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Compliance by employers with the Labor Code of Ukraine: On the issue of dismissal for improper performance of work

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Abstract. The relevance of the study of the legal regulation of dismissal of employees for improper performance of labour duties is due to the fundamental changes and reforms in labour legislation which require a more detailed study of the social and legal aspects of labour relations. The purpose of this study is to get acquainted with the procedure for dismissing employees, especially in the form of disciplinary proceedings for improper performance of duties. The study used a theoretical methodological approach, the method of legal hermeneutics, a formal legal, methodological approach, the method of deduction, the method of induction. In the course of the study, the characteristic aspects of labour relations in general, the specific features of the employment contract, and the procedures for dismissal for violation of relevant labour obligations in the framework of disciplinary proceedings were analysed. Modern judicial practice was considered, which provides an opportunity to analyse theoretical provisions in their reflection in the real practice of law enforcement in Ukraine to describe this particular procedure for dismissing an employee more thoroughly. The results of the study also identified certain problems in this area that may interfere with its effective functioning. These problems are related to the contradictory interpretation of legal norms regulating the procedure for dismissing an employee for improper performance of official duties. Therefore, to resolve this conflict of laws issue,

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the practice of the Supreme Court was considered, and the current legislation was analysed, which helps to provide explanations on all the features of the procedure for dismissing an employee legally. The study provides practical guidance for Ukrainian employers on how to properly dismiss employees for non-performance, ensuring compliance with the law, clear criteria for decision-making and the necessary documentation

Keywords: employment contract; employment relations; dismissal procedure; systematicity; misdemeanour

Introduction

Work is recognised as a necessary condition for life and a natural ability of a person. Through work in their own lives, a person has the opportunity to create material values that ensure a proper existence for them and their family. The Constitution of Ukraine establishes in Article 43 the right of citizens to work, which includes the opportunity for everyone to earn a living by work that a person freely chooses or freely agrees to; in turn, the state creates the necessary conditions for citizens to exercise the right to work and also provides guarantees of equal opportunities in choosing the type of work and in choosing a profession (Constitution of Ukraine, 1996).

The use and possession of the ability to work is an inalienable and inalienable natural right of every person. The exercise of this right takes place in various ways, which are characterised by their special legal form and give the person a characteristic as employed. Thus, in the Law of Ukraine No. 5067-VI "On Employment" (2013), namely paragraph 7 of Part 1 of Article 1 regulates that employment is determined by non-prohibited activities of persons related to the satisfaction of their personal and public needs to obtain income (wages) in monetary or other form, and the activities of members of the same family who conduct economic activities or work for business entities based on their property, including free of charge. Considering the main ways for citizens to exercise the right to work, in this case, it is worth highlighting such forms as self-employment, entering into labour relations, engaging in business activities, performing work under civil contracts. However, the most common form of exercising the right to work remains wage labour, which means exercising this right by entering into an employment relationship (Belloc, 2019).

Each employment contract concluded for an indefinite period, as in most cases, can be terminated at any time at the initiative of the employer, employee, third parties, or due to certain life circumstances. The current legislation of Ukraine establishes an exhaustive list of possible grounds for termination of an employment contract, which can be recognised as legitimate only under certain conditions. These conditions should include the existence of a legal fact of termination of the employment relationship, the existence of grounds for termination of the employment relationship provided for in the legislation, and compliance with the established procedure for conducting the dismissal procedure for a certain reason (Caldwell, 2022).

The examination of the dismissal procedure for improper performance of official duties in other countries is very relevant because of the importance of developing labour relations and ensuring the correctness of the dismissal procedure for the implementation of the principle of inviolability of citizens' rights. Notably, the world experience serves as a paradigm for Ukrainian legislation, and the development of labour legislation of Ukraine is one of the priority areas of modern policy in connection with the ratification of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (2014).

An important place in the field of labour relations is occupied by judicial protection of employees' rights, including during the dismissal procedure. In this regard, considerable attention is paid to judicial practice, especially to the legal positions expressed by the Supreme Court in resolving specific labour disputes (Denysiuk *et al.*, 2021). Much attention should be paid to the examination of decisions in court disputes related to the dismissal of employees for non-performance of official duties. This is explained by the fact that employers quite often make mistakes when applying, including when interpreting the norms of the Labour Code. In accordance with this, it is necessary to examine the procedural aspects of dismissal for non-fulfilment of obligations imposed on the employee, and develop recommendations to improve the effectiveness of applying the current legislation.

According to L.J. Maliuha *et al.* (2023), Ukraine's existing labor legislation is obsolete and imbalanced, with difficulties, deficiencies, conflicts, and gaps that are unsuitable for managing the labor market in a market economy. The necessity for reform is ascribed to the Ukrainian state's democratization and the establishment of democratic ideals, which necessitate a new way to comprehending the value of persons in society and the preservation of their rights and freedoms, particularly those connected to labor. Simultaneously, S.K. Gupta and N. Bhatia (2022) examined a range of employee turnover models and concluded that the theories of attitude, motivation, and choice are dominant in the majority of turnover models. While virtually all old core turnover models are attitude-centric, new turnover models are vastly different, more complicated and comprehensive, and employ attitudes in novel ways.

The dismissal of an employee for inadequate job performance exhibits significant divergence among different countries owing to disparities in labour legislation, regulations, and cultural conventions. Employment in the United States is generally governed by the at-will doctrine, which grants employers the authority to dismiss employees for a range of reasons (Bhargava & Young, 2022). In contrast, as noted the United Kingdom enforces a requirement for employers to follow a just and legal process, often entailing the implementation of performance improvement plans. In Canada, it is mandatory to provide notice or compensation in lieu of notice, along with opportunities for the employee to make improvements (Chireh *et al.*, 2023). Germany and France have robust employee safeguards, characterised by stringent protocols and the possibility of labour authority endorsement (Abad *et al.*, 2018). Japan prioritises valid justifications and counselling, while Australia enforces a process that is both fair and transparent (Bartram *et al.*, 2019). Dismissal procedures can be greatly influenced by employment contracts and local regulations, emphasising the importance for

employers and employees to obtain legal or HR advice that is customised to their particular jurisdiction.

The purpose of the study is to examine the basic principles of dismissal of employees for improper performance of their work duties. The main objectives of the study are disclosure of the functioning of labour relations in general and the main elements of this mechanism; examination of the employment contract as the basis for the emergence and termination of labour relations; analysis of the dismissal procedure in the framework of disciplinary proceedings; analysis of regulatory provisions enshrined in the legislation, and conducting an examination of judicial practice regarding dismissals for violation of labour discipline. These aspects will help to understand and explain the relevant provisions on the procedure for dismissing an employee for non-performance of duties in a legal way.

Materials and methods

Highlighting, first of all, the theoretical methodological approach, helped to identify the concept and content of labour relations, to highlight their characteristic features and principles of implementation. The logical analysis approach was used to reveal the content of an employment contract and highlight its role as the foundation for the creation of an employment relationship. The approach of formal legal analysis aided in the examination of regulatory legal acts governing the creation, termination, and substance of labor legal relations in Ukraine. The system analysis technique aided in considering the mechanism of labor relations as a system and characterizing its structural features. The method of legal hermeneutics is applied to provide a more detailed description of the termination of an employment relationship, especially for improper performance of duties in a legal way, which made it possible to identify the procedure for termination of an employment contract and determine the grounds for termination based on an analysis of the legal norms regulating this procedure.

The functional methodological approach provided an opportunity to examine the content of labour relations in more detail, highlighting their specific tasks and goals, and describing the features of these legal relations. The use of the deduction method in the study allowed analysing such a structural element of this system as the dismissal of an employee for improper performance of their own duties under an employment contract within the framework of the characteristics of labour relations. The induction method, in turn, helped to highlight the content of labour legal relations based on investigating the procedure for dismissing employees for improper performance of duties. The synthesis method is applied to identify problems that interfere with the effective functioning of the field of labour relations, in particular, in the segment of employee dismissal. It was necessary to use the method of structural analysis since the identified ways to overcome existing problems were reflected not only in the field of dismissal of employees, but also in the segment of labour relations in general to highlight recommendations that will improve the quality of functioning of labour relations in Ukraine.

As a result, the research was carried out in stages. The initial stage of scientific inquiry was to look broadly at the field of labor law relations. It provided for the disclosure of the theoretical component, in particular, the allocation of the concept and content of labour relations, the allocation of characteristic elements and principles of functioning of this field. The second stage was based on the study of the dismissal procedure, in particular, for improper performance of labour duties assigned to an employee. For a more detailed and meaningful analysis, the current national legislation and the practice of implementing relevant legal norms was examined. The third stage involved investigating the judicial practice of the Supreme Court and interpreting the relevant legal norms regulating the procedure for dismissing an employee for improper performance of work duties assigned to them. This stage was aimed to formulate appropriate explanations and recommendations for the parties to the employment contract.

Results and discussion

The dynamics and legal framework of labour relations

A person is regarded the highest social value in nations where the rule of law prevails, particularly in Ukraine and most contemporary governments. As a result, safeguarding and preserving their rights and personal interests are comparable values, the weight of which is set by the individual. Special attention in this aspect is paid to human labour rights, the legitimate interests and protection associated with them; in this case, their health, life, well-being, prosperity are also considered. This is achieved by a person as part of the exercise of their right to work and the right not to be forced to work. According to the above, it follows that the protection and implementation of human labour rights is equated with social value (Loubser & Garbers, 2021). This right, which represents an individual's innate need for labor, is established by their material makeup. It serves as a sort of foundation for all other heavenly rights and liberties in the workplace. It is respected as the primary and defining right within the framework of mortal rights accorded to individuals within society. The content of all labor law moralities as a field of law and their internal depth in accordance with the objective requirements of developing social and labor relations are determined by the right to work and the conditions under which it can be implemented (Kiselyova *et al.*, 2023).

In general, labour relations are defined as legal relations regulated by labour legislation, that is, they are a special legal structure, the objectification of which, when implemented in practice, leads to their falling under labour law and the emergence of obligations of the parties within the framework of these relations. Considering other approaches to the definition of the concept of "labour relations", it is necessary to highlight the definition according to which it is a two-way volitional relationship, the emergence of which is associated with the conclusion of an employment contract between an employer and an employee, the content of which is the establishment, development, change and termination of employees' work to perform the functions provided to them (Hatt, 2021). Another approach identifies them as a specific type of legal relationship that arises between an employee and an employer regarding the provision of a certain type of work, and is also characterised by a voluntary nature and is regulated by labour law norms (Ünal, 2021).

Emphasizing the distinguishing characteristics of labor relations, it is important to remember that they occur between subjects of law having a unique legal status that permits them to be regarded as an employer and an employee. Accordingly, it is important to highlight the provisions of Law of Ukraine No. 2694-XII "On Labor Protection" (1992), which states that an employer is the person who owns an

enterprise, institution, organization, or authorised body, regardless of the ownership structure, nature of business, management style, or use of hired labor. An employee is a person who works at an enterprise, organization, or institution and carries out duties or functions under an employment contract (contract).

In the future, among the characteristic features, these legal relations arise, change, or terminate in accordance with legal norms that affect the behaviour of subjects and are implemented through them. In this case, an employment contract occupies a special place since its conclusion is a legal fact, which means the emergence of an employment relationship between the employer and the employee. The next characteristic feature is defined in the fact that labour relations always have a volitional character, since they cannot arise or be implemented without the will of at least one subject. It is also highlighted that labour relations are provided by the norms of labour legislation of Ukraine and protected by the state (Romero, 2020). It should also be noted that labour relations are bilateral and provide for legal liability for violation by one party to the relationship of the rights and obligations of the other party to these relations.

The grounds for the emergence of an employment relationship require a more detailed study. Thus, according to the Labour Code of Ukraine (1971), namely, Part 2 of Article 2, employees can exercise the right to work by entering into an employment contract at an enterprise, institution, organisation, or with an individual. Therefore, an employment relationship arises as a result of the conclusion of a contract between an employer and an employee regarding the application of labour and the provision of payment for it. That is, an employment contract acts as the basis for the emergence of an employment relationship and the legal fact of its occurrence.

Part 1 of Article 21 of the Labour Code of Ukraine (1971) defines an employment contract as an agreement between an employer (an individual employer) and an employee wherein the employer (an individual employer) agrees to pay the employee wages and provide the working conditions required for the employee to perform the work specified in the agreement, as well as any additional work authorized by labor laws, collective agreements, and the parties' agreement. The terms of the employment contract may specify circumstances under which an individual must perform work requiring professional and/or partial professional qualifications, as well as circumstances under which such qualifications are not necessary.

Considering the positions of researchers on determining the grounds for the emergence of labour relations, these include not only an employment contract. This question deserves a more detailed analysis. Among other grounds for the emergence of labour relations, there are also the appointment of a civil servant to a position, election to an elective position, a decision on the conclusion of an employment contract, election by competition, referral to work of young professionals, approval in positions, referral to work at the expense of quotas, admission to membership, provided that this is a prerequisite for employment, a court decision (Jones, 2021). However, these grounds for the emergence of an employment relationship are mostly complex legal facts consisting of several consecutive elements. Moreover, the final element of any of them is the conclusion of an employment contract. It is also important to note that because of modifications to national laws, the great majority of the cases that were submitted are no longer relevant. Therefore, the referral to work at the expense of a quota or the referral of young specialists were made possible by laws that are no longer in effect, specifically Resolutions No. 992 and No. 578 of the Cabinet of Ministers of Ukraine, which deal with the procedure for hiring graduates of higher education institutions prepared by state order and approval of provisions on the application of the Law of Ukraine "On Employment" (1998). Interestingly, the foundation for the formation of an employment relationship was an employment contract, the signing of which came before the offer of employment.

According to the current legislation, the employer is obliged to conclude a contract with a person who is invited to work in the order of transfer from another organisation, institution, or enterprise with the approval of the heads of enterprises, institutions or organisations in accordance with Part 4 of Article 24 Labour Code of Ukraine (1971); employees after the expiration of their powers in an elected position in accordance with Article 118 Labour Code of Ukraine; an employee in case of re-employment in accordance with Article 42-1 Labour Code of Ukraine. If an employee challenges dismissal from work in court, the employment contract is not re-concluded, but the validity of the previous contract is restored. When a person files a claim to appeal against the refusal of employment in accordance with Part 2 of Article 232 of the Labour Code of Ukraine (1971), the basis for the emergence of an employment relationship is, in this case, not a court decision, but an employment contract, which the employer is obliged to conclude with the employee by a court decision.

The procedure for concluding an employment contract in the current Labour Code is limited by the fact that it sets out only the requirements regarding the form of the concluded employment contract, the employee's obligation to submit documents provided for by law, and the prohibition to require certain documents and information when entering into an employment contract. Part 4 of Article 24 of the Labour Code of Ukraine (1971) explicitly states the requirement on registering the fact that an employment contract was concluded by an order or order of the employer. The employer's order must contain information about the employee's work function by providing instructions on their appointment to the position. Thus, according to the above, the only basis for the emergence of an employment relationship is only an employment contract, regardless of the form of its conclusion or type. In addition, a necessary condition for concluding an employment contract is an indication of the employee's labour function in accordance with the Classifier of professions (National Classifier of…, 2010).

In conclusion, this analysis of labour relations in Ukraine emphasises the fundamental significance of upholding human labour rights as a social value. Crucial to these rights are the entitlement to employment and to be free from forced labour, both of which are essential in safeguarding individuals' health, well-being, and prosperity. Current legislation highlights those employers have a contractual obligation to engage with employees under different circumstances, such as transfers, re-employment, and court orders.

Procedure for dismissing an employee for non-performance of official duties

The institution of termination of an employment contract is one of the most significant in the realm of labour law. This

is demonstrated by the numerous disagreements that emerge over whether or not a dismissal is unlawful. Legal norms, the content of which provides for the grounds and procedure for dismissing employees, are inherently mandatory (Liu *et al.*, 2021). In other words, it implies that the parties involved in these legal contacts are unable to establish additional regulations for termination in individual or municipal regulatory legal acts. This is done in order to provide the best possible protection for the right to work, which is guaranteed by the Ukrainian Constitution (1996).

Considering the grounds for dismissal of an employee, they are conventionally divided into two groups. The first group should include the grounds for termination of the employment contract, which are not in any dependence on the illegal or guilty actions of the employee. The second group of grounds consists of illegal actions of the employee (Vegter, 2020). There is a different view on the classification of grounds for termination of an employment contract at the initiative of the employer, which provides for their division into three groups. The basis for distinguishing these grounds is made up of criteria that make it impossible for an employee to leave the team. These criteria include legal events that do not depend on the employee's will, production needs, and guilty illegal actions of the subject of labour legal relations (van der Mersch & Velink, 2021).

The discussion about excluding the grounds for dismissal for systematic violation of labour discipline from the list of disciplinary penalties against a person unfolded quite a long time ago and continues to this day. Regarding this subject of discussion, the position was expressed that there is a different procedure for conducting disciplinary proceedings while maintaining the place of work and in case of dismissal and different legal consequences associated with the application of certain types of penalties. However, it is necessary to keep dismissal for non-performance of labour duties among disciplinary penalties. This is due not only to the educational value but also to the possibility of applying legal guarantees of a procedural nature, which are applied in the event of the imposition of other disciplinary penalties.

Within the meaning of Paragraph 22 Resolution of the Supreme Court of Ukraine No. 9 "On the Practice of Consideration of Labour Disputes by Courts" (1992) when an employer applies dismissal as a disciplinary penalty, they are obliged to comply with the general procedure for imposing a disciplinary penalty, which is defined in the provisions of the Labour Code of Ukraine, namely in Articles 147-1, 148, and 149. In particular, this applies to the term of bringing to disciplinary responsibility, which is determined within one month from the moment of detection of a misdemeanour, not counting the time spent on vacation or the period of temporary disability, but not later than 6 months from the moment of committing the offence. In addition, when making a decision to dismiss an employee, the employer must consider the severity of the offence committed and the damage caused by the employee, the circumstances under which it was committed, and the employee's previous work. It is also worth noting that this type of exemption differs from other disciplinary penalties, and its implementation requires a set of certain conditions. These include the fact that non-performance or improper performance of labour duties by an employee must be characterised by guilt, committed by negligence or intentionally; non-performance of such duties must be systematic; this violation must concern only those duties that are part of the employee's functions or follow from the internal labour regulations; only public and disciplinary penalties imposed by public organisations and labour collectives in accordance with their charters are considered; bringing a person to dismissal must take place no later than one month after the detected violation.

Notably, currently public penalties for violation of labour discipline are no longer considered in the case of establishing the systematic failure of an employee to perform the duties assigned to them by an employment contract without valid reasons. Amendments to Paragraph 3 of Part 1 of Article 40 of the Labour Code were made by law of Ukraine No. 2215-IX "On the de-Sovietisation of the Legislation of Ukraine" (2022). However, these conditions relate to disciplinary dismissals in general, and considering the procedure for dismissal under Paragraph 3 of Part 1 of Article 40 of the Labour Code of Ukraine (1971), the leading role here is played by the systematic failure to perform labour duties, the presence of a penalty for a previous violation, and the essence of official duties, the violation of which is recognised as the basis for dismissal. The Supreme Court of Ukraine in its decision in case No. 520/3689/16-C notes that to dismiss an employee under Paragraph 3 of Part 1 of Article 40 of the Labour Code of Ukraine (1971), it is necessary that the employee repeatedly (for the second time or more) performs guilty non-performance or improper performance of labour duties after a public or disciplinary penalty for committing these actions has previously been applied to them (Resolution of the Grand Chamber..., 2019). Based on this, dismissal for systematic violation of labour duties is possible only in relation to those persons who have already been brought to justice, but these measures did not have a substantial impact, and this act was committed again.

Which of the previously imposed disciplinary penalties should be considered when deciding on dismissal from work? From the standpoint of the established judicial practice in these cases, only those types of disciplinary penalties that are established by the current legislation and have not lost their legal force due to the statute of limitations, that is, the period of 1 year has not expired or they are not removed ahead of schedule under Article 151 Labour Code of Ukraine (1971) are considered This understanding of the provisions of the Labour Code of Ukraine, defined in paragraph 23 of Resolution of the Supreme Court of Ukraine No. 9 "On the Practice of Consideration of Labour Disputes by Courts" (1992). The employer must provide specific facts of non-fulfilment by the employee of the duties assigned to them to comply with the relevant procedure, that is, indicate the type of misdemeanours, the period of their commission, and the actions of the employee after applying previous penalties to them. Thus, for example, failure to perform basic duties can serve as grounds for dismissal only if the employee does not fulfil exactly the duties assigned to the employee by the internal labour regulations or the employment contract. That is, failure to fulfil general legal obligations in the event of an employee's performance of labour duties cannot serve as grounds for dismissal. The employee must be familiarised with the relevant rules and responsibilities in a timely manner. The employer may not blame the employee and bring them to appropriate disciplinary responsibility in case of failure to perform duties that are not stipulated in the employment contract and about which the employee was not properly informed (Resolution of the Supreme Court..., 2019). In

addition, the spread of remote work creates certain difficulties in ensuring labour discipline and responsibility for its violation.

It should be noted that in order to improve labor productivity and labor discipline in remote work, it is essential to update and enact legislation governing the fundamental rules governing employees' adherence to labor discipline and to provide them with suitable working environments. Furthermore, a legislative framework must be established to guarantee adherence to internal security protocols and guidelines (Yaroshenko *et al.*, 2021). If the employer does not familiarise employees with the provisions of local regulatory legal acts containing a detailed list of job responsibilities and working hours, the court will take the employee's side when considering the case since the latter should not be responsible for fulfilling the rules and obligations that they were not familiarised with in advance. In accordance with this, the employer should carefully approach the issue of familiarising employees with the regulatory legal acts regulating their rules of conduct and obligations because one missed signature can lead to the resumption of the violator at the place of employment. Notably, the employee's familiarisation should also apply to all types of penalties. Thus, judicial practice shows that when making a decision on dismissal, a "friendly remark" can also be considered (Hatt, 2021). However, as already noted, public penalties have lost their legal force in matters of dismissal of employees for systematic failure to fulfil their labour duties.

With the growing number of employers-individuals and private entrepreneurs in the labour market, these penalties are defined as an exotic measure but are still found in the activities of large enterprises. It is worth focusing on the fact that the employer does not have the right to apply two or more penalties for the same violation and also does not have the right to dismiss an employee a few days after being reprimanded for the same misdemeanour. Article 149 of the Labour Code of Ukraine (1971), paragraph 2, states that a worker may only be punished once for each labor discipline infraction. The selection of such a punishment is an additional crucial factor. The seriousness of the offense, its repercussions, and the circumstances surrounding it must all be taken into account by the employer when determining the appropriate penalty. It should be remembered that the offense must have been done with guilt, on purpose, or by negligence. In order to establish culpability, the employer is required under Article 149 of the Labour Code of Ukraine (1971) to get a written explanation from the employee. However, failure by the employer to comply with this obligation, failure to receive such an explanation is not an indisputable basis for cancelling disciplinary proceedings, provided that the fact of violation of labour obligations by the employee is proved due to the evidence provided to the court.

The employer should be aware that the dismissal of a person for systematic improper performance of duties is possible only in relation to those persons who were brought to disciplinary responsibility within a year from the date of the previous bringing to disciplinary responsibility, and the penalties applied were not lifted ahead of schedule or not repaid at all. It should also be understood that the violation that is defined as the basis for dismissal, according to the chronology, should occur only after the application of appropriate penalties to the employee. This is what confirms the fact of systematic illegal behaviour of the employee. Part 1 of Article 43 of the Labour Code of Ukraine (1971) establishes that when the elected body of the primary trade union organization of the enterprise, institution, or organization consents, then the matter of dismissing individuals at the employer's initiative must also be taken into consideration. The Law of Ukraine No. 1045-XIV, "On Trade Unions, Their Rights and Guarantees of Activity", (1999), governs the process and grounds of consideration.

Paragraph 15 of the Resolution of the Supreme Court of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" (1992) states that when an employee is dismissed without an employer applying to a trade union body, the court must suspend the proceedings in this case, request the consent of this body, and only after a response, continue consideration of the case. On the one hand, it will not contradict the current legislation if, in this case, a court or employer applies to the trade union body when preparing the case for court proceedings. However, on the other hand, this contradicts paragraph 1 of Article 43 of the Labour Code of Ukraine (1971), which states that termination of an employment contract for systematic non-performance of labour duties is possible only with the prior consent of the trade union organisation. A certain legal conflict arises from this situation. Therefore, to resolve it, it is necessary to emphasise the need for the employer to comply with the obligation to apply in advance to the trade union body for consent to terminate the employment contract. It is equally important to note that such an obligation should lie only with the employer, and for the courts, this will serve as the basis for consideration. Thus, having analysed the judicial practice, the decisions of the Supreme Court provide legal positions that are supported by arguments and help, in turn, the employer to conduct the procedure for dismissing employees for non-performance of duties in a legal way.

Terminating an employee for poor performance is a sensitive and complex process that requires careful consideration and adherence to legal and ethical guidelines. According to S. Bonaccio *et al.* (2020), before taking such action, it is important to follow a series of steps to ensure that the decision is justified and defensible. These steps may include providing informal feedback and coaching, initiating a performance improvement plan (PIP), documenting the employee's performance issues, and seeking legal counsel to ensure that the termination is supported by valid reasons and in compliance with relevant regulations. Adopting measures for a just and lawful process of dismissing employees for inadequate performance could considerably improve Ukraine's labour legislation. Crucial to this process is the careful documentation of all interactions and evaluations related to performance, creating an inclusive record that underpins decision-making. Additionally, providing small and medium-sized enterprises with access to legal counsel can assist employers in navigating the intricacies of labour law, ensuring adherence to laws and promoting equity.

The different interests between employers and employees in Indonesia can lead to industrial disputes, with termination of employment being a dominant issue, particularly related to company efficiency. According to K.A. Sudiarawan *et al.* (2021), termination of employment in Indonesia is legally required to be based on good cause. Employees must be compensated according to their salary and length of service, and termination for corporate efficiency is only permitted in the event of a permanent firm closure. The parties may choose to use the bipartite, tripartite, or Industrial

Relations Court patterns of industrial dispute settlement. By adopting clear legal grounds for termination, ensuring fair compensation for terminated employees, and establishing a multi-tier dispute resolution mechanism, Ukraine could significantly enhance the balance between employer and employee interests. This Indonesian model, incorporating bipartite, tripartite, and judicial resolutions, could serve as a blueprint for Ukraine, offering a more transparent, equitable, and structured framework.

During the martial law period, as well as during the coronavirus pandemic, it became important to emphasise and more thoroughly consider legislation on the regulation of remote work. Therefore, S.M. Gusarov and K.Yu. Melnyk (2021) will report on the necessity for Ukraine to create and enact a contemporary, all-encompassing labor law, particularly a modernized Labour Code (1971). It is seen to be ineffective to keep adding to and changing the Labour Code (1971), since this does not assure high-quality regulation of labor and associated interactions and does not keep up with contemporary advances in labor law or international and European norms. The paper proposes that in order to remedy these deficiencies, the Labour Code (1971) should include a distinct structural section devoted to the unique aspects of governing the labor relations of certain employee groups, especially those who work remotely. The definition of remote work, the process for entering into, modifying, and canceling contracts for remote work, the working and rest hours for remote workers, and the rights and labor protections afforded to these workers should all be included in this new section. For Ukraine's legislation on employee termination, these findings imply a shift towards a more structured, clearly defined approach that accommodates modern work arrangements like remote and telework. This would involve updating the Labour Code (1971) to reflect current labour market realities and international standards, ensuring that terminations, especially in the context of remote work, are handled within a well-defined legal framework.

Legal norms governing termination are mandatory, aiming to protect the constitutional right to work. Dismissal grounds are categorized into those independent of employee misconduct and those based on illegal actions. The Supreme Court of Ukraine mandates adherence to the general procedure for imposing disciplinary penalties, including dismissal, as stipulated in the Labour Code of Ukraine. Employers must consider various factors and legal requirements when deciding on dismissals, including previous disciplinary actions within a specific timeframe.

Conclusions

Thus, having conducted a study in the field of proper dismissal of an employee for poor performance of duties, the conditions for its implementation by the employer in accordance with the norms of the Labour Code of Ukraine and the relevant decisions of the Supreme Court providing a more detailed explanation of this procedure were clarified. It was determined that the dismissal of employees for improper performance of duties is possible only if this act is re-committed by persons who were previously subjected to a disciplinary penalty for non-performance of duties expressly provided for in the employment contract and the employee is familiar with them.

Identifying the specific features of the dismissal procedure for improper performance by an employee of the obligations assigned to them, notably, such a violation must be characterised by guilt, committed by negligence or without valid reasons intentionally, and systematic. It should also apply only to those duties that are part of the employee's functions or follow the internal labour regulations, and the person's involvement in dismissal should take place no later than one month after the detected violation. The employer does not have the right to apply two or more penalties for the same violation. The procedure for dismissal for non-performance of duties by an employee is possible in chronology only after the application of penalties to the employee, which will be the fact confirming the systematic non-performance of obligations by the employee. The issue of dismissal of an employee for non-performance or improper performance of labour duties should be carefully considered in the context of the fact that the employee should be familiar with the regulatory legal acts regulating their rules of conduct and obligations. An important aspect is that the employer receives written explanations from the employee about the offence committed. However, considering this issue in the course of court proceedings, the absence of such an explanation will not be considered a necessary condition if the employer can prove the employee's guilt by providing evidence.

This research offers scientific novelty by conducting a comprehensive examination of the current legal framework for employee dismissal in Ukraine, with a focus on disciplinary proceedings. It emphasizes procedural nuances, interpretation challenges, and incorporates comparative analysis with international practices. This work contributes to a better understanding of Ukrainian labour law and its potential evolution. Future research prospects include labour law reform, implementation analysis, technological impact, and socio-legal studies on dismissal consequences.

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Conflict of interest

None.

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Дотримання роботодавцями Кодексу законів про працю України: проблема звільнення за неналежне виконання роботи

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Анотація. Актуальність дослідження правового регулювання звільнення працівників за неналежне виконання трудових обов'язків зумовлена докорінними змінами та реформами в трудовому законодавстві, які вимагають більш детального вивчення соціально-правових аспектів трудових відносин. Метою цього дослідження є ознайомлення з процедурою звільнення працівників, особливо у формі дисциплінарного провадження за неналежне виконання трудових обов'язків. У дослідженні використано теоретико-методологічний підхід, метод правової герменевтики, формально-юридичний, методологічний підхід, метод дедукції, метод індукції. У ході дослідження було проаналізовано характерні аспекти трудових правовідносин загалом, особливості трудового договору, а також процедури звільнення за порушення відповідних трудових обов'язків у рамках дисциплінарного провадження. Розглянуто сучасну судову практику, що дає можливість проаналізувати теоретичні положення в їх відображенні в реальній практиці правозастосування в Україні для більш ґрунтовної характеристики саме цієї процедури звільнення працівника. Результати дослідження також дозволили виявити певні проблеми у цій сфері, які можуть перешкоджати її ефективному функціонуванню. Ці проблеми пов'язані з суперечливим тлумаченням правових норм, що регулюють порядок звільнення працівника за неналежне виконання службових обов'язків. Тому для вирішення цієї колізійної проблеми було розглянуто практику Верховного Суду, а також проаналізовано чинне законодавство, що допомагає надати роз'яснення щодо всіх особливостей процедури звільнення працівника на законних підставах. Дослідження надає практичні вказівки для українських роботодавців щодо правильного звільнення працівників за невідповідність обов'язків, забезпечуючи відповідність законодавству, чіткі критерії для прийняття рішення та необхідну документацію

Ключові слова: трудовий договір; трудові відносини; процедура звільнення; систематичність; проступок