

# Abuse of Rights in Labor Relations: Concepts, Motives, Beneficial and Adverse Consequences

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**Abstract:** The article contains the studied issues of abuse of rights in labor relations: the concept of "abuse of rights in labor relations" has been defined, its motives, and beneficial and adverse consequences have been analyzed. The authors emphasize that "abuse of rights" as a legal fact arisen in specific life circumstances may have both beneficial and adverse social content. All this resulted from the fact that legislative practice does not keep up with real conditions of changing labor relations affected by dynamic circumstances of modern social and economic development of society. To develop new approaches to definition of the fundamental principles of labor law to ensure the rights of all participants in labor relations on the principles of equality before the law seems now to be very important. The solution to this problem is in formulation of a universal definition of the concept "abuse of rights in labor relations" like actions or inactions in the legal environment of labor law, based on antisocial motives of these actions (inactions), which do not coincide with motives officially indicated, resulting in adverse social consequences such as discrimination, oppression of labor rights of citizens and stateless persons, violation of the requirements for safe and healthy working conditions. In turn, according to the authors, actions or inactions beyond labor law, but based on positive social motives, resulting in beneficial social consequences such as labor rights of citizens and stateless persons for safe and healthy working conditions, production safety, environmental society, etc., shall not be considered as "abuse of rights" (but as "beneficial abuse of rights").

**Keywords:** Labor law, abuse, discrimination, motivation, behavior.

## INTRODUCTION

Modern labor law of Ukraine is believed to be the most important field of law, designed to solve significant and complicated problems of social relations like labor regulation issues or rights guaranteed by the international and national legislation.

Labor relations formed at the beginning of the 21st century are closely connected with globalization and digitalization processes, development of new forms of work, formation of conditions for decreasing the state's role in these relations (Cherdymova *et al.*, 2018). Currently, the state seems to be hardly able to control operation of virtual offices, virtual enterprises, meets significant problems in its attempts to control "remote employment". Besides, labor relations are more often regulated by agreements with provisions specified by an employee and an employer independently, and the state faces difficulties to interfere in these processes (Khairullina *et al.*, 2019).

The events of early 2020 show how vulnerable the current social and economic system is when a global epidemic affected entire industries, when millions of workers occurred on the verge of dismissal, and

employers hardly may comply with previously adopted laws governing the labor relationship.

In these conditions, the analysis of the problems of abuse of labor rights seems to be urgent, acquiring a new legal and social meaning in the modern context.

## LITERATURE REVIEW

The article is devoted to the issue of abuse of rights in labor relations, appeared long ago but turned into an aspect of labor relations to be finally regulated at the beginning of the 21st century. A new approach to solving this problem, based on the understanding that current labor legislation failed to provide for all aspects of labor relations and conflicts between employees and employers, has been offered in the article.

The article contains the strong presumption that to develop a general legal approach to understanding the meaning of "abuse of rights" with consideration that "abuse" may have both adverse and beneficial social meaning seems currently to be fundamental.

Clarification of the legal nature of "discrimination" as a form of abuse of rights is believed to be fundamental to the article (Labor Code of Ukraine, 1972: Article 2-1). Also "abuse of rights" seems to be very important to be learnt from the moral and legal point of view, i.e. the question is whether "abuse of rights" by an employee

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(employer) is a moral category only, or assessment of this phenomenon allows to establish rules on unacceptability of such behavior in labor law.

In recent years, issues on abuse of rights have been described by such Ukrainian scholars as V.V. Reznikova (2013), T.T. Polyanskyi (2010), O.V. Kuchmienko (2016); this issue in labor relations has been studied by O.V. Baylo (2016), N. Maksymenko (2018), A.S. Sydorenko (2012), L.A. Tykhonovych (2012), N.I. Kostevych and K.S. Koshytska (2017).

The researchers have not formed a single view on this form of behavior, considering it as legitimate in legal terms that does not violate prohibitions, although it impinges upon the social norms accepted in society (Maksymenko, 2018; Sydorenko, 2012).

Other authors (Tykhonovych, 2012; Reznikova, 2013), on the contrary, consider abuse of rights as an illegal action, expressed in legally prohibited forms of behavior, which entails harm to the subject of social relations.

In the Western scientific literature, the issue of abuse of rights in labor relations has been studied by H. Allan, H. Cowie and P. Smith (2009), A. Alleyne (2004), M. Badgett (1995). In these studies, much attention is paid to sexual harassment, violating the person's rights at the working condition level, and to such forms of discrimination as bullying and harassment, just recently appeared in the field of view of lawyers.

Western scholars (Allan, Cowie & Smith, 2009; Alleyne, 2004) note that such behavior is not always outside the law, but in any case, is beyond morality.

Following the analysis of the scientific literature and most researchers' opinions, we suggest abuse of rights in labor relations not to be considered as an infringement of law, because it formally is within the law and legitimate, in this sense. But this behavior is clearly destructive, encroaching upon the guarantees to citizens to exercise their right to dispose of their own abilities for productive work.

This form of social behavior goes beyond the "socially positive" behavior - the basis of interaction of participants in labor relations, as it aims to prevent the exercise of legal rights of other subjects and does not meet characteristics of lawful behavior, such as social utility, public life organization and harmony, focus on satisfaction of interests of the subjects of law.

In this regard, this form of behavior in labor relations is hard to be defined scientifically, because it cannot be unambiguously interpreted as illegal or as lawful; also signs of behavior, expressed in abuse of rights by the subject of labor relations seem important to be systematically studied.

## METHODS

The research was conducted basing on methods of complex system structural analysis of the legal phenomenon of "abuse of rights". The method of interpretation of norms and legal categories was used in the research, working on the article the authors used methods of formal logic, analysis and synthesis, and generalization of conditions and consequences of abuse of rights. The method of cognition of psychological phenomena used while researching motives of abuse of rights was essential for the methodology.

Thus, the purpose of the article is to determine current problems associated with abuse of rights, clarification of motives of such behavior, its consequences, and possibilities of legal regulation.

## RESULTS AND DISCUSSION

Labor law is believed to be a special field of the Ukrainian legal system. One of its main tasks is to provide legal conditions for coordination the interests of the employee, employer and the state, which is not always possible, as evidenced by judicial statistics of Ukraine. According to the official statistics of the Supreme Court and Analytical reviews of civil proceedings for 2017-2019, labor disputes at the Civil Court of Cassation within the Supreme Court consistently take the third place in the total number of cases in recent years (*Supreme Court of Ukraine. Court practice and statistics*). Thus the number of these cases is constantly growing both in absolute terms and as a percentage of total civil cases at the Supreme Court of Ukraine (2020) (Table 1).

Thus, the number of labor dispute cases is dynamically increasing in modern Ukrainian court practice because the current Code of Labor Laws (1971) of Ukraine, as well as the labor legislation in Ukraine in general does not fully comply with contemporaneity and dynamics of labor relations, and in these conditions, a huge number of conflicts arise in labor relations (Boyko, 2019).

**Table 1: Number of Labor Dispute Cases at the Supreme Court of Ukraine (According to the Analytical Reviews of Civil Proceedings for 2017-2019)**

Indicators	Years			Dynamics	
	2017	2018	2019	Abs.	%
Number of cases (thousands)	1.72	2.12	2.91	+11.9	69.2
% to total cases	7.7	8.5	9.6	–	1.9

This situation results in poor quality of judgments of Ukrainian civil courts on labor disputes, in particular due to the significant burden on the judiciary, and frequent annulations of judgments of local courts (39.5% in 2019, 40.2 % in 2018), respectively, the efficiency of Ukrainian courts seems to be low and unsatisfactory. In these circumstances, it becomes relevant to consider complex but important issues of court practice, based on achievements of the theory of labor law.

Among these scientific and practical issues, the issue of abuse of rights in labor relations takes a proper place.

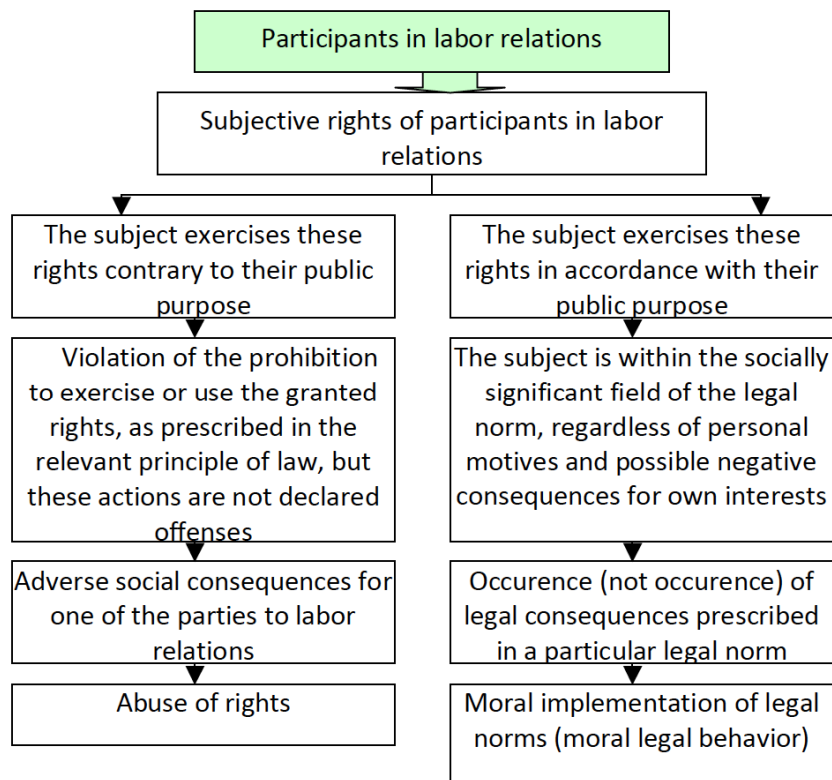
This issue is believed to be relevant because labor law, performing its main function (to ensure execution of subjective rights of participants in labor relations), in some cases becomes a tool for unjustified advantages

of certain participants in the labor process over others, revealing such a legal phenomenon as abuse of rights (Offman, 2006), which opposes moral legal behavior (Figure 1).

Legal doctrine and Western jurisprudence, however, assume that "whoever abuses his legal rights should be held liable for the consequences of such abuse" (Bolgár, 1975).

This provision is reflected in the practice of Western rule-making. For example, groundworks of German civilians resulted in Article 226 enshrined in the Civil Code of Germany, which explicitly prohibits actions that could harm another person (Bürgerliches, 2020).

The Italian legal system stipulates that a person shall not commit actions which may harm or persecute others (Codice civil, 2013).



**Figure 1:** Signs of abuse of rights as an action that opposes moral legal behavior (compiled by the author).

Attention should be paid well to the rules of French civil law. In France, abuse of rights if an affected person may feel offended entails a fine of up to 10,000 euros (Khairullina, *et al.*, 2019).

Theoretically, it should be noted that Western researchers, speaking of violations of workers' rights, describe workplace abuse as regular behaviors directed with the clear intention to harm an employee, adversely affecting his/her work. So, we can agree with this opinion, considering that this behavior is based on a certain intention, a certain motive.

According to the authors hereof, the abuse of rights is always based on an internal motive other than one specified by the party abusing the right. The actual motive may be, for example, personal hostility, however, justifying the actions, decisions, the person refers to the violation of labor law.

For example, in 2016, the Bila Tserkva City District Court in Kyiv Region heard a civil lawsuit filed by a doctor from the Skvyra Central District Hospital in Kyiv Region who claimed the cancellation of disciplinary orders, recognition of dismissal as illegal, employment reinstatement, recovery of average salary for the period of induced truancy, recovery of moral (non-pecuniary) damage. The hospital administration justified the dismissal by systematic failures of the plaintiff to perform his professional duties, although one of the grounds for his dismissal was a report of the head of the outpatient department with statement that during the inspection of execution by doctors of their duties he came in the office of the phthisiatrician doctor (the plaintiff), and the latter communicated with him in a rude manner and insulted him, calling him a thief and a bribe-taker. He caught all his actions on camera, although it was illegal, it was a gross violation of deontology to doctors and patients. Despite the court had established the fact of a difficult personal relationship between the applicant and the plaintiff, the chief physician did not take this into account. The chief physician, in deciding to dismiss the plaintiff, did not properly investigate the circumstances of what had happened, in fact, he supported the person who insisted on appropriate measures against the plaintiff.

In this case, the court, upon examination of circumstances of the case, decided that the dismissal of the plaintiff was illegal, the chief physician's conclusion on systematic violation of labor discipline, failure and improper performance of tasks assigned to the plaintiff and violation of medical ethics and deontology, was unfounded and premature.

So, in this case, we see an example of abuse of rights, given that the formal motive does not coincide with the internal motive of the person who made the decision to dismiss the doctor: a general conflict situation, personal enmity was hidden behind law.

It should be noted that in countries with no established democratic traditions, abuse of rights can be observed in cases where the government, using labor law, dismisses employees, although the motive for these decisions is a clear political component. This includes cases at the European Court of Human Rights concerning the dismissal of judges on the grounds of "violation of the oath" (the case of Kulikov and Others v. Ukraine, 2020; the case of Oleksandr Volkov v. Ukraine, 2020), although society and lawyers understand that the dismissal is a consequence of political vicissitudes in Ukraine (*Matola, 2018*).

In fact, negative, antisocial motives underlying the abuse of rights in labor relations, in one way or another, form grounds for discrimination against employees.

Referring to the scientists' opinion (Lazarenko, 2014), it can be asserted that discrimination is a restriction of labor rights of employees compared to the scope of legal rights of other employees, with identical job functions, working life, age, gender, etc. According to the Labor Code of Ukraine, discrimination shall be deemed as a violation of the principle of equality of rights and opportunities (Labor Code of Ukraine, 1972: Article 2-1).

## DISCUSSION

In practical terms, discrimination is expressed in the fact that a person, exercising his or her powers, in one way or another reduces the rights of subordinate(s), even within law.

In essence, this concept is almost identical to the concept of "oppression" as worded in the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" (Law of Ukraine, 2013), in which "oppression" means "unwanted to a person and/or group of persons behavior, the purpose or consequence of which is the humiliation of their human dignity because of specific features or creation for such person or group of persons of a tense, hostile, abusive or humiliating atmosphere in relation to such a person or group of persons."

Discrimination can be shown in restricted legal rights in employment, requirements for an employee's age, education level, health status, contrary to prescribed by the legislation of Ukraine (Labor Code of Ukraine, 1972: Article 22). The Constitution of Ukraine guarantees the equality of citizens before the law (the Constitution of Ukraine, 1996), and the Labor Code explicitly prohibits any direct or indirect restriction of rights or direct or indirect benefits in conclusion, amendment to and termination of an employment contract due to birth, social and property status, race and nationality, gender, language, political views, religious beliefs, membership in a trade union or other association of citizens, type and nature of occupation, place of residence (Labor Code of Ukraine, 1972: Article 22).

However, the question arises: how should we separate discrimination from a reasonable decision, which, at the same time, does not satisfy a person or a group of persons concerned in labor relations?

To address this issue, first, the analysis of the scope of rights granted (to a group of employees) in accordance with the law, the employment contract should be considered; second, practice of application of provisions of the law, terms of the employment contract with regard to the principle of "equality before the law", and we dare to add - before the employer.

The relative novelty of this issue in terms of its legal understanding should be noted as well: the discrimination in the labor sphere, its destructive, antisocial content appeared in the society's focus in the last decade only. This can be, for example, mobbing, showed in systematic psychological pressure on the employee(s), harassment of the employee, as well as in actions aimed at reducing his reputation and usually in subsequent dismissal. At the same time, such antisocial behavior, as a rule based on a personal negative motive, usually does not entail legal liability, although in these cases, of course, it should be an abuse of rights.

Western experts (Baillien, Neyens & De Witte, 2008) also include to discrimination bullying, harassment, i.e. phenomena somehow degrading human dignity one way or another.

At the same time, actions that at first glance can be attributed to abuse of rights, in some cases are quite reasonable and actually have a positive social orientation, so, they are justified.

When around the world, and in Ukraine, quarantine measures were applied in early 2020, restricting the workers' right to earn a living at work freely chosen, the issue of "beneficial abuse of rights" seemed especially relevant.

In these circumstances, the question arises is how unreasonable is, for example, the employer's requirement to measure employees' body temperature before their work shift in case of any suspicions about health? This issue can be particularly urgent when it related to employees came from countries from a red zone with a high number of cases, and the domestic employer requires these people to provide medical documents on the state of health.

In this case, this employer's request, in principle, does not meet the legislation, as it specifies only the employer's liability to arrange preliminary (before employment) and regular (during work) medical examinations of employees engaged in heavy work, harmful or dangerous working conditions or those required for professional enrollment, annual mandatory medical examination of persons under 21 years of age (Law of Ukraine, 1992).

Therefore, based on the law, a worker unemployed in the above work, has legal right to refuse to take temperature. In this case, if the employer, caring for the health of other employees, suspends the person from work, he thereby violates the provisions of Article 46 of the Labor Code, according to which the suspension of employees from work is allowed in case of: appearance at work intoxicated, under the influence of drugs or toxic substances; refusal or evasion of mandatory medical examinations, training, instruction and testing of knowledge on occupational safety and fire protection rules; in other cases provided by law.

So, in this event there is a special case, when two parties to the labor relationship abuse the right:

- the employee abuses his "legal right", but his actions are clearly antisocial. Note that in this case, the employee goes beyond the exercise of labor rights, which can be determined on the basis of the general principle stipulated in Art. 23 of the Constitution of Ukraine, stating that everyone shall have the right to free development of his or her personality if the rights and freedoms of others are not violated thereby;
- in turn, the employer abuses the right of decision making granted by the management terms, and

although his actions go beyond the law, they have a clear positive social meaning.

Thus, we must state that the "abuse of rights" as a legal fact appeared in specific life circumstances, may contain both positive and negative social content. This is a consequence of failure of legislative practice to keep up with real conditions of development of labor relations, changing under dynamic circumstances of modern social and economic development of society. Today, the circumstances of social life, social and economic, environmental problems require managers to make operational decisions, which, in some cases violating labor law, nevertheless aimed at protection of the legal rights of workers, including the right to proper, safe and healthy conditions of occupation, guaranteed by the Ukrainian Constitution (the Constitution of Ukraine, 1996).

Accordingly, the issue of "abuse of rights" goes beyond the ethical issues of public behavior, becomes a regulatory problem, and needs to be enshrined in law in order to distinguish between "adverse" and "beneficial" abuse of rights.

Taking this approach as a basis (considering its antisocial orientation of abuse of rights to be punished), in our opinion, this problem can be solved by proposing a universal definition of "abuse of rights" as actions or inactions in the legal environment of labor law, but based on antisocial motives of these actions (inactions), which do not coincide with motives officially indicated, resulting in adverse social consequences such as discrimination, oppression of labor rights of citizens and stateless persons, violation of the requirements for safe and healthy working conditions. In turn, actions or inactions beyond labor law, but based on positive social motives, resulting in beneficial social consequences such as labor rights of citizens and stateless persons for safe and healthy working conditions, production safety, environmental society, etc., shall not be considered as "abuse of rights" (but as "beneficial abuse of rights").

These definitions can serve as a basis for an article to be added to the Draft Labor Code of Ukraine that should provide for the liability of persons who abuse their rights at workplace to bring the regulation closer to European standards of labor relations.

## CONCLUSION

The current dynamic situation of the development of all spheres of human existence significantly affects labor relations. "Virtual offices", "digital enterprises" are

widespread creating a new reality and, accordingly, fundamentally new conditions for execution by labor participants of their rights.

Thus, the 21st century set to the theory of labor law fundamentally new problems to be immediately responded by the legislator, which is not always possible.

Accordingly, it is time to develop new approaches to definition of the fundamental principles of labor law to ensure the rights of all participants in labor relations on the principles of equality before the law, ensuring safe and healthy working conditions, restricting the rights of individuals to achieve socially significant results for society.

In the context of these issues, further researches should be aimed at solving the problem of restricting the individuals' right to work in unforeseen situations like epidemics.

It is also time to define approaches to enshrining in labor legislation of Ukraine liability for abuse of rights, taking into consideration European practice of regulation of these issues, as well as based on the priority of protection of fundamental human rights (right to life, right to work, right to dignity, workers' rights to rest and leisure), currently objectively present in labor relations and need to be protected by regulation.

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