

# **RULE OF LAW AND LEGALITY AS KEY PRINCIPLES OF PROTECTION OF LABOR RIGHTS OF MIGRANTS IN UKRAINE**

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## **ABSTRACT**

*Description: The purpose of the article is to characterize the principles of the rule of law and legality as key principles for the protection of migrants' labor rights. The subject of the study is the principles of the rule of law and legality as key principles for the protection of migrants' labor rights. Research methodology. The research is based on the use of general scientific and special-scientific methods and methods of scientific knowledge, in particular: dialectical method, comparative and legal method, normative and dogmatic method, system and structural method, the methods of grouping and classifying, legal modeling method. Results of the Study. The article provides an author's definition of the concept of principles of protection of labor rights of migrants based on the analysis of scientific views of Ukrainian and foreign scientists. It is substantiated that the principles of the rule of law and legality occupy the key position in the system of relevant principles. Practical implication. A meaningful description of the principles of the rule of law and legality in terms of protection of labor rights of migrants is provided. Value /originality. It is emphasized that the principles of the rule of law and legality create the basis for the formation and implementation of other principles of protection of labor rights of migrants.*

**Keywords:** Principles, Principles of Law, Legality, Rule of Law, Labor Rights, Migrants.

## **INTRODUCTION**

Nowadays, globalization processes have reached their high point, which can be understood at several moments: firstly, the presence of the unified global information system whose "cornerstone" is the World Wide Web; secondly, the existence of the world economy, within which the economic and financial systems of all countries operate; thirdly, mutual dependence of countries on political fluctuations, etc.

In addition to the above, globalization has affected the depth and prevalence of the movement of large masses of people, one of the manifestations of which is labor migration. Scientists are unanimous that today labor migration is a serious concern to world public opinion (Block, 2015). This problem is relevant to Ukraine as well, especially taking into account the fact

that the national legal system is still at the stage of ridding of many soviet norms and institutions, which had been regulating public relations in the labor area for almost a century (Kozin et al., 2020). At the same time the protection of migrants' labor rights is a complex multifaceted process, the implementation of which requires compliance with the relevant principles.

It is fair to note that the issue of the principles of protection of labor rights of citizens has been repeatedly considered by various experts. In particular, this problem was considered by Bakumenko, Atamanchuk, Zhadan, Nedbailo, Livshyts, Yavych, Bakhrovska, Moldovan, Chulinda, Syrykh and many others. However, despite the large number of scientific studies, it should be noted that the issue of the principles of protection of labor rights of migrants was not actually considered. In particular, from the perspective of the issue, the meaning of key principles such as: as the rule of law and legality remains unclear.

That is why the purpose of the article is to characterize the principles of the rule of law and legality as key principles for the protection of migrants' labor rights.

## MATERIALS AND METHODS

The methodological basis for the article is general and special methods and techniques of scientific knowledge. Dialectical method helps to provide a comprehensive analysis of legal principles in general and principles of labour law in particular. Monographic method is used in the process of examining the works of Ukrainian and foreign scientists, who studied the principles of law in general and principles of labour law in particular. Logical method is applied for the interpretation of the concepts of "*principle*", "*principle of law*", "*legality*", "*rule of law*". Comparative method allows to compare the views of different scientists on the issue under consideration. The method of generalization is applied to formulate the relevant conclusions and suggestions.

## RESULTS AND DISCUSSION

From the general scientific perspective, principle is the fundamental, initial, basic position of a certain object, in particular, a system, activity, mechanism or device. However, the principles are revealed in a slightly different way within various scientific areas. The principles are defined in the theory of management and public administration, which means generally accepted provisions which should be observed in the process of management. Principles are the basic rules that reveal the actions of objective laws, according to which the organization should function effectively. The principles reflect various areas of activity of the organization and its management. They are the basis for the proper understanding of the interaction between people, production processes, understanding the goals and the results of the organization (Marmaza, 2015). But there are other views on this issue.

Nyzhnyk (1998) believes that the principles of public administration are objective laws and relations of socio-political nature that determine the content, organizational structure and vital functions of the components of public administration. They are formulated in the form of certain scientific provisions, enshrined in law and used in the theoretical and practical public administration of people.

Thus, if we consider just general scientific definitions of the term "*principle*" as a basis, then the following assumption is appropriate: the principles of protection of labor rights of

migrants is the fundamental, starting point of institutional activities aimed at ensuring and protecting the legitimate opportunities and interests of migrants. At the same time, this definition shows only the basic nature of the principles. However, other, deeper aspects of this category remain unexplained. To rectify these shortcomings, it is appropriate to pay attention to the essence of this category from a legal point of view, especially since it correlates with the general concept of “*principles of law*”.

Kolodii (1998) believes that the principles of law are designed to ensure the organic relationship of the legal system and structure of law, norms of law and legal relations, the unity of norms, institutions and branches of law. They characterize the content and essence of law in a concentrated form and demonstrate the foundations of the reflection of economic, political and moral relations. Principles are criteria for assessing the legality or illegality of the actions of social actors, form legal thinking and legal culture, cement the system and structure of law.

According to Aleksieiev (2005), the principles of law are the guiding ideas that characterize the content of law, its essence and purpose in society. On the one hand, they express the patterns of law, and on the other hand, they are the most general rules that are applied in the entire area of legal regulation and apply to all entities. These norms are either directly formulated in the law, or are derived from the general content of the laws. Besides, the principles of law determine ways to improve legal norms, acting as guiding ideas for the legislator. They are the link between the basic laws of development and functioning of society and the legal system. The legal system adapts to the most important interests and needs of man and society, becomes compatible with them due to the principles.

That is, in accordance with the above, the principles of protection of labor rights of migrants are the ideas of the mechanism of legal regulation in this area, which exist in the abstract and express the general will of the State. That is, such principles acquire ideological slant; however, are not directly related to the practical side of legal regulation. So, the principle is more a scientific idea of a proper right than a concrete, valid right within such a definition.

This position is opposed by the idea that the principles of law are only those basic ideas that are officially enshrined in law. That is, the principles can be manifested only in the content of these norms, and they can not include the leading ideas of legal consciousness, which have received public recognition and implemented in legal relations, but have not been fixed in regulations (Kerimov, 1972).

This statement is criticized by many scholars, as in their opinion, some ideas are actually given legal expression, others remain in the realm of legal awareness or legal science, but are practically significant. For example, not all common law principles are directly enshrined in law, while the principles of humanism, democracy, etc. should be taken into account in the legal regulation and implementation of certain social relations (Lyvshyts, 1994).

Moldovan and Chulinda (2010) believe that the principles of law are the rules of general importance, supreme imperative (obedience) enshrined in law that reflect the essential provisions of law. As a rule, the principles of law are enshrined directly in legislative acts (articles, preambles to constitutions, laws) or follow from the content of specific legal norms. The principles of law reflect the system of values of society and have a legal form of expression and provision.

Lazariev (1974) supports the position that the principles of law are the main factors that determine the most important structural links in the subject, method, mechanism of legal regulation inside and outside the legal system (links with the social environment), which receive

formal and even informal reflection in the law. As regulators of public relations, they also have a common purpose, as the principles largely determine the prospects for the developing not only law but also society, State and thus contribute to the elimination of gaps or other shortcomings of current legislation.

Thus, having analyzed different points of view on the problem of defining the principles of law, as well as forming an interpretation of the category in the general scientific aspect, we have developed our own view on the principles of protection of labor rights of migrants. According to it, it is a set of basic, fundamental starting points, general legal ideas of legal regulation of social relations enshrined in the provisions of normative acts of the Ukrainian legal system, arising in the area of formation and implementation of measures to ensure and protect important labor rights of migrants. It is worth noting that there is a variety of scientific approaches to the list of relevant principles in the legal literature, but most scholars agree that the principle of the rule of law occupies a key position among them.

Thus, nowadays, the scholars' views on the content of the rule of law are diverse. For example, Yavych (1961) reveals the concept of "rule of law" by paying attention to several points; firstly, the rule of law is determined by the nature of the relationship between law and economic relations. Secondly, the rule of law is a specific social phenomenon, an inalienable right of individual and citizen, a means to protect him (her) from illegal actions by the power system. The law has priority over State institutions and subordinates State bodies to society.

Zaiets (1998) when studying the rule of law notes that law is not a set of norms, but a set of rules of good behavior, which are legitimized by society based on the historically achieved level of social ethics. He concludes that it is impossible to equate the law with the rule and specifies it through the following components:

1. The principles of minimum reliability of legal regulation (the law can apply only where other regulators are not effective);
2. The principles of the State's rights and freedoms (human and civil rights and freedoms and their guarantees are dominant over the interests of the State; "paternalistic" interpretation is unacceptable);
3. The principles of the relative autonomy of the judiciary; they do not formally apply the rule, but to some extent use the law;
4. The principle of the rule of law means not only the rule of its formal sources (the Constitution and laws), but the definition of law as a regulator of legal relations;
5. The principle of the supremacy of the Constitution of Ukraine and the laws of Ukraine, the supremacy of the Constitution over the laws and decisions of law enforcement and judicial bodies.

Petryshyn et al. (2015) distinguish two approaches to understanding the principle of the rule of law. According to a broad approach, the principles of the rule of law are understood as a model of legal organization of State power in society, i.e. as "*the rule of law over the State*", according to which it covers virtually all principles of the rule of law. For example, upholding the rule of law in the American legal tradition includes addressing a wide range of issues related to constitutionalism, federalism, separation of powers, civil rights, judicial protection, the judiciary, criminal justice, administrative law, and more.

The second approach (a narrow one) involves understanding the rule of law as a model of the relationship between law and law in the regulation of social relations.

Like the rule of law, legality is linked to the constitutional provisions, namely Article 19 of the Constitution of Ukraine (Law of Ukraine, 1996), which states that the legal order in Ukraine is based on the principles according to which no one may be compelled to do anything

not provided for by law. However, legality has broader definitions in the scientific area. In particular, according to Lisiutkin (2014) under the principle of legality one should understand the system of ideas and views resulting from the patterns of social development, which are taken as a starting point the reasons for lawful conduct and internal belief in the need to comply with laws and regulations.

Matuzov and Malko (2001) point out that legality is a political and legal form conditioned by the laws of social development, which ensures the process of moving society to a state of legitimacy by resolving the contradictions between political and economic expediency and the values of law expressed in current legislation. The essence of legality is the requirement of strict and consistently compliance with current legislation by all participants in legal relations.

Skakun (2000) defines the principle of legality as the starting point, an indisputable fundamental requirement, which is the basis for the formation of the rule of law and is imposed on the behavior of the parties. The principle of legality reveals the essence of the regime of socio-political life in a democratic State governed by the rule of law.

The content of legality is also considered in the works of Nersesiants (1999): Legitimacy is a set of diverse but one-sided requirements related to the relationship to laws and their implementation. The main ones are as follows:

1. The requirement of strict and consistently observance of laws by those to whom they are addressed.
2. The requirement to comply with the hierarchy of laws and other regulations;
3. Legality provides a provision under which no one can repeal the law except the authority that issued it.

These requirements constitute the content of legality. They can be formulated directly in laws, proclaimed by officials or expressed in other ways. If they are only proclaimed but not enforced, then legality will be formal. If these requirements are met, the legality will be valid”.

Lazarev (2001) notes that the essence of legality is given concrete content and the relevant form under specific historical conditions. Legitimacy is proclaimed, and often enshrined as a principle, the requirement to comply with legal requirements addressed to the subjects of public relations in law. At the same time, due to various reasons, including measures of state coercion, legality (observance of the rule of law) is manifested in the specific behavior, activities of these entities, i.e. becomes a method of their activities. As a result, there is a regime of public life, which is expressed in the fact that most participants in public relations comply with legal requirements.

Thus, having analyzed the above, we can determine the main features of the principles of rule of law and legality in ensuring labour rights of migrants:

1. The principle of the rule of law, which lies in legal regulation of public relations in the area of ensuring and protecting the rights of migrants, is based solely on legal provisions, because the law is recognized as the main regulator of public relations in the State;
2. The principle of legality of protection of labor rights of migrants determines that the authorized State bodies are obliged to conduct their activities based solely on the current legislation in the process of implementing the measures to protect the labor rights of migrants.

Such principles, firstly, have a legal basis, i.e. they are real imperative norms, not abstract provisions; secondly, the principles of protection of labor rights of migrants are derived from the general principles of law, but due to the special sphere of existence they have a slightly different

meaning; thirdly, the principles defined in the article include the basic ideas of both general and special nature.

## CONCLUSION

Modern life is characterized by a number of integration and globalization processes, the feature of which is a significant and rapid increase in population migration. Labour migration occupies a special place in migration processes. This situation determines the expediency and necessity of introducing effective mechanisms for managing migration processes and ensuring the protection of the rights, freedoms and legitimate interests of labour migrants (Kozin et al., 2021).

Thus, summarizing the results of the presented research, it should be generalized that the principles of the rule of law and legality of protection of labor rights of migrants play a key role in the implementation of relevant activities. Thus, in view of the above, the content of the principle of the rule of law protecting the labor rights of migrants is expressed in the fact that the regulation of public relations in the field of ensuring and protecting the rights of migrants is based solely on legal provisions; besides, other social regulators, such as moral standards, ethics, etc. should be implemented. In turn, the principle of legality means that the authorized State bodies are obliged to base their activities solely on current legislation and within the powers vested in them by relevant regulations in the process of implementing measures to protect the labor rights of migrants within the framework of the presented issues.

Thus, as a result, it should be noted that these principles are not only the basis for activities related to the protection of labor rights of migrants, they also create the basis for the formation and implementation of other principles in the area of public relations.

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