



InterAcción y Perspectiv

Revista de Trabajo Social

ISSN 2244-808X
D.L. pp 201002Z43506

Julio-Diciembre 2022
Vol. 12 No. 2

Universidad del Zulia
Facultad de Ciencias Jurídicas y Políticas
Centro de Investigaciones en Trabajo Social

ARTÍCULO DE INVESTIGACIÓN

Prevención de las violaciones del derecho a la protección laboral: factores determinantes para preservar la salud de los trabajadores **DOI:10.5281/zenodo.7114646**

Apollinariya A. Sapfirova *, Victoria V. Volkova **, Anna V. Petrushkina***, Evgeniya G. Vasilyeva ****

Resumen

El documento pretende demostrar la posibilidad de preservar la salud de los empleados proporcionándoles un entorno de trabajo seguro. El objetivo de la investigación puede alcanzarse utilizando el método histórico-jurídico, el método de análisis jurídico y el método formal-jurídico. El análisis histórico-jurídico de las normas de protección laboral de los Anna V. Petrushkina empleados de las fábricas del siglo XIX y de los empleados del siglo XXI demostró la validez de la formación del derecho laboral como derecho de protección laboral de los empleados. Durante años, el sistema de priorización de las medidas de castigo a los empresarios por las violaciones del derecho de protección laboral ha tenido un impacto negativo en su cultura jurídica. Sólo en la última década, los legisladores y los organismos encargados de hacer cumplir la ley han empezado a considerar la prevención de las violaciones de los derechos de los empleados como la forma más eficaz de cumplirlos. Como resultado, en primer lugar, es necesario mejorar la cultura jurídica del empresario al tiempo que se garantiza la seguridad laboral y se preserva la salud de los empleados. En segundo lugar, el análisis de la clasificación de las medidas preventivas ha demostrado que las medidas de prevención de accidentes de trabajo garantizan la seguridad laboral de los empleados y las medidas de prevención de enfermedades profesionales, la preservación de la salud de los empleados. En tercer lugar, es fundamental cambiar el principio de contratación de las mujeres y darles el derecho a elegir cualquier profesión (excepto las prohibidas por las normas internacionales).

Palabras clave: protección laboral, prevención de violaciones del derecho a la protección laboral, preservación de la salud de los trabajadores.

Abstract

Preventing violations of the right to labor protection: determining factors in preserving employee health

The paper aims to demonstrate the possibility of preserving employee health by providing them with a safe working environment. The research goal can be achieved using the historical-legal method, the method of legal analysis, and the formal-legal method. The historical-legal analysis of labor protection standards of factory employees of the 19th century and employees of the 21st century showed the validity of the formation of labor law as the right of employees' labor protection. For years, the system

of prioritizing measures to punish employers for violations of labor protection law has had a negative impact on their legal culture. Only in the last decade, legislators and law enforcement agencies have begun to consider preventing violations of employees' rights as the most effective way to comply with them. As a result, first, it is necessary to improve the legal culture of the employer while ensuring occupational safety and preserving the health of employees. Second, the analysis of the classification of preventive measures has shown that measures for preventing accidents at work ensure the occupational safety of employees and measures for the prevention of occupational diseases – the preservation of the employee health. Third, it is crucial to change the principle of employing women and give them the right to choose any profession (except for those prohibited by international standards).

Keywords: labor protection, prevention of violations of the right to labor protection, preserving the employee health.

Recibido: 03/08/2022 Aceptado: 12/09/2022

* Doctorado en Derecho, Profesor Asociado, Universidad Agraria Estatal de Kuban que lleva el nombre de I.T. Trubilin, Krasnodar, Rusia. e-mail: pol499@yandex.ru

** Doctorado en Derecho, Profesor Asociado, Universidad Estatal Rusa de Justicia, sede del Cáucaso Norte, Krasnodar, Rusia. e-mail: truba.ru@mail.ru

*** Profesora, Universidad Estatal Rusa de Justicia, sede del Cáucaso Norte, Krasnodar, Rusia. e-mail: joesline@yandex.ru

**** Doctorado en Derecho, Profesor Asociado, Universidad Estatal Rusa de Justicia, sede del Cáucaso Norte, Krasnodar, Rusia. e-mail: vasileva_e80@mail.ru

1.- Introduction

Labor protection is an essential component of the labor process. The occupational safety of employees is one of the guarantees of the labor legislation of Russia. The employee's right to labor protection corresponds to the employer's obligation to ensure it. This goal can be achieved both through a system of sanctions (i.e., restoring the right to occupational safety and health that was violated) and through the prevention of violations of this right. In our opinion, the second method is much more effective because it is easier to prevent violations of rights than to restore them.

Scientists worldwide continue studying the realization of rights that ensure human and civil health (including the health of employees). The solution to these issues significantly affects the health of the country's population and its economic development. The performance of a healthy employee differs significantly from their sick colleague, whose labor activity is accompanied by additional costs for the employer. A healthy employee is economically beneficial for an employer. One of the criteria for preserving employee health is occupational safety, which is achieved, among other things, by preventing violations of labor protection law.

The implementation of the right to occupational safety and health covers several activities, the study of which will fully disclose the topic of prevention of violations of the right to occupational safety and health of employees. The following issues will allow employers to ensure occupational safety for their employees: (1) funding of labor protection measures, (2) conducting a specific assessment of the working

environment, (3) providing employees with personal protective equipment, and (4) following the procedure for investigating industrial accidents and occupational diseases.

We analyzed the literature that covers (1) basic research on labor law (Tal, 1913; Alexandrov, 1948; Blanpain, 2016), (2) intermediate studies that consider the problems of labor protection law through the prism of other labor law institutions, including social partnership (Alexandrov, 1948; Vaslichev, 2000; Gubenko, 2003; Alekseenko, 2006; Krasnykh, 2008; Sadakhmedov, 2009; Mikhailov, 2013; Frolova et al., 2016; Kuznetsova, 2016), and (3) research in comparative-legal terms (Galiakbarova et al., 2016). The essence of these studies is to restore the already violated labor rights of employees.

However, only a few scientific papers focus on preventing violations of the right to labor protection of employees (Markovichenko, 2011; Sapfirova et al., 2020). Therefore, the problem of ensuring occupational safety for an employee requires further research.

2. Materials and methods

To achieve the research goals, we used several methods. Above all, we used the historical and legal method to give a historical overview of the content of the right to labor protection. Furthermore, the legal analysis method allowed us to study the norms of the Labor Code of the Russian Federation and other legal acts containing the labor law norms. We tried to identify the shortcomings of these norms and the prospects for the development of labor protection law. The formal-legal method enabled us to propose measures to improve the legal regulation of labor protection and employees' right to labor protection and formulate new standards preventing violations of labor protection of employees.

3. Results

Labor protection of employees is the most outstanding achievement of justice in the 20th century. In the 19th century, the factory owners used not only the labor of the adult population (16–18 hours a day) but also the labor of young children, considering it the most effective. Children died at an early age, before they reached 18, due to grueling slave labor. That is why one of the first labor laws of the Russian Empire of the 19th century was the Law "On minors working in factories, plants, and manufactories" (June 1, 1882) (Russia. Laws and regulation, 1886). Although the law applied only to factories, it was of great importance since it introduced a ban on the work of children under 12, as well as their work on Sunday and at night (from 9 pm to 5 am) and established an 8-hour working day for children aged 12–15. The second law was the law "On the prohibition of night work for minors and women in factories, plants, and manufactories"

(June 3, 1885), which prohibited night work for children under 17 and women in specific industries (e.g., in cotton factories) (Russia. Laws and regulation, 1887). These laws were subject to the same fate as most labor laws that attempted to weaken the power of factory owners. One by one, these laws were amended to eliminate previously accepted provisions (e.g., minors could also be involved in night work). Even the factory labor inspectorate, formed in the 1880s, could not prevent the cruel exploitation of the labor of the Russian population (including child labor) (Bondaryuk, 2014). What is most striking is that the thinking of 19th-century manufacturers and 21st-century employers has hardly changed: the profit justifies the means. If it is necessary to force employees to work 24 hours a day (as during the pandemic this spring, in remote work), the employer will do it, despite violating the right to rest and labor protection. From an economic point of view, employee health and occupational safety are an unjustified waste of money for some employers.

The first Decree of the Council of People's Commissars of the Russian Soviet Federative Socialist Republic "On the eight-hour working day" (October 30, 1917) declared that the working day must not last more than 8 hours and exceed 48 hours per week (Council of People's Commissars of the RSFSR, 1917). This event dramatically changed the legal status of employees. The decree prohibited night work for persons under 16. This decision was a notable achievement of employees in labor protection. That is why labor law is called the right of labor protection of employees.

Many decades have passed since then. More than one code regulating the work of employees in Russia has been adopted. However, labor protection remains attractive to the employees, guaranteeing the protection of their health and the proper investigation of occupational diseases and accidents that may occur at work. Recently, standards have appeared that fix the possibility of preventing violations of employees' right to labor protection. However, these standards are not in demand by employers. Nevertheless, we hope that in the future, given the socialization of business as one of the directions of economic development, they will be in high demand by employers who are considering the prospects for the development of their business.

Today, the prevention of violations of labor protection allows the employer to avoid criminal or administrative responsibility (depending on the composition of the offenses). The fact that the legislator classifies certain violations of labor protection law as crimes (Article 143 of the Criminal Code of the Russian Federation) indicates the importance attached by the State to such violations of employees' rights (State Duma of the Federal Assembly of the Russian Federation, 1996). Prevention of such violations increases the significance of labor protection requirements for the employer. For example, measures for preventing accidents at work may include (1) the provision of personal protective equipment to employees (e.g., special clothing and footwear; respiratory, hand, head, face, hearing, and eye protection equipment, etc.) (Ministry of Health and Social Development of Russia, 2009); (2) training each employee in the basics of labor protection, as required by the Labor Code of the Russian Federation (State Duma of the

Federal Assembly of the Russian Federation, 2001); and (3) implementation of sanitary services (equipped sanitary facilities, canteens, recreation rooms, etc.)

In our opinion, the primary measures to prevent occupational diseases of employees involve (1) conducting a special assessment of working conditions, (2) carrying out medical examinations (note that under the new rules, employees under 40 years are given one day in three years with the preservation of average earnings for medical examinations; over 40 years of age – one day a year; employees of pre-retirement and retirement age – two days a year), (3) providing therapeutic and preventive food, milk, and disinfecting supplies (soap).

4. Discussion

We believe that to prevent violations of the right to labor protection, one should raise the level of the legal culture of the employer. The modern employer differs from the 19th-century factory owner who used child labor, which is now prohibited (except for creative jobs – theater, cinema, circus, etc.). However, 21st-century employers, just like 19th-century factory owners, prefer profit-making to ensure employees' occupational safety. Meanwhile, the prevention of violations of labor protection requirements is the first step of the employer's legal culture and may well lead to benefits for employers. Moreover, this benefit does not necessarily must be material (although this is important); it can be expressed in improving the employer's business reputation, which will allow them to employ highly qualified specialists who always pay attention to the employer's compliance with the basics of legal culture. An employer who takes care of their employees, including the right to occupational safety and health, is valued among employees. Compliance by the employer with high legal culture in ensuring occupational safety and health should be considered a principle of the institution of labor protection as an institution of labor law. This principle should be attributed to labor law principles since it can manifest itself in labor relations with employees in different positions. However, this question does not belong to the research subject and requires additional argumentation.

The system of labor protection measures established by the legislation is the most appropriate; it allows one to prevent violations of employees' rights to labor protection.

Additionally, it is crucial to draw the legislator's attention to the possibility of hiring women in any profession. The current list of such jobs was updated (100 items instead of the previously existing 456) (Ministry of Labor and Social Protection of the Russian Federation, 2019) and will enter into force on January 1, 2021. However, it is necessary to abolish it in full since its existence is discriminatory. Women must decide for themselves whether to work in harmful working conditions, aviation, or other areas. This right should be granted to women but subject to specific rules. First, the government must not oblige women to choose these professions but economically encourage them not to choose them. Second, when employing a woman, the employer must comply with international standards on the protection of women's rights to their occupational safety and adhere to the relevant International Labor Organization [ILO] Conventions (e.g.,

Convention No. 45 "On the employment of women in underground work in mines" (International Labor Organization [ILO], 1935).

5. Conclusion

The research resulted in several conclusions that allow one to prevent violations of employees' rights to labor protection.

Prevention of violations of labor protection law is a set of preventive measures that contribute to the employer's compliance with employees' rights to labor protection. These measures can be divided into two groups: measures for preventing accidents at work and measures for preventing occupational diseases. Each group has its prevention measures that ensure occupational safety for employees, which are unique for each group.

Considering women's interests, one must cancel any lists of jobs prohibited for women since these lists are discriminatory, despite the government's concern for women's health. In this regard, the employer must comply with international standards that explicitly prohibit women from working in certain jobs. The ILO conventions are valid on the Russian territory, if they are ratified; thus, employers must comply only with the ratified ILO Conventions. Therefore, we believe that there is no need to draft another list at the national level, which contains other professions prohibited for women.

Labor protection law does not require the employer to develop a legal culture in relations with employees. At the same time, without a legal culture, it is difficult to force the employer to comply with the labor protection law since no administrative penalties (fine, disqualification) will affect the employer in full if they are not interested (both economically and morally) in the absence of violations of the labor protection law. Such tools as competitions for the best employer or the best labor protection specialist can encourage employers and improve their legal culture in labor relations.

Bibliographic references

- Alekseenko, P. G. (2006). **Constitutional and legal regulation of labor protection in the Russian Federation**. Blagoveshchensk: Amur State University.
- Alexandrov, N. G. (1948). **Labor relations**. Moscow: Legal publishing house.
- Blanpain, R. (Ed.). (2016). **New forms of employment in Europe**. Alphen aan den Rijn: Wolters Kluwer.
- Bondaryuk, D. V. (2014). "Factory legislation on working time". **TSPU Bulletin**, 8 (149), 99–102.
- Council of People's Commissars of the RSFSR (1917). **Decree of October 30, 1917 "On the eight-hour working day"**. *Gazeta Vremennogo Rabochego i Krest'yanskogo Pravitel'stva [Gazette of the Provisional Workers' and Peasants' Government]* 30.10.1917 No. 2.

- Frolova, E. V., Medvedeva, N. V., Kabanova, E. E., Kurbakova, S. N., & Vinichenko, M. V. (2016). "Social partnership in Russia: Prerequisites, problems, and trends". **Journal of Advanced Research in Law and Economics**, 7 (2), 221–228.
- Galiakbarova, G. G., Zharkenova, S. B., & Kulmakhanova, L. S. (2016). "Revisiting jurisdiction of individual labour disputes in the Republic of Kazakhstan: Comparative legal analysis of the labour law application in countries near and far abroad". **Journal of Advanced Research in Law and Economics**, 7 (1), 64–74.
- Gubenko, M. I. (2003). Legal regulation of labor protection, supervision, and control activities for compliance with labor legislation and labor protection. PhD thesis, Perm State University, Perm.
- International Labor Organization [ILO] (1935). **Convention On the use of women's labor in underground work in mines No 45 of June 12, 1935**. Available: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312190
- Krasnykh, G. I. (2008). Labor protection in the Russian Federation: System of administrative and legal regulation and security problems. PhD thesis, Voronezh State University, Voronezh.
- Kuznetsova, M. V. (2016). **Legal regulation of social relations in the field of labor protection in the historical aspect**. Moscow: Internauka.
- Markovichenko, S. V. (2011). Characteristics and prevention of criminal violations of labor protection law. PhD thesis, Omsk Academy of the Ministry of Internal Affairs of the Russian Federation, Omsk.
- Mikhailov, A. V. (2013). Legal regulation of labor protection in the Russian Federation. PhD thesis, Academy of Labor and Social Relations, Moscow.
- Ministry of Health and Social Development of Russia (2009). **Order of June 1, 2009 No. 290n "On the approval of the Interindustry rules for providing employees with special clothing, special footwear, and other personal protective equipment"**. Rossiiskaia Gazeta [Ros. Gaz.] 25.09.2009 No. 181.
- Ministry of Labor and Social Protection of the Russian Federation (2019). **Order of July 18, 2019 No. 512n "On the approval of the list of industries, jobs, and positions with harmful or hazardous working environment with limited use of women's labor"**. Available: <http://publication.pravo.gov.ru/Document/View/0001201908150010>
- Russia. Laws and regulation (1886). **Complete collection of laws of the Russian Empire**. Collection 3, Vol. 2, 1882. St. Petersburg: Gosudarstvennaya tipografiya.

- Russia. Laws and regulations (1887). **Complete collection of laws of the Russian Empire**. Collection 3, Vol. 5, 1885. St. Petersburg: Gosudarstvennaya tipografiya.
- Sadakhmedov, S. I. (2009). Legal regulation of labor protection in labor law of the Republic of Uzbekistan and the Russian Federation. PhD thesis, Academy of Labor and Social Relations, Moscow.
- Sapfirova, A. A., Volkova, V. V., & Petrushkina, A. V. (2020). "System of prevention of labor rights violation in the sphere of labor protection: Essence and prospects of legal regulation". **Turismo-Estudios e Praticas. Geplat: Caderno Suplementar**, 1, 21-24.
- State Duma of the Federal Assembly of the Russian Federation (1996). **The Criminal Code of the Russian Federation No 63-FZ of June 13, 1996**. Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Collection of Legislation of the RF] 17.06.1996, No. 25, Item 2954.
- State Duma of the Federal Assembly of the Russian Federation (2001). **The Labor Code of the Russian Federation No. 197-FZ of December 30, 2001**. Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Collection of Legislation of the RF] 07.01.2002, No. 1 (Part I), Item 3.
- Tal, L. S. (1913). **Employment contract. Civilistic research**. Yaroslavl: Tipografiya Gubernskogo Pravleniya.
- Vaslichev, S. F. (2000). Legal regulation of supervision and control over occupational safety and compliance with labor legislation. PhD thesis, Moscow State Law Academy, Moscow.