended to determine the vector of development of national rule-making in the field of labor and directly related relations. As already noted, in their content, and partly in the form of consolidation, these principles should be attributed to the ideas and norms of natural labor law, although they can also be "positive" (become norms of positive law) as a result of the perception of national constitutions and laws, through their implementation into the national legal system, for example, through direct perception, accession to universal international treaties developing these principles.

The obligation of states to generally recognized principles of international law is determined not so much by voluntarily assumed treaty obligations, but by the general recognition of these principles, their support from the international community, the high status and authority of international organizations involved in their formulation, and the state's membership in these organizations. The UN and the ILO undoubtedly have such a high status and authority in the international community in relation to human rights and international labor standards, as evidenced by the number of member states of these universal international organizations (the ILO currently includes 187 countries, the UN – 193 states).

Some general principles of international law are enshrined in the UN Charter (Pacta sunt servanda, etc.). The generally recognized principles of international law are also contained in the Universal Declaration of Human Rights, adopted and proclaimed by UN General Assembly Resolution № 217 A(III) of December 10, 1948, according to which every person has the right of equal access to public service (clause 2 of Article 21), the right to work, freedom of labor, fair wages are guaranteed (Article 23), and contains a number of other labor standards. Many legal scholars wrote about the universal recognition and priority of the norms and principles proclaimed in this declaration: E. M. Ametistov, A. M. Kurennoy, V. D. Zorkin, R. A. Kalamkaryan. Many provisions of this Declaration today actually reflect the norms of customary international law [10, p. 7].

Proof of the generally recognized principles of international law proclaimed in the Universal Declaration of Human Rights is the fact that many of its provisions in the second half of the twentieth century. were transferred to the basic laws of dozens of states and thereby recognized by the world community as an international legal custom. At the same time, these provisions of the said Declaration became mandatory due to the authority of the UN and the consolidation of the principles of law shared by the world community.

It is appropriate to recall that according to Art. 53 of the UN Convention on the Law of

Treaties of 1969, a peremptory norm of general international law is a norm that is accepted and recognized by the international community of states as a whole as a norm, deviation from which is unacceptable and which can only be changed by a subsequent norm of general international law of the same nature ; the same definition is enshrined in Art. 53 of the UN Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986 (hereinafter – the Vienna Conventions).

So, let us formulate the characteristics that norms of international law must have in order to be recognized as generally recognized principles of international law:

1) their essence consists of the initial, fundamental legal principles that determine the vector of development of other norms of international law and influence national legal systems;

2) universality of action, i.e. recognition by the world community;

3) initial recording and (or) subsequent confirmation in concentrated form in the statutory documents and (or) declarations of universal international organizations;

4) imperativeness, i.e. binding as norms of jus cogens due to the membership of states in international organizations;

5) guarantee of their compliance with the help of international legal means of responding to their non-compliance.

The above-mentioned features of generally recognized principles of international law in relation to the world of labor must take into account industry specifics (the leading role of the ILO in their formulation, dissemination and monitoring of compliance by member states; focus on the subject area of labor law).

Generally recognized principles of international labor law are *imperative fundamental labor law principles shared by the world community, expressed in concentrated form in the constituent documents and (or) declarations of universal international organizations, mandatory for compliance by all member states of these organizations, guaranteed by international legal means of response in in case of non-compliance, determining the direction of development of international labor law norms, influencing national labor policy, labor law systems and legislation.*

Varieties of generally recognized principles of international law are the fundamental principles and rights in the world of labor, which were consolidated and developed in the international legal documents of the ILO. They are formulated in concentrated form in the founding documents and declarations of the ILO: in the Preamble to the ILO Constitution of 1919, in the Declaration of the Aims and Objectives of the International Labor Organization, adopted on May 10, 1944 at the 26th General Conference of the ILO (hereinafter – the 1944 Declaration), which is an integral part of the ILO Constitution (appendix to it), in the ILO Declaration on Fundamental Principles and Rights at Work, adopted on June 18, 1998 at the 86th General Conference of the ILO (hereinafter – the 1998 Declaration), in the ILO Declaration on Social Justice for a Fair Globalization, adopted on June 10, 2008 at 97-th General Conference of the ILO. As you can see, certain provisions proclaimed in the UN and ILO declarations become, over time, generally recognized principles of international law, moving from the categories of soft law or conventional norms to *jus cogens*. Taking into account the above, it is difficult to agree with those authors who classify the norms and principles of the 1998 Declaration as “soft law” [11, p. 119].

The problem of determining the list of generally recognized principles of international law (including in the field of labour) is complex and debatable [12, p. 591].

From a systematic interpretation of the Preamble to the ILO Constitution, the 1944 Declaration and the 2008 Declaration, the following **generally recognized principles of international labor law** emerge:

1) *the principle of social justice* (paragraph 1 of the preamble of the ILO Constitution, paragraph 1 of article II of the 1944 Declaration; the 2008 Declaration as a whole);

2) *the principle of equal pay for equal work* (paragraph 2 of the preamble of the ILO Constitution);

3) *freedom of speech* and 4) *freedom of association, which "are a necessary condition for constant progress"* (clause "b" of Article I of the 1944 Declaration; paragraph 2 of the preamble of the ILO Constitution);

5) *the principle of humanity (humanism) in the world of work* ("poverty in any place is a threat to the general welfare", "the fight against want must be waged with unrelenting energy", noted in paragraphs "c" and "d" of Article I of the 1944 Declaration; paragraph 4 of the preamble of the ILO Constitution);

6) *"labour is free and is not a commodity"* (clause "a" of Article I of the 1944 Declaration).

The 1998 Declaration explicitly included four ideas among the principles relating to fundamental rights at work, which were supplemented by a fifth principle in 2022. The following list of five generally recognized principles of international labor law is currently relevant:

a) freedom of association and the effective recognition of the right to collective bargaining;

b) the elimination of all forms of forced or compulsory labor;

c) the effective abolition of child labor;

d) the elimination of discrimination in respect of employment and occupation; and

e) a safe and healthy working environment (since June 2022).

It is important to emphasize that even before the proclamation of the principles relating to fundamental rights at work by the ILO, most of them were reflected in the seven fundamental ILO conventions, of which there are currently 10 (two conventions develop each of the principles).

In the science of international and labor law, there are discussions regarding the binding nature of generally recognized principles of international law. A fairly common point of view in the literature is that states are required to apply only those generally recognized principles that are enshrined in the statutory documents of international organizations, based on the fact of membership in them, or developed in international treaties concluded with their participation, and those reflected in declarations – optional. This approach does not seem entirely justified. If each state determines for itself whether it considers one or another generally recognized principle of international law to be binding for itself, then the meaning of their universal recognition, universally binding and imperative nature is lost. For example, Myanmar may not consider the principle of prohibition of forced or compulsory labor to be universally accepted, and Belarus may not consider freedom of association and effective recognition of the right to collective bargaining to be universally accepted, and continue to violate fundamental workers' rights in relation to these generally recognized principles. Following the logic of these authors, for Myanmar and Belarus the corresponding principle, generally recognized by the international community, but not recognized as such by these countries, is not required to be observed. We believe that the mechanism of action of these principles is different. In addition, a number of Eastern Partnership states (in our example, Belarus), recognizing their priority, at the constitutional level (Article 8 of the Constitution of Belarus) voluntarily limited their state sovereignty in favor of this part of international law.

2. Implementation of generally recognized principles of international labor law in the labour legislation of the Eastern Partnership countries

Given the limited length of this article, we will focus only on the five principles related to fundamental rights at work, which were proclaimed in the 1998 Declaration.

Let us note that Armenia and Georgia have ratified 8 out of 10, Azerbaijan, Belarus and Ukraine – 9 out of 10, Moldova – all 10 fundamental conventions related to these principles. Let's look at how these principles are reflected in the labor legislation of the Eastern Partnership countries.

A characteristic feature of the labor legislation of all six compared Eastern Partnership countries is the fact of its codification. In Armenia, the Labor Code of the Republic of Armenia of 2004 (hereinafter – the Labor Code of Armenia), in Azerbaijan – the Labor Code of the Azerbaijan Republic of 1999 (hereinafter – the Labor Code of the AR), in Belarus – the Labor Code of the Republic of Belarus of 1999 (hereinafter – the Labor Code of Belarus) , in Georgia - the Labor Code of Georgia 2010 (hereinafter – the Labor Code of Georgia), in Moldova - the Labor Code of the Republic of Moldova 2003 (hereinafter - the Labor Code of Moldova) and in Ukraine - the Code of Labor Laws of Ukraine 1971 (hereinafter – the CLL of Ukraine).

2.1. Freedom of association and the effective recognition of the right to collective bargaining

This principle is developed in two fundamental ILO conventions on freedom of association and protection of the right to organize in trade unions № 87 and on the right to organize in trade unions and to conduct collective bargaining № 98, which are ratified by all Eastern Partnership states, which gives their norms direct effect on the territory of all six countries.

This principle is reflected in the labor legislation of most Eastern Partnership countries, but to varying degrees of detail and often through the basic principles of social partnership.

According to Art. 45 of the Constitution of Armenia, everyone has the right to free association with other persons, including the right to create trade unions for the purpose of protecting labour interests and to join them. In paragraphs 7 and 9 of Art. 3 of the Labor Code of Armenia, among the ten basic principles of labor legislation, proclaims: ensuring the right of employers and employees to free association to protect labour rights and interests (including the right to create trade unions and associations of employers or to participate in them) and freedom of collective bargaining. Here, the analyzed generally recognized principle of international labour law is taken into account to the maximum extent. In addition, freedom of collective bargaining is also included in the list of 11 Basic principles of social partnership (clause 2, part 2, article 39 of the Labour Code of Armenia).

In Azerbaijan, with the Labour Code of the AR, freedom of association and effective recognition of the right to conduct collective bargaining as a principle of labour law (Part 3 of Article 2) or the basic principles of preparation, conclusion and implementation of a collective agreement and agreement (Article 22) are not clearly recorded, although Article 25 regulates the right to collective bargaining.

The Labour Code of Belarus does not have a separate article containing a list of principles of labour law. The principle of freedom of association and the effective recognition of the right to collective bargaining as a sectoral principle are not clearly established. It is not among the basic principles of social partnership (Article 353), although the right to collective bargaining is regulated in Article 356 of the Labour Code (similar to the experience of Azerbaijan).

Part 2 of Article 26 of the Constitution of Georgia proclaims that everyone has the right, in accordance with organic law, to create trade unions and unite in them. If we turn to the Labour Code of Georgia, then in this code, as well as in Belarus, there is no article establishing the principles of labour law. There are no principles of social partnership in it, but only the principles on which the activities of the tripartite commission for social partnership are based (clause 2 of article 83). Consequently, as in Azerbaijan and Belarus, the analyzed principle was not reflected in the Labour Code of Georgia.

According to Part 1 of Article 42 of the Constitution of Moldova, any employee has the right to create trade unions and join them to protect their interests, and in accordance with Part 4 of Article 43 of the same Constitution, the right to negotiate on labour issues and the binding nature of collective agreements are guaranteed. The Labour Code of Moldova has a separate chapter II, dedicated to the basic principles. Moreover, Article 5 of the same code contains an impressive list of 18 basic principles for regulating labour relations and other relations directly related to them, among which is the following: ensuring the right of workers and employers to associate to protect their rights and interests, including the rights workers to unite in trade unions and membership in them and the rights of employers to associate in patronages and membership in them (clause "h" part 1). Article 17 of the Labour Code of Moldova enshrines the basic principles of social partnership, but effective recognition of the right to collective bargaining is not reflected in Article 5 and Article 17.

In the CLL of Ukraine, as the oldest labour code in the world (in force for more than 60 years), there is neither a general article fixing the principles of labour law, nor a separate establishment of the principle of freedom of association and effective recognition of the right to collective bargaining. This is not surprising, since the CLL of Ukraine was adopted in a different social and political system - during the existence of the USSR, the period of developed socialism. At the same time, the regular Law "On Social Dialogue in Ukraine" of 2010 has been adopted and is in force in Ukraine, in Art. 3 of which the basic principles of social dialogue are enshrined. But even among them the analyzed principle is not indicated.

From a comparison of the labour legislation of the Eastern Partnership countries in relation to the generally recognized principle of freedom of association and the effective recognition of the right to collective bargaining, it follows that this principle is most fully enshrined in the Labour Code of Armenia, and partially in the Labour Code of Moldova. This principle is practically not reflected in four of the six Eastern Partnership countries (Azerbaijan, Belarus, Georgia and Ukraine).

It is important not only to enshrine the corresponding principle in national legislation, but also to ensure its compliance in the activities of government bodies and social partners. We have previously written about the problems with the implementation of the principle of freedom of association in Belarus [13].

2.2. The elimination of all forms of forced or compulsory labour

This principle is more fully enshrined in two fundamental ILO conventions (the Forced Labour Convention № 29 and the Abolition of Forced Labour Convention № 105, and they have also been ratified by all Eastern Partnership states. This principle is closely interconnected with the right to work and freedom of labour, although it does not completely "dissolve" in them [14].

In a number of Eastern Partnership countries, the principle of prohibition of forced and (or) compulsory labour is enshrined even in basic laws (Part 5 of Article 57 of the Constitution of

Armenia, Part III of Article 35 of the Constitution of Azerbaijan, Part 4 of Article 41 of the Constitution of Belarus, Art. 44 of the Constitution of Moldova, part 3 of article 43 of the Constitution of Ukraine). In contrast to the basic laws of the five mentioned Eastern Partnership countries, the Constitution of Georgia ensures freedom of labour and the right to free choice of work (Part 1 of Article 26), but nothing is said about the prohibition of forced labour.

Moving to the industry level, we note that in paragraphs 1 and 2 of Art. 3 of the Labour Code of Armenia proclaims the following principles: 1) freedom of labour, including the right to work (which everyone freely chooses or to which one freely agrees), the right to dispose of one's ability to work, to choose a profession and type of activity; 2) prohibition of any form (of any nature) of forced labour and violence against workers. At the same time, the principle of prohibition of forced labour is not disclosed in more detail in the Labour Code of Armenia.

The situation with the consolidation of this principle in Azerbaijan is different. According to Art. 17 of the Labour Code of the AR, it is prohibited to force an employee to perform work (services) not included in his labour function by using force in any order and in any way, as well as threatening to terminate the employment relationship. Persons guilty of forcing an employee to work are held accountable in the manner prescribed by law. The exception is work performed under the control of relevant government bodies in connection with a military or emergency situation on the basis of relevant legislation, as well as during the execution of court sentences that have entered into legal force. In addition, Part 1 of Article 42 of the Labour Code of the AR provides for the rule that employment contracts are concluded freely; a person who does not create and does not want to create an employment relationship cannot be forced to conclude an employment contract.

Similarly, the Labour Code of Belarus has a separate article. 13, which specifically addresses the principle of prohibition of forced labour. According to its norms, forced labour is prohibited. Forced labour is considered to be work required from an employee under the threat of any force, including as: 1) a means of political influence or education, or as a measure of punishment for having or expressing political views or ideological beliefs contrary to the established political, social or economic system; 2) the method of mobilizing and using labour for the needs of economic development; 3) means of maintaining labour discipline; 4) means of punishment for participation in strikes. The following is not considered forced labour: 1) work performed as a result of a court decision that has entered into legal force; 2) work, the performance of which is stipulated by the legislation on military service, on alternative service, or by emergency circumstances. In the above provisions of Art. 13 of the Labour Code of Belarus quite accurately and completely implemented the norms from the fundamental ILO Conventions № 29 and № 105.

This principle was even more fully consolidated in Art. 7 Labour Code of Moldova. According to its norms, forced (compulsory) labour is prohibited; forced (compulsory) labour means any labour or any service to which a person is forced or to which he has not given his consent. The use of forced (compulsory) labour in any form is prohibited, namely:

a) as a measure of political or educational influence or a measure of punishment for the support or expression of political views or beliefs contrary to the established political, social or economic system;

b) as a means of mobilizing and using labour for the needs of economic development;

c) as a means of ensuring labour discipline;

d) as a punishment for participating in a strike;

e) as a measure of discrimination based on race, nationality, religion or social status.

According to Part 4 of Article 7 of the Labour Code of Moldova, forced (compulsory) labour includes: a) violation of established deadlines for payment of wages or payment not in full; b) the employer's requirement for the employee to perform work duties in the absence of collective or individual protection systems or in the case where the performance of the required work may threaten the life or health of the employee.

On the contrary, the following are not considered forced (compulsory) labour in Moldova: a) military service or activities replacing it of persons who, according to the law, do not undergo compulsory military service; b) the work of a convicted person during the period of imprisonment or in the case of parole, carried out under normal conditions; c) work in conditions of natural disasters or other danger, as well as work that is part of ordinary civil duties established by law.

For comparison: in the Labour Code of Georgia and the CLL of Ukraine, the principle of prohibition of forced labour has not found its normative support.

To summarize the analysis of the principle of prohibition of forced or compulsory labour, we note that most legislators in the Eastern Partnership countries do not make a clear distinction between forced and compulsory labour.

This principle is most fully enshrined in the Labour Code of the Autonomous Republic of Azerbaijan, Moldova and Belarus, a brief proclamation is in the Labour Code of Armenia, but is absent in the Labour Code of Georgia and the CLL of Ukraine.

2.3. The effective abolition of child labour

This generally recognized principle is consistent with two fundamental ILO conventions: Minimum Age Convention № 138 and the Worst Forms of Child Labour Convention № 182. These conventions have also been ratified by all Eastern Partnership states. As for the legislative consolidation of this principle, basically the legislators of the six countries being compared took the path of implementing the norms of ILO Convention № 138 in the articles of the Labour Code devoted to the minimum age for employment, and the norms of ILO Convention № 182 in relation to mandatory rules regarding the types of work in which The employment of minor workers is prohibited. Let us illustrate this with several examples of norms from labour legislation.

In accordance with Part 2 of Art. 15 of the Labour Code of Armenia, labour legal capacity and the ability of a citizen to acquire and exercise labour rights through his actions, to create labour duties for himself and fulfill them (labour capacity) arise in full from the moment he reaches the age of sixteen, with the exception of cases provided for by the Labour Code and other laws. According to Art. 17 of the Labour Code of Armenia, employees are also considered to be minor citizens aged fourteen to sixteen years, working under an employment contract with the written consent of one of the parents, adoptive parent or trustee (Part 2); It is prohibited to conclude an employment contract with citizens under fourteen years of age or to involve them in work (Part 3). Similar rules regarding the minimum age for entering into an employment relationship are enshrined in Art. 21, art. 272 Labour Code of Belarus and Article 10 Labour Code of Georgia. True, Part 3 of Article 10 of the Labour Code of Georgia separately stipulates the exception that an employment contract with minors under the age of 14 years can be concluded only for work in the field of sports, art or culture, or for performing advertising work. This norm does not fully take into account paragraph 1 of Article 8 of Convention № 138, which makes an exception only for work related to artistic performances, but not to advertising work and work in the field of sports.

For comparison: according to Part 3 of Article 42 and Art. 249 of the Labour Code of the AR, any person who has reached fifteen years of age can become a party to an employment contract. In Art. 250 of the Labour Code of the AR prohibits the use of labour by persons under 18 years of age in workplaces with difficult, harmful working conditions, as well as in underground tunnels, mines and other underground work, as well as in nightclubs, bars that have a negative impact on moral formation, at work related to the production, transportation, sale and storage of alcoholic and energy drinks, tobacco products, toxic drugs, and other work, related to the trafficking of narcotic drugs, psychotropic substances and their precursors and endangering their life, health or morals, related to the production, transportation, sale and storage of alcoholic and energy drinks, tobacco products, toxic drugs, and other work related to trafficking narcotic drugs, psychotropic substances and their precursors and endangering their life, health or morals.

Persons under 18 years of age who are subject to the legislation on compulsory general secondary education are prohibited from being employed in jobs that may deprive them of the opportunity to receive this education in full. Similar special prohibition norms with some editorial differences from the list of prohibited types of work for minors can be found in Art. 274 Labour Code of Belarus, clauses 4-6 of article 10 of the Labour Code of Georgia, article 190 of the CLL of Ukraine.

According to Art. 46 of the Labour Code of Moldova, an individual acquires working capacity upon reaching the age of sixteen years (probably the legislator had in mind working capacity). An individual in Moldova may enter into an individual employment contract upon reaching the age of fifteen years with the written consent of his parents or his legal representatives and provided that the work does not cause harm to his health, development, educational process and professional training. Moreover, hiring persons under the age of fifteen is prohibited. Thus, the Labour Code of Moldova implements the provisions of Convention № 138 as fully and accurately as possible.

In turn, according to Art. 188 of the Labour Code of Ukraine also sets the minimum age for employment at 16 years as a general rule. There are two exceptions to this. With the consent of one of the parents or a person replacing him, as an exception, persons over 15 years of age may be hired. And in order to prepare young people for productive work, it is allowed to employ students of secondary schools, vocational schools and secondary specialized educational institutions to perform light work that does not harm health and does not interfere with the learning process, in their free time from school, after they reach 14 years of age with the consent of one of the parents or a person replacing him.

Thus, most of the Eastern Partnership countries have established a general rule of employment at 16 years (Armenia, Belarus, Georgia, Moldova and Ukraine), only Azerbaijan has set the lower “bar” at 15 years. In most of the countries being compared, there are exceptions to the general rule, allowing the employment of minors from 14 years of age for light work that does not cause harm to health, education, and with the consent of a legal representative. And only in Georgia has another exception been established for employment under 14 years of age, with some deviations from the norms of Convention № 138 regarding the range of work performed.

2.4. The elimination of discrimination in respect of employment and occupation

This generally recognized principle is further developed in the provisions of two ILO Conventions (the Equal Remuneration Convention № 100 and the Discrimination (Employment and Occupation) Convention № 111). Let’s consider

whether this principle and the norms of these conventions are reflected in the codes of the Eastern Partnership countries.

Part 3 of Article 3 of the Labour Code of the AR mentions ensuring equality among the principles on which this code is based. True, in Art. 16 of the same code sets out detailed rules regarding the principle of non-discrimination in labour relations. Similarly in Art. 14 of the Labour Code of Belarus quite fully and accurately implements majority of positions from ILO Convention № 111.

Article 3 of the Labour Code of Armenia mentions among the principles of labour law such as equality of parties to labour relations, regardless of gender, race, nationality, language, origin, citizenship, social status, religion, marital status and marital status, age, beliefs or views, affiliation to parties, trade unions or public organizations, other circumstances not related to the employee's business qualities (clause 3) and equality of rights and opportunities for employees (clause 5). This code does not specifically reinforce the principle of prohibition of discrimination in the sphere of labour and occupation.

A different picture is observed in the Labour Code of Georgia, where a separate chapter. II is specifically devoted to the prohibition of labour discrimination (as amended on September 29, 2020). Let us briefly indicate what exactly is regulated in this chapter. II: concept of labour discrimination (Article 4); the limits of the prohibition of discrimination (Article 5); requirements due to the type of work (Article 6); the burden of proof in discrimination disputes rests with the employer (Article 7); special measures of protection or support that are not recognized as discrimination (Article 8); reasonable accommodation for persons with disabilities, not recognized as discrimination (Article 9). The specified norms of the Labour Code of Georgia reflect the international labour standards of the ILO, and also took into account foreign experience in anti-discrimination legislation.

In Art. 5 of the Labour Code of Moldova, among the principles of labour law, such as equality of rights and opportunities of workers (clause "e") and ensuring equality of workers, without any discrimination, are proclaimed when promoting at work, taking into account labour productivity, qualifications and work experience in the specialty, as well as professional training, retraining and advanced training (clause "g"). In addition, Article 8 of the same code contains two more rules that reveal the principle of prohibition of discrimination in the world of work. Moldova prohibits any direct or indirect discrimination against an employee on the basis of sex, age, race, skin color, nationality, religion, political opinion, social origin, place of residence, disability, HIV/AIDS infection, trade union membership or participation in a trade union. activities, as well as according to other criteria not related to the professional qualities of the employee. It is not discrimination to establish differences, exceptions, preferences or individual rights for workers due to requirements specific to a given type of work or provided for by current legislation, or the special care of the state for persons in need of increased social and legal protection.

The CLL of Ukraine enshrines and reveals the principle of non-discrimination in the article devoted to the equality of labour rights of citizens. Thus, according to Article 2-1 of the CLL of Ukraine, any discrimination in the sphere of labour is prohibited, in particular violation of the principle of equality of rights and opportunities, direct or indirect restriction of the rights of workers depending on race, skin color, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, health status, disability, suspicion or presence of HIV/AIDS, marital and property status, family responsibilities, place of residence,

membership in a trade union or other association of citizens, participation in a strike, appeal or intention to appeal to the court or other bodies for the protection of their rights or providing support to other employees in protecting their rights, reporting possible facts of corruption or corruption-related offenses, other violations of the Law Ukraine "On the Prevention of Corruption", as well as assistance to a person in making such a message, on linguistic or other grounds not related to the nature of the work or the conditions of its performance.

Summing up the comparative analysis of the consolidation of the principle of prohibition of discrimination in the field of work and occupation, we note that of the six Eastern Partnership countries this principle is least fully enshrined in the Labour Code of Armenia, the most fully in the Labour Code of Georgia, in other countries (Azerbaijan, Belarus, Moldova and Ukraine) Legislators have sufficiently implemented the norms of ILO Conventions № 100 and № 111 into their Labour Codes with minor editorial differences (in terms of discrimination criteria, differentiating forms of discrimination and exceptions to this prohibition).

2.5. A safe and healthy working environment

This principle became generally recognized after the amendment was made to the 1998 Declaration at the ILO General Conference in June 2022. Two fundamental ILO conventions (the Occupational Safety and Health Convention № 155 and the Promotional Framework for Occupational Safety and Health Convention № 187) are directly related to this principle. Moreover, Convention № 187 has been ratified only by Moldova from the Eastern Partnership countries.

In paragraph "d" of Article 5 of the Labour Code of Moldova, the list of principles of labour law separately enshrines the right of every employee to fair working conditions, including those that meet the requirements of health and safety, and the right to rest, including regulation of working hours, provision annual paid leave, daily rest, weekends and non-working holidays. It is worth noting that although separate articles devoted to this principle are not found in the Labour Code of the Eastern Partnership countries, it is still enshrined in one form or another (for example, in the list of basic rights of an employee - in paragraph "d" of Part 1 Article 9 of the Labour Code of the RA ("work in conditions that ensure labour protection, life and health, and also demand the creation of such conditions"), in paragraph 1 of Article 11 of the Labour Code of Belarus ("the right to healthy and safe working conditions"), etc.).

In most Labour Codes of the Eastern Partnership countries there are separate chapters or sections "Occupational Safety and Health" (in the Labour Code of Armenia – "Safety and Health of Workers", in the Labour Code of Moldova – "Health Protection and Labour Safety"), which concentrate the norms of this institution, including h. aimed at ensuring the generally recognized principle of a safe and healthy working environment.

A detailed analysis of the norms of these chapters and sections is beyond the scope of this article, but we note that due to the non-ratification of Convention № 187 in 5 of the 6 Eastern Partnership countries, its norms have not yet found full and comprehensive acceptance in the Labour Codes of these countries.

Conclusion

Summarizing the scientific research, let us formulate the main conclusions.

1. To be recognized as generally recognized principles of international law, norms of international law must have the following characteristics:

a) their essence consists of the initial, fundamental legal principles that determine the vector

of development of other norms of international law and influence national legal systems;

b) universality of action, i.e. recognition by the world community;

c) initial recording and (or) subsequent confirmation in concentrated form in the statutory documents and (or) declarations of universal international organizations;

d) imperativeness, i.e. binding as norms of jus cogens due to the membership of states in international organizations;

e) guaranteeing their compliance with the help of international legal means of responding to their non-compliance.

The above-mentioned features of generally recognized principles of international labour law should take into account industry specifics (the leading role of the ILO in their formulation, dissemination and monitoring of compliance by member states; focus on the subject area of labour law).

2. A comparative analysis of the generally recognized principles of international labour law and related international labour standards of the ILO, on the one hand, and the national labour legislation of the Eastern Partnership countries, on the other hand, allowed us to draw the following conclusions:

2.1. From a comparison of the labour legislation of the Eastern Partnership countries in relation to the generally recognized principle of freedom of association and the effective recognition of the right to collective bargaining, it follows that this principle is most fully enshrined in the Labour Code of Armenia, and partially in the Labour Code of Moldova. This principle is practically not reflected in the labour legislation of the four Eastern Partnership countries (Azerbaijan, Belarus, Georgia and Ukraine).

2.2. From a comparison of the labour legislation of the Eastern Partnership countries in relation to the generally recognized principle of freedom of association and the effective recognition of the right to collective bargaining, it follows that this principle is most fully enshrined in the Labour Code of Armenia, and partially in the Labour Code of Moldova. This principle is practically not reflected in the labour legislation of the four Eastern Partnership countries (Azerbaijan, Belarus, Georgia and Ukraine).

2.3. Most Eastern Partnership countries have established a general rule of employment at 16 years (Armenia, Belarus, Georgia, Moldova and Ukraine), only Azerbaijan has set the lower "bar" at 15 years. In most of the countries being compared, there are exceptions to the general rule, allowing the employment of minors from 14 years of age for light work that does not cause harm to health, education, and with the consent of a legal representative. And only in Georgia has another exception been established for employment under 14 years of age, with some deviations from the norms of Convention No. 138 regarding the range of work performed.

2.4. Of the six Eastern Partnership countries, the principal of elimination of discrimination in respect of employment and occupation is least fully enshrined in the Labour Code of Armenia, the most fully – in the Labour Code of Georgia, in the remaining countries (Azerbaijan, Belarus, Moldova and Ukraine) – legislators to a sufficient extent with minor editorial differences (in terms of discrimination criteria, distinguishing forms discrimination and exception to this prohibition) implemented the norms of ILO conventions № 100 and № 111 into their Labour Codes.

2.5. There are no separate articles devoted to the principle of a safe and healthy working environment in the Labor Code of the Eastern Partnership countries. This principle is enshrined in the list of basic rights of an employee (in Article 9 of the Labor Code of the AR, in Article 11 of the Labor Code of Belarus, etc.). Most Labor Codes of the Eastern Partnership countries

have separate chapters or sections dedicated to occupational safety and health, which focus on standards aimed at ensuring the generally accepted principle of a safe and healthy working environment. Five of the six Eastern Partnership countries (except Moldova) have not yet ratified ILO Convention № 187.

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BEYNƏLXALQ ƏMƏK HÜQUQUNUN ÜMUMQƏBUL EDİLMİŞ PRİNSİPLƏRİ VƏ ONLARIN ŞƏRQ TƏRƏFDAŞLIĞI ÖLKƏLƏRİNİN MİLLİ QANUNVERİCİLİYİNDƏ ƏKS OLUNMASI

XÜLASƏ

Məqalədə BMT, BƏT-in beynəlxalq standartları və doktrinal tədqiqatlar əsasında əmək sahəsində beynəlxalq hüququn hamılıqla tanınmış prinsiplərinin mahiyyəti araşdırılır. Şərq Tərəfdaşlığı ölkələrinin (Azərbaycan, Ermənistan, Belarus, Gürcüstan, Moldova və Ukrayna) əmək qanunvericiliyində tam və adekvat şəkildə qəbul edilmiş prinsiplərin necə əks olunduğunun müqayisəli hüquqi təhlili aparılır. Əmək qanunvericiliyinin beynəlxalq əmək standartlarına uyğun olaraq daha da təkmilləşdirilməsi üçün gəlinmiş nəticələr əsasında təkliflər verilir.

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ОБЩЕПРИЗНАННЫЕ ПРИНЦИПЫ МЕЖДУНАРОДНОГО ТРУДОВОГО ПРАВА И ИХ ОТРАЖЕНИЕ В НАЦИОНАЛЬНОМ ЗАКОНОДАТЕЛЬСТВЕ ГОСУДАРСТВ ВОСТОЧНОГО ПАРТНЕРСТВА

РЕЗЮМЕ

В статье рассматривается сущность общепризнанных принципов международного права в сфере труда на основе международных стандартов ООН, МОТ, доктринальных исследований. Проведен сравнительно-правовой анализ того, насколько полно и адекватно общепризнанные принципы отражены в трудовом законодательстве стран Восточного партнерства (Азербайджана, Армении, Белоруссии, Грузии, Молдовы и Украины). По результатам сделаны предложения по дальнейшему совершенствованию трудового законодательства в соответствии с международными трудовыми стандартами.

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