

Labour standards regulations in EU and Ukraine



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The Ukrainian National Platform of the Eastern Partnership Civil Society Forum (<http://eap-csf.org.ua/>) is a network of more than 140 non-governmental organizations in Ukraine that advocates Ukrainian interests within the framework of the Eastern Partnership. The platform is part of the Eastern Partnership Civil Society Forum (EaP CSF).

The Eastern Partnership Civil Society Forum is unique multi-layered regional civil society platform aimed at promoting European integration, facilitating reforms and democratic transformations in the six Eastern Partnership countries - Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Serving as the civil society and people-to-people dimension of the Eastern Partnership, the EaP CSF strives to strengthen civil society in the region, boost pluralism in public discourse and policy making by promoting participatory democracy and fundamental freedoms. The EaP CSF is a non-partisan bona fide non-governmental organization.

SUMMARY

By signing and ratifying the Association Agreement with the European Union, Ukraine has declared its commitment to democratic European values and committed itself to harmonizing national legislation with EU regulations (the so-called "EU acquis").

The need to introduce changes to the current labour legislation is based not only on Ukraine's orientation towards the EU, but also on the fact that it and its principles do not always correspond to modern realities and quite often do not ensure the creation of legislative bases for ensuring decent work, employment policy, safe and healthy working conditions, social dialogue, social protection, social involvement, gender equality and non-discrimination.

Since 2019, Ukraine has been experiencing the so-called "Turbo mode" of labour legislation reform. The authorities have set a goal to conduct a full audit and implement a significant reform of the current labour legislation of Ukraine. Some legislative initiatives that actually responded to the challenges of our time were adopted quite quickly and did not cause a significant resonance in society: Law of Ukraine "On amendments to certain legislative acts of Ukraine on improving the legal regulation of remote, home-based work and work using flexible working hours", Law of Ukraine "On amendments to certain legislative acts of Ukraine concerning the accounting of an employee's work activity in electronic form" and others. With the adoption of these laws, it was possible to partially solve the problem of significant administrative costs for registration and maintenance of labour relations, as well as introduce new forms of employment, which in general slightly increased the attractiveness of registration of labour relations. At the same time, some of the draft laws, such as the Labour Law No. 2708, which was planned to introduce new labour legislation, caused a significant response in society and significant criticism from Ukrainian civil society and international institutions. The main criticism was based on non-compliance with Ukraine's international obligations: the ILO conventions ratified by Ukraine and other Ukraine's obligations in the field of social and labour relations, in particular relevant directives in accordance with Annex XL to the Association Agreement between the European Union and Ukraine (EU-Ukraine Association Agreement).

Currently the most controversial are a number of draft laws in the field of Labour Relations regarding the definition at the legislative level of the concept of Labour Relations and signs of their presence; regarding the regulation of certain issues of Labour Relations; regarding the regulation of some non-standard forms of employment; regarding the simplification of regulation of Labour Relations of employees working for small businesses, and reducing the administrative burden on business activities; regarding the deregulation of Labour Relations; on strengthening the protection of employees' rights; on improving the procedure for resolving individual labour disputes; regarding the regulation of the work of domestic workers.

These draft laws were mainly developed and registered in the Verkhovna Rada of Ukraine (Ukrainian Parliament) during the last year (October 2020 - October 2021), in particular :

- Draft Law "On amendments to the Labour Code of Ukraine concerning the definition of the concept of Labour Relations and signs of their existence" (register. No. 5054 of 09.02.2021) and the alternative Draft Law "On amendments to the Labour Code of Ukraine concerning the regulation of certain issues of Labour Relations" (register. No. 5054-1 dated 25.02.2021).
- Draft Law "On amendments to certain legislative acts of Ukraine concerning deregulation of Labour Relations" (register No. 5388 dated 16.04.2021).
- Draft Law "On amendments to the Labour Code of Ukraine concerning simplification of regulation of Labour Relations of employees working for small businesses and reduction of administrative burden on business activities" (register. No. 5371 dated 27.04.2021).
- Draft Law "On amendments to certain legislative acts of Ukraine concerning the regulation of certain non-standard forms of employment" (Register. No. 5161 dated 25.02.2021).
- Draft Law "On amendments to the Labour Code of Ukraine concerning the improvement of the procedure for resolving individual labour disputes" (register. No. 5555 dated 24.05.2021).
- Draft Law "On amendments to certain legislative acts of Ukraine regarding strengthening protection of workers rights" (Reg. No. 5266 dated 18.03.2021).
- Draft Law "On amendments to certain legislative acts of Ukraine concerning the regulation of the work of independent workers" (register. No. 5695 dated 23.06.2021).

Some of the Draft Laws that are alternative to those listed in the list were not included in this list, since some Draft Laws were adopted as a basis (Draft Laws No. 5388, No. 5161, No. 5266), accordingly, the consideration of alternative Draft Laws loses its meaning, and regarding the other part, the conclusion of the relevant committee on the rejection of Draft Laws is published on the website of the Verkhovna Rada (Draft Laws No. 5371-1, No. 5555-1, No. 5695-1).

The issue of analyzing these Draft Laws for compliance with ILO Conventions and EU directives is one of the key issues on the agenda of Ukrainian society. Among the most comprehensive documents, it is worth noting "Technical Recommendations of the EU-ILO project to draft laws on Labour Relations, non-standard forms of employment, deregulation of Labour Relations". The position on each of the Draft Laws is presented and voiced in statements and analytical documents prepared by trade unions, public organizations, and scientists. However, most of these documents are devoted to a particular draft law and do not reflect a comprehensive approach to the analysis of this problem.

This analytical document aims to provide a comprehensive comparative overview of the provisions of legislative acts developed and registered in the Verkhovna Rada of Ukraine during the last year (October 2020 - October 2021) which are currently being actively discussed in Ukraine regarding the standards for regulating Labour Relations in Ukraine and EU countries, including issues of equality and non-discrimination and the implementation of gender impact assessment.

On February 11, 2021, the European Parliament approved a resolution on Ukraine's implementation of the EU-Ukraine Association Agreement. It notes Ukraine's success in implementing the agreement. However, a number of critical comments are also given.

The document notes that in order to address problems in the field of Labour, the European Parliament calls on the Association Council to prioritize the implementation of International Labour Standards, EU legislation and practices in the areas of social policy, employment and labour, collective bargaining norms, social dialogue, combating gender inequality and reforming labour legislation to ensure that the interests of social partners are balanced, and the rights of employees are protected in accordance with the provisions of the EU-Ukraine Association Agreement (articles 419-421 and 424) and the relevant ILO Conventions (81, 87, 98, 117, 122, 129, 144 , 154 and 173); reminds the Ukrainian government that its efforts to improve the business climate, attract direct investment and promote economic growth should not come at the expense of workers' rights and working conditions (p. 110) .

When developing draft laws in the field of labour relations, it is necessary to remember that most of our population is employees, not employers. A significant part of the analyzed draft laws is aimed at approving the thesis that an employer and an employee are two equal participants in labour relations. However, taking into account the realities of the labour market, formal inequality, which is fixed in the current legislation (an employee obeys internal labour regulations, follows management orders, can be brought to disciplinary responsibility, etc.) it is impossible to talk about the fixed legal equality of the parties, because the employer has much more leverage over the employee. The dominance of the employer's economic interests over the personal needs of employees is also a constant objective reality. That is why there is no formal or real equality of the parties in the employer-employee relationship. National labour laws around the world are designed to balance this inequality in a certain way by providing employees with additional guarantees, and this is exactly what international tools for regulating the labour market are aimed at.

The possibility of establishing additional rights, obligations and responsibilities directly in the employment contract by the employer and employee, provided for by the amendments proposed in these draft laws, is of great concern. Although the principle of freedom to conclude contracts should be applied in all possible cases, it should be applied taking into account and observing the general rules and minimum requirements established by labour legislation and applicable collective agreements, especially in the field of Labour Relations.

The introduction of dispositive elements in labour relations, in particular, the definition of working conditions and conditions of dismissal in an employment contract, which will have an advantage in regulating Labour Relations, may lead to the establishment by employers of such conditions in employment contracts that employees will have to agree to in order to get a job.

In this context, it is appropriate to ensure that the above-mentioned possibility is accompanied by a protective condition which limits the possibility of setting other conditions in an employment contract to situations where those other provisions are more favourable to the employee, in accordance with the general rules and minimum requirements established by labour law or applicable collective agreements. In the process of reforming labour legislation, the state is

required to ensure professional and balanced regulation of Labour Relations, which play an important role in the life of every person and are of great social importance.

The analysis of the above-mentioned draft laws allowed us to highlight general positive trends in labour reform which contribute to bringing the legislation of Ukraine closer to international and European labour standards. Among them, first of all, it is worth noting:

- contractual regulation of Labour Relations;
- extension legal framework regarding the employer's obligation to inform employees about the main aspects of an employment contract or employment relationship;
- recognition of the employee's right to be in an employment relationship simultaneously with other employers;
- definition of the concept of "employer" at the legislative level, etc.

The norms of individual draft laws suggest changes that contribute to bringing Ukrainian legislation closer to international and European labour standards. We are talking about:

- definition at the legislative level of the concept of "Labour Relations", partially will be consistent with the provisions of ILO Recommendation No. 198 (register. No. 5054, No. 5054-1);
- determination of legal succession in labour relations, which will be partially consistent with provisions of Council directives 2001/23 / EC (register. No. 5054, No. 5054-1);
- introduction of a special type of employment contract – an employment contract with non-fixed working hours, partially it will be agreed upon with provisions of Directive 2019/1152 (register. No. 5161);
- recognition of the right of all employees to conclude collective agreements, including those working for individual employers, and determination of the mechanism for extending the norms of the industry agreement to all employers in the relevant industry, it will be agreed upon with the provisions of ILO Recommendation No. 91 (Register. No. 5266);
- improved procedure for regulating fixed-term employment contracts and introducing measures to prevent abuse of fixed-term employment contracts (register. No. 5388), which will be partially consistent with the provisions of the ILO Convention No. 158, Directive (EU) 2019/1152, Directive 1999/70/EC;
- consolidation at the legislative level of the possibility of conducting mediation procedures in the field of Labour Relations (register. No. 5555), partially consistent with the provisions of ILO Recommendation No. 130;
- the concept of "domestic labour, the legal status of independent workers and the specifics of its regulation are fixed at the legislative level (register. No. 5695), which will be consistent with the provisions of ILO Convention No. 189 etc.

The provisions of some of the Draft Laws contain a significant list of norms that contradict international and European regulatory legal acts and require thorough revision and, in certain cases, removal. Thus, draft laws No. 5054, 5054-1, 5161, 5388 and 5371 contain provisions that contrary to EU directives:

- Council Directive No 89/391 / EEC on the implementation of measures to encourage improvements in the field of safety and health protection of employees during work;
 - Council Directive No. 91/383 / EEC on supplementing measures to promote the improvement of safety and health at work of employees with fixed-term employment or temporary employment;
 - Council Directive No. 91/533 / EEC on the employer's obligation to inform employees of the conditions applicable to a contract or employment agreement;
 - Council Directive No. 1999/70 / EC on a fixed-term work framework agreement concluded by ETUC [European trade union confederation], UBECE [Union of business and employers' confederations of Europe] and ECEE [European Center for employers and enterprises] ;
 - Council Directive 2003/88/EU about some aspects of organizing working hours;
 - Council Directive No. 98/59/EU on the approximation of the laws of member states concerning collective exemption;
 - Directive (EU) 2019/1152 of the European Parliament and of the Council on Transparent and predictable working conditions in the European Union;
- as well as a number of ILO Conventions and recommendations:
- ILO Convention No. 81 on the inspection of labour in industry and trade;
 - ILO Convention No. 87 on freedom of association and protection of the right to organization;
 - ILO Convention No. 98 on the application of the principles of the right to organize and conduct collective bargaining;
 - ILO Convention No. 129 on the inspection of labour in agriculture;
 - ILO Convention No. 132 on paid leave;
 - ILO Convention No. 135 on the protection of the rights of employees' representatives at the enterprise and the opportunities provided to them;
 - ILO Convention No. 155 on Occupational safety and health and the industrial environment;
 - ILO Convention No. 158 on termination of Employment Relations at the initiative of the employer;
 - ILO recommendations No. 166 on termination of Employment Relations at the initiative of the employer;
 - ILO Recommendation No. 189 on general conditions for stimulating job creation in small and medium-sized enterprises;
 - ILO recommendations No. 198 regarding Labour Relations.

The presence of these contradictions, in turn, leads to violation of Ukraine's obligations under the association agreement, in particular: Part 1 of Article 291, according to which Ukraine undertakes to "promote trade in a way that promotes full and productive employment and decent work for all, as well as the effective implementation of the fundamental and priority ILO Conventions"; article 424, according to which Ukraine undertakes to "ensure a gradual

approximation to EU law, standards and practices in the field of Employment, Social Policy and equal opportunities, as specified in Annex XL to the EU-Ukraine Association Agreement" .

Although international law defines and provides strong guarantees of women's labour and social rights, Ukraine is currently experiencing difficulties in putting them into practice.

Ukraine has signed more than 20 international commitments in this area, and at the same time, it is designing the current comprehensive reform of labour legislation without taking them into account.

From 2018 to 2021, the Ukrainian government has issued six government recommendations on different types of gender analysis, three of which should be applied to bills, but this was not done. These are the Recommendations on Gender Legal Expertise of Draft Laws (2018), the Guidelines on the Integration of Gender Approach in the Development of Regulations (2020), and the Recommendations on Gender Impact Assessment of Sectoral Reforms (2020).

However, as the review of draft laws in the field of labour and social relations submitted to the Verkhovna Rada of Ukraine in the last year shows, the results of their application are not seen in the form of gender-sensitive draft laws.

Out of more than 20 draft laws, ten directly relate to labour relations and were submitted or registered in the Verkhovna Rada of Ukraine from October 2020 to October 2021. Six out of this ten were submitted by the government, and four - by People's Deputies of Ukraine.

Consideration of six government draft laws (for which the Ministry of Justice's gender-legal expertise on compliance with the provisions of the principle of equal rights and opportunities for women and men is mandatory), showed that only two of them (No. 5054 and No. 5555) can be considered relatively gender correct.

But two more are ambiguous about the rights of women workers, and contain provisions both in their benefit and harm: draft law No. 5266 and the draft law "On safety and health of employees at work". And two draft laws (No. 5388 and No. 5161) can be considered as containing provisions that could harm women workers rights.

These results may indicate the weakness of existing gender expertise procedures and other tools developed by the Ukrainian government to prevent inadequate legislation that violates women's labour and other rights. These procedures certainly need to be strengthened.

It is now clear that the legal regulation of labour relations in Ukraine may undergo significant changes in the near future. National labour legislation will be reformed, taking into account the new realities in this area that have emerged or accumulated since Ukraine's independence. However, this path must take into account the fact that no reform can be carried out with the leitmotif of a potential or actual narrowing of fundamental human rights, such as labour, trade union's, women workers, or other rights.

National labour reform should be based on adherence to basic principles of labour law, such as freedom of work and employment; prohibition of forced labour; the right to work, protection against unemployment, employment assistance and material support for the unemployed; gender

equality in labour and employment; prohibition of all forms of discrimination in the field of labour, etc. This requires the involvement of social dialogue between parties in the discussion and approval of draft laws, taking into account the best international and European practices and standards in the field of labour legislation, which have proven themselves over time.

The document analyzes more than 90 regulatory legal acts in the field of labour legislation, non-discrimination and gender equality: EU directives, documents of international organizations, ILO conventions, resolutions of the Cabinet of Ministers of Ukraine, ILO recommendations, presidential decrees, resolutions of the Cabinet of Ministers of Ukraine.

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