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THE INTERNATIONAL EMPLOYMENT PROTECTION PRACTICES

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Otenko P. V. The International Employment Protection Practices

The article discusses the need for corporate protection of staff in accordance with both the European and the International labor law. The author defines the essence of the category of «protection of staff», its constituent elements and the importance of function of this mechanism in terms of corporate security. The main methods used in the international practice to achieve a high degree of protection of staff have been systematized and presented. The main stages of development and tendencies concerning the formation of instruments for protection of staff have been analyzed, and the principal indices to assess the degree of protection of staff have been determined.

Keywords: *protection of staff, European and International labor law, methods, instruments, elements, principal indices.*
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Отенко П. В. Міжнародна практика захисту зайнятості

У даній статті розглядається питання щодо необхідності корпоративного захисту персоналу відповідно до європейського й міжнародного трудового права. Автор визначає сутність категорії «захист персоналу», складові елементи та важливість дії даного механізму в корпоративній безпеці. Систематизовано й представлено основні методи, які використовуються в міжнародній практиці для досягнення високого ступеня захисту персоналу. Проаналізовано основні етапи розвитку та тенденції відносно формування інструментів захисту персоналу, визначено основні індекси для оцінювання ступеня захисту персоналу.

Ключові слова: *захист персоналу, європейське й міжнародне трудове право, методи, інструменти, елементи, основні індекси.*
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УДК 338.2

Отенко П. В. Международная практика защиты занятости

В данной статье рассматривается вопрос о необходимости корпоративной защиты персонала в соответствии с европейским и международным трудовым правом. Автор определяет сущность категории «защита персонала», составляющие элементы и важность действия данного механизма в корпоративной безопасности. Систематизированы и представлены основные методы, которые используются в международной практике для достижения высокой степени защиты персонала. Проанализированы основные этапы развития и тенденции касательно формирования инструментов защиты персонала, определены основные индексы для оценивания степени защиты персонала.

Ключевые слова: *защита персонала, европейское и международное трудовое право, методы, инструменты, элементы, основные индексы.*
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Over the past decade, there has been a heated debate on the costs and benefits of employment protection regulations. These regulations have been introduced with the aim of enhancing workers' welfare and improving working conditions, but if too onerous they may raise labor adjustment costs and affect labor market outcomes. Theoretical models show that employment regulations constrain both layoffs and hirings, but these models do not provide conclusive answers regarding the aggregate effects on related areas.

This problem was addressed by the following authors and institutions: A. Muravyev, A. Bassanini, L. Nunziata, D. Venn, G. Bertola, T. Boeri, S. Cazes, the European Commission, the International Labor Organization, OECD, John P. Martin, S. Scarpetta, O. Blanchard, P. Cahuc, F. Postel-Vinay, and other. Thus, this topic is widely discussed nowadays.

Employment protection and employment security as essential aspects of the right to work have been a major concern of the International Labour Organization and Labour law throughout history. Accordingly, the following question can be raised – why employment protection and employment security are vital at all? The most appropriate answer to this question is that workers and employers usually work under the so-called "master-servant relations". This means that the employee as a servant is expected to perform his duties under the supervision and for the good of the employer (master). De facto, there is asymmetry of contractual rights between them due to the big concentration of power in employers' hands.

Thus, there are a lot of techniques that are being applied by governments all around the world in order to achieve a high degree of employment protection and em-

ployment security. The most widely used tool is employment protection legislation. At the same time, employment protection and employment security are not only related to legislation governing dismissals and contract types but also related to collective bargaining, employment contracts, unemployment insurance, health and safety occupation standards, etc. In other words, the interplay between all these institutional features plays a key role in either enhancing or hindering job security. Employment protection is also tightly connected with labour market security, which can be achieved through different labour market policies, such as unemployment protection, minimum wages, training, and other labour policies that facilitate transition from unemployment to employment and also providing protection for those who are already in employment.

What does employment protection mean? There are different definitions of this term. Employment protection usually refers to the rules and procedures governing the dismissals of individuals or groups of workers or the hiring of workers on fixed-term or temporary work agency contracts [5]. The concept of employment protection refers to rules concerning an employer's duty to show objective or similar grounds for dismissal, irrespective of whether the sanctions for the breach of the rules make that the dismissal is invalid and the employee is entitled to remain at work or go back to work, or whether the sanctions entail only damages or some other financial compensation [10]. Employment protection refers both to regulations concerning hiring (e. g. rules favouring disadvantaged groups, conditions for using temporary or fixed-term contracts, training requirements) and firing (e. g. redundancy procedures, mandated prenotification periods and severance payments, special requirements for collective dismissals and short-time work schemes) [6].

As we can see from the above-mentioned definitions, all of them have got the common elements – rules and procedures that govern recruitment and dismissal of workers. Thus employment protection can be specified in employment protection legislation which is based on three main pillars: *1) termination of regular employment (permanent or open-ended contracts); 2) hiring of temporary workers and 3) collective dismissals.* With respect to termination of regular employment, legislation addresses substantial and procedural requirements (administrative and legal), notice periods and severance pay. Severance pay is a direct cost of dismissals for employers. Legislation usually requires either a valid reason for a dismissal or a list of valid reasons, which generally includes personal circumstances of the employee (e. g. conduct and capacity related reasons) and economic reasons (e. g. loss in revenues). If the dismissal is challenged and the employer cannot show that there were valid reasons for it, the dismissal can be declared unfair and gives rise to remedies in the form of reinstatement or compensation [9].

The second pillar of employment protection legislation covers temporary contracts designed to give firms flexibility in adjusting employment (by hiring temporary workers) during economic fluctuations. In order to prevent excessive use of temporary contracts, there are laws governing their use, the chief among which is the regulation that stipulates the reasons for which a firm can hire workers on temporary contracts. For example, temporary contracts are generally accepted for seasonal works, and also for employing specific groups of workers such as young people and new entrants to the labour market. The primary restriction an employer faces is the length of time for which it can keep an employee on a temporary contract [7].

Finally, the third pillar of EPL is regulations governing collective dismissals that tend to be subjected to stringent restrictions because it entails additional requirements (information, consultation etc.). The definition of collective dismissal depends on the number of employees concerned, and it tends to vary among countries. Collective dismissals have broader economic and social consequences, hence regulation is meant to strike a right balance between the socio-economic costs of collective dismissals (on individuals, enterprises, and the community as a whole) and the need for employer to adjust employment.

Another tool that is used to maintain and enhance employment protection is collective bargaining. Collective bargaining is a process of negotiation between employers and workers that determines employment relationship, in particular, wages, working time and working standards. By design, collective bargaining entails a process of joint decision making where specified issues between employer and employees are negotiated. In some countries (for e. g. Denmark), EPL is mostly regulated through collective bargaining agreements. Therefore the conventional distinction between EPL as being government enacted and collective bargaining as a result of negotiations between employers and workers does not always hold. In fact, in many cases government set the rules for collective bargaining but allows the social partners to self-regulate. Meanwhile, collective bargaining occurs at several levels, namely inter-sectoral (or national), sectoral and firm level. The most prevalent types are multi-level bargaining, which involve national, sectoral and firm level bargaining (varies by country) [8].

It is also quite important to know from what moment a worker can benefit from employment protection. For example, under German and English rules employees may acquire employment protection only after a certain specified period of employment. Similar rules can be found in Danish law – Section 2b of the White-Collar Workers Act stipulates that an employee shall have been in continuous employment with the employer concerned for at least one year before the dismissal in order to make demands on objective grounds regarding the dismissal. However, there are countries like Finland, Norway and Sweden where no such qualifying conditions can be found regarding the right to employment protection. For an employee with an employment contract of unspecified duration objective reasons for dismissal are required already from the first day of his or her employment. It must be mentioned, nevertheless, that the legislation in all the three countries allows for employment contracts on a trial basis, and that rules concerning this employment form may have principally the same function as the above-mentioned provisions concerning the requirements of a certain qualifying period.

In order to better understand the current tendencies of employment protection in Europe and in the whole world, it is important to know the history of its development. At the end of the 1970s there was a dramatic rise in unemployment across Europe. In response to it, European governments simultaneously applied two different policy instruments. The first one clearly outlined stringent and government's intervention in market regulation – adoption, maintaining and even reinforcing legislation on employment protection in order to slow down job destruction and protect employees as strong as possible. But the second police was explicitly taken towards flexibility – it introduced the possibility of hiring workers on flexible, fixed-term contracts aiming at enhancing job creation. At the end of the 1970s, labor market regulations required that temporary jobs were directed to specific tasks characterized by large variations in productivity due to important seasonal variations in demand, for instance. But those regulations have changed since the 1980s, and it is now possible in a number of European countries to hire workers on a temporary basis even to jobs that are not subject to large variations in productivity. For instance, in Spain, in Germany, and in France, the use of temporary jobs is authorized quasi-unconditionally for certain groups of workers (such as youths, seniors, long-term unemployed), and restrictions on the use of such contracts for other categories of labor have been slackened.

The crucial moment that triggered major changes in the employment protection policy was the global economic crisis in 2008. In order to respond to it, countries modified their employment protection legislation as part of broader labour market reforms. In fact, 50 countries have changed their employment protection legislation for permanent employees, where 19 of 27 EU countries altered employment protection for permanent workers. It's quite interesting that these changes have focused primarily on lowering the overall protection rather than its strengthening (e. g. increasing probationary periods, expanding the grounds for justified dismissals, reducing severance payments, etc.). Moreover, the same situation was in the area of temporary contracts – most countries also reduced employment protection for fixed-term employees by increasing the maximum length of such contracts, increasing the number of reasons for their conclusion, and reducing the level of protection. Furthermore, 25 countries have made changes to the legislation governing collective dismissals for economic reasons. This new legislation facilitates the use of collective dismissals, for example, by reducing the administrative procedures to be followed or increasing the numerical benchmark above which a dismissal is considered collective. In Central and South-Eastern Europe and sub-Saharan Africa the changes in the legislation of collective dismissals have relaxed the regulation in 83% of the cases.

As we can see from the history, employment protection legislation has been always changing. Earlier on, it was a tendency to centralize, regulate and severe supervise over labor market by adopting and maintaining compulsive rules. However since the 2000s (in particular from 2008) most countries, including European countries, have lowered granted protection in order to increase employment and eliminate unemployment because of the global economic crisis. It is very important, because strict employment protection reduces both job separation and hiring rates. Therefore, strict employment protection legislation might reduce the labor turnover, weakening firms' ability to respond to changes in demand (due to technological or competitive pressures) and to efficiently reallocate labor resources. Labor turnover is usually low in countries where legislation entailed high and uncertain dismissal costs.

Now we would like to outline the most important instruments at European and International levels that are principal and act as a basis for employment protection legislation. The following list is made up according to the three pillars of employment legislation (termination of regular employment, hiring of temporary workers and collective dismissals). The first international labour instrument dealing specifically with this issue – the Termination of Employment Recommendation (No. 119) – was adopted in 1963. It marked the recognition at the international level of the idea that workers should be protected against arbitrary and unfair dismissals and against the economic and social hardship inherent in their loss of employment. To take into consideration new developments since then, such as globalization, growth of global competition and changes in economy, the Termination of Employment Convention, 1982 (No. 158) and the Termination of Employment Recommendation, 1982 (No. 166) were adopted by the International Labour Conference in 1982. ILO Convention No. 158 concerning termination of employment by an employer provides for minimum standards for individual and collective dismissal. Regarding temporary workers, ILO adopted the Private Employment Agencies Convention (No. 181) in 1997 and the Private Employment Agencies Recommendation (No. 188) in the same year [4].

Within the EU, the protection is not similarly granted in all member states. Apart from the common minimum requirements stemming from the EU legislation and other international obligations, the characteristics of employment protection legislation mostly reflect different legal and institutional traditions. In countries with civil law traditions employment protection legislation is usually regulated by law, while in common law countries it rather relies on private contracts and litigations. In the latter countries, courts have ample judicial discretion as opposed to the former, where legislation plays a greater role. Nevertheless, the most important documents that grant protection for employees are the EU Charter of Fundamental Rights, the EU Treaty and EU Directives which form a common minimum level of protection for workers in all EU members states.

The cases where employment protection legislation differs most across EU member states are related to the regime for individual dismissals on regular contracts, not only in terms of stringency but also in terms of instruments to protect workers against dismissal. In some countries the definition of fair dismissal is not restrictive, and unfair dismissals are limited to cases that are not reasonably based on economic circumstances and on cases of discrimination (e. g. Belgium, the Czech Republic, Denmark, Greece, Hungary, Ireland, Italy, Poland, Slovakia and the United Kingdom). In the Anglo-Saxon countries in particular, there is no need to

justify an economic dismissal as such. In other countries (e. g. Finland, France, Slovenia) dismissals are considered unjustified if they are not based on an effective and relevant reason and further specific conditions are applied in case of collective redundancy (e. g. Austria, Estonia, the Netherlands). Protection of workers in case of unfair dismissal differs widely across the EU. Broadly speaking, in case of unfair dismissal, a worker is entitled either to a pecuniary compensation on top of what is normally required for a fair dismissal or to be reinstated, and employers may also have to pay worker's foregone wages ('back pay'). In some cases reinstatement is not foreseen (e. g. Belgium, Finland) while in others reinstatement is the rule (e. g. Austria, Estonia, Luxembourg, the Czech Republic). The design of severance payments also differs a lot among countries. Severance payment entitlements may be enshrined in law (e. g. France, Hungary, Portugal and Slovenia) or bargained in collective agreements (e. g. Sweden and Denmark for blue collars). In some countries severance pay does not exist at all (e. g. Belgium, Finland, and Sweden).

The regulation of temporary contracts also differs, but the main principles are set out in Directive 1999/70/EC on fixed-term work and Directive 2008/104/EC on temporary agency work. Regarding collective dismissals, EU members states also differ in rules and procedures, however, common principles are enshrined in Directive 75/129/EEC and Directive 98/59/EC on the approximation of the laws of the member states relating to collective redundancies [2].

It's quite important to find out how we can compare countries with each other regarding employment protection and which indices we should rely on. The most commonly used methodology was originated by the OECD and based on indicators of strictness of employment protection legislation. Such a methodology permits a synthetic quantification of strictness of employment protection legislation as well as a cross-country comparison. Other index called employing workers indicators was made up by the World Bank, which has been collecting data on several aspects of labour regulations since 2006. It contains an aggregate indicator of employment rigidity, which is based on three aggregate sub-indicators: difficulty of hiring, rigidity of hours, and difficulty of redundancy. An alternative index was composed by Cambridge Center for Business Research. This center made up the labor regulation index, which includes the following sub-indicators: alternative employment contracts, regulation of working time, regulation of dismissal, employee representation, industrial action, for a selection of countries, between 1970 and 2006. The questions analyzed in this article do not allow disclosing the impact of employment protection on the other related areas such as worker flows, productivity, investments, etc. These questions and ways for reforming and improving employment protection will be investigated in the further research [1; 3; 6].

CONCLUSIONS

In general, as we can see, there is no clear answer to these questions due to the fact that there are many pros of having quite strict employment protection. For instance, having stringent legislation can stabilize employment and unemployment over the business cycle, EPL can be also justified by the need to protect workers from arbitrary actions by employers or it can promote long-lasting commitment to a firm and the firm's investment in human capital, etc. Nevertheless, according to many empirical evidences, we can say that having stringent employment protection legislation reduces job creation and keeps out firms' ability to be flexible and get used to new technologies and crisis. In many developing and emerging economies, stringent employment protection is weakly enforced. Also, depending on the particular country, there is a quite big difference in time when employment protection starts to operate for a worker, thus, it's unfair that one worker is being granted employment protection and another remains out of its protection.

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ТЕОРЕТИЧНІ ТА ПРАКТИЧНІ АСПЕКТИ ЗАРУБІЖНОГО ДОСВІДУ ФІНАНСУВАННЯ ІНВЕСТИЦІЙ В СИСТЕМІ ПАРТНЕРСЬКИХ ВІДНОСИН ДЕРЖАВИ І БІЗНЕСУ ТА ІМПЛЕМЕНТАЦІЯ ЙОГО В УКРАЇНІ

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Калита Т. А. Теоретичні та практичні аспекти зарубіжного досвіду фінансування інвестицій у системі партнерських відносин держави і бізнесу та імплементація його в Україні

У статті досліджено зарубіжний досвід розвитку та впровадження державно-приватного партнерства (ДПП) та його роль в економічному розвитку країн. Надано основні характеристики ДПП у різних країнах і визначено основні закономірності та критерії вибору видів та характеристик ДПП залежно від типу економічної та фінансової системи. Встановлено, що ДПП розширює фінансові можливості здійснення інвестицій у соціально значущі проекти. ДПП найбільше поширене в розвинених країнах (Великобританія, США, Франція, Німеччина). Щодо досвіду «проміжних країн у сфері розвитку ДПП», то в них державно-приватне партнерство розвинуто на інституційному рівні. Серед «країн, які запізнилися у сфері реалізації ДПП», висвітлено досвід Польщі, серед країн колишнього СНД – Казахстану. Виявлено, що ДПП притаманні такі принципи: орієнтація на національний або місцевий розвиток, задіяння небюджетного фінансування у розмірі більше 50%, сприяння інноваціям, створення спеціальних державних інституцій щодо регулювання ДПП і відповідного законодавства. Також проаналізовано переваги та недоліки застосування ДПП для фінансування інвестицій, визначено основні умови тенденції його розвитку.

Ключові слова: *державно-приватне партнерство (ДПП), приватне фінансування інвестицій, державні та приватні партнери, концесія, державні гарантії, державні замовлення, інфраструктурні проекти.*

Табл.: *1.* ***Бібл.:*** *22.*

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Калита Т. А. Теоретические и практические аспекты зарубежного опыта финансирования инвестиций в системе партнерских отношений государства и бизнеса и имплементация его в Украине

В статье исследован зарубежный опыт развития и внедрения государственно-частного партнерства (ГЧП) и его роль в экономическом развитии страны. Приведены основные характеристики ГЧП в разных странах и определены основные закономерности и критерии выбора видов и характеристик ГЧП в зависимости от типа экономической и финансовой системы. Установлено, что ГЧП расширяет финансовые возможности реализации инвестиций в социально значимые проекты. ГЧП наиболее распространено в развитых странах (Великобритания, США, Франция, Германия). Что касается опыта «промежуточных стран в области развития ГЧП», то в них государственно-частное партнерство развито на институциональном уровне. Среди «стран, которые опоздали в сфере реализации ГЧП», показан опыт Польши, среди стран бывшего СНГ – Казахстана. Выявлено, что для ГЧП свойственны следующие принципы: ориентация на национальное или региональное развитие, привлечение небюджетного финансирования в размере больше 50%, содействие инновациям, создание специальных государственных институтов, которые регулируют ГЧП, и соответствующего законодательства. Также проанализированы преимущества и недостатки применения ГЧП для финансирования инвестиций, определены основные тенденции развития.

Ключевые слова: *государственно-частное партнерство (ГЧП), частное финансирование инвестиций, государственные и частные партнеры, концессия, государственные гарантии, государственные заказы, инфраструктурные проекты.*

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Kalyta T. A. The Theoretical and Practical Aspects of the Foreign Experience of Financing Investment in the System of the State and Business Partnerships and Its Implementation in Ukraine

The article explores the foreign experience of development and implementation of public-private partnership (PPP) and its role in the economic development of the country. The main characteristics of PPP in different countries have been provided and the main regularities together with criteria for selecting the PPP kinds and characteristics, depending on the type of economic and financial system have been defined. It has been determined that PPP increases the financial opportunities for investment in the socially significant projects. PPPs are most common in developed countries (UK, United States, France, Germany). As for the experience of the «intermediate countries in the sphere of PPP development», the public-private partnership is developed at the institutional level in these countries. Among the «countries that are late in the PPP implementation», the Poland's experience has been observed, among the countries of the former CIS – the experience of Kazakhstan. It has been identified that PPP is based on the following principles: a focus on the national or the regional development, attraction of more than 50 per cent of non-budget financing, promotion of innovation, and establishment of the special State institutions that regulate PPPs and of relevant legislation. Also the advantages and disadvantages of PPPs for investment financing have been analyzed and the major development tendencies have been defined.

Keywords: *public-private partnership (PPP), private financing of investments, public and private partners, concession, State guarantees, government orders, infrastructure projects.*

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