

FOREIGN APPROACHES TO REGULATION IN LABOUR RELATIONS AND THE POSSIBILITY OF THEIR IMPLEMENTATION IN UKRAINE

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Abstract. The article is devoted to the definition of foreign approaches to the legal regulation of relations in the world of work and possibilities of their implementation in Ukraine. It is emphasized that development of Ukrainian statehood is inextricably linked to the reform of labour legislation and the implementation of civilizational approaches to regulation of labour relations. However, the significant economic lagging of Ukraine from the developed countries of the world hinders the processes of improving labour legislation and strengthening the legal foundation of "decent work". The level of guarantee, safety and protection of labour rights of employees of all generations in Ukraine is analysed, and it is proved that the decent existence of working people in Ukraine is actually declared by the legislation, and the realization of labour rights of working population of Ukraine remains unfulfilled in relation to proper working conditions and the opportunity of work for themselves and members of their families. Moreover, it is stressed that Ukraine, being a civilized European state, does not fail to recognize employees' rights, in particular it concerns fourth generation's labour rights that are related to the individual personality.

Key words: *Ukraine, labour law, European Union, regulation.*

Introduction

Having examined the approaches to the implementation of supervision and control over the observance of labour legislation in Europe, as well as economic and legal means of influence on the participants of labour relations in order to ensure employees' labour rights, as well as the framework approach of EU and International Labour Organization (ILO) to the regulation of labour relations, the author finds it reasonable to implement the following approaches in Ukraine:

- a complex approach to ensuring the labour rights of employees, where supervision and control of the compliance with labour legislation form an independent task. At the same time, it is important to realize that decentralization in Ukraine should not be realized as refusal from state supervision and control in this sphere. European experience clearly shows us that a democratic society does not reject such form of government activity; moreover, it improves nowadays the supervisory and control processes in labour sphere;
- to overcome the negative perception of innovations in labour legislation and regulatory requirements, European countries use framework regulation, where a legal act outlines the framework conditions to implement certain rights and obligations in the world of work which have legal force, while the framework legal requirements are detailed on the local level and that enables one to take into account the opinion of both the employer and the work collective. Furthermore, this approach to the regulation of labour relations forms a conscious attitude of the labour relations participants to their obligations not by using state coercion, but via obligations they accepted in partner relationships;
- the use of economic incentives to provide for the realization and observance of employees' labour rights. At the same time, European states, having realized the economically weaker position of the employee in relation to the employer, take measures to save and protect the rights of employees, in particular in the field of safety

and occupational health. The priority of workers' rights in the field of safety and occupational health is fundamental for European states;

- practically valuable for Ukraine are the ILO approaches to reveal the ways and legal possibilities to improve legislation, and as a result – improvement of legal and real situation of employees. Framework indicators of decent work, as well as recommendations of the ILO, help not only to identify the deep problems in the labour sphere, but also to coordinate the actions that the state must take to resolve revealed problems.

In general, the practical approaches of European countries to guaranteeing, saving and protecting employees' labour rights are acceptable for Ukraine taking into account the fact that at the level of recognition of employees' fundamental labour rights our state is solidary with developed countries of the world. Historically short period of Ukraine's independence is felt in the realization of civilizational legal foundations in the sphere of labour, but the borrowing of advanced foreign experience gives our country the opportunity to overcome legal and actual problems in the labour sphere with the support and advisory assistance of European countries.

Topicality of the research theme

Development of Ukrainian statehood is inextricably linked to the reform of labour legislation and the implementation of civilizational approaches to regulation of labour relations. However, Ukraine's significant economic lagging from developed countries of the world hinders the processes of improving labour legislation and strengthening the legal foundation of "decent work". Great part of the social and economic problems is caused by unfavourable working conditions in Ukraine and the inability to provide citizens with the opportunity to earn their living by their own work. All this caused the necessity to analyse the foreign approaches to regulate labour relations and their implementation in Ukraine.

Analysis of recent publications

During the years of Ukraine's independence, the regulation of social relations on the basis of advanced international experience is increasingly attracting the attention of scientists. Many Ukrainian scientists research this issue, including the works of O. Avramov, O. Barabash, O. Zhydkov, O. Zaichuk, I. Lavrinchuk, N. Mushak, N. Onischenko, and their studies form the basis of this article. However, the ways to implement advanced international ideas to regulate labour relations in Ukrainian legislation are still not specified. The purpose of this article is to determine the ways of implementing foreign approaches to the regulation of labour relations to Ukrainian labour legislation.

Presentation of the main material

Foreign approaches to the regulation of labour relations are inextricably related with the development and normative recognition of employees' labour rights. At the same time, this process is not completed and the workers' labour rights are always updated, expanded and acquire more legal guarantees, safety and protection. Moreover, we agree with the statement that human rights constitute a historically changing category that evolves with society and the state (Onishechenko, 2007, p. 5). Notwithstanding this, Ukrainian state is at the stage of

strengthening employees' fundamental labour rights and recognition of a number of modern labour rights that have become widespread in developed countries. All of this demands from the Ukrainian science of labour law to find the best approaches to the implementation of international labour standards in domestic legislation and to suggest an approach to improve labour legislation that would make possible the simultaneous implementation, guarantee, safety and protection of labour rights of employees of different generations.

Analysing the state of realization of employees' labour rights in Ukraine and working on improving the level of their guarantee, safety and protection, one needs to take into account that, in general, the first generation includes civil and political rights, the second generation is made up of socio-economic and cultural rights, and the third one consists of collective rights or the rights of «solidarity» (Mushak, 2011, p. 299). The present society already recognizes the formation of the fourth generation of rights, to which scientists include “all rights that emerged as a result of scientific progress, development of morals, namely, all of the so-called «somatic rights»” (Barabash, 2016, p. 215). Thus, if we look at the evolutionary and cultural level of the development of Ukraine, we can assuredly speak of absolute recognition and realization of rights of the first generation. As to the labour sphere, it is confirmed by the prohibition of forced labour in all its manifestations, by the workers' rights and joining labour unions, etc. (VVRU, 1971). However, employees' labour rights of the second and third generations, though they are secured by the law of Ukraine, we can't consider them as actually implemented, guaranteed, saved and protected by the state.

Therefore, nowadays, employees in Ukraine suffer from the arbitrariness of employers in terms of meeting the occupational safety requirements. Thus, the number of violations of labour legislation reached 102 in one month in 2016 in the Kyiv region; 86 protocols on administrative offence were formed and filed to court (GDKO, 2016). The list of accidents in Ukrainian mines and the number of victims of accidents there is overwhelming (Miningwiki, 2018). According to ukrstat.gov.ua wage arrears in Ukraine, reaching 2581.7 million UAH in December 2017 (2017) testify to massive violations of workers' labour rights. And taking into account that the minimum wage level of employees from 01.01.2018 is 3723 UAH, about 108 EUR without taxes, it becomes obvious that decent existence of working people in Ukraine is actually declared by the legislation, while the realization of labour rights of the working population of Ukraine remains unfulfilled in the sphere of proper working conditions and the opportunity to provide decent living standards for themselves and their family members by means of their own job.

According to scientists, the fourth generation of rights are formed “on the principles of: recognition of the high status of a person; the desire to unify the norms of law, morality, religion in determining legal behaviour; recognition of a person's right for individuality that presupposes respect for the person's special needs, which enable him to differ from others; introduction of sovereignty of a person in relation to the state” (Avramova, 2010, p. 103). These rights are recognized and acquire legal status in Ukraine, however, one cannot speak of their actual realization, for the main interests of the Ukrainian population are directed at the realization of their socio-economic rights ensuring a person's decent life.

At the same time, it should be noted that Ukraine, being a civilized state in Europe, does not doubt the very fact of recognizing human rights, even those which are now at the stage of formation in the developed countries of the world. In particular, this also refers to

employees' labour rights, where the Ukrainian state has confirmed its recognition of the fourth generation rights at the legislative level, especially those which are related to the individual's personality. Thus, all forms of discrimination in the sphere of labour, in particular direct or indirect restrictions of employees' rights depending on religious and other beliefs, sex, gender identity, and sexual orientation are prohibited in Ukraine (VVR, 2015). In other words, certain «somatic rights» of a person and, accordingly, an employee are recognized and guaranteed by the state.

The above-mentioned facts testify to the fact that Ukrainian labour legislation, in general, corresponds to the libertarian concept in law that provides for the rational dignity of the individual human being: each person is a self-owner with inalienable rights of control over his or her own body and efforts... By permitting the individual to stand alone, outside the social or political bodies of mankind, it provides the only basis on which the individual may rightfully criticize in both word and deed every other individual and existent social institution (Wanter, 1982, p. 311).

However, realization of rights and freedoms recognized by Ukraine remains only on paper, and the life routine of Ukrainian society testifies to the struggle for their labour rights on the verge of life and death. The actual situation with the guarantee, safety and protection of employees' labour rights by the state resulted in freezing state supervision and control over keeping within labour legislation, and thus freezing of employees' labour rights. According to the 2014 law inspection of enterprises, institutions and organizations, natural persons – entrepreneurs by supervisory bodies (except for the State Fiscal Service of Ukraine) are to be performed in the period from August to December 2014 solely with the permission of the Cabinet of Ministers of Ukraine or at the request of the business entity concerning its inspection (VVR, 2014). Later, this moratorium was prolonged and from 01.01.2017 Art. 3 of the Law of Ukraine «On Temporary Peculiarities of Implementing State Supervision (Control) in the Sphere of Economic Activity» established a moratorium to conduct planned measures to perform state supervision (control) in the sphere of economic activity by state supervision (control) bodies (VVR, 2017).

Such state “transformations” generated an ungovernable splash of labour offenses and lack of control over employers' actions in organizing work at enterprises, institutions and organizations irrespective of ownership form, organizational and legal forms. The declared «decentralization» in the sphere of labour lead to a moratorium on inspections in Ukraine. The introduction of permissions and approvals for inspections, in particular in the field of labour generated a new wave of abuses caused by corruption, while the main purpose of supervision and control over adhering to labour law and workers' rights was reduced to imposing administrative fines on employers to fill the state budget. The results of the work of the controlling bodies of the Dnipropetrovs'k region serve an example of the fact that supervision and control in the sphere of labour are mostly directed at fining employers and not at restoring the employees' infringed rights. In 2016 the issue of meeting the requirements of labour protection was inspected in 409 business entities and 5082 objects and as a result 2172 fines were imposed for violation of the law on labour protection (2016). Therefore, we have come to the conclusion that despite recognizing almost all labour rights of employees at the level of legislation, Ukraine still fails to guarantee their observance. At the same time, realization of employees' labour rights is actually offset by the state through

substitution of the main objectives of supervision and control over the observance of labour legislation for the economic interests of the state and its bodies. Recognition and securing labour rights in legislation characterizes the general vector of development of national standards in the field of labour as complying with the civilizational approaches in this field. However, it should be noted that the processes of guaranteeing, realizing, securing and protecting employees' labour rights in Ukraine need to be reviewed and reformed on the basis of advanced experience of developed countries of the world.

Thus, exploring the role of labour inspections in preventing violations of labour law, John Graversgaard emphasizes that "Much points to the fact that the role of the labour inspector in the small businesses is the single most important factor in changing the affairs. SME's form the major proportion of EU businesses and in growth-and marked-driven economies like EU and the Eastern European countries the safety and health problems are well-known and well-documented. With this in mind it becomes central that labour inspection is effective and focused on the central risk factors, integrating safety and health risk factors. A good example of labour inspection being accorded a primary and visual role is the Polish system with labour inspection being responsible directly to the parliament (Sejm). But this is a model against the stream of one-sided economic thinking which is popular in these times, subordinating workers' needs to market-driven priorities. Small and medium employers have strong visions of independence and large freedom of action. And as buyers of labour-power they play a pivotal role providing economic safety for workers in economies with low social benefits. Workers are often under a strong economical and psychological pressure not to complain about their working conditions for fear of dismissal. Labour inspection has access to these workplaces and must therefore be supplied with the necessary means to fulfil this important mission" (Graversgaard, 2000).

In other words, increased attention to labour conditions and production safety plays an important role in ensuring employees' proper labour conditions by the state. European experience in these countries shows that while economic inequality of employee and employer are recognized, the guarantee and safety of the employees' rights are realized through the implementation of control policy over labour safety at enterprises. This approach to the provision of employees' labour rights shows that freedom and democracy in the field of labour can only exist if the parties to labour relations adhere to labour legislation and provided relevant competent authorities control of its compliance. This approach to safety and protection of employees' labour rights by the state should be a guideline for Ukraine in the process of reforming labour legislation, in particular, the state should not distance itself from the problems of violating employees' labour rights, especially in the part of adhering to the rules of labour safety and occupational health.

Researchers emphasize that "the determinant precondition for the formation of legal security of social and labour rights in international legal practice was their recognition at the level of legal obligations. That opened conceptually and qualitatively new prospects for the development of civilized regulatory relations at the various levels of social life. However, the way international norms are applied within the country and whether law enforcement authorities can apply them directly depends on the specific approach the country applies to international law in the national legal system (Lavrinchuk, 2011, p. 113). Ukraine's labour legislation recognizes the priority of international law, however in practice it is only used by

courts, and as a result, international law has almost no effect at the local and individual levels in the regulation of labour relations between an employee and a Ukrainian employer. However, Ukraine is trying to implement the recommendations of international organizations but so far to no effect, therefore the implementation of the concept of decent work in Ukraine remains a topical practical task.

The ILO fairly suggests that “the goal of decent work is best expressed through the eyes of people. It is about your job and future prospects; about your working conditions; about balancing work and family life, putting your kids through school or getting them out of child labour. It is about gender equality, equal recognition, and enabling women to make choices and take control of their lives. It is about your personal abilities to compete in the market place, keep up with new technological skills and remain healthy. It is about developing your entrepreneurial skills, about receiving a fair share of the wealth that you have helped to create and not being discriminated against; it is about having a voice in your workplace and your community. In the most extreme situations it is about moving from subsistence to existence. For many, it is the primary route out of poverty. For many more, it is about realizing personal aspirations in their daily existence and about solidarity with others. And everywhere, and for everybody, decent work is about securing human dignity» (ILO, 2001).

In our opinion, this requires from the Ukrainian state the review of labour legislation with an emphasis not on the recognition of certain labour rights, but on the search for legal means to guarantee and realize such rights, including the participation of the state and its authorities. At the preparation stage for the adoption of the draft of the Labour Code of Ukraine legislators should focus on these aspects of legal security of employees' labour rights.

International experience of legal regulation of labour relations shows that ILO provides significant methodological support in this sphere, and continuing this work at the international level the concept of decent work was developed, which found support at the level of the General Assembly of the United Nations as complying with the interests of social development and fight against poverty. It is also supported as a strategy that enables young people to find decent work (UN, 2000). The introduction of indicators of decent work substantially enables countries, including Ukraine, to analyse the level of implementation of decent work in the areas of unemployment insurance, protection of an employee at the time of dismissal, the setting of minimum wages, the resolution of labour disputes, the percentage of workers legislative protection covers in practice, ratification of the ILO conventions, etc. (ILO, 2013, p. 23). Indicators of decent work as its framework indicators also make it possible to identify the critical areas of employees' working life, which need an immediate response and protection from the state.

We believe that the practice of determining framework indices and conditions of work organization allows the authorized bodies to focus on specific problems. Working on the ways of their solution, one needs to involve employers, work collectives and their associations into this process. It should be also noted that European countries practise framework regulation of labour relations. For example, Directive 89/391/EEC – OSH «Framework Directive» of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, specifies the general principles of prevention in the field of safety and health of workers: avoiding risks, evaluating the risks, combating the risks at source, adapting the work to the individual, adapting to technical

progress, replacing the dangerous by the non- or the less dangerous, developing a coherent overall prevention policy, prioritizing collective protective measures (over individual protective measures), giving appropriate instructions to the workers (1989). This document also determines the main responsibilities of the employee and the employer, which are further detailed in individual directives (EC, 2018) or in collective agreements and contracts.

This European experience of legal regulation of labour relations can be applied in Ukraine, in particular, to change the polarization of the actions of state bodies from hard regulation and control to self-exclusion from control over the observance of regulations on labour protection. A European framework approach should be implemented to the regulation of labour relations which, in our opinion, are more flexible in the regulation of employers' obligations to adhere to certain rules. After determining the basic principles of labour safety, preventive measures for ensuring safety and health, the rule maker gives the participants of labour relations the legal opportunity to implement these requirements in a way more acceptable and convenient for a particular enterprise, taking into account the opinion of the work collective. We are convinced that this approach will ensure real "decentralization" in work issues with simultaneous state supervision and control over the situation in the field of occupational safety and health.

The Recommendations are also widely used in European countries as a form of strategic development of relations. Thus, investigating the provision of employees' fundamental rights European specialists suggest the following measures to solve a number of problems in the field of labour caused by the financial crisis, "Incentives such as insurance-related ones or financial aid by the EU and national governments to support the application of health and safety standards should be provided to ensure that higher costs for training and equipment do not hinder the enforcement of this right by employers hit by the economic crisis. The European Parliament could ensure the stepping up of financing efforts in this field in the negotiations of the European Social Fund 2014-2020 and consider the adoption of a Recommendation encouraging Member States to set up economic incentives to support the implementation of health and safety standards". The study also recommends "Holistic policies which include preventive measures, such as awareness raising on health and safety standards and clear guidance for employers in order to facilitate compliance (i.e. through checklists or catalogues), should be supported both by the EU and national institutions for the effective enforcement of the right to health and safety. The European Parliament could support these efforts by calling upon the Commission and the national health and safety authorities to disseminate the guidance documents developed by the Commission and the Advisory Committee on Health and Safety at Work by organizing workshops or ad hoc events at EU and national level (Canetta, 2012, p. 71).

We believe that such recommendations are appropriate for Ukraine, however, taking into account the level of economic security of our state, not all of them can be transferred to the domestic development programs. Nevertheless, making an effort to improve the level of guarantee, implementation, safety and protection of employees' labour rights one should also take into account that European community uses the practice of economic incentives to implement certain standards in order to solve labour problems. Domestic practice of introducing innovations, however, in particular in the sphere of employees' labour

protection, does not apply such measures, preferring state coercion and direct prohibition. In our opinion, this does not create a favourable environment for the realization and voluntary implementation of the Ukrainian government's legislative initiatives by the employers.

The systematic character of problems in the field of labour in the Ukrainian society testifies to a high level of illegal employment of the population, i.e. employment relationships without their proper execution. At the beginning of the century, according to the ILO, the informal sector employment as a percentage of total employment in Ukraine was between 25 and 49.9 percent (ILO, 2002, p. 13), and today this negative phenomenon has not yet been overcome. This testifies to the systematic character of the problem in the sphere of employment and to the level of observance of labour legislation by employers. According to the international community this situation in developing countries is the result of bureaucracy in the authorities (ILO, 2002, p. 22), and this phenomenon, is, unfortunately, also viable in Ukraine. Indeed, employment relationships cannot be separated from other relations, because they permeate all human activity, therefore the solution of the problems of violating employees' labour rights and the introduction of advanced international experience into the regulation of employment relationship require the solution of related issues such as corruption and bureaucracy.

At the same time, it is to be taken into account that in the fight against illegal employment international researches on this issue also reveal other causes of this negative phenomenon, in particular, there are also both direct and indirect linkages between informal workers and formal businesses, given that the informal economy includes the full range of "nonstandard" wage employment that flexible specialization has given rise to, such as sweatshop production, homeworkers, industrial outworkers, temporary and part-time work and unregistered workers (ILO, 2002, p. 38). In other words, in order to solve Ukrainian problems with illegal employment it is not enough to overcome bureaucracy and corruption; it is also necessary to regulate at the legislative level the issues of atypical forms of employment that have recently become widespread in Ukraine.

In general, the above-mentioned facts show that developed countries of the world and international organizations apply in their practice not only legal but also economic means to ensure employees' labour rights, and the implementation of their experience can help Ukraine to solve a number of problems in the labour area. There is no need to search for one's own method of fighting against the violations of labour legislation and employees' labour rights. It is just necessary to apply the experience of foreign countries taking into account national traditions. We believe that positive experience that can be applied in Ukraine should be as follows:

- a complex approach to ensuring employees' labour rights, where supervision and control of the compliance with labour legislation constitute a separate task. At the same time, it is important to realize that decentralization in Ukraine should not be realized as refusal from state supervision and control in this sphere. European experience clearly shows that a democratic society does not reject such form of government activity; moreover, it improves the supervisory and control processes in labour sphere nowadays;
- to overcome the negative perception of innovations in labour legislation and regulatory requirements, European countries use framework regulation, where a legal act outlines the framework conditions for the implementation of certain legally valid rights and

obligations in the field of labour, while framework prescriptions of law are detailed on the local level, thus enabling one to take into account the opinion of the employer and the work collective. This approach to the regulation of employment relationship forms a conscious attitude of the parties to the labour relations to their obligations, not by using state coercion, but by means of obligations they accepted in partner relationships;

- the use of economic incentives to provide for the realization and observance of employees' labour rights. At the same time, European states, having realized the economically weaker position of the employee in relation to the employer, take measures to save and protect the rights of the employee, in particular in the field of safety and occupational health. The priority of workers' rights in the field of safety and occupational health is fundamental for European states;
- the ILO approaches to reveal the ways and legal possibilities to improve legislation are practically valuable for Ukraine, hence they improve the legal and real situation of employees. Framework indicators of decent work, as well as recommendations of the ILO, help not only to identify the deep problems in the world of work, but also to coordinate the actions that the state must take to resolve revealed problems.
- In general, the practical approaches of European countries to guarantee and protect employees' labour rights are acceptable for Ukraine, taking into account the fact that Ukraine, just like developed countries of the world, recognizes employees' fundamental labour rights. The historically short period of Ukraine's independence is felt in the realization of civilizational legal foundations in the field of labour, however borrowing advanced foreign experience gives our country the opportunity to overcome legal and actual problems in the sphere of labour with the support and advisory assistance of European countries.

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