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Medically-labour dispute on Supremes' court of England, Wales and Northern Ireland precedent practice

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Key words: *medically-labour dispute, Supreme Court of England, Wales and Northern Ireland, court's precedent, European integration, labour law.*

Paper proposed devotes to the SC' of England, Wales and Northern Ireland practice in medically-labour lawsuits from 2012 to 2022. The aim of showed survey is, particularly, to clarify of their patterns and mainly features; derivate of relations in the field of medicine, which, due to their social significance, could be settled and defined as medically-labour disputes. Research methodology is based on general scientific methods such as analysis, synthesis, induction, deduction, analogy, and empirical ones.

Was concluded that in Europe medically-labour disputes devote to: 1) inspection on professional safety; 2) women who have temporarily left work because of the late stages of pregnancy and early aftermath of childbirth is to be treated as a 'worker' for the purpose of the right to income support; 3) workers suffered actionable personal injury on which they can found claims for negligence/breach of medical practitioner/statutory duty; 4) lawful to bring about the termination of a pregnancy for work-ability women; 5) prohibition of smoking in workplaces as damage cause; 6) vicariously liable of employer for the sexual assaults allegedly committed during medical examinations of employees;7) COVID-19 related workplace and business losses; 8) professional's right to practice of doctors entitlement; 9) professional diseases, injures and damage factors causes job transfers or deaths; 10) keep the medical-relate commercial secrets by employees; 11) dismissals from diseases reasons; 12) jurisdiction cases. 'Lion's share' of medically-labour disputes falls on professional diseases, injures and damage factors causes job transfers or deaths' cases (46.4%).

Provided implication that European medically-labour dispute can be define as contradiction on grounds of common (professional safety, dismissals from diseases reasons, professional diseases, injures and damage factors etc.) or specific (medical negligence, pregnancy, childbirth consequences for work-ability persons and so on and so forth) considerations affect job transfers, salary losses, termination of contract or death of relevant employees.

Медико-трудовий спір у прецедентній практиці верховного суду Англії, Уельсу та Північної Ірландії

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Ключові слова: *медико-трудовий спір, Верховний Суд Англії, Уельсу та Північної Ірландії, судовий прецедент, євроінтеграція, трудове право.*

Пропоноване дослідження присвячено прецедентній практиці ВС Англії, Уельсу та Північної Ірландії у медико-трудових спорах за 2012–2022 роки. Мета дослідження, зокрема, полягає у висвітленні їх основних патернів та особливостей; виокремленні тих медико-суспільних відносин, котрі з огляду на їхню суспільну вагу можуть бути предметом вирішення та сутнісним наповненням дефініції медико-трудового спору. Методологія дослідження базується на загальних та спеціальних методах наукового пізнання (аналізі, синтезі, індукції, дедукції, аналогії, емпіричному методі тощо).

Зроблено висновок про те, що у Європі медико-трудові спори стосуються інспектування професійної безпеки; відшкодування заробітку жінкам, котрі не можуть виконувати попередню роботу через вагітність та пологи, задля підтримки їхніх доходів; постраждалих працівників від дисциплінарного проступку або недбалості лікаря чи недотримання роботодавцем обов'язку забезпечення належного медичного обслуговування; законності проведення абортів працездатним жінкам; заборони тютюнопаління на робочому місці як шкідливого фактору; субсидіарної відповідальності роботодавця за сексуальні домагання під час профілактичних медоглядів працівників; втрат робітників та бізнесу від наслідків пандемії COVID-19; надання дозволів на здійснення лікарями професійної трудової діяльності; професійних хвороб, нещасних випадків на виробництві, каліцтв та шкідливих факторів, що спричинили переведення на іншу роботу або смерть працівника; дотримання працівниками комерційної таємниці медичного змісту; припинення трудових договорів з мотивів захворюваності; справ про юрисдикційні питання. Виявлено, що левова частка медико-трудових спорів припадає на справи, що стосуються професійних хвороб, нещасних випадків на виробництві, каліцтв та шкідливих факторів виробництва, що спричинили переведення на іншу роботу або смерть працівника (46,4%). Обґрунтовано позицію про те, що європейський медико-трудовий спір можна визначити як розбіжність, що виникла на підставі загальних (професійна безпека, припинення трудових договорів з мотивів захворюваності, професійних хвороб, нещасних випадків на виробництві, каліцтв та шкідливих факторів тощо) або спеціальних (медична недбалість, наслідки вагітності та пологів для працездатних осіб тощо) міркувань та обставин, що спонукають до переведень на іншу роботу, втрат заробітку, розірвання трудового договору або смерті чинного працівника.

Introduction. Sufficient European integration and effective reform of Ukrainian legislation in the spirit of European law are rather doubtful without a properly study of the Anglo-Saxon Law Family Court precedents in matters of legal regulation of medically-labour relations. Such approach will entitle us to consider medical law not only as a separate field, but also as a guarantor of social stability,

labour protection and industrial relations, a regulator of work's safety and hygiene which gives survey provided an increased relevance and social demand.

The general issues of the development of medical law, in particular in the co-operation with labour law and, from the other hand, labour disputes resolution were discussed properly and pleural on the papers of V.F. Moskalenko, O.M. Yaroshenko, V.V. Zhernakov, S.G. Stetsenko, I.A. Senyuta, O.A. Yakovlev, V.V. Lazor, A.N. Sliusar, G.I. Chanisheva, S.V. Lozovoj, N.A. Plahotina, I.V. Kolosov [1–13], etc. For all respect to the scientific achievements of the aforesaid scholars, to the issues of the contemporary England Supreme Court's precedent practice in medically-labour lawsuits were already not made adequate efforts.

Consequently, the aims of the proposed papers are: 1) England Supreme Court's precedent practice in medically-labour lawsuits study; 2) clarification of their patterns and mainly features; 3) derivation of relations in the field of medicine, which, due to their social significance, could be settled and defined as medically-labour disputes; 4) providing of author's implication and outlining perspective directions of furthermore scientific investigation and Ukrainian legal reforming in respect to Euro integration in aforesaid field.

Results and discussion. In brief, structure of medically-labour disputes decided by SC from 2012 to 2022 showed in Diagram 1 (*see follow*) and derivated on professional safety inspection, pregnancy salary's losses, doctor's misconduct, abortion lawful for work-abilities, smoke prohibition on workplace, liability for sexual harassment during employees' medical examinations, dismissals on medical reasons, medically-contented commercial secret keeping cases and others [14–41]. Lion's share' falls on professional diseases, injures and damage factors causes job transfers or deaths' cases (46.4%) [18–22; 24–28; 30; 35; 36].

In general [42], from 2012 to 2022 SC decided 842 lawsuits, 28 of them are medically-labour (without labour and social welfare disputes itself taking in account). With labour and social welfare disputes itself this mark is double. In two most important medically-labour disputes Her Majestic took part as an embodiment of Dieu et Mon Droit Principle. Particularly, in case [34] the issue in the appeal is whether a tribunal is confined to the material which was, or could reasonably have been, known to the Her Majestic Inspector at the time the notice was served or whether it can take into account additional evidence which has since become available. SC argued that the tribunal in the present case had to decide whether the stairways to the helideck were so weakened by corrosion as to give rise to a risk of serious personal injury. His decision is often taken as a matter of urgency and without the luxury of comprehensive information. The effectiveness of a notice is in no way reduced by an appeal process which enables the realities of the situation to be examined by a tribunal with the benefit of additional information. The appellant's arguments, that permitting the tribunal to look beyond the material available to the inspector will create delay and cost, do not change the conclusion on the wider interpretation of s.24 of 1974 Act. The Supreme Court unanimously dismisses the appeal.

In case [16] three companies (which can be conveniently referred to as "Vestergaard") developed techniques ("the techniques") which enabled them to manufacture and sell long-lasting insecticidal nets. The purpose of a long-lasting insecticidal net ("LLIN") is to prevent the sleeper from being bitten by mosquitoes, and also to reduce the mosquito population. From 2000 to 2004, Mrs. Trine Sig and Mr. Torben Larsen were employed by Vestergaard. Their employment

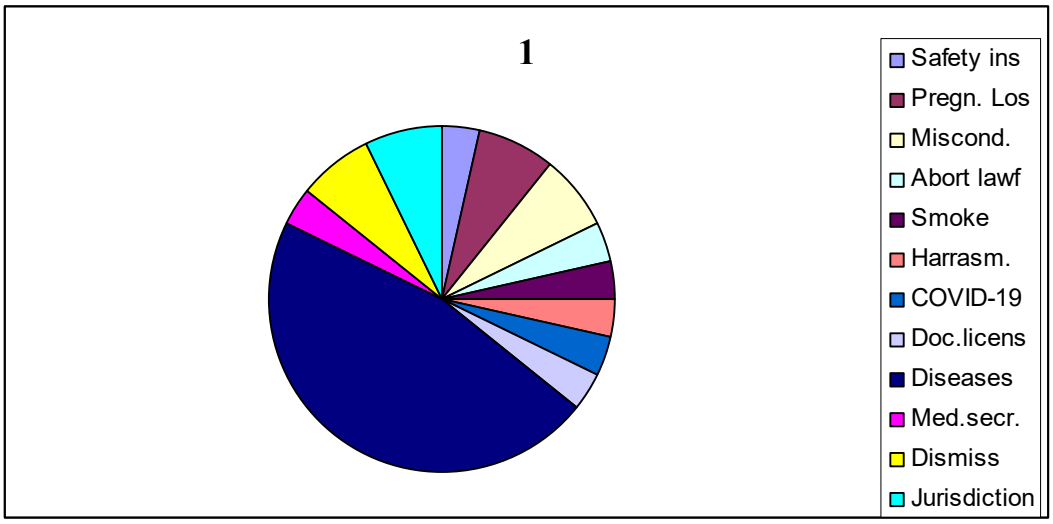

Diagram 1. Structure of medically-labour disputes decided by SC (2012–2022)

contracts contained provisions requiring them to respect the confidentiality of Vestergaard's trade secrets. In 2004, Mrs. Sig and Mr. Larsen resigned from Vestergaard. They formed a Danish company, Intection, which started to carry on a business in competition with Vestergaard, manufacturing and selling new LLINs under the name Netprotect. Dr. Ole Skovmand, who worked as a consultant to Vestergaard from 1998 to 2005, and played a major role in developing the techniques, agreed to assist Mrs. Sig and Mr. Larsen to manufacture Netprotect. Eventually, tests proved sufficiently successful for Intection to arrange a launch for the new product. Before the Supreme Court, Vestergaard argued that Mrs. Sig is liable for breach of confidence on three different bases: 1) under her employment contract, either pursuant to its express terms or to an implied term; 2) for being party to a common design which involved Vestergaard's trade secrets being misused; 3) for being party to a breach of confidence, as she had worked for Vestergaard, and then formed and worked for the companies which were responsible for the design, manufacture and marketing of Netprotect. The Supreme Court unanimously dismisses the appeal. Vestergaard's arguments fail because of the combination of two crucial facts: 1) Mrs. Sig did not herself ever acquire the confidential information in question; 2) until some point during these proceedings, Mrs. Sig was unaware that Netprotect had been developed using Vestergaard's trade secrets.

In case [15] appellant submitted that the court had power to strike out the claim in its entirety on the ground that it was tainted by fraud and was an abuse of process. Both the judge and the Court of Appeal held they were bound by the decisions of the Court of Appeal in Ul-Haq *v* Shah and Widlake v BAA to refuse the application on the ground that the court had no power to strike out a statement of case in such circumstances. SC unanimously holds that the court does have jurisdiction to strike the claim out for abuse of process, but declines to exercise the power in the present case.

Conclusions.

1. From 2012 to 2022 Supreme Court of England, Wales and Northern Ireland decided 842 lawsuits, 28 of them are medically-labour (without labour and social welfare disputes itself taking in account) which consists 3.33%. With labour and social welfare disputes itself this mark is double (6.7% approximately), as seems significant. In two most important medically-labour disputes Her Majestic took part as an embodiment of Dieu et Mon Droit Principle.

2. In England, Wales and Northern Ireland in aforesaid period of time medically-labour disputes devote to: 1) Crown Inspection on professional safety; 2) women who have temporarily left work because of the late stages of pregnancy and early aftermath of childbirth is to be treated as a 'worker' for the purpose of the right to income support; 3) workers suffered actionable personal injury on which they can found claims for negligence/breach of medical practitioner/ statutory duty; 4) lawful to bring about the termination of a pregnancy for work-ability women; 5) prohibition of smoking in workplaces as damage cause; 6) vicariously liable of employer for the sexual assaults allegedly committed during medical examinations of employees; 7) COVID-19 related workplace and business losses; 8) professional's right to practice of doctors entitlement; 9) professional diseases, injures and damage factors causes job transfers or deaths; 10) keep by employees the medical-relate commercial secrets; 11) dismissals from diseases reasons; 12) jurisdiction cases. Lion's share' of medically-labour disputes falls on professional diseases, injures and damage factors causes job transfers or deaths' cases (13 from 28, or 46.4%).

2. In respect to these circumstances, European medically-labour dispute can be define as contradiction on grounds of common (professional safety, dismissals from diseases reasons, professional diseases, injures and damage factors etc.) or specific (medical negligence, pregnancy, childbirth consequences for work-ability persons and so on and so forth) considerations affect job transfers, salary losses, termination of contract or death of relevant employees.

4. Reasons of 2–7 and 10 from Conclusion № 2 need furthermore properly scientific investigation and Ukrainian legal reforming in respect to Euro integration in field of labour law.

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