

Topchiy Vitaly –
Researcher Open International
University of Human
Development «Ukraine»

PRINCIPLES OF INTERACTION OF THE INVESTIGATOR AND SUBJECTS WHO SUPERVISE AND CONTROL THE OBSERVANCE OF LABOR LEGISLATION

Based on the analysis of legislative and other normative-legal acts that regulate the activities of supervision and control over compliance with labor laws, as well as learning the practice of investigation of crimes against labor rights defined common ground cooperation in the investigation of such crimes are defined subjects interaction.

Keywords: crimes are against labour rights; investigation; cooperation; organs of supervision and control are after inhibition of legislation about labour; a state inspection of Ukraine is on questions labour; trade unions.

На підставі аналізу законодавчих та інших нормативно-правових актів, що регулюють діяльність органів нагляду та контролю за дотриманням законодавства про працю, а також вивчення практики розслідування злочинів проти трудових прав, з'ясовано загальні засади взаємодії під час розслідування таких злочинів, визначено коло суб'єктів взаємодії.

Ключові слова: злочини проти трудових прав; розслідування; взаємодія; органи нагляду й контролю за дотриманням законодавства про працю; Державна інспекція України з питань праці; професійні спілки.

На основании анализа законодательных и других нормативно-правовых актов, которые регулируют деятельность органов надзора и контроля за соблюдением законодательства о труде, а также изучения практики расследования преступлений против трудовых прав, выяснены

общие основания взаимодействия при расследовании таких преступлений, определены субъекты взаимодействия.

Ключевые слова: преступления против трудовых прав; расследование; взаимодействие; органы надзора и контроля за соблюдением законодательства о труде; Государственная инспекция Украины по вопросам труда; профессиональные союзы.

As you know, the employment relationship resulting from the impact of labor relations on the right to the use of hired labor on the basis of an agreement between the employee and the employer of personal fulfillment employee workers work function (work as in accordance with the staffing, occupation, profession, indicating qualifications specific type of assigned work) subordination of employee work rules, while ensuring employer conditions stipulated by labor legislation and other normative legal acts containing norms of labor law, collective agreement, local regulations, the employment contract.

Therefore, the implementation of the employment relationship, there are a number of specific and complex communication and interaction between the employee and the employer. In such circumstances, on the one hand the actors share a common labor relations to fulfill production targets, on the other - their interests sometimes radically different, which eventually leads to violations of labor rights. Thus, employers are primarily guided by the interests of the Company with respect to the stability of its operation and profit, often at the expense of respect for labor legislation.

Therefore, in order to prevent and suppress these disorders, as well as ensuring compliance with labor legislation in enterprises, institutions and organizations of public administration in Ukraine provides for the operation of special government agencies that are designed to exercise supervision and control over the observance of labor legislation, together with they are subject to non-governmental organizations that carry out public control over observance of labor legislation. In the context of the problems of investigating crimes against labor rights activities of these organizations and institutions is of particular interest because of their operation is directly related to the monitoring of the observance of labor legislation, take

measures to eliminate violations of labor rights and prevent their occurrence in the future.

However, as evidenced by the study of the practice of investigating crimes against labor rights, appeal to the relevant authorities currently single, practitioners question of interaction due attention is not given, the investigators are not aware of the possibility of solving problems in the investigation of the interaction, there is no systematic understanding of the subjects exercising supervision and control over the observance of labor legislation. However, the results showed that the interaction is recognized by almost all respondents as relevant. Considering the above, the problems of investigating the interaction of state bodies exercising supervision and control over the observance of labor legislation and other subjects which competence includes social control in that area, should be given special attention.

The interaction in the detection and investigation of crimes at different times were devoted to works of domestic and foreign forensic G. Andreeva, R. Belkin, D. Bekisheva, P. Biryukova, I. Vozgrin, A. Volobueva, V. Gritsenko, A. Gutnyk, I. Kozachenko, V. Lysenko, V. Lukasheva, G. Matusovskij, O. Taran, V. Shepitko, O. Yurchenko and others.

However, the interaction of the investigation of crimes against labor rights in the forensic literature were not considered, the specificity of this interaction is not described.

A. Marushev notes that in terms of forensics, interaction - a process of direct or indirect effects of objects (entities) to each other, giving rise to their interdependence and communication. This implies that the interaction - the process of organizing and carrying out investigations and prevention of certain types of crimes. The interaction between the actors is done in the investigation of crimes. She is the most organized and effective form of law enforcement agencies fighting crime is characterized by certain properties. In this regard, it is considered as a higher degree of consolidation capabilities of law enforcement and regulatory authorities who have the relevant legal authority to participate in various combinations depending on the type of crime under

investigation, the complexity of the problems solved, the need for appropriate tools, techniques and methods [1, p. 134].

In the scientific literature, the interaction is also considered as a category, reflecting the impact of processes of different objects at each other, their mutual dependency . In summary, during the interaction mainly realize coordinated by purpose, time and place of joint activities specified range of subjects [2], combining the efforts of the investigator and other law enforcement agencies for concerted action and the overall objective the detection and investigation of crime, which is carried out in the forms provided by law, departmental regulations or produced (elaborated) practice [3, p. 443], for an agreed purpose, place and time of the activity as an investigator and the inquiry, which provide an effective balance of power, integrated use of methods and tools [4, p. 677], the same (single) or quite long (long time) collaborative efforts, tools and techniques to perform the tasks of detection, prompt and full disclosure of crimes, exposing those responsible and ensure the correct application of the law so that anyone who committed a crime was justly punished and no innocent has not been prosecuted and convicted [5, p. 11], objectively necessary, coordinated in time, form and the results agreed upon by the previous and the ultimate goal of the joint activity of the investigator, operational commissioner specialists and experts [6], coordinated or joint activities of officials of various law enforcement agencies or departments, aimed at achieving a specific tactical purpose [7, p. 4], coordinated activities of different parts of one or more organizational systems, aimed at achieving the common goal of least expenditure of effort, resources and time [8].

Analysis of the above and other definitions of cooperation during the investigation of crimes allows to distinguish a number of essential characteristics that define and characterize the mentioned concepts and content.

From this perspective, offered his own definition of cooperation during the investigation of crimes against labor rights as a focused and coordinated activities of investigators and other entities that exercise supervision and control over the observance of

labor legislation aimed at combating offenses in the field of labor relations, the rule of law and order and prevent violations.

This interaction is characterized by the following features:

1) the existence of common goals and objectives of the investigator and other entities that exercise supervision and control over the observance of labor legislation;

2) solve these problems is impossible or ineffective without (help) other business interaction;

3) exercising their powers of each of the interacting entities taking into account the interaction of common goals;

4) consistent and coordinated implementation of the common objectives;

5) the need to manage the process of interaction;

6) A clear definition of the legal status of the business interaction.

The purpose of interaction provides:

joint action actors to strengthen law and order, prevention of crimes against labor rights, detection and elimination (neutralization) of negative phenomena and processes that give rise to the offense and / or contribute to their occurrence;

the need to improve the efficiency and effectiveness of law enforcement agencies coordinated actions of regulatory agencies in joint actions in establishing the circumstances of violations of labor rights.

The basis of the interaction is the activity of each of its entities (within their competence through appropriate tools and methods) aims to collect information on compliance with labor laws and detection of violations of the facts and helped them take appropriate measures. Given the above, we can define the basic principles of interaction.

1. Legality. This principle suggests that the interaction should take place in accordance with the laws and other legal acts regulating the activities of the joint as well as the functioning of each subject separately.

2. Planned character. Given that the interaction is a continuous and dynamic process may only conditionally define the stages of planning, including: 1) awareness of expediency interaction setting (option) a specific business interaction, determine trends and patterns of interaction, coordination of actors interaction, 2) direct implementation of interaction, and 3) analysis, review of work

performed, summarizing and generalizing the data, if necessary – to develop further joint action plan.

3. The division of competence. The powers of law enforcement and regulatory authorities, as well as their business units are governed by different laws and regulations. Therefore, the interaction involves joint activity and a clear distribution of powers, forms and methods of work of various departments [9, p. 334-335].

The legal basis for cooperation during the investigation of crimes against labor rights are: the Constitution of Ukraine, the Criminal Procedure Code of Ukraine, the Labour Code of Ukraine, Laws of Ukraine «On Militia», «On Labour Protection», «On labor», «On Government supervision (control) of economic activity», «on Trade Unions, Their Rights and guarantees», Decree of the President of Ukraine «on the State Inspectorate for Labour», and so on. Meanwhile, a separate act, which would have dealt with the interaction of the Interior and entities exercising supervision and control over the observance of labor legislation is not yet worked out.

Form a picture of the supervisors and monitoring compliance with labor legislation is impossible without defining the basic properties of these entities. Analysis of legal literature and legal acts to determine the next one. First, the system of supervision and control over the observance of labor legislation is not accidental diversity, a random set of items. It can not be mechanically include entities which are subject to other purposes.

Secondly, the system of supervision and control over the observance of labor legislation specific expresses properties that are inherent to herself, unlike other systems that operate in the field of labor law. The specificity of the system of supervision and control over the observance of labor legislation is determined by its constituent elements and relationships that develop between them. When considering a system of supervision and control over the observance of labor laws should be borne in mind that it includes the bodies vested with legislative control and oversight powers. The essence of this system is addressed not only to the nature of the separate components, but also their interaction. Based on the analysis of scientific literature can be divided into departmental and non-departmental, public and private (social) system of supervision and control over compliance with labor laws. Departmental system of

supervision and control over the observance of labor legislation is characterized usually by the presence of a stable, depending on the owner and the authorized body. The presence of such a system is characterized most ministries and agencies that are subject to the Cabinet of Ministers of Ukraine. In this case, correct to speak of a system of control. Departmental system, as opposed to departmental does not depend on the owner and the authorized body. Control subjects of this system is implemented on all subjects of labor law, regardless of their subordination and forms of ownership. The state system of supervision and control over the observance of labor legislation indicated the presence of a strictly regulated by the state authority, a state monopoly on the performance of the subjects of their functions. This system characterized by the presence of supervisors such as prosecutors and courts. Non-governmental, the system of supervision and control is characterized by the absence of such a monopoly. Its feature is the presence of non-state actors - trade unions and their associations, labor groups, public officers, employees freely chosen representatives (representative).

Thirdly, the system of supervision and control over compliance with labor laws can be represented as a whole, as the variety of components that are subject to a single whole. This means that its individual parts (supervisors and control) are connected so that if necessary can replace one another.

Fourth, the system of supervision and control over the observance of labor legislation is not a static but are dynamic.

Thus, in accordance with Labour Code of Ukraine, supervision and monitoring of compliance with labor legislation is carried out specifically authorized by the authorities and inspections, central executive authorities, Ukraine's Prosecutor General and subordinate prosecutors, public control over observance of labor legislation by professional unions and associations. Labor Code expanded the system of social control, and to entities that may be involved in labor relations in the absence of trade union organizations include freely elected workers representatives (representative).

Fifth, the system of supervision and control over compliance with labor laws is an open system . One of the activities of all the control and supervision of the systematic informing the public about the observance of labor legislation in enterprises, institutions and

organizations. Supervisors and control not just have no right to conceal from the public the real state of implementation of labor laws, and even the obligation to communicate to the public about any possible violations of labor laws by owners or their authorized agencies. The only exception is investigating a mystery in the investigation of crimes.

Sixth, the system of supervision and control over the observance of labor legislation is not a system that is managed. Today there is no single authority, which are subject to oversight bodies.

Thus, the system of supervision and the control of compliance with labor laws can be defined as a single set of competent state bodies and public scrutiny, endowed with a number of similar powers, which are aimed at achieving a common goal – the observance of all subjects of labor law labor legislation in all stages of their activity [10, p. 732–734]. So is seen that the system of supervision and control over compliance with labor laws and their legal status rather clearly defined and structured supervision and control authority with regulatory consolidation.

The development of market economy, changing economic conditions and the strengthening of the social role of the state has consistently led to the improvement of the system of state bodies which carry out the functions of supervision and control in various areas of public life.

Other special place in this system belongs to the State Inspection of Ukraine for work, which is the successor of the rights and obligations of the State Department oversight of compliance with labor legislation – a government body acting in the Ministry of Labour and Social Policy of Ukraine.

State Inspection of Ukraine on Labour is a central executive body, whose activities are governed by the Cabinet of Ministers of Ukraine by Vice Prime Minister of Ukraine – Minister of Social Policy of Ukraine.

Derzhpratsi Ukraine belongs to the executive and provides implementation of state policy on supervision and control over the observance of labor legislation, employment legislation on compulsory social insurance against accidents at work and occupational diseases, which are caused disability in due to temporary disability benefits and expenses related to the birth and

burial, unemployment in the destination of calculation and payment of benefits, compensation, social services and other types of financial security with a view to respecting the rights and guarantees of the insured. The main objectives Derzhpratsi Ukraine are:

Implementation of the state policy of state supervision and control over the observance of labor legislation;

Implementation of the state policy of state supervision and control over observance of the legislation on employment;

Implementation of the state policy of control over observance of the legislation on compulsory social insurance in terms of purpose, calculation and payment of benefits, compensation, social services and other types of financial security with a view to respecting the rights and guarantees of the insured;

Develop and propose public policy on state supervision and control over the observance of labor legislation, employment and legislation on compulsory social insurance in terms of purpose, calculation and payment of benefits, compensation, social services and other types of financial security for the purpose of respecting the rights and guarantees of the insured.

Significant role in the protection of labor rights and legitimate interests of workers belonging to trade unions and their associations, which, as has been noted earlier, exercise public control over observance of labor legislation.

Professional association (union) – a voluntary non-profit public organization uniting people bound by common interests for their professional (work) activities (training).

Trade unions are created for the representation and protection of labor, social and economic rights and interests of union members.

To determine the possibilities and forms of interaction between the investigator and the trade unions in the investigation of crimes against labor rights were analyzed legal regulation of activity of these public scrutiny. The most important of these powers are.

1. The rights of trade unions and their associations to represent and protect the rights and interests of trade union members.

2. The rights of trade unions and their associations in collective bargaining and collective agreements.

3. The powers of trade unions, associations for the protection of the rights of citizens to work and public control over observance of labor legislation.

4. The rights of trade unions and their associations in resolving collective labor disputes.

5. The right of trade unions and their associations for information on labor and socio-economic development.

6. The rights of trade unions and their associations to bring to justice officials.

In summary set out, we note that an analysis of the legal status and authority of those who supervise and control the observance of labor legislation in terms of interoperability during the investigation of crimes against labor rights, as well as a generalization of existing experience such interaction gives rise to define as a business, are good to bring to the criminal procedural activities during the investigation of the said categories of crimes: Derzhpratsi Ukraine and trade unions and associations, so as to carry out the direct supervision and control over the observance of labor legislation, and their activities accompanied by the accumulation of a large amount of information that can be useful for the tasks of investigation, and the actors worked out their own means and methods of control can be used in investigative work, such as an information guide to planning the investigation, preparation and implementation of investigative (detective) Action and others.

REFERENCES

1. Марушев А. Д. Принципи взаємодії слідчого з учасниками досудового слідства / А. Д. Марушев // Теорія та практика судової експертизи і криміналістики. – Х. : Право, 2011. – Вип. 11. – С. 133–138.

2. Мешканцов В. Н. Экономико-правовые проблемы противодействия коррупции : дис. ... канд. эконом. наук : 08.00.05 / Мешканцов Владимир Николаевич. – М., 2005. – 175 с.

3. Криминалистика : [учеб.] / под ред. Т. А. Седовой, А. А. Эскархопуло. – СПб. : Лань, 2001. – 926 с.

4. Курс криминалистики. Общая часть / [отв. ред. В. Е. Корноухов]. – М. : Юрист, 2000. – 784 с.

5. Криминалистическое обеспечение деятельности милиции и органов предварительного расследования / [под ред. Т. А. Аверьяновой, Р. С. Белкина]. – М. : Новый юрист, 1997. – 400 с.
6. Криминалистика. Расследование преступлений в сфере экономики / [под. ред. В. Д. Грабовского, А. Ф. Лубина]. – Н. Новгород : Нижегород. ВШ МВД России, 1995. – 400 с.
7. Цветков С. И. Комплексное использование сил и средств правоохранительных органов при расследовании деятельности преступных структур / С. И. Цветков. – М. : Моск. ин-т МВД России, 1994. – 147 с.
8. Матусовский Г. А. Экономические преступления: криминалистический анализ / Г. А. Матусовский. – Харьков : Консум, 1999. – 480 с.
9. Таран О. В. Криміналістичне забезпечення розслідування злочинів, пов'язаних із порушенням вимог законодавства про охорону праці : дис. ... доктора юрид. наук : 12.00.09 / Таран Олена Вікторівна. – К., 2013. – 445 с.
10. Подгорна Г. В. Щодо системної організації діяльності органів нагляду та контролю за дотриманням трудового законодавства [Електронний ресурс] / Г. В. Подгорна // Форум права. – 2010. – № 4. – С. 731–735. – Режим доступу : <http://www.nbuv.gov.ua/e-journals/FP/2010-4/10pgvdtz.pdf>.
11. Попова О. И. Место и роль государственных инспекций труда в системе государственного надзора и контроля Российской Федерации : автореф. дис. на соискание ученой степени канд. юрид. наук : спец. 12.00.05 «Трудовое право; право социального обеспечения» / О. И. Попова. – М., 2009. – 23 с.