

POSITION OF FORENSIC ECONOMICS IN ENSURING CITIZEN RIGHTS TO WAGES

Tiulieniev S.A., Spitsyna H.O., Simakova-Yefremian E.B.

*National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute»,
Kharkiv, Ukraine*

The article is devoted to the current problem of determining the position of forensic - economic expertise in the production of cases on violation of the right of each employee to timely receipt of wages. In the article the differentiation of responsibility for violations by the employer of payment of wages to employees in the terms established by the legislation is given and the practice of appointment of forensic - economic expertise on the topic under study is generalized. Special attention is paid to the need to develop effective measures to prevent negative phenomena in labor relations, in strict compliance, in particular, with the goals and objectives of the Labor Law. Such measures, first of all, should include the establishment and introduction of criminal liability for violation of human rights in the field of labor, where forensic economic expertise can play not the last role. According to the results of the analysis of previously performed studies, some results were summarized, which allowed us to conclude that this problem is poorly studied and requires further research. In particular, considerable attention should be paid to a detailed analysis of the issue of financial capacity of employers to timely payment of wages to staff. On the basis of the study of the latter, it was established that certain difficulties in the investigation of crimes on the facts of unjustified non-payment of wages by officials to employees of enterprises or institutions are due to the fact that, unlike the staff of investigative bodies of the Prosecutor's Office, which have accumulated some experience of similar investigations, investigators of the Ministry of Internal Affairs of Ukraine are only accumulating such experience. The authors conclude that the solution of the problem will be greatly facilitated by the classification of tasks of forensic economic expertise in the investigation of such crimes and the establishment of clear requirements for the objects of study. It is substantiated the idea that in the course of forensic - economic expertise, first of all, it is necessary to find out the objective possibility of payment, based on the financial and economic condition of the enterprise or institution, as well as to establish and distinguish the intended use of funds transferred to current accounts. It is noted that the solution of the issue under consideration involves a financial audit of the enterprise's activities, while the methods used in the production of forensic economic expertise to determine the financial condition of the enterprise or institution involves a comprehensive analysis of all their economic activities. On the basis of the analysis of generalized forensic practice in Ukraine, systematized questions that the pre-trial investigation bodies or the court most often submit for examination during the investigation of criminal cases initiated under Art. 175 of the Criminal Code of Ukraine. It is noted that foreign experience is also taken into account.

Correspondence address: Tiulieniev Serhii Anatoliiovych, PhD in Economics, Director National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute», Kharkiv, Ukraine, e-mail: Tiulieniev.Serhii@nncise.org.ua

Keywords: *wages, legislative regulation, forensic examination, violation of rights, investigation, liability, labor relations, foreign experience, employee, employer, labor law functions.*

Problem Formulation. Formation of Ukraine as a legal, social, democratic state will remain only formality, if it does not have valid mechanisms for protecting the rights, freedoms and citizen interests.

State duty component to protect human rights and freedoms is to ensure the social orientation of economy, create conditions and guarantee opportunities for citizens to earn a living by work and receive timely remuneration for work. Compliance with the main functions of labor law is essential for this. At the same time, it is worth focusing on negative phenomena, when there is a narrowing of the real rights and freedoms of workers in Ukraine, when it becomes commonplace to hire employees without proper registration; non-payment of wages; illegal dismissals; deterioration of working conditions; lowering of social standards in working field, etc. In this connection, the issue of developing effective measures to prevent negative phenomena in labor relations is becoming increasingly urgent, one of which is establishment and implementation of criminal liability for violations of human labor rights, where forensic and economics occupies not the least position.

Analysis of Essential Researches and Publications. Research papers of many scientists has been devoted to research on theoretical and practical aspects of forensic examination in proceedings regarding the violation of the rights of citizens to payment of wages to employees by employers. Thus, I. H. Zavdovieva's research paper deserves attention highlighting generalization results of existing approaches to research on peculiarities of conducting forensic economic examinations related to determination of the financial ability of enterprises to repay arrears for salary. The research paper outlines the main approaches that should be followed by forensic expert while conducting economic researches on the issue of salary non-payment that will contribute to completeness and validity of the expert's conclusions, which is one of the sources during offense investigation [1].

I. V. Fridmanska notes: analysis results of domestic judicial practice indicate that bringing the guilty to criminal responsibility is a method of protection, that does not guarantee the restoration of violated property rights of a person to wages, but protects his labor rights and contributes to their further restoration [2].

Instead, I. V. Sabadash examines interdependence between expenditure of funds for production needs and formation of appropriate amount of labor remuneration fund based on analysis results of financial and economic enterprise activity, for which he proposes to use the indicator of product profitability as a factor of the relationship between labor costs and profit from sales of products for a certain period of time [3].

I. O. Savchenko and S. I. Hlushchenko, supporting use of a special forensic technique, proposed to expand the range of research indicators, believing that conducting research only on the indicator of product profitability is not enough to assess formation of the volume of working capital of the enterprise as a source of wages. They propose to identify additional factors that allow investigators or the court to objectively assess activities of officials aimed at paying off salary arrears [4].

Thus, despite the fact that the issues of researching the financial ability of enterprises and institutions to pay salary on time are often highlighted in research papers, a significant range of issues remains outside attention of scientists.

Article Purpose is to determine forensic examination position in proceedings regarding the violation of citizen rights to wages; outline responsibility for violation of labor legislation; generalize the practice of appointing forensic economic examinations on issues of wages.

Main Content Presentation. Currently, late salary payment occurs at enterprises of various forms of ownership. This applies as state enterprises as private structures. The right of every citizen to timely receipt of remuneration for work and social benefits is enshrined in Art. 43, 46 of the Constitution of Ukraine [5]. Implementation of the mentioned constitutional rights of citizens is regulated by the Law of Ukraine: *On Remuneration of Labor* [6], Labor Code of Ukraine (hereinafter referred to as *Labor Code*) [7], other legislative and normative acts.

Unjustified delay in payment of wages, stipends, pensions or other legally established payments to citizens for more than one month is a criminal offense, the responsibility for which is provided for in Art. 175 of *Criminal Code of Ukraine* [8]. In the letter of Supreme Court of Ukraine on generalization of consideration practice by courts of criminal cases on salary non-payment, scholarships, pensions or other payments established by law, it is emphasized the need to conduct a forensic economic examination within each such proceeding in order to study and analyze relevant documents and provide a reasoned answer on the questions raised that will contribute to adoption of correct decision by the court [9].

Any reduction in wages depending on: origin, 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 occupations is prohibited by law, residence. Wages of enterprise employees is carried out on a priority basis. All other payments are made by the enterprise after fulfillment of obligations regarding wages (Part 3 of Article 15 of Law of Ukraine: *On Remuneration of Labor* [6]).

Thus, the right of every citizen to timely receipt of remuneration for work and social benefits is guaranteed by current regulations.

For a clear understanding of forensic expert task during research on criminal proceedings that court considers within the framework of civil legal disputes, it is necessary to analyze provisions of the current legislation in terms of responsibility for late payment of wages, as well as to list the state and other bodies that exercise control in in the field of wages.

Non-compliance with the terms of salary payment to employees is a gross violation of labor legislation of Ukraine. According to Art. 35 of Law of Ukraine: *On Remuneration of Labor* [6] control over compliance with the legislation on wages at enterprises is carried out by: the Ministry of Social Policy of Ukraine and its bodies; financial bodies; bodies of the State Tax Inspection; trade unions and other bodies and organizations representing the interests of employees. General Prosecutor of Ukraine and prosecutors subordinate to him carry out the highest supervision of compliance with the legislation on wages.

According to Art. 265 of the Labor Code of Ukraine [7] any person guilty of violating labor legislation shall bear responsibility in accordance with current legislation. Violations of legislation on wages are subject to disciplinary, material, administrative and criminal liability in accordance with legislation (Article 36 of the Law of Ukraine: *On Remuneration of Labor* [6]). Owners of enterprises, managers, their deputies, heads of structural subdivisions, as well as other officials who are directly responsible for compliance with labor legislation can be the subjects of responsibility. In turn, Labor

Code provides for disciplinary and material liability of officials for violations of labor legislation [7].

Disciplinary responsibility consists in applying disciplinary penalties to guilty person that in accordance with Art. 147 of Labor Code is reprimand or dismissal [7]. The least severe form of disciplinary sanction is a reprimand. For its announcement, it is enough only to have the fact of labor legislation violation. However, there is a more severe punishment: namely: dismissal.

Employees can be dismissed, in particular, on the basis of Clause 3, Part 1, Article 40 of Labor Code in case of systematic non-fulfillment by employees without good reason of the duties assigned to them by employment contract or the rules of internal labor procedure, provided that disciplinary or public penalty measures were previously applied to them [7]. This provision applies to all employees, including managers. In addition, in accordance with clauses 1 and 11, part 1 of Art. 41 of the Labor Code, dismissal can take place for a one-time gross violation of labor duties by managers of enterprises of all forms of ownership (branches, representative offices, branches and other separate divisions) or their deputies, as well as for such culpable actions of managers of enterprises, as a result of which salary was paid late or in amounts lower than minimum wage established by law [7].

It should be noted that in any case, both during announcement of a reprimand and during dismissal, according to part 1 of Art. 148 of the Labor Code of Ukraine, a disciplinary sanction should be applied by the employer directly upon discovery of misdemeanor, but no later than one month from the day of its discovery [7]. In addition, time of dismissal of an official from work due to temporary incapacity for work or his stay on vacation are not taken into account. All other circumstances cannot be considered legally justified grounds for non-compliance with the general terms of imposing disciplinary penalty. We emphasize that in any case, disciplinary action cannot be imposed later than six months from the offense date.

In addition, Head of an enterprise, institution, of all ownership forms is guilty of late salary payment for more than one month, which led to the payment of compensation for violation of the terms of its payment, and provided that the State Budget of Ukraine and local budgets, legal entities of state form property do not have debts to this enterprise, bear material responsibility in the full amount of damage caused to the enterprise, institution, organization due to their fault in accordance with Clause 9 of Art. 134 of Labor Code [7]. Furthermore, Art. 117 of the Labor Code provides for liability for withholding the payment during dismissal, provided that due to the fault of the owner or the body authorized by him, sums due to dismissed employee are not paid within the terms specified in Art. 116 of the Labor Code, enterprise, institution should pay the employee his average earnings for the entire detention period and up to the day of actual settlement [7].

Administrative responsibility arises for violations of labor legislation and is provided for by the Code of Ukraine on Administrative Offenses [10]. It consists in the application of administrative penalties that are usually penalties to specific guilty persons. For violation by officials of enterprises regardless of the ownership form and subjects of economic activity using hired labor, of the established terms of payment of wages or their payment in an incomplete amount, as well as for violation of other requirements of labor legislation in part 1 of Art. 41 of the Code of Administrative Offenses provides for liability in the form of an administrative fine in the amount of fifteen to fifty non-taxable minimum incomes of citizens (from UAH 255 to UAH 850) [10]. Administrative responsibility for the above-mentioned and other offenses arises only on condition that the nature of

these violations does not entail criminal liability, i.e., there are no offense signs in the actions of relevant officials.

Violators of labor legislation can be held criminally liable. In particular, *criminal liability* for non-payment of wages is established by Art. 175 of the Criminal Code of Ukraine, namely:

“1. Unreasonable non-payment of wages, scholarships, pensions or other payments established by law to citizens for more than one month, committed intentionally by the head of an enterprise, institution or organization regardless of the form of ownership or by a citizen, a subject of entrepreneurial activity is punishable by a fine from five hundred to one thousand non-taxable minimum incomes of citizens or correctional labor for a term of up to two years, or liberty deprivation for a term of up to two years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.

2. The same act, if it was committed as a result of improper use of funds intended for the payment of wages, scholarships, pensions and other payments established by law is punishable by a fine from one thousand to one and a half thousand non-taxable minimum incomes of citizens or restriction of freedom for a period of up to three years, or deprivation of liberty for a term of up to five years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.

3. Person is released from criminal liability if, before being held criminally liable, he has paid wages, scholarships, pensions, or other legally established payments to citizens” [8].

Non-payment of salaries, scholarships, pensions or other statutory payments should be understood as incomplete or late payment of these payments to citizens. Such non-payment constitutes a crime under Article 175 of the Criminal Code of Ukraine [8] if it:

- 1) is groundless;
- 2) takes place within a certain period (more than one month).

In addition, it is mandatory to bring a person to criminal responsibility under Art. 175 of the Criminal Code of Ukraine [8], among other things, establishes the period of time during which a person has not received the salary [11].

Such salary non-payment should be considered unjustified, that was committed if objective opportunity to make the payment and in order to find out such a possibility was available, it is necessary to check the financial and economic condition of the enterprise, institution where the non-payment was found, as well as the purpose of using the funds received to their accounts. The specified non-payment will be considered unjustified when it occurs, despite existence of legal grounds for the payment of wages, stipends, pensions or other payments established by law to citizens. There will be no composition of this offense if the specified payments are not made on legal grounds (for example, non-payment of part of the salary as a result of deduction from it to cover employee’s debt to the enterprise, institution, in where he works) or their non-payment is due to objective reasons (for example, incomplete budget funding, lack of funds necessary for payments on the enterprise institution accounts [12].

Under such conditions, pre-trial investigation bodies should find out how exactly the wage fund is formed at the non-state-owned enterprise, how the funds received into the enterprise account are used. It is necessary to find out the following signs of this offense composition: the reasons for salary non-payment; whether such non-payment was due to the need to use funds for continuation of

enterprise economic activity and its existence. This is due to the fact that such incompleteness of pre-trial investigation and judicial investigation can call into question the validity of conviction of enterprise head for the intentional and unjustified salary non-payment to employees. Forensic economics should give an answer regarding the financial and economic possibility of salary paying for a certain period (period of indebtedness) [12].

The subjective side of this type of criminal offense is characterized only by the intentional form of guilt. In particular intention is confirmed by the circumstances when, during the salary non-payment to employees for more than one month, the company made other payments, which increased the amount of unpaid wages to the employees. In particular, enterprise manager spent the funds received on the enterprise current account in a certain period of time (namely, during the period of salary arrears) not for repayment of salary arrears, but for the payment of enterprise production costs (payment of salaries to enterprise employees was directed only 15.1% of the amount received on the company current account) [13].

It should be noted that the right to receive salary is protected by the state and is formally enshrined in Art. 43 of the Constitution of Ukraine [5]. The mechanism of salary payment and receipt is regulated by Art. 24 of the Law of Ukraine: *On Remuneration of Labor*. "Salary is paid to employees regularly on working days at the time specified by the collective agreement, but not less than twice a month, after a period of time that does not exceed sixteen calendar days" [6]. Therefore, immediate object of this offense is social relations in the field of the constitutional right of a person to receive wages in full in a timely manner within the time limits provided by law.

According to Art. 1 of the Law of Ukraine: *On Remuneration of Labor*, salary is a reward, calculated, as a rule, in monetary terms, which is paid to an employee for the work performed by the owner or a body authorized by him under employment contract [6]. Salary non-payment means incomplete and/or late payment. In other words, if salary not paid in full and/or less often than once every sixteen calendar days, then this (according to Article 24 of the Law of Ukraine: *On Remuneration of Labor* [6]) can be qualified as salary non-payment. Non-payment of wages is unjustified if there are legal grounds for the payment of wages and there are no objective reasons for this non-payment. It should be borne in mind that the violator is brought to criminal liability only in case of non-payment of wages for more than one month. Unreasonable non-payment of one-time payments (those that are not part of the salary) is only a gross violation of labor agreement and can be qualified under Art. 173 of Criminal Code of Ukraine [8].

The mentioned offense is committed both by inaction (non-payment) and by active actions (partial payment). Objective side of this offense consists in the commission of an act (untargeted use of funds designated for statutory payments), socially dangerous consequences (unreasonable non-payment of statutory payments to citizens for more than one month) and causal connection between them. In Art. 175 of the Criminal Code of Ukraine clearly stipulates that subject of this offense can be the head of enterprise, institution or regardless of ownership form (a person who heads an enterprise, institution or a separate subdivision and has the authority to dispose of its financial resources including associated with salary payment) [8]. Citizens-subjects of entrepreneurial activity and natural persons are not managers; the specified violation committed by them should be recognized as another gross violation of labor legislation (Article 172 of Criminal Code of Ukraine [8]).

Bringing to criminal responsibility is possible only in case of intentional commission of specified actions. Therefore, subjective side of this offense is characterized only by the intentional form of guilt in the form of direct intent. At the time of offense committing, the guilty should be aware of the socially dangerous nature of unjustified non-payment. Motive and purpose do not affect qualification and can be different. Regarding part 2 of Art. 175 of the Criminal Code of Ukraine [8] it should be noted about possibility of committing this offense as with direct intent and as mixed guilt form. Inappropriate use of funds intended for salary payment is committed only intentionally and with regard to consequences in the form of non-payment itself, as intent as carelessness are possible.

Analysis of forensic and economic examinations on issues of late payment of wages, conducted at National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute» over past 10 years, indicates a constant increase in the number of examinations in this category. Cases of this category were initiated based on the materials of inspections carried out by territorial state labor inspectorates, control and audit departments, as well as prosecutor's offices, regarding compliance with labor legislation. Pre-trial investigation bodies most often ask forensic expert the following questions:

- “Are the inspection act conclusions of Territorial State Labor Inspectorate regarding arrears from salary payment and receipts and expenditures of funds documented?”;
- “Are the audit act conclusions regarding salary non- payment for the period from... to...?”;
- “Do accounting and primary documents confirm the misuse of funds intended for salary payment?”;
- “Did enterprise have a financial opportunity to pay salary arrears?”;
- “Did enterprise have a financial opportunity to pay salary on time?”.

While conducting forensic research, experts apply methods of documentary verification and comparison of documents, whereby:

- correctness of filling in details in the primary accounting documents, payroll information of enterprise employees (document number availability, signature date, seal) are established;
- correctness of arithmetic calculations and summing up in accounting documents is checked;
- data of summaries of settlement information are compared with data of the order logs and data of the total amounts displayed in general ledger.

In addition, to determine the total amount of unpaid salaries (arrears), non-payment period: “for more than one month” was taken into account, i.e., the moment of the day following the day on which the first part of salary for the second month should have been paid affecting correctness of determining the amount of overdue debt. It is necessary to take into account data confirming salary payment in kind, affecting determination of the total amount of salary non-payment.

In the case of inappropriate use of funds intended for the salary payment, documents confirming the receipt of funds for salary payment are examined compared with the data of documents testifying to the use of funds for economic needs or other purposes. According to requirements of Part 3 of Art. 15 Law of Ukraine: *On Remuneration of Labor* stipulates those wages of enterprise employees are carried out on a priority basis [6]. All remaining payments should be made by the enterprise after fulfillment of labor payment obligations.

In order to answer the question: “Did the company have the financial ability to pay wages on time”?, it is necessary to establish the amount of cash receipts, so forensic experts examine movement of funds on enterprise current accounts and the cash book. After that, they check the amounts of

income with the amount of debt as of the dates specified in the questions and provide answers based on documented data from accounting registers.

Attention should be paid to the fact that the issue of legality of the use of enterprise funds does not belong to competence of a forensic economist, as it involves the legal assessment of actions of the company officials.

According to the disposition of Art. 175 of the Criminal Code of Ukraine [8], criminal liability arises in case of unjustified salary non-payment. As stated above, such salary non-payment is considered unjustified if it is committed in occurrence of an objective opportunity to make the payment and in order to find out such a possibility, it is necessary to check financial and economic condition of enterprise or institution where the non-payment was detected, as well as the purpose of using funds that were sent to their accounts. In addition, conflict of interests between the enterprise and its employees can be detected when, in case of salary arrears, the money received in the enterprise account was spent to support its activities. Pre-trial investigation bodies, after establishing that a part of the funds of enterprises were spent on production needs, brought to the expert's decision the issue of how exactly the spending of funds on production affected the state of arrears for salary payment in subsequent reporting periods.

We note that forensic expert methods for determining financial condition of an enterprise require an expert to carry out a complex comprehensive analysis of entire economic activity of the enterprise, which is a rather cumbersome research, but at the same time it does not always provide a concrete answer to the questions asked by the court or investigation, since they do not provide for determining the impact of spending funds on production (investment) for formation of a labor remuneration fund, as well as the need to use funds for continuation of economic enterprise activity and its existence, etc.

It should be noted that for a long time methodological approaches for conducting such forensic examinations are determined by experts independently, empirically, separately in each specific forensic examination. Under such conditions, forensic experts formulated answers in conditional or probable form, but more often forensic experts noted that their solution is not possible due to the lack of expert methods. Such answers cause certain difficulties for pre-trial investigation bodies and courts while solving the issue of bringing the heads of enterprises to criminal responsibility. The situation improved to some extent after creation of expert technique in 2011, whereby forensic expert can answer the questions [14].

Conclusions. It was established that certain difficulties the investigation of criminal offenses based on the facts of unjustified salary non-payment by officials to employees of enterprises are due to the fact that, unlike the investigative bodies of the prosecutor's office that have accumulated some experience in such investigations, investigators of the Ministry of Internal Affairs of Ukraine have only got. To some extent, classification of expert tasks during the investigation of such offenses and establishment of clear requirements for the objects of research will contribute to issue solving. It was noted that during forensic examinations it is necessary to find out objective possibility of payment based on the financial and economic condition of enterprises and institutions, as well as to establish the purpose of using the funds that were transferred to current accounts. It is emphasized that solution of the mentioned issues involves conducting a financial analysis of the enterprise activity and forensic

methods of determining enterprise financial condition involve a comprehensive analysis of entire economic enterprise activity. On the basis of forensic practice analysis, the issues that the pre-trial investigation bodies and the court most often submit to forensic examination during investigation of criminal proceedings initiated under Art. 175 of the Criminal Code of Ukraine, task of forensic research is given. In addition, we consider it expedient in further research to form single research algorithm for determining sufficiency of funds in enterprises and organizations to repay arrears from salary payment and to outline the stages of its implementation taking into account modern foreign experience on raised issues.

References

1. Завдов'єва І. Г. Про практику проведення судових експертиз, пов'язаних з визначенням фінансової можливості підприємств погашати заборгованість з виплати заробітної плати. *Криміналістичний вісник*. № 1 (21). 2014. С. 108-112.
2. Фрідманська В. І. Захист прав при порушенні трудового законодавства про оплату праці: аналіз судової практики. *Науковий вісник Ужгородського Національного Університету. Серія Право*. 2022. Вип. 72. Ч. 1. С. 209-216. DOI: 10.24144/2307 - 3322.2022.72.91 (дата звернення: 09.09.2023).
3. Сабадаш І. В. Експертна практика проведення експертиз, пов'язаних з несвоєчасною виплатою заробітної плати. *Теорія та практика судової експертизи і криміналістики*. 2012. Вип. 12. С. 424-427.
4. Савченко І. О., Глущенко С. І. Проведення економічних досліджень, пов'язаних з визначенням фінансової можливості підприємств і організацій погашати заборгованість із заробітної плати. *Теорія та практика судової експертизи і криміналістики*. 2012. Вип. 12. С. 404-415.
5. Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (дата звернення: 09.09.2023).
6. Про оплату праці : Закон України від 24.03.1995 р. № 108/95-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/108/95-%D0%B2%D1%80#Text> (дата звернення: 09.09.2023).
7. Кодекс законів про працю України від 10.12.1971 р. № 322-VIII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/322-08#Text> (дата звернення: 09.09.2023).
8. Кримінальний кодекс України від 05.04.2001 р. № 2341-III (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (дата звернення: 09.09.2023).
9. Практика розгляду судами кримінальних справ про невиклату заробітної плати, стипендій, пенсій чи інших установлених законом виплат : узагальн. ВС України. URL: <https://ips.ligazakon.net/document/VS06531> (дата звернення: 09.09.2023).
10. Кодекс України про адміністративні правопорушення від 07.12.1984 р. № 8073 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/80731-10> (дата звернення: 09.09.2023).
11. Вирок Шевченківського районного суду м. Києва від 07.05.2020 р. у справі № 761/33934/18. URL: <https://reyestr.court.gov.ua/Review/89678666> (дата звернення: 09.09.2023)

12. Вирок Шевченківського районного суду Харківської області від 04.10.2019 р. у справі № 637/1166/17. URL: <https://reestr.court.gov.ua/Review/84771982> (дата звернення: 09.09.2023).
13. Вирок Мостиського районного суду Львівської області від 01.02.2018 р. у справі № 448/27/18. URL: <https://reestr.court.gov.ua/Review/71971279> (дата звернення: 09.09.2023).
14. Методика експертного дослідження фінансової можливості підприємств і організацій погашення заборгованості по виплаті заробітної плати (реєстр. код 11.0.47). Харків : Харківський НДІСЕ, Сумське від-ня ХНДІСЕ, Севастопольське від-ня ХНДІСЕ, Полтавське від-ня ХНДІСЕ Мін'юсту України, 2011 / Реєстр методик проведення судових експертиз Мін'юсту України. URL: <https://rmpse.minjust.gov.ua/search/3> (дата звернення: 09.09.2023).

ԴԱՏԱՆՏԵՍԱԿԱՆ ՓՈՐՁԱՔՆՆՈՒԹՅԱՆ ԴԻՐՔՈՐՈՇՈՒՄԸ ՔԱՂԱՔԱՑԻՆԵՐԻ ԱՇԽԱՏԱՎԱՐՁԻ ԺԱՄԱՆԱԿԻՆ ՍՏԱՑՄԱՆ ԻՐԱՎՈՒՆՔՆԵՐԻ ԱՊԱՀՈՎՄԱՆ ՀԱՐՑՈՒՄ

Տյուլենյև Ա.Ա ., Սպիցինա Ն.Օ ., Սիմակովա-Եփրեմյան Ե.Բ.

Հոդվածը նվիրված է ներկայումս արդիական համարվող յուրաքանչյուր աշխատողի աշխատավարձը ժամանակին ստանալու իրավունքի խախտման վերաբերյալ գործերի վարույթում դատարանատեսագիտական փորձաքննությամբ դիրքորոշում հայտնելու խնդրին: Հոդվածում ներկայացված են օրենսդրությամբ սահմանված ժամկետներում գործարույի կողմից աշխատողներին աշխատավարձ վճարելու խախտումների համար պատասխանատվության սահմանափակումները, ինչպես նաև ամփոփված է հետազոտվող թեմայի վերաբերյալ դատարանատեսագիտական փորձաքննությունների նշանակման պրակտիկան: Հարուկ ուշադրություն է դարձվում աշխատանքային հարաբերություններում բացասական երևույթները կանխելու համար արդյունավետ միջոցների մշակման անհրաժեշտությանը՝ խստորեն պահպանելով, մասնավորապես՝ աշխատանքային օրենսդրության նպատակներն ու խնդիրները: Նման միջոցառումներին, առաջին հերթին, պետք է վերագրել աշխատանքային ոլորտում մարդու իրավունքների խախտման համար քրեական պատասխանատվության սահմանմանը և ներդրմանը, որպեսզի դատարանատեսագիտական փորձաքննությունը կարող է նշանակալից դեր խաղալ: Նախկինում կատարված հետազոտությունների արդյունքների վերլուծության հիման վրա ամփոփվել են որոշ դրույթներ, որոնք թույլ են տվել եզրակացնել, որ այս խնդիրը քիչ է հետազոտված և պահանջում է հետագա հետազոտություն: Մասնավորապես, զգալի ուշադրություն պետք է դարձնել աշխատողների աշխատավարձերի ժամանակին վճարման վերաբերյալ գործարույների ֆինանսական հնարավորությունների հարցի մանրամասն վերլուծությանը: Վերջինիս ուսումնասիրության հիման վրա հաստատվել է, որ պաշտոնատար անձանց կողմից ձեռնարկությունների կամ հիմնարկների աշխատողների աշխատավարձերի չհիմնավորված չվճարման փաստերի հիման վրա հանցագործությունների քննության որոշակի դժվարություններ պայմանավորված են նրանով, որ, ի տարբերություն դատախազության քննչական մարմինների աշխատակիցների, ովքեր կուրակել են նմանատիպ հետաքննությունների որոշակի փորձ, Ոսկրահնայի ներքին գործերի նախարարության քննիչները դեռևս կուրակում են նման փորձ: Հեղինակները հանգում են այն եզրակացության, որ խնդրի լուծմանը մեծապես կնպաստի նման հանցագործությունների քննության ընթացքում դատարանատեսագիտական փորձաքննության առաջադրանքների դասակարգումը և հետազոտության օբյեկտների նկատմամբ հստակ պահանջների սահմանումը: Հիմնավորվում է այն միտքը, որ դատարանատեսագիտական փորձաքննությունների ընթացքում առաջին հերթին անհրաժեշտ է պարզել վճարման օբյեկտիվ հնարավորությունը՝ ելնելով ձեռնարկության կամ հիմնարկի ֆինանսատեսական վիճակից, ինչպես նաև սահմանել և սահմանափակել ընթացիկ բանկային հաշիվներին փոխանցված դրամական միջոցների նպատակային օգտագործումը: Նշվում է, որ քննարկվող հարցի լուծումը ենթադրում է ձեռնարկության գործունեության ֆինանսական աուդիտի իրականացում, մինչդեռ ձեռնարկության կամ հիմնարկի ֆինանսական վիճակը գնահատելու համար դատարանատեսագիտական փորձաքննությունում օգտագործվող մեթոդները ներառում են դրանց համալիր տնտեսական գործունեության համապարփակ վերլուծություն: Համակարգվել են Ոսկրահնայում ընդհանրական դատական

փորձագիտական պրակտիկայի վերլուծության հիման վրա Ուկրաինայի քրեական օրենսգրքի 175-րդ հոդվածով հարուցված քրեական գործերի քննության շրջանակներում մինչդարձական քննության մարմինների կամ դատարանի կողմից փորձաքննության ներկայացված հարցերը: Նշվում է, որ շոշափվող հարցի վերաբերյալ հաշվի է առնվել նաև արտասահմանյան փորձը:

Բանալի բաներ. աշխատավարձ, օրենսդրական կարգավորում, դատական փորձաքննություն, իրավունքների խախտում, հետաքննություն, պատասխանատվություն, աշխատանքային հարաբերություններ, արտասահմանյան փորձ, աշխատակից, գործադու, աշխատանքային իրավունքի գործառույթներ:

ПОЗИЦИЯ СУДЕБНО - ЭКОНОМИЧЕСКОЙ ЭКСПЕРТИЗЫ В ОБЕСПЕЧЕНИИ ПРАВ ГРАЖДАН НА СВОЕВРЕМЕННОЕ ПОЛУЧЕНИЕ ЗАРАБОТНОЙ ПЛАТЫ

Тюленев С.А., Спицына Н.О., Симакова-Ефремян Е.Б.

Статья посвящена актуальной на сегодняшний день проблеме по определению позиции судебно - экономической экспертизы при производстве дел о нарушении права каждого работника на своевременное получение заработной платы. В статье приведены разграничения ответственности за нарушения работодателем выплаты работникам заработной платы в установленные законодательством сроки и обобщена практика назначения судебно - экономических экспертиз по исследуемой теме. Особое внимание уделено необходимости разработки эффективных мер по предотвращению негативных явлений в трудовых отношениях, при неукоснительном соблюдении, в частности целей и задач Трудового законодательства. К таким мерам, в первую очередь, следует отнести установление и введение уголовной ответственности за нарушение права человека в сфере труда, где судебно-экономическая экспертиза может сыграть не последнюю роль. По результатам анализа ранее выполненных исследований подведены некоторые итоги позволившие прийти к выводу о том, что данная проблема мало изучена и требует дальнейшего исследования. В частности, значительное внимание следует уделить детальному анализу вопроса финансовых возможностей работодателей по своевременной выплате заработной платы персоналу. На основе изучения последнего, установлено, что определенные трудности при расследовании преступлений по фактам необоснованной невыплаты должностными лицами заработной платы работникам предприятий или учреждений обусловлены тем, что в отличие от сотрудников следственных органов прокуратуры, накопивших определенный опыт аналогичных расследований, следователи МВД Украины только накапливают такой опыт. Авторы приходят к выводу, что решению проблемы в значительной степени будет способствовать классификация задач судебно - экономической экспертизы при расследовании подобных преступлений и установление четких требований к объектам исследования. Обосновывается мысль о том, что в ходе выполнения судебно - экономических экспертиз, в первую очередь необходимо выяснять объективную возможность оплаты, исходя из финансово - экономического состояния предприятия или учреждения, а также устанавливать и разграничивать целевое использование

денежных средств, переведенных на текущие счета. Отмечается, что решение рассматриваемого вопроса предполагает проведение финансового аудита деятельности предприятия, при этом используемые при производстве судебно - экономической экспертизы методы определения финансового состояния предприятия или учреждения предполагают комплексный анализ всей их хозяйственной деятельности. На основании анализа обобщенной судебно-экспертной практики в Украине, систематизированы вопросы, которые органы досудебного расследования или суд чаще всего представляют на экспертизу при расследовании уголовных дел, возбуждаемых по ст. 175 УК Украины. Отмечается, что по затронутому вопросу также учтен зарубежный опыт.

Ключевые слова: заработная плата, законодательное регулирование, судебная экспертиза, нарушение прав, расследование, ответственность, трудовые отношения, зарубежный опыт, работник, работодатель, функции трудового права.

The article was submitted: 12.09.2023

The article was accepted: 01.12.2023