

PRIVATE LAW BRANCHES UNDER A TOTALITARIAN POLITICAL REGIME (the case of Soviet labor law development in the 1918–1930s)

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The subject. Implementation of Soviet labor law in the context of totalitarianism. Particular attention is paid to the formation of a repressive model of regulation of private law relations. The study of this problem is extremely important from the point of view of the totalitarian past of our country, covering all spheres of public life and entailing large-scale tragic consequences.

The purpose of the article is to confirm or disprove hypothesis that a totalitarian political regime seriously impacts on the essential characteristics of private law branches.

The theoretical and methodological basis of the study includes the principles of objectivity and historicism, the formal logical interpretation of the Soviet legal acts concerning labor relations and the method of system analysis, which allows us to reveal the subject of research comprehensively.

The main results, scope of application. During the formation of the Soviet totalitarian regime, administrative methods of governance in the branches of private law (and in labor law, in particular) prevailed. The formation and development of Soviet labor law in the 1918–1930s. fully reflects the logic of the impact of a totalitarian state on the branches of private law. The widely used system of repressive measures in the sphere of labor was provided not only by laws, but also by the adoption of numerous by-laws, which deformed the system of private law relations based on decentralization and freedom of choice by legal entities. Labor relations were used by the Soviet state as a means of political management of significant masses of the population. Along with the codification of labor legislation (the adoption of the RSFSR Labor Law Codes of 1918 and 1922), normative acts aimed at state monopolization of labor regulation were adopted. A significant number of by-laws, which actually had the highest legal force, often had a purely coercive nature and was used by management as a means of achieving political goals. There was a de facto substitution of the right to work with a labor obligation. In a totalitarian regime in 1918–1930. in fact, a labor obligation is being affirmed, and the relationship between the employee and the employer has ceased to be private in nature, being under the control of executive authorities. Conclusions. Totalitarian political regime seriously changed the essential characteristics of private law branches.

1. Introduction.

The concept of "political regime" is one of the key concepts in studying the influence of the state on the development of various branches of law. Along with the form of government and the form of state structure, it is the political regime that determines the real ways and methods of exercising state power of government, as well as the nature of the application of specific legal norms in practice.

Note that this concept reflects "the level of guarantee of democratic rights and political freedoms of the individual, the degree of compliance of official constitutional and legal forms with political realities, the nature of the relationship of power structures to the legal foundations of state and public life" [1, p. 168].

The term "totalitarianism" means all, whole, complete and was introduced by the ideologue of Italian fascism D. Genitile in the early XX century. In 1925, this concept was first voiced in the Italian Parliament during the speech of the leader of the Italian fascists, B. Mussolini, and it was at this time that the totalitarian regime in Italy itself began to be established [2, p. 38].

Such features of totalitarianism as the establishment of a monopoly in all spheres of public life, the merging of the party and state apparatus, the actual alienation of society from the tools of state management, the purely declarative nature of rights and freedoms in the actual absence of their implementation inevitably raises the question of the specifics of the functioning of certain branches of law. In this regard, of particular interest is the functioning in such conditions of private law branches built on a dispositive method of legal regulation, which is characterized by independence and equality of participants in legal relations.

The division of branches into private and

public is one of the most common among the branches of law. We agree with the opinion of S. A. Ivanova, who defines the method of building legal relations as the main criterion for dividing branches of law: "the legal relationship of legally equal subjects is a private legal relationship; the legal relationship of the legally ruling with the legally subject is public" [3, p. 44]. Traditionally, these industries include civil, labor, family, business, and land law. The peculiarity of these industries is that the implementation of the right is carried out by personal self-expression and individual will of a particular person. Thus, the key criterion for dividing branches of law into separate branches of private law is "the idea that goes back to Aristotle, the idea of law as justice, equalizing and distributing, and private law as a right based on equality of subjects" [4, p. 193].

Legal regulation in the framework of totalitarian political regimes is associated not only with the activities of state authorities, but also with active influence on other public institutions, including private law institutions, including the right to work. Thus, the large-scale intervention of the totalitarian state determines the specifics of the development of this industry in the appropriate political and legal conditions.

A person's ability to work is not only the most important tool for ensuring financial well-being, but also the basis for personal growth, self-realization in professional activities, and a social Elevator that ensures social mobility in society.

The right to work, being a basic economic right in the system of human rights and freedoms, under totalitarianism acquires features that significantly distinguish it from a similar right in authoritarian and especially democratic regimes.

2. Soviet labor law during the period of war communism and the New Economic Policy.

The process of realization of the right to work

in the first years of Soviet power is indicative. Adopted in 1918 The Constitution of the RSFSR did not directly establish the right to work. At the same time, article 65 deprived both active and passive suffrage of persons "resorting to wage labor for profit... private traders, commercial and commercial intermediaries." Thus, the totalitarian regime at the legislative level deprived a large part of the urban and rural population of the right to choose, based on the principles of the dictatorship of the proletariat as one of the foundations of the constitutional system of the Soviet state.

The labour code of 1918 established that all persons between the ages of 16 and 50 years of age were subject to compulsory labour. The only exceptions were those who had permanently lost their ability to work as a result of injury or illness. Note that universal labor conscription was equated with mobilization in the army, thus the Bolsheviks solved the most important question of the availability of workers in the conditions of civil war.

During the period of "war communism", regulations were adopted that significantly tightened the norms of labor legislation. For example, the decree of the Council of people's Commissars (SNK) of November 14, 1919 provided for the creation of workers' disciplinary friendly courts of representatives of management bodies, trade unions and factory committees, designed to consider cases of violations of labor discipline. These courts were given the right to apply the most severe punishments to violators, up to sending them to hard socially necessary work and incarceration in a concentration camp [5, p.16].

Thus, government decrees during the years of the "war communism" policy played a key role in regulating labor relations. The adoption of various normative acts in the context of the civil war was of an emergency nature and their provisions were often given priority over the

existing labor legislation. This circumstance was a manifestation of another feature of totalitarian regimes – the primacy of Executive power over legislative power. This effectively made employees disenfranchised, and provided the state with the ability to freely direct the nature of labor relations in the right direction for itself, guided only by its own expediency, actively using this mechanism in the confrontation with political opponents in the civil war.

The position of trade unions in the context of the formation of a new model of labor relations was entirely determined by the fact that they performed the functions of state institutions. Therefore, the active participation of trade unions in standard-setting activities should not be misleading: the approval by the people's Commissariat of labor (CNT) of trade Union initiatives indicated not so much their real strength, but that both these structures were part of the state apparatus. Trade unions created the appearance of the dictatorship of the proletariat, in fact, being the conductor of the policy of the Soviet state.

A feature of the regulation of labor relations during the period of "war communism" was the actual absence of a mechanism for judicial protection in resolving labor disputes. They were resolved either through trade unions or the CNT. In the event of labor conflicts, the authorities actively applied measures of a non-legal repressive nature, which were used much more often than legal methods, which clearly reflects the essence of the totalitarian state. This, according to B. E. Roshchina, was due to the "eclecticism" of Soviet legal norms (decrees, resolutions, regulations, instructions, resolutions, personal orders, orders, etc.); the ineffectiveness of the law enforcement mechanism in specific historical conditions (war, total destruction, active opposition to the Soviet government, etc.); identification of labor conflicts with manifestations of

counterrevolution" [6, p. 182].

The weakening of totalitarianism in the form of the transition from "war communism" to the new economic policy (NEP) was also reflected in a certain softening of the applicable labor law. The end of the civil war reduced the need for labor mobilization of the population. According to the adopted labor Code of the RSFSR in 1922, forced labor was replaced by signing an employment contract. There was a departure from the equalizing principle of remuneration in favor of the market. In addition, the law limited the cases of conscription to work only in exceptional cases, which included the fight against natural disasters, lack of labor to perform important state tasks.

The same document was approved by the free hiring of labor through the labor exchange. More than 280 labor exchanges and thousands of correspondent points were created. As a result, "all hiring operations were concentrated in one place, and the work had to be distributed in accordance with the principle of "greatest need" [7, p. 41]. Citizens could not agree with the vacancy that was provided by the labor exchange. But if they refused without a good reason they lost their monthly unemployment benefits; in the case of repeated similar refusal, the benefit was no longer paid at all, and the worker was removed from the queue to get a job.

The practice of concluding collective agreements between employees represented by trade unions was returned to the RSFSR labor Code of 1922. Moreover, "the collective agreement could contain a higher level of social and labor guarantees compared to the code" [8, p.127].

During the NEP period, there was a labor and horse-drawn tax (trudguzhnalog) as a duty of citizens (mainly rural population) to perform certain mass works established by law for state needs (procurement and export of fuel,

transportation of food, etc.) [9, p. 59].

3. Changes in labor legislation in the late 1920s – 1930s.

The rejection of the new economic policy, which was characterized by a certain easing in the economic sphere of the state, led to another round of tightening of the political regime in the country, which also affected the development of the labor law system. During this period, there was no question of any effective protection of workers' rights [10, p. 152].

State monopolization in the regulation of this branch of law was closely related to the motivation to protect the employee from abuse by the employer. With an extremely low level of legal culture of the population, a significant proportion of citizens perceived this option of state care in this way. The paradox was that in the actual absence of the institution of private property, when the state itself acted as the only employer in the labor market, it was from it that the main threat of violating the labor rights of citizens came.

The policy of collectivization was accompanied by "dekulakization", as a result of which the category of peasant proprietors was destroyed. The procedure for "dekulakization" was defined by a secret instruction of the Presidium of the CEC of the USSR dated February 4, 1930. "On eviction and settlement of kulak farms". The ideological justification for the destruction of the exploiting kulak was accompanied not only by economic measures in the form of confiscation of property and farm buildings in favor of collective farms, products, and money savings, but also by the mass expulsion of the dispossessed to the Urals, Siberia, Kazakhstan, and the far East.

The crowning limitation of the right to work of the collective farm peasantry was the introduction of the passport system in 1932, according to which this category of workers was

actually deprived of the possibility of changing their place of residence. By restricting civil rights (the right to freedom of movement), the state also restricted the right to work, securing for itself the ability to independently dispose of a citizen's personality and ability to work. As a result of the measures taken, "the list of residents was kept by village councils" [11, p. 168].

The adopted legislative measures eventually led to a decrease in labor productivity. V. P. Motrevich notes a decrease in the level of labor discipline of collective farmers, which was due to "meager wages, alienation of the peasant from the land and his actual enslavement" [12, p. 39].

The need to strengthen control over the work of farmers led to the emergence of new regulations. The resolution of the Central Committee of the CPSU (b), SNK of the USSR of 27.05.1939 "on measures to protect public lands of collective farms from squandering" established a minimum of workdays for able-bodied collective farmers (60, 80 and 100 depending on the specific region). Later in the years of the great Patriotic war, the number of mandatory workdays increased. Thus, the rules were legally fixed, which completely demotivated the peasants, work in the conditions of workdays actually returned serfdom to the village, where the totalitarian state acted as the sole owner of property.

Their labor in the Soviet Union was abolished only in 1966, after the decision of the CPSU Central Committee and USSR Council of Ministers dated May 18, 1966 "On increasing the material interest of collective farmers in the development of social production". The most important difference between working under totalitarianism is that the right to work is replaced by the duty to work. These measures were supported by the threat of criminal penalties. The duty to work is reflected in the USSR Constitution of 1936. Article 12

established the principle "who does not work, does not eat", which was a direct expression of the fact that "work in the USSR is a duty and a matter of honor for every citizen capable of work". The same article proclaimed another principle of socialism: "from each according to his ability, to each according to his labor." Note that these provisions were contained in the first Chapter of the Constitution "Social structure", which is actually one of the foundations of the constitutional system of the Soviet state. It is paradoxical that article 118 of the "Stalinist Constitution" of 1936 proclaimed the right to work. In reality, the basic economic right has been transformed into an exclusive duty, and labor relations have become strictly mandatory. We agree with the opinion expressed by A.V. Karpushkin, who, analyzing the provisions of the Constitution of the USSR of 1936 and the Constitution of the RSFSR of 1937, comes to the conclusion that "the right to work was not understood as a choice to work or not, but as a state guarantee of providing work for people who are obliged to work" [9, p.59].

Earlier, on December 1, 1931, a six-day working week with five fixed days off was introduced. The calendar without days of the week will be valid until the end of the 1930s. Since November 1932, a sanction was introduced in the form of dismissal for absenteeism "in the case of at least one day of absence from work without valid reasons".

The labor obligation fully corresponded to the logic of the industrialization policy: large-scale construction of new production facilities throughout the country required significant involvement of labor under strict state control. In the 1930s, a number of regulations were adopted that allowed the state to transfer workers and specialists from one place to another, based on the principle of expediency. The new wave of labor mobilization was exclusively Directive in nature and did not leave the right to choose employees, evading persons

were called "deserters from the labor front" [5, p. 26].

The situation of the working population also became more complicated due to the growth of repression, which became widespread: "the existing judicial system is completely controlled by the party and state apparatus and is not able to protect citizens from arbitrariness emanating from the state itself" [13, p.257]. The extension of repressive measures, including to branches of private law, logically follows from the essence of totalitarianism: an atmosphere of constant fear is one of the conditions for the unquestioning subordination of the individual to the state.

4. Conclusions.

In the conditions of functioning of the totalitarian political regime, the formation and development of labor law goes against the basic provisions of private law, relying on the "principle of priority of public (state) over personal" [14, p.241]. It is an absolute fact that the norms of labor legislation under the dictatorship were repeatedly changed to suit the political situation. These rules almost always put the interests of the state as a priority over the personal interests of a particular employee. The strictly subordinated nature of labor relations was also associated with the adoption of numerous regulations that were actually given more legal force than

laws, often had a pronounced ideological character and were determined by a specific socio-political situation. Their essence was "direct" manual "management of labor relations through an expansively expanding volume of regulatory legal acts at the national level" [15, p. 103].

Such systematic, unquestioning subordination to the state contradicts key provisions of private law. In it, participants act as independent subjects of legal relations, actively applying a dispositive method of legal regulation based on the free choice of possible behaviors within the framework of current legislation.

Since totalitarian regimes are highly ideologized, it is certainly necessary to agree with the following statement: "in the life of a "totalitarian " society", there is no question that is not political" [16, p. 86]. In the process of implementing the policy of war communism, NEP, collectivization and industrialization, the method of coercion becomes the defining one in Soviet labor law. The actual replacement of the right to work becomes an obligation to work, including under the threat of criminal penalties. A totalitarian type of private law was formed, which is based on an over-centralized regulation of legal relations by the state, where law was often replaced by non-legal mechanisms, which is a manifestation of the essence of the dictatorship.

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