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**EEU STATTES’ LABOR LEGISLATION: QUESTIONS OF HARMONIZATION**

***Abstract.*** *Article reflects modern approaches to the application of**international norms, legal acts in the sphere of work legal regulation from the international labor law positions, to the distribution of international labor standards to the national legislation and vice versa – national legislation influence on the international labor law condition with aim of identification the EEU states’ labor legislation rapprochement and harmonization.*

***Keywords:*** *international work, international labor law, unification, labor**legislation harmonization, transformation, international standards and principles*

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*ТРУДОВОЕ ЗАКОНОДАТЕЛЬСТВО СТРАН ЕАЭС: ВОПРОСЫ*

*ГАРМОНИЗАЦИИ*

***Аннотация.*** *Статья отражает современные подходы к применению**междунардных норм, нормативных правовых актов в сфере трудоправового*

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*регулирования со стороны международных позиций в области трудового права, к распределению международных трудовых норм в национальное законодательство, и наоборот – влияние национального законодательства на международные нормы.*

***Ключевые слова:*** *международный труд,**международное трудовое**право, унификация, гармонизация, трансформация, международные стандарты и принципы.*

Processes of goods, equipment and science production integration and internationalization, the international labor division and, respectively, the world economic exchange development deepening, and also mutual enrichment of cultures don't keep within national legal systems framework: an international legal system gets more law-enforcement practice, i.e. a primacy before the domestic (national) legislation. Thus, value of the international legal system it is so high in the solution of world civilization maintenance questions.

Understanding of indissoluble communication between complete country national legal system, constitutional state in the world community, international relations building on the legal basis, represents important line of modern political thinking. One of the signs of country development as a constitutional state is national legislation legal system improvement – i.e. the state is faces integrated problem of legal reform which includes updating of all its elements and providing conditions for their optimum interaction with standards of the national legislation and international law, increase of system integrity on what legal regulation efficiency as a whole depends.

In other words, national and international legal systems are "doomed" to be in close interaction [1]. In relation to the relations in the work sphere this communication is especially strong. The modern international law is created substantially under the influence of the most successful national labor legislation samples. However in the analysis of any one national labor law system return influence is much more noticeable: influence of the international legal acts on national [2]. The international law should be considered not as legal branch but right system, sometimes for comparison with which can be no one branches of the right (civil, labor, criminal, etc.) and national right as a whole [3]. Therefore the international law also includes branches as well as the national law. If labor law and others occur to be the subject of national labor law as branches of international law is not the relations in the sphere, but relations of the states and other subjects of international law concerning these relations [4].

According to item 3 of art. 4 of the Republic of Kazakhstan Constitution the international contracts ratified by the Republic, have a priority before its laws and are applied directly, except cases when from the international treaty follows that its application requires the publication of the law [5]. From this constitutional situation follows that: a) the international contracts ratified by the Republic of Kazakhstan, having a priority before its laws, are applied directly, except cases, b) when from the international treaty follows that its application requires law publication.

Eventually, the constitutional methods of international treaties application are reduced to that international contracts, according to the theory of transformation existing in international law, lose their international character, and become a part of national legal system.

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From these positions, the international labor law is consedered to be not only a relevant branch of international law, but also a direct regulation of the relations in the work sphere beyond national borders of one state. For international law it is typical to integrate diverse law rules that are special for this or that sphere of regulation. The international law integrates not various national law branches, but national and international labor law in the narrow sense of the word i.e. as a branch of international law [6]. Therefore the international labor law, as well as the national labor law extend the action to the relations connected with international and national labor migration respectively.

It should be mentioned that problems of migration arose in the world with origin of mankind and the factors promoting migration in the past, remain now [7]. Thus, many foreign countries scientists consider set of the international norms about work as an independent branch of international law [8].

The research conducted by us in a range of international labor law definition allows us to consider the EEU states’ labor legislation harmonization questions, the contract on which creation was signed on May 29, 2014 by Presidents of the Republic of Belarus, the Republic of Kazakhstan, the Russian Federation [9].

The Euroasian integration has already become the brand which is brings in real income, the President of Kazakhstan N. A. Nazarbayev declared, acting from lectures in Lomonosov Moscow State University. "The Euroasian union is possible, and we already approached to create it. And it has to be constructed on the principles of voluntariness, equality, mutual benefit, accounting of pragmatical interests of each country, in particular. This initiative has become a starting point for the new historical process which now is called the Euroasian integration", - N. A. Nazarbayev told.

It is represented that the Euroasian Economic Union creation principles proclaimed N. A. Nazarbayev, together with fundamental provisions of the EEU states’ labor legislation harmonization, will provide creation of the new integration association which concept is based on the principles of general history, economic attraction, close interrelation of cultures.

As russian scientists emphasize, at the same time with formation of new social and economic, political and spiritual prerequisites of Russian constitutional creation the state the maintenance of a standard material is updated also, tendencies of its improvement and development change [11]. It is need of strict ensuring law rule offor all spheres of life of society; specialization, unification, legislation intensification; discrepancy and competitiveness of its structures; increase in the array of technical and legal instructions, - scientists state [12]. The tendencies which, as we believe, is entirely possible to extend to Post-Soviet legislations of the EUU countries, and is conditionally possible to divide into three big groups. The first group treat: comprehensive strengthening of a legislative priority, intensification and aspiration to stability. To the second – legislation specialization with its various forms of manifestation: differentiation, specification, specification. The third group includes legal unification and processes accompanying it: integration, generalization, universalization, publication of complex regulations [13].

In the modern legislation development tendencies ahother, called as the Eurasian Economic Community states’ labor legislation harmonization, becomes accepted, that is recorded by Recommendations about the EEC states’ labor legislation harmonization approved by resolution of Inter-parliamentary Assembly of

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Eurasian Economic Community from May 13, 2009 No. 10-13 [14]. We will notice, that the definition "harmonization" is absent in a legal conceptual framework.

According to the act, the Eurasian Economic Community states’ labor legislation harmonization can be carried out in several ways:

1. creation of the model Labour code having advisory nature;
2. acceptance of EEC labor legislation Bases having the status of the statutory act of direct action;
3. modification and additions in existing labor codes of the EEC states for the purpose of creating unified conditions of labor use.

The ways of the Eurasian Economic Community states’ labor legislation, which in the teory and practical plan will be transferred to the EEC states' legislations, are perceived ambiguously and, naturally, reflected in different researchers' views of this subject.

From our point of view, it is necessary to develop uniform concept of he labor legislation harmonization which, as we believe, it is necessary to understand as rapprochement of national labor legislations, but not their unification reduced only to development of uniform norms, calculated on the similar relations. Certainly, unification process in national legislations is considered as a peculiar science of generalization and a unification of structures of the legal regulation which substantial beginnings are formed at the legislator in the form of need of development of the unified legal models for the labor legislation of a certain state. Further completion of unification can act, as a rule, in the form of the separate regulatory legal act, or the structured contents of certain sections of bases, codes, provisions, charters of various legislations branches, including and labor law.

From these positions labor or other legislation's unification of any separately taken EEU state doesn't raise doubts, but it is a question of sovereign states labor legislations rapprochement (harmonization). And, apparently, Recommendations about the EEC states’ labor legislation harmonization are implemented within standardization of the legislation of separately taken national state. Correctly S.Y. Golovina noted that he EEC states’ labor legislation harmonization is directed on creation of interstate standards in the sphere of wage labor regulation, and also improvement of national legislations. Doesn't cause dispute S.Y. Golovina's proposal that the international labor norms which can be regarded as model for Bases of the labor legislation of EEC have to become a basis of the EEC states’ labor legislation harmonization. On the one hand, unifications are subject the major rules concerning the employment contract, working hours and time of rest, disciplinary and a liability, and on the other hand, - the scientist offers, - it is expedient to leave certain opportunities for preservation of national features of regulation of the labor relations, the developed legal traditions of member states of EurAsEC [15].

N. L. Lyutov is convinced that so far as labor legislation harmonization within Eurasian Economic Community is concerned, it is necessary to understand that two absolutely different phenomena, which not always distinguish, are behind this term:

1. unification (or rapprochement) the labor legislation for the purpose of bigger convenience of "using" by it in the EEC territory workers and employers;
2. creation of the Common Economic Space and, as a result, common market of work of EurAsEC.

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* standardization of the labor legislation of EEC, i.e. its reduction to a certain general denominator, it is theoretically possible to carry out, but without creation of the uniform labor market the sense of such unification will be minimized substantially [16].

This scientist's approach of labor legislation harmonization concept judgment differs from previous, including also conceptual provisions of recommendations about the EEC states’ labor legislation harmonization. Supporting the concept of Bases of the labor legislation of EEC, the scientist brings a number of the interesting offers directed on the solution of the EEC states’ labor legislation harmonization problems. In this plan justifications, S.Y. Golovina's approving a priority of Bases of the labor legislation of EurAsEC the ideas aren't faultless.

At the same time, agreeing with many theoretical calculations of the scientists, nevertheless, it would be desirable to state the following.

The EEC states’ labor legislation harmonization needs to be considered from positions of its rapprochement, instead of position of its unification, carried out in any state for its further development. In this sense the EEU states’ labor legislation harmonization and standardization in separately taken country, carried out by means of national legal receptions, ways, is necessary to consider as philosophical categories: the general and private. We find an explanation for it that the states of Euroasian Economic Union are sovereign and independent states, and considered to be the subjects of international relations. And the interstate relations of these states are under construction on the standard international principles and norms. Inviolability of the sovereignty of the EEU states is a pledge of future economic union. And from these positions harmonization of the EEU states labor legislation, as we believe, can be built differently, in a view of that unbiased fact that these states are subjects of the international relations and the rights. It is thought that in a case considered by us it is expedient to proceed from particular to general, i.e. from the national, internal law to international law. What standards of the internal law can be used in the transformed look in international law? R. A. Myullerson considers that to such norms of the national right which can be transformed to international law, can relate the norms regulating concrete activity of the states, for example, the conclusion of contracts, a legal status of foreigners, diplomatic and consulates in the country. The standards of the internal law governing the relations between subjects of the national right from the different countries belong to such "source" of international law also; the norms regulating part of the interstate relations, able to generate the international relations concerning their regulation. With prospect of "occurrence" into international law R. A. Myullerson includes "the certain legal maxims which providing internal coherence of legal systems and have arisen, as a rule, within the national right" in the list of standard elements of the internal law. In the conditions of expansion and deepening of the international cooperation of the states there is a task by means of international law to unify a number of areas of the internal law. This unification is carried out by means of international treaties, agreements.

Experience of the states international cooperation finds expression in various forms of unification of relations regulation between them. Considerable theoretical and practical interest is represented by legal system of the European Union which was created in 1992. Distinctive feature of the European Union right is its supremacy and direct action in the territory of all countries entering into

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the Union. [17]. Citizens of the states entering into EU, are at the same time citizens of EU. Nationality of the Union supplements, instead of substitutes national nationality.

Standards of international legal acts in order to govern the interstate relations have to enter into system of this state's right, i.e. to be implemented in the internal law. Important means of implementation is represented by transformation which is shown in several forms (the straight line mediated, mixed).

Direct transformation means that standards of the signed and ratified international treaty directly find the law force and if the states about it reach the agreement, and force surpassing the law. The mediated transformation means adoption of the special law, other regulatory legal act translating standard of the international treaty in interstate rule of law. It is obvious that legal status of the personality according to the international treaty, on international law needs the interstate legal mechanism of providing and protection. And for this purpose it is necessary to develop system of standards of the internal law which would provide a complex of legal, social, economic guarantees of legal status of the personality.

The most widespread is the mixed transformation which represents a combination of elements of the first two types of transformation [18].

Unfortunately, the uniform legal framework in which EU participating countries work, creates also some legal difficulties. For example, in the case "Viking" considered by the European court of justice in parallel, legality of trade-union blockade of the businessman (the Finnish ferry company), made the decision to replace a flag of one of ferries (and it is respectively right, applicable to employment contracts with seamen) from Finnish with Estonian was estimated. Decisions on these affairs were made in December, 2007, but they were preceded by some years of judicial proceedings at national level, an extensive discussion in the press, debate in scientific literature [19], collisions between labor unions and associations of businessmen and involvement in this dispute of politicians: Some experts claimed that not only the future of the European trade-union movement, but also the future of the European Union as a whole depends on "Laval" and "Viking" decisions [20].

In a counterbalance to the decision of the European court of justice in October, 2008, the resolution of the European parliament was adopted. Though judgments came into force, debate on these lawsuits has not come to the end.

**Conclusion:** The EEU states’ labor legislation harmonization has to be carriedout without resorting to unification of its norms, but by rapprochement on the basis of the transformation theory. The states, without creating supranational legislature, ratify the agreements developed by authorized by them bodies on work which consider national features of each state, and on the basis of the conventional international principles and standards develop uniting and arranging states legal drafts of decisions. Each state of Euroasian Economic Union approves these projects as laws, ratifying them in national parliaments. Thus the states of EEU keep the sovereignty, political independence, remaining being the subjects of the international relations and the international labor law.

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