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PAPER

Transnational Collective Agreements and Global Collective Treaties in Russia and the EU

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Abstract In connection with the processes of globalization and internationalization of the economies of States in different regions of the world, the increasing pressure of competition, there are new forms of social partnership agreements at the regional levels (so called transnational collective agreements) and global collective agreements. Regional associations of employers and trade unions, transnational corporations and trade unions participate and play an important role in this process.

The paper examines collision issues related to the solution of the problem of correlation of transnational collective agreements and global collective agreements with other international and national sources of labour law.

This issue is almost not settled both in the national labour legislation of the member states of the European Union and the Eurasian Economic Union, and at the international level. The author examines specific examples of transnational collective agreements and global collective agreements from the legal system of the European Union, as well as the member states of the Eurasian Economic Union, in particular the Russian Federation.

The conceptual solutions to the above mentioned problem of resolving legal conflicts between transnational collective agreements and global collective agreements and national social partnership agreements in the member states of the Eurasian Economic Union were proposed.

Keywords: Transnational (framework); collective agreement; global collective agreement; source of law; conflict.

JEL classification: F; H; L

Introduction

Taking into account the processes of globalization and internationalization of the economies of states in different regions of the world, the growing pressure of

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competition on goods, services, finances, labour, new forms of social partnership agreements at regional levels - transnational collective agreements and global collective agreements have appeared. Their conclusion is attended by regional associations of employers and trade unions, transnational corporations and trade unions that unite the workers of these corporations.

Although the questions of collective-contractual legal regulation with the use of collective agreements of transnational corporations (hereinafter - TNCs) and international framework agreements have been studied in some part by Russian scientists (K.N. Gusov and K.D. Krylov [1], N.L. Lyutov [2], L.V Zaitseva [3], S.V. Shuraleva [4]) and Western European researchers (E. Alles, C. Sciarra, F. Valdés Dal-Ré [5], R.Blanpain [6], B. Happle [7], G. Boni, I. Schцmann, and others [8]) the legal nature of these sources of labour law, Globalization of regionalization and legal systems, is not clear, as well as the question of their relation to other classical sources of international and national labour law.

The science of labour law (both Western and post-Soviet) did not completely investigate conflict issues related to possible differences between the provisions of transnational collective agreements and global collective agreements with national social partnership agreements (collective agreements, tariff agreements, national agreements).

For a comparative legal study, legal sources, transnational collective agreements and global collective agreements concluded in the legal systems of the member states of the European Union (hereinafter referred to as the EU) and the Eurasian Economic Union (hereinafter referred to as the "EEU"), in particular TNCs registered in the Russian Federation . This article is a continuation of the previous two monographic studies of sources of labour law in Belarus and the member states of the EEU [9; 10].

1. International labour standards for MNCs (TNCs)

Let us recall that the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (for brevity - The MNC Declaration adopted by the ILO Governing Body in 1977 and updated in 2000 and 2006 [11] briefly touched upon the participation of MNCs in social partnership (collective) relations.

The purpose of the MNC Declaration is to encourage the positive contribution that MNCs can make to economic and social progress and minimize and overcome the difficulties that can be caused by their different activities, taking into account the resolutions of the United Nations (UN), aimed at the new international economic order establishing, as well as subsequent achievements within the UN, such as, for example, the Global Compact and the Millennium Development Goals.

Although the MNCs Declaration did not set out to define MNCs accurately, but in paragraph 6, to facilitate understanding of the term, it indicated that multinational corporations include such corporations - state, mixed or private - owned or controlled outside their home country there are production, distribution, maintenance and other areas. As we can see, such a broad interpretation of the MNC makes it possible to use this category as a generic one, embracing a narrower concept - transnational corporations,

which include subsidiaries or affiliated companies with the rights of legal entities and based outside the state where the parent company is registered.

Paragraphs 42-56 of the MNC Declaration are particularly important for clarifying international standards relating to freedom of association and the right to collective bargaining, and they largely repeat and specify the international labour standards that were previously enshrined in ILO Conventions No. 87, No. 98, No. 135 and in a number of ILO recommendations. Unfortunately, none of the paragraphs of the above-mentioned MNC Declaration even mention transnational landmark agreements and global collective agreements, as well as options for resolving the problem of their correlation with other social-partnership agreements and international treaties.

2. Legislative "vacuum" and legal nature of transnational collective agreements and global collective agreements

Before legalizing global collective agreements and transnational collective agreements in legislation, it is necessary to understand what they are, what is their legal nature and, to find out: are they a kind of social partnership normative agreement or an international treaty?

An attempt to look at the legal nature of global collective agreements concluded with the participation of TNCs was undertaken in a collective work with the participation of K.N. Gusova, K.D. Krylov, in the Ph.D. theses of Perm researchers M.V. Shakhaev and S.V. Shuraleva, in the scientific articles of L.V. Zaitseva and D.A. Novikov. But all points on the "i" in this matter are not placed either in the theoretical, or even more so in the legislative and law enforcement aspects.

The supranational level of international framework agreements concluded with the participation of TNCs was not without justification, co-authors of the joint monograph edited by K.D. Krylov, published in 2005 [1, p. 243], but this research was rather staged. The co-authors of this book did not offer an acceptable solution to the problem of embedding these international (more precisely - transnational) framework agreements and corporate agreements in the legal system of Russia.

M.V. Shakhaev, defining the collective agreement as a legal act regulating labour and other directly related relations, relations on social protection, as well as economic relations related to labour, concluded as a result of collective negotiations between the collective of workers, representatives of the collective of workers, on the one hand, and employers and employers' associations, on the other hand, with the participation of public authorities (local government), at the appropriate level of social parthnership relations [12, p.5] in his dissertation yet clearly does not have a place of global collective agreements and international framework agreements in relation to this system.

In opinion of S.V. Shuraleva "corporate agreements are not a subclass of collective agreements, which are implicit in Article 45 of the LC RF, but are an independent class of agreements in the field of social partnership, because the corporate agreement equally combines the signs of a collective agreement and a collective agreement" [4, p.165-166]. It is true that the same author writes that corporate agreements can be considered as an "independent subclass of social partnership agreements", arguing that

"it represents a new section of social partnership" [4, p.169]. Following the logic of this author, it turns out that all social-partnership agreements are divided into three large subclasses: collective agreements, corporate agreements and collective agreements. In our opinion, such a tripartite system does not exhaust the whole variety of social partnership agreements and at least should be supplemented by transnational collective (framework) agreements.

The Russian scientist L.V. Zaytseva, analyzing the Labour Code of the Russian Federation (hereinafter - the Labour Code of the Russian Federation) and other Russian labour legislation, concludes that neither Article 45 nor Article 26 of the Labour Code establishing levels of social partnership in the Russian Federation provides for the existence of any agreements at the level of holdings, or the corresponding level of social partnership "and then makes a valid conclusion that" today in Russia the collective agreement of a corporation (holding) exists in a situation of some kind of legal uncertainty, going beyond the schemes defined by the legislation. "[3, p.172]. One can partly agree with this statement, but with regard to Russia the situation is in any case not hopeless, considering that the list of agreements in Article 45 of the LC RF is formulated as open and there are mentioned other agreements that, according to part 10 of this article, "may involve the parties at any level of social partnership in certain areas of regulation of social and labour relations and other directly related relationships." A similar rule is also fixed in Part 9 of Article 46 of the Labour Code of the Kyrgyz Republic in 2004 (hereinafter – the LC of the Kyrgyz Republic). The problem, therefore, is the lack of legitimization in the LC RF and in the LC of Kyrgyzstan of an international or, more accurately, transnational level of social partnership, and ideally a reference to a general or global collective agreement and a transnational framework agreement.

For comparison: unlike Russian and Kyrgyz legislation, the Labour Code of the Republic of Kazakhstan of 2015 (in Article 152) and the Labour Code of the Republic of Belarus of 1999 (Article 358) provide for the conclusion of agreements only at three levels (republican, sectoral and regional/local), with three types of relevant agreements formulated in Belarus and Kazakhstan in an exhaustive manner, which does not allow the integration of legally operating systems of social partnership into global collective agreements and transnational frameworks agreements. In the Labour Code of the Republic of Armenia (art. 46), the list of levels on which collective agreements can be concluded is also exhaustively defined (there are no agreements in Armenia with the legislator at all). More details of the collective agreements concluded in EEU member states, agreements are given in the last of our monograph [10, p. 258].

The Ukrainian author D.A. Novikov notes that instead of the codes of social behaviour as unilateral acts of "goodwill", "in the mid-1990s, international trade unions developed their own code" Basic Code of Conduct covering the world of work", the ultimate goal of which was "introduction to practice the work of international trade unions for the conclusion of international collective agreements"[12, p.377]. The same scholar calls for the legitimization of international collective agreements that "will stop the spread of unsustainable employment and will help to strengthen the social protection of workers, increase their living standards, preserve the balance of interests of workers,

employers and the state at the global level" [12, p.378] .

Of all the above points of view, the closest thing to understanding the legal nature of corporate agreements was approached by S.V. Shuraleva. In our opinion, these sources of law regulating certain aspects of labour and related relations undoubtedly go beyond the national level of legal regulation, as they regulate relations outside the state of registration of TNCs, extending to subsidiaries abroad and their employees. They cannot be fully attributed to the sources of international labour law (in this regard, they are not entirely called the international framework agreements), since the main subjects of international law (states and international organizations) are not involved in their adoption, therefore their place is in the supranational labour law. If we rely on the term "transnational law", introduced by Philip Jessup in his 1956 monograph of the same name, as a broader concept, "all the law that governs actions and events that go beyond national boundaries" [15, p.2], transnational collective agreements and global collective agreements are sources of transnational law.

At the same time, global and general agreements in their legal nature are socially-partner normative agreements, but with a broader scope than collective agreements and agreements concluded in the national legal order.

3. Experience in concluding transnational collective agreements and global collective agreements in the EU and the EEA

Historically, one of the first attempts to conclude corporate agreements in the European region can be considered an agreement between the unions and the management of TNC Glaverbel-Glass-Company-BSN-Gervais-Danone, which covered workers in France, Austria, Italy and the Federal Republic of Germany in 1977. The first supranational agreement regulating labour relations, is associated with 1985 - between the company Danone and the International Federation of Trade Unions of Food and Allied Industries (IFTUFAI). Later, at the annual meetings of social partners from 1989 to 1997, in its development was adopted a number of agreements, including. 1994 - on the basic trade union rights [1, p.250].

In 2013, an agreement was signed between the global IndustiALL union and Volvo Group to establish a world-wide production council that promotes the practice of the European production council to representatives of employees who work in enterprises located outside the EU [16, p. 315].

As of April 2018, the global union association IndustriALL signed transnational collective agreements with 44 transnational companies: Aker, BMW, Bosch, Daimler, Elecrilux, Ford, H & M, Lukoil, Mann, Peugeot, Citroen, Renault, Saab, Siemens, Tchibo, Volkswagen and others.

In the EU, the joint effort of the ILO and the European Commission has even formed a separate database of transnational agreements, which includes 265 international, European and transnational agreements concluded with the participation of TNCs, in which global treaties and transnational collective agreements (with different names) are placed, for example, Air-France-KLM (France), Allianz (Germany), AHA groups

(France), Weier, BMW, Bosch (Germany), etc. [14] With reference to the experience of the conclusion of global collective agreements, which some authors refer to as corporate agreements in the field of social and labour relations [1; 4], others - acts of social partnership of TNCs [3, p. 171], the most interesting is the experience of such well-known oil producing and gas producing TNC – residents of Russia – as JSC GAZPROM and JSC NK LUKOIL, which are widely represented in Europe by their subsidiaries.

As applied to JSC GAZPROM, registered in Russia, its subsidiaries operating in the territories, for example, Belarus, Kazakhstan or Kyrgyzstan, will be subject to the General Collective Agreement of JSC GAZPROM and its subsidiaries for 2013-2015, the action which was extended for 2016 – 2018, but at the same time the applicable labour legislation will be the legislation of Belarus, Kazakhstan and Kyrgyzstan respectively, if it concerns workers employed in these republics. It remains an open question how this general collective agreement will be correlated with the general agreements concluded in these republics with the participation of the government, republican associations of trade unions and employers (employers), as well as industry (tariff) agreements concluded by oil refineries and concerns? We will return to this issue later. The specificity of the scope of global and general collective agreements (for example, the General Collective Agreement of JSC GAZPROM and its subsidiaries for 2013 – 2015) is that they operate in subsidiaries, branches and representative offices of the parent company, often alongside with collective agreements concluded in these organizations and their separate subdivisions. In essence, they act as the normative one, based on which the collective agreements of the subsidiaries of this TNC are developed.

If we refer to the Agreement concluded between the global trade union association IndustriALL, the trade union of oil, gas and construction workers of the Russian Federation, the international association of trade union organizations of JSC NK LUKOIL and JSC NK LUKOIL itself, we can see that this agreement is being extended to all spheres of activity and organizations directly controlled by LUKOIL [18].

The solution of the question of the correlation of the above mentioned agreements with each other and with other sources of labour law lies in the plane of the answer to the question of their attribution to a particular subsystem of sources of labour law (to international, supranational or national sources). It is pertinent to recall that Article 8 of the Model Law of the CIS “On Social Partnership” of 16.11.2006 [19] mentions such level of social partnership as the level of the financial and industrial group and transnational corporation. We believe that this name of this level of social partnership with regard to transnational agreements should be adjusted and shortened. The supranational (transnational) level of the conclusion of these social partnership agreements, their distribution to workers and organizations located on the territory of different states, allows, with a certain degree of conventionality, to classify these normative agreements to the subsystem of supranational sources of labour law. Since global collective agreements and framework international social-partnership agreements *de jure* are not international treaties, and therefore it is not correct to call them international agreements in the field of social partnership [20, p.20], but their scope is broader than national social-partnership agreements. Given the general legal nature, conflicts arising between

transnational collective agreements, global collective agreements and national social partnership agreements (including general, sector (tariff) and regional, local, territorial agreements, should be resolved on the basis of the universal conflict principle *in favorem* improvement of the legal status of employees), since neither in the member states of the EEU nor in the EU law the issue of their legal power is not legislatively regulated L.V. Zaitseva came to a similar conclusion in her report at the Third Gusovsky Readings in 2017, which believes that the actual expansion of the practice of using global collective agreements (agreements) "can be facilitated by the effective and universal implementation of the principle of" lawfully , which improves the position of the employee "[21, p.267] .This principle is more preferable at the universal level (in the ILO convention or declaration), taking into account the supranational level of transnational collective agreements and global co Collective agreements with access to the borders not only of specific states and regional interstate associations.

Conclusion

Summarizing the results of the scientific comparative legal research, we note the following:

- transnational collective (framework) agreements, as well as global (general) collective agreements concluded with the participation of TNCs, represent the legal nature of a variety of social partnership normative agreements concluded at the transnational level of social partnership;
- in terms of the level of imprisonment and scope, transnational collective agreements can be attributed to sources of supranational labour law that have a cross-border scope, extending to employers - legal entities and employees from different countries;
- meaningful conflicts that can arise between transnational collective agreements and global collective agreements with national social-partnership agreements should be resolved on the basis of the conflict of laws *in favorem*;
- the labour legislation of the EEU member states requires legalizing the existence of such types of social partnership normative agreements as transnational collective agreements and global collective agreements, as well as the transnational level of social partnership, supplementing the corresponding norms of the heads of labour codes devoted to social partnership.

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