

# HARMONIZATION OF UKRAINIAN LABOUR LEGISLATION ACCORDANCE WITH ACQUIS COMMUNAUTAIRE OF THE EUROPEAN UNION

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## **Abstract:**

*The article proves the necessity of harmonization of the Ukrainian labour legislation in accordance with Acquis communautaire. The main legal acts in the sphere of Ukrainian labour legislation are analyzed. Special attention in the article is devoted to the critics of the Draft Labour Code of Ukraine, also marked its contradictions, positive sides and shortcomings are indicated. Potential dangers of the protection of labour rights in Ukraine connected with the lack of regulation of activity of trade unions are identified. The conditions necessary for the successful implementation of international labour standards and principles in Ukrainian national law are proposed.*

**Key words:** Labor Economics Policies, labour legislation, labour standards, Ukraine, acquis communautaire.

**JEL classification:** J80, K40

## **1. INTRODUCTION**

At the present stage of our country's priority is the practical realization of the objectives of long-term strategy, which should provide a solid foundation of Ukraine as highly, social in its essence, democratic state, its integration into the global economic process as a country with competitive economics, able to solve the challenges of development. This should aim all institutional transformations undertaken policy of economic, social and humanitarian reforms. It should be noted that the first steps in this direction have been carried out in 2004 with the approval of the "On the State Program for Adaptation of Ukrainian Legislation to the Legislation of the European Union", which defines the mechanism of harmonization of the Ukrainian legal system in accordance with Acquis communautaire. One of the important directions of this program is to harmonize Ukrainian labour laws, which consist of the Labour Code, adopted in 1971 in the former USSR.

## **2. THE NEED FOR HARMONIZATION OF UKRAINIAN LABOR LEGISLATION**

Ukrainian modern labour legislation does not meet the requirements of international labour law and besides legal problems also it has economic and political problems because it is the result

of adaptation of socialist norms to the conditions of market transformations and globalization. Since independence Ukrainian legislation are constantly changing its political concept, which influenced the formation legal labour principles and economic labour standards. Currently all the labour laws of Ukraine, which are contained in various legal acts, are collected in The Draft Labour Code of Ukraine (The Draft LCU). Although The Draft LCU was only approved in the first reading by Verkhovna Rada of Ukraine on November 5, 2015, and it has not implemented yet, most scientists and trade unions have already expressed an opinion about its partial imperfection and of needs to introduce numerous amendments. There is necessity of developing and applying scientific recommendations of harmonization of normative labour acts in accordance with its historical analysis, current economic conditions and with *Acquis communautaire*.

The paper is based on desk research and gap analysis of Ukrainian labour legislation and related acts of EU legislation. The research paper aims to observe legal and regulatory framework of Ukrainian and EU labour sector, to compare them and to identify the issues for approximation and measures to mitigate revealed gaps through outlining the need for changes applicable for the labour market of Ukraine.

### **3. PROBLEMATIC ASPECTS IN THE LABOR LEGISLATION OF UKRAINE**

The conceptual position of the Soviet norms and principles were based by the Soviet legislator on the specific for socialist system normative theory of law. This theory based on the Marxist definition of law as elevated to the law of the will of the ruling class, which by its nature intended to suppress the interests of the lower classes. So, according to the normative doctrine, all laws were recognized as legal, regardless of their content, and consequently, the right and law were generalized. The Soviet right was established according to the legal norms that were created by the Soviet government, that were argued that the state was primary and the right was secondary. Labour laws not were exception and were also formed on normative theory of law (Pylypenko, Burak, Kozak, Synchuk, Yakushev, Shevchuk, 2003). However, in spite of the distorted understanding by the Soviet legislator of the nature of labour rights, the existing Ukrainian labour standards are humanistic and are aimed at protecting the rights and legitimate interests of employees. But, Ukraine's transition to a market economy, its integration into the world economic system, changes in political orientation and reorientation of the legislation on the use of naturally-legal doctrine, require new approaches to the concept of law in general and labour law in particular.

Note that since independence of Ukraine, labour laws were constantly in the process of reforming and adapting labour standards to international standards. The process of harmonization of Ukrainian legislation with international legal standards on the protection of labour rights is over such a long time because of the following reasons:

Firstly, the worldview of a number of officials who shape human rights policy based on normative stereotypes of the Soviet period.

Secondly, there are differences of historical, social and cultural development of legal systems.

Thirdly, the current complicated bureaucratic system in Ukraine and high level of corruption by officials.

State protection of employers is also problematic for the process of adapting national labour standards to international norms of law. Employers have an impact on the formation of discriminatory legislation for workers by restricting or insufficiently regulating the forms and methods of protecting their workers' rights while at the same time enhancing the guarantees of employers' rights.

That is why, we consider that modification of the Soviet norms and principles of labour legislation is not needed in Ukraine. The creation of new labour laws that would meet the requirements of modern times and a common civilization values is needed. In our opinion, such development can take place only in the application of legal and technical means to ensure compliance of national legislation with international law and EU norms. These means are positive

reception such as inclusion in national legislation international law norms unchanged and negative reception such as elimination of norms that do not conform to international laws. One of the forms of law harmonization is the ratification of international treaties and the creation of national standards of prolonged nature.

Since 1954 Ukraine is a member of the International Labour Organization (ILO) and assumes the obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with principles relating to defined in the ILO Declaration on Fundamental Principles and Rights at Work.

Today, in Ukraine, with the support of the ILO in the framework of technical cooperation “Ukraine: the promotion of fundamental principles and rights at work”, the process of reforming of labour legislation, which is attended by experts, representatives of trade unions, employers, academics and international experts, is actively being conducted. As part of this process, the codification of national labour law is the essential step for realizing harmonization with international and European legislation.

Ukraine has not ratified all the ILO conventions yet. At the same time, it should be emphasized that it is impossible to change the law by applying a strong-willed approach or also to get closer it with a similar one that is taken from another social environment. Harmonization of the legislation presupposes either the existence of objective conditions for the rapprochement of relations in various fields or the existence of grounds for it. That is, the right only either creates incentives, or arranges the already existing conditions. Due to absence of this, none legal approach will not ensure harmonization. In this regard, the ILO Director-General (1992) stresses that “each system of labour relations derives from historical, political, economic, social and cultural experience and determines its own rules of the game within its parameters”.

The Draft LCU is focused on the European Social Charter, the Universal Declaration of Human Rights, The International Covenant on Economic, Social and Cultural Rights (ICESCR) and Conventions of the International Labour Organization which were ratified by Ukraine. The Draft LCU conceptually redefines the mechanism of legal regulation of labour relations between employer and employee, as well as the basic principles and mechanisms of implementation are provided by the Constitution of Ukraine and guarantees of labour rights of workers, the establishment of appropriate working conditions and protecting the interests of workers and employers in a market economy.

The Draft LCU will make changes of many labour norms. This legal act retained the rate of 40-hour workweek with 5 working days. However, the employer can set a 6-day working week or 10-hour day but if the amount is not to exceed 40 hours per week. In addition, there was a provision of so-called flexible work functions that can increase employee’s obligations. This means that the employer can add duties when workload is too small and does not provide full employment. There is another important point: workers can be employed at the weekend without their agreement. In addition, work is allowed during state and religious holidays, if it is provided in the employment contract.

Positive changes in The Draft LCU are associated with additional payment for work at night, which will be 30% as opposed to 20% that is now. In addition, salaries in overtime will be increased not twice, but in three times. Minimum duration of vacation is increased from 24 to 28 days a year, such a rule spelled out in The European Social Charter. The duration of unpaid vacation for family reasons is also significantly increased from a maximum of 15 days up to three months. However, the right for vacation is narrowed for those who want to get a degree. Additional vacation is provided only if the employer is interested in sending their employees for studying (Vodianka, Zrybnieva, Sybyrka, 2017).

The issue of compliance with working and pension age in Ukraine is still open. There is an inconsistency between the categories “unemployed”, “working age”, “economically active population”. According to the Law of Ukraine “On Employment of Population” (2012): “unemployed” is a person aged 15 up to 70 years, who is due to the lack of work has no earnings or other stipulated by the legislation income as sources of livelihood, and who is ready and able to

start work. In Article 26 of the Law of Ukraine “On Mandatory State Pension Insurance” (2003) is specified: “people of working age” are people aged 16 years up to under the age for women — 60 years, for men — 65 years. Under the ILO definition (1982): “Economically active population” comprises all persons of either sex who furnish the supply of labour for all production and processing of primary products whether for the market for barter or for own consumption, the production of all other goods and services for the market and, in the case of households which produce such goods and services for the market, the corresponding production for own consumption during a specified time-reference period. Economically active population consists of the employed and unemployed. Thus, persons engaged in economic activity are persons who are aged from 15 up to 70 years. There are contradictions in the laws according to the age at which a person is considered unemployed aged 15 years and older with age at which a person is in the working age from 16 years and older. And the contradiction between the age at which a person achieves the retirement age of 60-65 years old and the age till which a person is considered unemployed up to 70 years old.

Article 86 of The Draft LCU also requires further improvement. It concerns about the possibility of an employee dismissal in connection with reduction under the conditions of economic, technological, structural, organizational nature and the formal grounds, such as liquidation, merger, division, transformation, conversion without real production necessity. International instruments, in particular ILO Convention No. 158 (1982), protect rights of employees upon termination of employment at the initiative of the employer. Under the Convention (article 4) “the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service”.

We think that the main problems of the establishment of such situation in Ukraine are: Firstly, the lack of regulation of the labour laws and related laws that punish employers for violations of certain labour rights. Although Article 172 of The Criminal Code of Ukraine sets liability for gross violation of labour law, but it does not define the very definition of “gross violation of labour legislation”, which would have to follow certain grounds for prosecution of this type of responsibility.

Secondly, adoption by the legislator of a number of discriminatory employment normative legal acts. Consequently, in the process of reforming the labour legislation of Ukraine there is a threatening tendency to adopt norms aimed at minimizing the forms and means of protecting labour rights.

Particularly dangerous for the protection of labour rights in Ukraine is the lack of regulation of activity of trade unions, which are the main representational authority of employees. In Ukraine, there is a problem of protecting the classical labour rights of employees, the main reason for this is absence of regulation or insufficient regulation of labour laws that provide for the employer's liability for violation of certain labour rights.

In particular, the ability to protect the interests of workers will be limited by the adoption of The Draft LCU, because will be allowed employers independently to regulate labour relations by adopting their own regulatory enactments. It is a threat that the chapter XVI of the current Labour Code of Ukraine “Guarantees of Trade Union Activities to Protect Labour and Socio-Economic Rights of Workers” is completely deleted from this document. This is the fact that threatens to eliminate the organizational and legal mechanism for securing the rights of trade union members enshrined in the Law of Ukraine “On Trade Unions, Their Rights and Guarantees of Activity”, other special normative acts and relevant international legal acts. In accordance with Article 398 of The Draft LCU, the State Labour Inspection will be authorized to consider only issues of violation of the labour rights of an individual employee. And the same time it will not be authorized to consider the violation of labour rights of trade unions or other employees' associations.

However, despite these contradictions, we consider that The Draft LCU contains some positive features which:

— frees of ideological stereotypes and declarative norms of the Soviet system legislation;

- responds to the socio-economic and cultural processes of modernity;
- organizes all labour standards and principles of Ukraine and international labour laws into one system;
- prescribes in detail powers of state and local authorities in the field of labour relations.

In addition, one of the important aspects of adaptation of Ukraine's legislation to the EU laws is labour protection acts. The legislation of Ukraine concerning the health and safety needs serious reform. According to the annual implementation plan for The State Program for Adaptation of Ukrainian Legislation to the Legislation of the European Union (2004) in the sphere of labour protection is necessary to carry out the following steps:

- 1) development and approval the indicators required to ensure the safety and protection of health of workers;
- 2) development drafts of legal acts concerning:
  - general requirements regarding the provision by employers of labour protection of workers;
  - the rules of labour protection of workers of the mining industry;
  - occupational safety rules when performing work on board fishing vessels;
  - requirements to employers regarding protection of workers from harmful exposure to chemicals (heavy metals and compounds);
- 3) ratification of ILO Convention No. 184: Safety and health in agriculture;
- 4) direct implementation of EU directives in the field of labour protection.

The modification of the national labour legislation is an inalienable process of fulfilling the state's international obligations and implementing the global co-ordination of Ukraine's labour law with international labour standards stemming from the ratified and universal conventions of the United Nations, ILO, and the EU regional norms. It should also be noted that by acquiring in 1995 membership in the Council of Europe, Ukraine has ratified the main acts of this institution such as European Convention on Human Rights (ECHR) and European Social Charter (revised).

It is also important that the legislators ratified a fundamental European legal act as The European Convention on the Legal Status of Migrant Workers (1977, UA ratif. 2007) and was involved in the process of universalization of European labour law, which largely represents the right of European states, combining international legal Confederate and federal features that is a complex nature and is dynamic. Scientists point out the fact that Ukraine has taken a lot of new legislation that subject to the provisions of international law and modern achievements legal provision qualitatively strengthened safeguards to protect the rights and freedoms of our citizens and the state thereby acquires the characteristics of a legal state.

#### 4. CONCLUSIONS

Summing up the above, it should be noted that Harmonization of Ukrainian labour legislation accordance with *Acquis communautaire* will help to create a market-oriented social legislation in Ukraine. This will ensure the development of political, business, social and cultural activities of citizens of Ukraine, the economic development of the state, as well as a gradual increase in the welfare of citizens, bringing it closer to the level existing in the EU member states.

For successful implementation of international norms and principles of work, Ukraine should create conditions for their perception in the national legislation, in particular, there is a need to establish a clear legal framework that will determine the specific order of adaptation, application, realization of international laws. With the implementation of international labour standards should take into account the nature of the national legal system, the economy, the level of culture, historical features and traditions, as a result effectiveness of international labour standards will be increased and will be revealed their beneficial influence on labour relations in Ukraine.

The experience of states that carried out profound transformations has provided insight that the real success of transformation processes is possible only when reforms and their results meet the interests and aspirations of broad sections of the population and receive sufficient public support.

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