



ILLEGAL DEPRIVATION OF AN EMPLOYEE'S OPPORTUNITY TO WORK: LEGAL NATURE AND INTERNATIONAL ANALYSIS OF COMPENSATION MECHANISMS

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Abstract

This article examines the employer's illegal deprivation of an employee's opportunity to work as an independent form of violation of labor rights. The study reveals gaps in the current national labor legislation, in particular the insufficient regulation of liability and compensation mechanisms for such violations. Based on international labor standards, ILO conventions and the practice of several foreign countries, proposals are put forward for improving compensation and reinstatement mechanisms.

Keywords: labor rights, unlawful restriction, compensation, forced idleness, discrimination, ILO conventions.

Introduction

The right to work constitutes an integral and fundamental component of human rights. At the present stage, the digitalization of labor relations, the transformation of the economy and the increasing complexity of production processes are giving rise to new forms of legal relations between employers and employees [1]. At the same time, in certain cases employers unjustifiably hinder the performance of employees' job duties, thereby effectively depriving them of the opportunity to work. Such situations are increasingly widespread and are often implemented not through formal hiring, dismissal or other official



procedures, but by covert and indirect means, significantly weakening the employee's economic and social protection[2].

The right to work is expressly recognized in international legal sources and is manifested as a guarantee of human dignity, free development and economic well-being. This right is enshrined in the following core international instruments:

Article 23 of the Universal Declaration of Human Rights guarantees the right to work, to just and favorable working conditions and to protection against unemployment;

Articles 6–7 of the International Covenant on Economic, Social and Cultural Rights consolidate the right of every person to engage in freely chosen work, to fair remuneration and to safe working conditions;

ILO Conventions Nos. 87, 98 and 158 prohibit discrimination in labor relations and establish safeguards against dismissal without valid reason[3];

The European Social Charter recognizes the inseparability of social justice and labor rights[4].

The analysis of these normative instruments shows that protection against deprivation of the opportunity to work is not merely a right to employment, but one of the key guarantees of human dignity, economic independence and social security. Therefore, unjustified obstruction of an employee's performance of job duties should be assessed as a violation of human rights.

National practice demonstrates that deprivation of the opportunity to work is often carried out covertly or indirectly. The most common forms include:

unjustified denial of access to the workplace;

failure to provide the tools, equipment and means necessary to perform job duties;

artificial reduction or limitation of workload;

delaying or restricting access to electronic systems, permits or corporate platforms;

psychological pressure or harassment limiting work activity;

transfer to another position without consent or lawful grounds;

artificial creation of a "forced idleness" situation[5].



These practices are often not formalized in documents and therefore are not reflected in statistics and official reports. As a result, an employee may be deprived of wages and social guarantees and find themselves in a legally vulnerable position.

Article 320 of the current Labor Code recognizes the following situations as illegal deprivation of the opportunity to work: unlawful refusal to hire; unlawful transfer to another job; unlawful suspension from work; unlawful termination of an employment contract; delay in issuing a labor book or its electronic extract; failure to enforce a decision to reinstate an employee; dissemination of information damaging the employee's reputation[6].

However, many of the covert forms of obstruction encountered in practice are not fully covered by this provision. As a result, a number of problems arise: there is no mechanism to qualify such actions as an independent offense; the amount and procedure for compensation are not clearly defined; a separate type of liability for depriving an employee of the opportunity to work is not established. This significantly hinders the effective legal protection of employees in practice. In the labor law of the European Union Member States, deprivation of the opportunity to work is regulated through the following legal institutions: constructive dismissal (United Kingdom, Ireland) – where the employer's conduct forces the employee to resign; moral harassment/mobbing (France, Italy) – deterioration of working conditions through psychological pressure; unfair labour practice (Germany) – unfair labor practices[7].

If such violations are committed, the employee is entitled to the following types of compensation:

- full wages for the period of forced idleness;
- compensation for moral (non-pecuniary) damage;
- recovery of court costs;
- reinstatement or placement in an equivalent position.

In U.S. labor law, the concept of “wrongful interference with employment” has developed, under which artificially created obstacles by the employer are regarded as an independent violation. In such cases, the employee is entitled to the following types of compensation:

- punitive damages;



lost wages and income; compensation for reputational harm.

This practice is noteworthy because it protects not only the employee's economic interests, but also their dignity and professional reputation[8].

The illegal deprivation of an employee's opportunity to work represents a modern and complex form of violation of labor rights and is often manifested through covert and indirect methods. Such actions negatively affect not only the economic interests of the employee, but also their dignity as a person, social status and psychological well-being. From this perspective, the issue is not limited solely to the sphere of labor law, but is directly linked to the protection of human rights, the promotion of social justice and the achievement of sustainable socio-economic development[9].

The analysis of international labor standards, ILO conventions, the Universal Declaration of Human Rights and the European Social Charter demonstrates that the right to work constitutes the foundation of an individual's social protection and economic independence. Practices such as unjustified denial of access to the workplace, artificial limitation of workload, failure to provide necessary tools, denial of access to digital systems, as well as mobbing and psychological pressure, must be recognized as violations of this fundamental right. However, the fact that these situations are not clearly and comprehensively classified as specific offenses in current national labor legislation, and that compensation and liability mechanisms are insufficiently developed, further increases the urgency of this problem.

The existence of such institutions as constructive dismissal, mobbing and unfair labour practice in the EU Member States, and the formation of the doctrine of wrongful interference with employment in U.S. law, illustrates that artificial exclusion of an employee from work activity is treated as an independent violation accompanied by wide-ranging compensation mechanisms[10]. This experience may serve as an important theoretical and practical foundation for improving national labor legislation.

In this regard, it is necessary to define the illegal deprivation of an employee's opportunity to work as an independent offense in national labor legislation, to provide for the recovery of wages for the period of forced idleness, compensation for moral damage, and the introduction of penalty sanctions. It is



also essential to establish separate liability for mobbing, psychological pressure and unjustified blocking within digital labor systems, as well as to expand the possibility for courts to promptly consider such cases and apply interim reinstatement measures.

In conclusion, the creation of effective legal mechanisms to combat the illegal deprivation of employees' opportunity to work will protect not only individual labor rights, but will also contribute to the stability of the labor market, social justice, productivity, and the enhancement of the value of the human factor in the digital economy. Implementing legal reforms in line with international standards will help to further strengthen human rights guarantees, promote social cohesion and ensure sustainable development.

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