

# CONCEPT OF DECENT WORK IN INTERNATIONAL-LEGAL ACTS AND UKRAINIAN LEGISLATION

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**Abstrakt.** *Ukrainian Constitution does not prohibit development and realization of various political, economic, social ideas and theories with their further transformation into social relations, when the former ones can be beneficial for society, consolidate and strengthen it. Considering current social and especially ideological situation in Ukraine, global trends in the development of civilizations and geopolitical importance of Ukraine it must be noted that the only right ideology for our country is the one based on humanism and social equity. Every human being, their material well-being, development of spiritual and creative abilities, physical excellence must become the core of this ideology.*

*The International Labour Organization unanimously adopted the ILO Declaration on Social Justice for a Fair Globalization on 10 June 2008, which points that under the concept of decent work all member states must pursue policies based on four strategic objectives – employment, social protection, social dialogue, and rights at work. Therefore, decent work is the key to contemporary understanding of social justice in a democratic society. The European Union has fixed the aforementioned view on social and economic development of its member states in the Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.*

*Provisions of article 420 of Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part can be considered as Ukraine's Social declaration that further paves the way to becoming a part of the European Union. The article also provides that cooperation in the area covered by Article 419 of this Agreement shall pursue several important goals. And according to article 424 of this Agreement, Ukraine shall ensure gradual approximation to EU law, standards and practices in the area of employment, social policy and equal opportunities, as set out in Annex XL to this Agreement.*

*The aforementioned legal acts contain essential directions for social economy of any modern European state and assessment criteria for all legislative innovations and fateful managerial actions taken by governmental authorities or individual officials.*

*Separate provisions of draft laws of Ukraine under No. 2708 "On Labor", under No. 2275 "On Amendments to Some Laws of Ukraine on Stabilization of the Functioning of the Compulsory State Social Insurance System", under No. 2681 "On Amendments to Certain Legislative Acts of Ukraine (on certain issues related to the activities of trade unions) "contradict both the international obligations of Ukraine and the provisions of the Constitution of Ukraine. In some cases, there is a significant liberalization of labor law, in particular, the consolidation of the unlimited right of the employer to terminate the employment contract, and in others, a radical offensive on the basic principles of interaction of social partners, as well as the right to freedom of association and protection of the right to organize. Such innovations do not appear to meet the criteria of a democratic, rule of law and welfare state. The Law of Ukraine "On Employment", in particular concerning the determination of the place, role, tasks, functions and sources of financing of the nationwide system of employment bodies, determination of the role and place of each state body in managing internal and external labor migration, needs major updating.*

**Key words:** *ideology of humanism and social equity, decent work, employment, social protection, social dialogue, rights at work, contemporary understanding of decent work, significant liberalization of labor law, a radical offensive on the basic principles of interaction of social partners.*

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## INTRODUCTION

Ukrainian Constitution [1] does not prohibit development and realization of various political, economic, social ideas and theories with their further transformation into social relations, when the former ones can be beneficial for society, consolidate and strengthen it.

Ideology is a system of ideas and views that exists in a form of theoretical concept which represents

ideological foundations and values of social order, interests and goals of its bearers [12, p. 109].

Ukraine needs to create its own ideological system based on state formation ideology as a development program for its society with a distinct social focus. This ideological system must reflect changes happening in the society and explain its relationship with national and universal values. The ideology

must determine directions for the country's development, moral and spiritual values that exist in the society, principles for protection of its interests and destruction of the country. New ideological system must unite Ukraine spiritually, put an end to all political disputes, facilitate to the establishment of a political nation, social inclusion and consensus. This is known as «basic» or «framework» ideology. Considering current social and especially ideological situation in Ukraine, global trends in the development of civilizations and geopolitical importance of Ukraine it must be noted that the only right ideology for our country is the one based on humanism and social equity. Every human being, their material well-being, development of spiritual and creative abilities, physical excellence must become the core of this ideology.

The Constitution of Ukraine also declared a fundamentally new role of state in its relation with the Constitution, fixed a transition from the ideology of state's dominance that used to be dominant for many years to a new one where a state serves the interests of its people. The latter one will become the spiritual power that shall transform our degraded Ukrainian society into a truly human society based on the principles of social humanism.

However, current political situation in Ukraine sees such approach for establishment of social relations as nothing but a relic of communist regime when a state has no social obligations before its people. Now Ukrainian state authorities are following the route to "Ukrainian centrism" [26], that distances us from libertarianism while neglecting Ukraine's international obligations and provisions of the Constitution.

#### REVIEW OF THE LITERATURE

The most prominent Ukrainian and foreign scholars who studied social policies and their legislative regulation in Ukraine and EU countries are the following: O. Shutaeva, V. Pobirchenko, U. Chaliuk, H. Spitsyna, O. Tyshchenko, J. C. Mosher., D. M. Trubeka, P. Pearson, J. Qwist and others.

Theoretical base of the research contains scientific and academic works of renowned soviet, Ukrainian and Russian scholars, namely L. Tal, M. Bahlai, I. Voitynskyi, K. Hintzburg, V. Dohadov, B. Zharkov, S. Ivanov, I. Kyselov, A. Pasherstnyk, V. Esenin and others. Among modern international and comparative labour law scholars there are several that must be noted. They are V. Andriiva, N. Vyshnevskaya, A. Dohert, N. Lutova, K. Rekosha, A. Silina, H.H. Schutten and others. Works of H. Volmani, V. Kaskel, H. Kalzen (Germany), F. Collen, R. Dokua, P. H. Gutier (France) made a significant influence on formation of author's critical comparative and legal approach.

#### RESEARCH METHODOLOGY

The International Labour Organization unanimously adopted the ILO Declaration on Social Justice for a Fair Globalization on 10 June 2008 [2], which points that under the concept of decent work all

member states must pursue policies based on four strategic objectives – employment, social protection, social dialogue, and rights at work. Therefore, decent work is the key to contemporary understanding of social justice in a democratic society.

The European Union has fixed the aforementioned view on social and economic development of its member states in the Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union [11].

Provisions of article 420 of Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part [23] can be considered as Ukraine's Social declaration that further paves the way to becoming a part of the European Union. The article also provides that cooperation in the area covered by Article 419 of this Agreement shall pursue the following goals:

- a) improve the quality of human life;
- b) meet common challenges, such as globalisation and demographic change;
- c) aim at more and better jobs with decent working conditions;
- d) promote social fairness and justice, while reforming labour markets;
- e) promote conditions of labour markets that combine flexibility with security;
- f) promote active labour market measures and improve efficiency of employment services to match the needs of the labour market;
- g) foster more inclusive labour markets that integrate disadvantaged people;
- h) reduce the informal economy by transforming undeclared work;
- i) improve the level of protection of health and safety at work, including by education and training on health and safety issues, promotion of preventive measures, prevention of major accident hazards, management of toxic chemicals, and exchange of good practice and research in this area;
- j) enhance the level of social protection and modernise social protection systems, in terms of quality, accessibility, and financial sustainability;
- k) reduce poverty and enhance social cohesion;
- l) aim at gender equality and ensure equal opportunities for women and men in employment, education, training, economy and society, and decision-making;
- m) combat discrimination on all grounds;
- n) enhance the capacity of social partners and promote social dialogue.

And according to article 424 of this Agreement, Ukraine shall ensure gradual approximation to EU law, standards and practices in the area of employment, social policy and equal opportunities, as set out in Annex XL to this Agreement.

Article 1 of the Constitution of Ukraine enshrines that Ukraine is the sovereign and independent, democratic, social, legal state. Under provisions of article 3 of the Constitution, a man, their life and health, honour and dignity, inviolability and safety, confess in Ukraine by the greatest social value. Rights and freedoms of man and their guarantees determine maintenance and orientation of activity of the state. The state is responsible to the man for the activity. Assertion and providing of rights and freedoms of man is the main duty of the state. Part 4 of article 13 of the Constitution of Ukraine declares social focus of our country's economy.

The aforementioned legal acts contain essential directions for social economy of any modern European state and assessment criteria for all legislative innovations and fateful managerial actions taken by governmental authorities or individual officials. Our task it to check the consistency of most recent legislative innovations with the outlined approaches and criteria.

## RESULTS

The aim of this article is to determine the level of conformity of innovations present in Ukraine's social and labour legislation with its international obligations and the Constitution of Ukraine, to highlight existent problems and gaps of governmental authorities in legislative field.

Ukraine Government's first step in the course of action for providing and ensuring decent work is establishment and affirmation of labour rights of citizens. In order to assess the innovations of Ukraine's labour legislation we will analyze certain provisions in the draft Act "On labour" #2708[13], submitted by the Cabinet of Ministers of Ukraine.

First of all, article 1 of the draft Act "On labour" narrows the content of the aim of Law of Ukraine "On labour" particularly by focusing exclusively on subjects of labour relations.

As it is stated in this article, the aim of this Act is to establish rights and obligations for subjects of labour relations, ensure the realization of labour rights and guarantees of employees enshrined in the Constitution of Ukraine, create appropriate working conditions, protection of rights and interests of employees and employers. Having no doubts regarding the significance of subjects of labour relations and other provisions contained in this article, there still are several constant points that must be taken into account when defining the content of legal norms of this Act:

1) approach to understanding labour as a commodity or sale of work force must be discarded due to a number of following reasons:

Firstly, none of the currently existent definitions of "labour" or terms associated with it mention anything about the "commodity" character of labour. "Big Ukrainian dictionary", for instance, gives several interpretations for the term "commodity": "1. A product of labour used for exchanging with consumptive

and exchange value. 2. Anything that can function as a tradable good" [14, c. 476].

Secondly, according to article 665 of Ukraine's Civil Code [15], a contract of sale is a formal contract by which one party (seller) agrees to sell an item (good) specified in the agreement to the other party (buyer) who in turn agrees to buy the item for a price fixed in the contract. Article 656 of Ukraine's Civil Code established the subject matter of this type of agreement. It can be goods, property rights or right to claim. Moreover, buyer receives property rights on the goods obtained under the contract of sale. Neither labour nor work force can change their ownership since they inseparable from a man.

Thirdly, in the beginning of XX century L. Tal eloquently described legal characteristics of work force: «Work force is not an object but an inseparable and inalienable part of a person's personality. Labour is a manifestation of a person's muscle and spiritual energy that may function as a subject matter of obligations. But it is legally impossible to alienate labour from the employee performing it, since only they can dispose of their work force. There is an inextricable link between work force itself and the person that possesses it. Their relationship is opposite from that between property and its owner» [16, p. 123].

Fourthly, the approach to perceiving labour as "a commodity" goes against state ideology enshrined in article 3 of Ukraine's Constitution which states that a man, their life and health, honour and dignity, inviolability and safety, confess in Ukraine by the greatest social value [17, p. 113].

2) purpose of any normative and legal act, considering the aforementioned constitutional provisions, lies in ensuring comprehensive development of all citizens and their abilities, their socialization and individualization within the society they belong to;

3) according to part 1 of article 43 of Ukraine's Constitution, everybody has a right to work, that includes possibility to earn a living by labour which they freely elect or on which they consent freely. Thus, labour is one of means available to any person to earn a living and secure themselves decent existence in a human society;

4) a person in the process of working (as one of the forms of human activity) becomes a part of particular social relations, namely: managerial, social, psychological and other ones.

Proper purpose and influence on relations regulated by the aforementioned normative and legal act can only be determined after taking into account these axioms. We suggest the following wording for article 1 of draft Act "On labour":

«This Law determines legal framework and guarantees for Ukraine's citizens to exercise their constitutional right to work; establishes norms that shall regulate relations that are the subject matter of this Law, provides establishment of legal coercive measure to ensure realization of rights and obligations of subjects of this Law».

Parts 1 and 2 of article 1 of the draft Act are dedicated to social relations that shall be regulated by this Law other acts of law. According to the lawmakers:

1. This Law regulates labor relations that arise after the conclusion of an employment contract in accordance with the procedure established by this Law.
2. This Law also regulates social relations related to the labor relations (relations before the conclusion of the employment contract and after its termination, relations arising during the settlement of individual labor disputes, relations related to exercising control over the observance of labor law).

The subject of regulation of this law is set out similar to the position expressed by O. Protsevskiy: "The only criterion for defining the relations that the new Code is intended to regulate should be work in a broad sense, protection of the right to it, that is, relations that arise before the labor force – occupancy, employment; labor relations that arise in the course of employment, as well as relationships that are replaced by employment (social insurance and protection)" [19, p. 81].

In our opinion, the problem of correctly determining the subject of regulation of this law arises from its very name - the Law on Labor.

The term «labor» according to the «Ukrainian Language Interpretation Dictionary» is: «1. Conscious human activity aimed at creating material or cultural values. Synonymous with work. 2. A certain type of paid employment; work, employment service as a means of subsistence "[14, p. 357].

The right to work under Part 1 of Art. 43 of the Constitution of Ukraine is regarded as a right that includes the opportunity to earn a living by work that everyone freely chooses or agrees freely. That is, this constitutional right, in addition to "making a living", also includes some opportunities for the citizen.

The provisions of ILO Recommendation No. 198 on Labor Relations 2006 [20], in particular Section II "Determining the existence of individual labor relations" are of paramount importance for the correct determination of the subject matter of the Law of Ukraine "On Labor". Paragraph 9 of the aforementioned Recommendation states: «For the purposes of national employment protection policy, the existence of such a relationship must first be determined on the basis of the facts confirming the performance of the work and the payment to the employee, regardless of the manner in which the employment relationship is characterized in any other agreement to the contrary that is of a contractual or other nature that could be concluded between the parties.»

Paragraph 13 of the Recommendation provides specific indications of the existence of an employment relationship. The following could be attributed to the following features:

- a) the fact that the work: is carried out in accord-

ance with the instructions and under the control of the other party; involves integration of the employee into the organizational structure of the enterprise; performed solely or principally in the interests of another person; performed personally by an employee; executed according to a specific schedule or workplace specified or agreed by the party who ordered it; has a certain duration and implies a certain continuity; requires the presence of an employee; assumes the provision of tools, materials and mechanisms by the contracting party;

b) periodic payment of remuneration to the employee; the fact that this remuneration is the sole or principal source of the employee's income; remuneration in kind by providing an employee, for example, with food, housing or vehicles; recognition of such rights as weekly weekends and annual leave; payment by the contracting party of the work performed by the employee for the purpose of performing the work; or that the employee bears no financial risk.

In view of the above, Art. 2 of the Draft Law of Ukraine "On Labor" should be read as follows:

- "1. This Law regulates relations on realization of the person's ability to work in different organizational forms (dependent employment, independent professional activity, freelancing (provision of services on request), employment activity of working owners, etc., if these types of activity at least partially meet the criteria of employment relations, established by the International Labor Organization.
2. This Law also regulates public relations for the protection of employees, the application of legal coercion, the protection of labor rights and the interests of the employee and the employer.»

In addition, we believe that the title of the bill does not allow to include in the subject of regulation of this law «public relations related to labor relations (relations to the conclusion of an employment contract), in particular, relations of employment and employment through public authorities or private employment agencies. Although the procedure for negotiation, the receipt of information from an employee, the conclusion of an employment contract, its execution - this is the subject of this law.

Attention should also be paid to the provisions of the Project on the termination of an employment contract at the initiative of the employer. In our view, the provisions of Part 1 of Art. 35 of the Project do not comply with the provisions of Art. 4 of the ILO Convention No. 158 on the termination of employment at the initiative of the employer in 1982 [21]. Part 1 of Art. 35 is formulated as the absolute right of the employer to terminate the employment contract: «The employer has the right, on his own initiative, to terminate the employment contract with the employee.» Whereas under the provisions of Art. 4 of the Convention, employment relations with employees shall not be terminated unless there are legitimate grounds for such termination related to the ability or behav-

ior of the employee or caused by the production need of the enterprise, establishment or service. That is, first, legal grounds (legal) must be provided, and not just the wishes of the employer, and secondly, these legal grounds must be linked to certain legal facts as indicated by the Convention. Moreover, these requirements are provided by Part 6 of Art. 43 of the Constitution of Ukraine, in which citizens of Ukraine are guaranteed protection against unlawful release.

In our view, the grounds for termination of an employment contract on the initiative of the employer should be contained in the law [18]. The legitimacy of the dismissal is justified on a more or less clear basis provided by law. The bases provided for in Convention No. 158 can be detailed as follows:

"Article... Grounds for termination of employment at the initiative of the employer

1. Employment relations with an employee at the initiative of the employer may be terminated on grounds relating to his or her abilities, behavior or for reasons of economic, technological, structural or similar nature, which are independent of the will, ability or behavior employee.
2. The grounds for dismissal related to the employee's abilities are:
  - full or insufficient professional ability of the employee to perform the work stipulated by the employment contract, due to the level of qualification or health status;
  - revealed the inability of the employee to adapt to the new production conditions defined by the employer, to master the latest equipment, technologies, new knowledge, requirements for work, etc.;
  - other reasons related to the competency of the employee, discovered after the end of the probationary period, which hinder the continued maintenance of the employment relationship.
3. The grounds for dismissal related to the employee's behavior are:
  - gross violations of discipline at work, including absenteeism, neglect or verbal or written instructions and orders of the employer, appearance at work intoxicated, use of alcohol, narcotic, toxic and similar substances, embezzlement of employer property, theft, games etc.;
  - systematic inactivity, including failure to perform without due cause their work responsibilities, unproductive use of working time, etc.;
  - the use of the property of the employer for purposes not related to the performance of duties or for his own purposes;
  - immoral behavior, neglect of the rules of conduct, defined by local acts of the employer;
  - loss of trust in the employee by the employer for actions that led to or could have caused the employer property damage, loss of reputation or other character;

- unlawful encroachment on the information protected by law from the employer;
- other reasons related to the employee's behavior, which hinder the continued maintenance of the employment relationship. «

Article 41 of the Draft contains a provision that can be regarded as legalizing the employer's arbitrariness. So, in particular, according to para. 1 Part 1 of this Article, employees may not be dismissed on the initiative of the employer on grounds of discrimination or retaliation. However, under Part 2 of this Article, «the circumstances provided for in paragraph one of this Article shall not be an obstacle to termination of employment if the employer has a legitimate reason for doing so.» That is, the presence of «legitimate grounds», which provides for Part 1 of Art. 35 of the Project - the will of the employer, or other articles of the Project that regulate dismissals at the initiative of the employer, allow for discriminatory dismissals.

Article 16 of the Draft discloses the content of the employment contract and, in accordance with paragraph 10 of Part 2 of this Article, the mandatory terms of the employment contract, without which the employment contract is not concluded, are the responsibility of the parties to the employment contract.

But what are the responsibilities of the parties in the Draft?

Chapter VII provides for the liability of the employee. True, it is not clear why in Part 1 of Art. 80 of the Draft refers to compensation for «material damage» caused by an employee. This is despite the fact that labor law has been operating in the category of «direct actual harm» for the last 48 years. The category "property damage" is a category of civil law. Part 7 of this Article states that collective liability and conditions for its application may be imposed on the terms set out in the collective agreement. Part 1 of Art. 82 of the Project stipulates that an employment contract concluded with an employee who has full civil capacity may stipulate conditions for full liability for the performance of works directly related to storage, processing, sale (leave), transportation, the use or application of values transferred to the employee.

Such rules contradict paragraph 22 of Part 1 of Art. 92 of the Constitution of Ukraine, since it is exclusively the laws of Ukraine that determine the principles of civil liability; acts that are crimes, administrative or disciplinary offenses and are responsible for them. Paragraph 2 of the reasoning part of the Constitutional Court Decision No. 7-rp/2001 of 30.05.2001 [27] states: "Emphasizing the importance of guarantees for the protection of human and citizen's rights and freedoms, the Constitution of Ukraine found that the composition of the offense as a basis for attracting a person legal liability and measures of state coercive influence for its commission are determined solely by law and not by any other normative legal act, that the legal liability of a person is an individual nature, that no one can be responsible for acts committed, will not be recognized by law as an offense and be brought

twice to legal liability of the same type for the same offense (Art. 58, 61, para. 1, 22 h. 1 Art. 92 of the Constitution of Ukraine).

The systematic analysis of the constitutional provisions outlined here leads to the conclusion that, in its content, paragraph 22 of Part 1 of Art. 92 of the Constitution of Ukraine is not intended to establish a list of types of legal liability. It stipulates that only the laws of Ukraine should regulate the principles of civil liability (general grounds, conditions, forms of liability, etc.), grounds of criminal, administrative and disciplinary liability - acts that are crimes, administrative or disciplinary offenses (the main signs of offenses, which constitute offenses and their responsibility). Thus, the Constitution of Ukraine forbade to regulate these issues by subordinate legislation and established that only the Verkhovna Rada of Ukraine in the relevant law has the right to determine what offense is recognized, in particular, an administrative offense or crime, and the extent of responsibility for it.

In addition, the Draft contains no mention of the legal regulation of internal labor regulations at enterprises, institutions, organizations and disciplinary responsibility of employees. There is also no hint of liability for the employer as a party to the employment contract.

It seems that this was done consciously because in this case:

- 1) the provisions on disciplinary liability of employees will be enshrined in various local regulations. Although, as is clear from the above Constitutional Court Decision, such practice is not constitutional;
- 2) according to the submitted Draft - the employer is not subject to liability.

Disciplinary liability of employees and liability of the employer are independent types of legal liability in labor law [28], and they should be enshrined in this law. The legal basis of all types of liability is the sanction of legal norms, and the legal fact that determines its occurrence in each case - the offense [29, p. 91]. Regulatory constructs of legal liability is the normative structure of legal liability. In our view, the regulatory construction of legal liability combines sanction (as a rather independent phenomenon) with the procedure for its implementation. Features of the content of the sanction determine the procedure for its implementation. But the procedure for the implementation of the sanction depends largely on the characteristics of a particular field of law, in particular, labor.

A very contradictory rule is contained in Section 4, Ch. X of the Draft, which stipulates that from the day this Law enters into force the acts of state authorities and administration of the USSR and the Ukrainian SSR on labor relations shall not be valid on the territory of Ukraine.

Consciously or not consciously, but as a result of adopting this norm, conventions of the International Labor Organization ratified by the Ukrainian Soviet Socialist Republic can be denounced.

At present, ILO conventions are being considered as part of national legislation with priority application of the provisions of international legal acts. The legal basis for such a statement is the provisions of the following regulations:

- 1) in accordance with Art. 3 of the Law of Ukraine «On the succession of Ukraine» [22], the laws of the Ukrainian SSR and other acts adopted by the Verkhovna Rada of the Ukrainian SSR operate in the territory of Ukraine, as they do not contradict the laws of Ukraine adopted after Ukraine's independence. And according to Art. 6 of this Law, Ukraine reaffirms its obligations under the international treaties concluded by the Ukrainian SSR prior to the declaration of independence of Ukraine.
- 2) for Part 1 of Art. 9 of the Constitution of Ukraine, the applicable international treaties, the consent of which is rendered binding by the Verkhovna Rada of Ukraine, is part of the national legislation of Ukraine.
- 3) Article 8-1 of the Labor Code of Ukraine [24], which refers to the relationship between international labor agreements and the laws of Ukraine, provides for a rule that, unless an international treaty or international agreement involving Ukraine provides for other rules, than those contained in the labor law of Ukraine, the rules of an international treaty or international agreement apply.

The second direction of implementation of decent work measures by the state in Ukraine is employment of the population, and what is especially important for our country is regulation of labor migration. For Ukraine, labor migration is an insurmountable problem, because in the Republic of Poland alone, around 1 million citizens of Ukraine work at different estimates [25].

Item 23 h. 1 Art. 1 of the Law of Ukraine «On Employment» [3] defines labor migration as displacement of a person related to crossing a state border or boundaries of an administrative-territorial unit in order to perform or search for a job. Article 10 of the said Law even provided for a person's right to work abroad. Citizens of Ukraine have the right to engage in work activity abroad, if such activity is not prohibited by the legislation of Ukraine and the country of residence. The rights of citizens of Ukraine who work abroad are protected by the legislation of Ukraine and the country of residence, unless otherwise provided by international treaties of Ukraine, the consent of which is provided by the Verkhovna Rada of Ukraine.

According to paragraph 8 of Part 2 of Art. 15 of the Law on Employment of Population, the purpose of the state employment policy is to strengthen the social and legal protection of Ukrainian citizens working abroad, including by intensifying international cooperation, concluding international treaties concerning the protection of the rights of migrant workers. Therefore, it is quite understandable step in the direction of

state regulation of labor migration was the adoption of the Law of Ukraine «On External Labor Migration» [4], which defines the legal and organizational principles of state regulation of foreign labor migration and social protection of Ukrainian citizens abroad (labor migrants) and their families .

Article 6 of the said Law defines the executive authorities that provide for the formation and implementation of state policy in the field of foreign labor migration.

Cabinet of Ministers of Ukraine, central executive bodies, local public administrations and local self-government are responsible for formation and implementation of state policy in the field of employment and labor migration. Main body in the system of executive bodies implementing state policy in the field of employment and labor migration that ensures formation and implementation of state policy in the field of employment and labor migration is the central executive body that implements state policy in the field of employment and labor migration.

It is clear that state policy in the sphere of foreign labour migration is just a part of state policy in the sphere of employment.

Chapter III of Law of Ukraine "On Employment of Population" points at the central executive body that implements state policy in the field of employment and labor migration. Part 1 of article 1 of the aforementioned Law says that activity of the central executive body implementing state policy in the field of employment and labor migration is coordinated by the Minister, who is the head of the central executive body implementing state policy in the field of employment and labor migration. The only authority with such functions and subordination is the State Employment Service. According to the Chapter 2 of Art. 21 of the Law of Ukraine "On Employment of Population", the central executive body implementing state policy in the field of employment and labor migration which exercises its powers directly and through territorial bodies. Article 22 of the Law of Ukraine "On Employment of the Population" defines the tasks and functions of the central body of executive power, which implements the state policy in the sphere of employment and labor migration, of its territorial bodies. And among the top priorities of this body is the implementation of state policy in the field of employment and labor migration, including the impact on external labor migration.

This is where a number of questions arise regarding the ways of implementing this type of public policy, determining the competence of public authorities and their responsibility for the results of their activities.

However, before addressing the above issues, here are some examples of problematic norms that apply to this area. So, Art. 8 of the Law of Ukraine "On External Labor Migration", in chapters 2 and 3, provides for rules that do not impose any social obligations on the external labor migrant in Ukraine. Migrant workers

and their families may voluntarily participate in the compulsory state social security system in accordance with the laws of Ukraine. The pension insurance of migrant workers is carried out in accordance with the laws that establish the conditions of pension insurance and international agreements in the field of pension insurance, the consent of which is provided by the Verkhovna Rada of Ukraine. However, when it comes to reintegration into the labor migrant society, Art. 14 of the Law of Ukraine "On External Labor Migration" provides that the state promotes reintegration into the society of migrant workers and their families by implementing a set of social, legal, economic and other measures provided for by law. And according to part 2 of this article, the central body of executive power is responsible for the reintegration of labor migrants, which ensures the formation and implementation of state policy in the sphere of labor, employment and labor migration, that is now the Ministry of Economic Development, Trade and Agriculture of Ukraine and State Employment Service.

The provisions of Chapter 4 of Art. 14 of the Law of Ukraine "On External Labor Migration" are crucial. To provide migrant workers with an opportunity to familiarize themselves with the conditions of return upon request of the person concerned upon their return from their country of residence, information on employment opportunities and conditions in Ukraine and assistance provided for economic reintegration is provided. That is, an external labor migrant can expect these measures from the State Employment Service. According to Chapter 3 of Art. 14 of the Law of Ukraine "On External Labor Migration", central and local executive authorities, within their powers, promote the reintegration of migrant workers who have indicated their intention to return or returned to Ukraine.

However, it should be reminded that in accordance with Chapter 1 of Art. 16 of the Law of Ukraine "On Compulsory State Social Insurance against Unemployment" [6], insurance payments of insurers are the primary sources of formation of funds of the Compulsory State Social Insurance against unemployment. For the para 10 part 1 Art. 1 of the Law of Ukraine of July 8, 2010 "On Collection and Accounting of the Single Contribution to Compulsory State Social Insurance" [7], insurers are employers and other persons who, under this Law, are obliged to pay a single contribution in Ukraine. According to Part 2 of Art. 16 of the Law of Ukraine "On Compulsory State Social Insurance against Unemployment" the funds of the budget are used to pay for the provision and provision of social services provided for in Art. 7 of this Law, financing the measures provided for by Art. 7-1 of this Law, implementation of measures in accordance with the Law of Ukraine "On Employment of Population", other needs stipulated by this Law.

The question arises: why should insurers fund the activities that relate to persons who are not members of compulsory state social insurance? Why is

it compulsory for some and voluntary for others? It seems that the labor reintegration measures for external labor migrants should be financed through the appropriate state return programs for this category of Ukrainian citizens.

In our view, there has been an imbalance of the legal bases for the formation and implementation of the state policy in the sphere of employment and social protection against unemployment, labor migration, in particular, and on external labor migration. Therefore, first of all, it is necessary to clearly identify the place and role of each entity in the formulation and implementation of state policies in the field of employment and labor migration.

1. The Verkhovna Rada of Ukraine defines in law the basic principles of domestic policy in the field of employment and social protection against unemployment (paragraph 5 of Article 85 of the Constitution of Ukraine), approves the national program of social development of Ukraine, including the issues of employment and social protection against unemployment ( paragraph 6 of the Article 85 of the Constitution of Ukraine). Only the laws of Ukraine determine the basics of social protection, the principles of regulation of labor and employment (paragraph 6 of Article 92 of the Constitution of Ukraine), the organization and activity of executive authorities (paragraph 12 of Article 92 of the Constitution of Ukraine).

2. The Cabinet of Ministers of Ukraine:

- 1) ensure the implementation of domestic policies in the field of employment and social protection against unemployment, implementation of the Constitution and laws of Ukraine in this part (paragraph 1 of Article 116 of the Constitution of Ukraine);
- 2) develops and implements a nationwide program of social development of Ukraine, including issues of employment and social protection against unemployment (Article 116, Clauses 3, 4 of the Constitution of Ukraine).

According to para. 1 part 1 Art. 20 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" [8], the Cabinet of Ministers of Ukraine ensures the implementation of the state economic policy, provides forecasting and state regulation of the national economy; ensures the development and implementation of national programs of economic and social development. And according to para 22 this state body ensures the implementation of state policy in the areas of labor relations, employment, labor migration, remuneration and labor protection, development and implementation of relevant state programs, resolves the issues of vocational orientation, training and retraining, regulates migration processes, ensures the implementation of the provisions of the General Agreement within the limits of the undertaken obligations.

- 3) designate the ministry responsible for the implementation of state policy in the field of em-

ployment and social protection against unemployment (Article 116, paragraph 9 of the Constitution of Ukraine);

- 4) direct and coordinate the work of the ministries and other executive bodies involved in the implementation of state policies in the field of employment and social protection against unemployment (paragraph 9 of Article 116 of the Constitution of Ukraine, part 1 of Article 21 of the Law of Ukraine "On the Cabinet Ministers of Ukraine").

3. The Ministry, responsible for the implementation of state policy in the field of employment and social protection against unemployment, shall coordinate and control the activities of the State Employment Service. These powers of the Ministry are based on the provisions of paragraph 3 of Part 1 of Art. 7 of the Law of Ukraine "On Central Executive Bodies" [9], which envisages, among the tasks of the Ministry, information and clarification on the implementation of state policy in a particular area. "Implementation of state policy" is a term that does not contradict the provisions of the Constitution. The direct implementation of state policy in the field of employment and social protection against unemployment is a function of the State Employment Service. The provisions of Art. 6, 7 and 8 of the Law of Ukraine "On Central Executive Bodies" do not provide for direct subordination of a body such as the State Employment Service to the ministry responsible for implementing state policies in the field of employment and labor migration.

4. The State Employment Service, directly or in cooperation with other interested public and private institutions, implements measures in the sphere of employment of the population and social protection against unemployment, implements the national program of social development of Ukraine in this part (Part 2 of Article 1 of ILO Convention No. 88 the organization of the employment service in 1948 [10]. The State Employment Service is the national system of state institutions that provide the best possible organization of the employment market (Part 2 of Article 1 of ILO Convention No. 88 on Organization of the Employment Service 1948, Part 2 of Article 43 of the Constitution of Ukraine). Financial support of the State Employment Service, the implementation of the national program of social development of Ukraine on employment and social protection against unemployment, other necessary measures for the organization of the employment market, social protection of the unemployed is entrusted to the Compulsory State Social Insurance Fund for unemployment (part 1 Article 1 of ILO Convention No. 88 on the Organization of the Employment Service, 1948, Art. 43, Art.

Local state administrations in the respective territory ensure implementation of the Constitution and laws of Ukraine, acts of the Cabinet of Ministers of Ukraine, other bodies of state executive power, national and regional programs of social and economic development, including issues of ensuring employ-



ment of the population, social protection against unemployment (clauses 1 and 3 of Art. 119 of the Constitution of Ukraine).

Thus, the legal framework needs updating, especially in terms of determining the place, role, task, functions and sources of funding for the nationwide system of employment agencies, social protection of the unemployed, managing internal and external labor migration.

The third area of implementation by the state of measures to ensure decent work in Ukraine is the social protection of citizens, and in particular workers. This is an urgent important topic that requires a deep and detailed study.

The fourth area of the state's implementation of decent work measures in Ukraine is social dialogue.

According to the preamble to the Law of Ukraine "On the Principles of Domestic and Foreign Policy" [39], this Law defines the principles of the domestic policy of Ukraine, including in the social sphere. According to para. 9 clause 2 Art. 2 of this Law, domestic policy is based on the principles of social partnership and civic solidarity. They are a logical extension of the principles set out in Art. 11 and Part 1 of Art. 15 of the Constitution of Ukraine. According to Art. 11 of the Constitution, the state promotes the consolidation and development of the Ukrainian nation. Consolidation is a union, rallying around something. It is impossible to achieve social consolidation without stability in the relationship between those who work and earn a living and those who give them the opportunity. A partner is one who is treated equally, not superficially. The socio-economic partnership implies that each of its members is considered to be a full-fledged and self-sufficient subject of social relations. We find it unacceptable that employers, authorities, or employees view themselves as a "more important" subject of partnerships. Cooperation is seen as a form of interaction between the subjects of socio-economic partnership. This interaction involves taking into account the interests of other participants in the relationship, resolving differences through dialogue, constructive cooperation, reaching a compromise, abandoning ultimatums. There are two aspects to the social peace: the goal of socio-economic partnership and the state of relations between the subjects of socio-economic partnership. Social peace can only be achieved through consolidation. Consolidation, as a principle of labor law, involves uniting the efforts of workers, employers and public authorities and uniting them around the idea of achieving a high level of well-being for Ukrainian citizens. This approach to the relations between the main subjects of socio-economic relations clearly implements in the labor legislation the constitutional provision that Ukraine is a social state [40, p. 35].

Recent developments in the labor and social legislation of Ukraine raise concerns about the Ukrainian authorities' understanding of such categories as «democracy», «social dialogue» and «social part-

nership». Subparagraph 2 of para 2 of the Draft Law No. 2275 of 16.10.2019 "On Amendments to Certain Laws of Ukraine on Stabilization of the Functioning of the Compulsory State Social Insurance System" [30] proposes para. 1 p. 1 Art. 6 of the Law of Ukraine «On Compulsory State Social Insurance» [31] shall be read in the following wording: "1. The Board of Directors consists of ten representatives of the state and four representatives from the insured persons and from the employers who carry out their duties on a public basis."

The main scientific and expert department of the Verkhovna Rada of Ukraine, having considered the submitted draft law, noted the following [32].

This bill replaces the principle of parity of representatives of all subjects of compulsory state social insurance in the management of compulsory state social insurance on the principle of their participation in such management (amendments to Article 5 of the Fundamentals of Legislation of Ukraine on Compulsory State Social Insurance [33], Articles 5, 7, 17 of the above Act).

Following the introduction of a compulsory state social insurance system in Ukraine based on the requirements of the European Social Security Code [34] and the recommendation of the International Labor Organization No. 67 on income support in 1944 [35], the Fund was established on a tripartite basis, council and other bodies. This model of managing the Fund enables social partnership parties to make informed decisions and solve common tasks, taking into account the interests of each party (the state, employers and insured persons). The experience of foreign countries shows that the formation at the legislative level of representative bodies from all participants of social partnership on a parity basis, the establishment of clear rules of their relations provides an opportunity for quality dialogue between the three parties (government, trade unions, employers) with the aim of working closely with others, the welfare of the public. It is important to consider social partnership as the main condition for the development of various spheres of public life, including in the field of compulsory state social insurance, for the further integration of Ukraine into the European Union, enshrined, in particular, in the Association Agreement between Ukraine, on the one hand, and The European Union, the European Atomic Energy Community and their Member States, on the other hand (Article 421, Chapter 21).

The implementation of the above-mentioned innovations undermines the essence of social partnership, makes it impossible to carry out a full-fledged social dialogue in the field of compulsory state social insurance, as it will effectively remove representatives of insured persons and employers from real participation in the management and further reform of the system and further reform.

Equally controversial are the provisions of the Draft Law No. 2681 of December 27, 2019 "On

Amendments to Certain Legislative Acts of Ukraine (Concerning Some Issues of Activity of Trade Unions)" [36]. This bill proposes to amend item 2 of Part 1 of Art. 1 of the Law of Ukraine «On trade unions, their rights and guarantees of activity» [37], stating it in the following wording:

"The primary organization of a trade union is the voluntary association of trade union members who, as a rule, work in the same enterprise, institution, organization, regardless of ownership or type of business, or of a natural person who employs hired labor, or who is self-employed. The primary trade union organization includes at least 10 union members. No more than 2 primary trade union organizations may be formed at one enterprise, in an institution."

In our view, the rule limiting the number of primary trade union organizations that can be formed in a single enterprise, institution, organization is contrary to ILO Convention No. 87 on Freedom of Association and the Protection of the Right to Organize in 1948 [38], which defines the fundamental foundations of freedom association. According to Art. 2 of the Convention, employees and employers, without any distinction, have the right to create their own choice of organization without prior authorization, and the right to join such organizations with the sole condition of being subject to the latter's statutes. Article 10 of the Convention, in effect, proclaims pluralism and freedom of association in organizations designed to protect and protect the interests of workers. The proposal to limit the number of primary trade union organizations in one enterprise can be regarded as a violation of the provisions of Part 3 of Art. 36 of the Constitution of Ukraine on guarantees of activity of trade unions. Trade unions are formed without prior permission based on the free choice of their members. All trade unions have equal rights.

## CONCLUSION

Summarizing the above, we can conclude:

1. The only possible ideology for Ukraine should be the ideology of humanism and social justice, which should be the basis of the social policy of the state, where a person, his material well-being, the development of spiritual potential, creativity and physical perfection are the essence of the content and orientation of the state's activity.

2. Declaration by the International Labor Organization on social justice for fair globalization, Directive No 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, and the Constitution of Ukraine, are the main political and legal acts that determine the main directions of social policy of modern European country Ukraine and criteria for evaluation of all legislative innovations and crucial management

decisions taken by public authorities or individual officials.

3. Separate provisions of draft laws of Ukraine under No. 2708 "On Labor", under No. 2275 "On Amendments to Some Laws of Ukraine on Stabilization of the Functioning of the Compulsory State Social Insurance System", under No. 2681 "On Amendments to Certain Legislative Acts of Ukraine (on certain issues related to the activities of trade unions) «contradict both the international obligations of Ukraine and the provisions of the Constitution of Ukraine. In some cases, there is a significant liberalization of labor law, in particular, the consolidation of the unlimited right of the employer to terminate the employment contract, and in others, a radical offensive on the basic principles of interaction of social partners, as well as the right to freedom of association and protection of the right to organize. Such innovations do not appear to meet the criteria of a democratic, rule of law and welfare state.

4. The Law of Ukraine "On Employment", in particular concerning the determination of the place, role, tasks, functions and sources of financing of the nationwide system of employment bodies, determination of the role and place of each state body in managing internal and external labor migration, needs major updating.

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