THE RIGHT TO WORK AS A CONSTITUTIONAL VALUE

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SUMMARY *The article is devoted to relevant issues of study of the right to work as a constitutional value under the latest achievements of the humanities, in particular, legal science, as well as changing, on this basis, the doctrinal interpretation of so-cio-economic rights of Ukrainian citizens.*

Rights in the field of labour are enshrined in many articles of the Constitution of Ukraine and in different variations constitute the content of the constitutional right to work, which, in turn, is conditional upon the legal form of its implementation. The right to work can be considered in the context of the unity of axiological and formal-legal approaches and which is defined as a state-provided opportunity to realize the values of the highest order in the field of labour through the use of certain legal instruments and institutions.

Generally, in considering the right to work as a constitutional value, the following features can be distinguished: it is a supreme value, which is derived from the highest good ¬¬– labour; it is a value of a complex structure, its content consists of relatively independent constitutional values of the highest order and are determined by the chosen form of realization of the constitutional right to work (labour relations, public service, entrepreneurial activity, etc.); realization of the constitutional right to work is based on the adoption of interim measures by other subjects of law, especially the state. It is the latter aspect that is not included in the decisions of the Constitutional Court of Ukraine on the interpretation of the right to work.

Keywords: *legal understanding, socio-economic rights of citizens, the right to work, constitutional value of the highest order, doctrine of the "living constitu-tion", a narrow interpretation of the right to work.*

INTRODUCTION

In recent years the doctrine of the "living constitution" has become increasingly common. Thus, in particular, V. M Campo notes: "The court should make the final transition to the doctrine of the "living constitution", which guarantees a higher level of resolution of legal issues" [1].

In our opinion, the doctrine of the "living constitution" provides for the possibility of a new vision of the provisions of the Constitution taking into account the political, socio-economic and other changes that are taking place in society and the state.

One of the elements of the implementation of this doctrine is the possibility of reviewing the decisions adopted by the Constitutional Court of Ukraine. There are already such examples in practice. For instance, such can be considered the decisions of the body of constitutional jurisdiction, adopted in 2008, 2011, 2012 (cases of social guarantees). In this vein, R. O. Maksymovych brings to the atten-tion that norm-guarantee is established in its form by way of a textual normative prescription, and approaches to the interpretation of the content (what this guar-antee includes) are constantly changing. As an example, the scientist points to the constitutional right to health care, medical care, enshrined in Art. 49 of the Constitution of Ukraine. It is normatively defined and has not changed since the adoption of the Constitution, but approaches to its interpretation have been changing during this time. Such decisions, in his opinion, are often political, eco-nomically necessary and can be reviewed by the Constitutional Court of Ukraine by virtue of constant transformations of social relations, changes in the legal con-sciousness of citizens, the economic situation in the state and in the world as a whole [2, p. 114–115].

Generally, it is possible to agree with this point of view, because the mani-festations of social life cannot be placed in once for all established decisions, even of such an important institution as the Constitu-

tional Court of Ukraine. Exactly the change of emphasis in the views on the legal understanding will make it pos-sible to figure out in a new way the meaning of the right to work at the current stage of the development of the state and society.

The purpose of this article is to identify the new aspects of the content of the right to work based on its vision as a constitutional value and change, in view of this, of the doctrinal interpretation of the socio-economic rights of Ukrainian citizens.

REVIEW OF THE LITERATURE

Among the domestic and foreign scholars, who have studied social policy and its legislative regulation, it is worth noting the following: O. O. Shutaeva, V. V. Pobirchenko, Yu. O. Chaliuk, H. O. Spitsyna, O. V. Tishchenko, J. S. Mosher, D. M. Trubeck, P. Pearson, J. Quist and others. The nature, essence and content of the right to work are revealed in the works of H. Yu. Vdovin, R. S. Veprytskyi, H. A. Hadzhiieva, V. L. Kostiuk, N. S. Mokrytska, V. F. Penkivskyi, O. V. Pushkina, V. V. Khromei, A. M. Hurmatulina and other researches.

The theoretical framework for the research is represented by scientific and educational works of prominent scholars, such as: L. S. Tal, M. V. Baglai, I. S. Voitynskyi, L. Ya. Hinzburh, V. M. Dohadov, B. N Zharkov, S. A. Ivanov, I. Ya. Kyselov, A. E. Pasherstnyk, V. U. Yesenin and others. Among the modern researchers of the theory of law and the theory of constitutional law it should be mentioned the works of S. P. Holovatyi, M. I. Koziubra, O. V. Petryshyn, O. V. Skrypniuk, Yu. M. Todyka and other authors. The works of G. Volmani, V. Kaskel, H. Kelzen (Germany), F. Kollen, R. Dokua, P. H. Gutierrez (France) etc. had a significant influence on the formation of a critical comparative legal approach.

RESEARCH METHODOLOGY

In the context of finding topical approaches to legal understanding today, first of all, the demands of its clear focus on solving practical social problems and tasks are made, that is not possible without close interaction of jurisprudence with other social disciplines – philosophical, sociological, psychological, ethical etc. [3, p. 11].

M. I. Kozyubra proposed to expand the general issues of legal understand-ing, its role, significance and possibilities in via highlighting along with theoretical (scientific) legal understanding, which was a priority research topic, such its spe-cific levels as everyday empirical and professional legal understanding. The latter are more closely related to a certain experience of perception and enforcement of the law, special features of the legal mentality and reflect belonging to a certain cultural and historical type of society [4, p. 30–34].

Precisely the change of emphasis in views on the legal understanding is appeared to allow seeing the content of the right to work and considering it as a constitutional value for the development of the state and society.

RESULTS

The study of the nature and content of human and civil rights and freedoms has been and still is relevant. However, as correctly is pointed out by S. P. Holovatyi: "The Constitutional Court of Ukraine has not still noticed fundamental (principal, basic-constructive) nature of Art. 3 of the Constitution for the whole matter of systematic interpretation of the other provisions of the Constitution of Ukraine, which directly or indirectly relate to the institution of human rights, its essence and purpose" [5, p. 53].

S. P. Holovatyi considers the theory of "natural human rights" as a corner-stone for the interpretation of any provisions of the Constitution of Ukraine. Without underestimating the importance of this political and legal theory, never-theless, it is worth noting that some scholars embrace an alternative, compro-mise, legal ideology, which differs from the theory of natural law in that it does not reject the significant role of the state and legislation in the theory of legal un-derstanding.

In this regard, the opinion of O. V. Petryshyn that under any circumstances the natural law concept is designed to become a rational basis for positive law, to develop basic notions, which should form the conceptual foundation of legal the-ory, as fundamental legal values are somehow a component of the content of legal norms, and the norms themselves should be perceived as those that protect social values [3, p. 10].

From the point of view of integrative (natural-positive) theory, law is a bi-nary social phenomenon, i.e. it has a dual nature. The nature of law is a complex but necessary intertwining of two components: the natural beginning (nature of personality) and the positive beginning (political nature). The third degree is nat-ural-positive law. Its beginning should be associated with the removal of class, estate privileges, advantages, the assertion of legal equality of all people before the law, putting forth the human, his rights and freedoms to key positions in the legal system.

The positive component becomes a means of ensuring rights and freedoms. In its entirety natural-positive law reveals its potential at the present stage of the development of civilization [6, p. 148–149].

Talking about human rights in the modern world, it is difficult to refute the allegations that the theory of "natural law" is of Western origin. However, this phenomenon is filled with some special civilizational characteristics that are im-portant for each legal system. The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 [7] stipulates that the development and protection of human rights is necessary to achieve greater unity between the members of the Council of Europe in the process of their integration. It is im-portant for Europeans that observance of human rights provide the ideals of the Enlightenment: freedom, justice and universal peace, democracy and the suprem-acy of the statute law.

The American model of human rights differ slightly from the European one. In particular, the American Convention on Human Rights of 1969 [8] is different in such

aspects: 1) the desire to establish a system of personal freedom and social justice in this hemisphere within democratic institutions and 2) the recognition of broader norms in the field of economic and social rights.

It should be pointed out that the emphasis in the above-mentioned Conventions in some respects coincides (freedom, justice) and differs in others (democracy, supremacy of the statute law / priority of socio-economic rights). Thereinafter these accents appear to affect significantly both the definition of the content of norms in the Constitutions of states, as well as their further interpretation. This situation can be also observed in Ukraine, where there is a constant debate between supporters of guaranteeing freedom and democracy, but without assurance of the social rights of citizens, and supporters of the priority of guaranteeing socio-economic rights of citizens with certain concessions to the defining role of state in the life of society.

In order to reasonably determine the content of the right to work, first of all, it is necessary to identify its place among the constitutional rights.

Analysing the nature of constitutional right to work and the right to social protection, S. P. Holovatyi asserts that these constitutional rights are a part of an independent type of constitutional rights of Ukrainian citizens namely socio-economic rights.

Regarding inaccuracies in the wording of the right to work, S. P. Holovatyi reasonably points out that the national body of constitutional jurisdiction has the main responsibility for the fact that the methodological error, made by the domestic constitution-maker, hasn't been still corrected, when in Part 1 of Art. 43 of the Constitution, "the right to work" is referred to the category of rights, which belong to "everyone", and in Part 2 of the same article the possibility of exercising this right is provided only for Ukrainian citizens [5, p. 55]. We share the scholar's opinion that neither "the right to work" (Article 43 of the Constitution), nor the "the right to social protection" (Article 46 of the Constitution), nor "the right to housing" (Article 47 of the Constitution) are the rights that belong to the category of natural human rights.

The nature of the right to work, as well as other socio-economic rights of citizens, gives rise to a lot of discussions and contradictory interpretations.

This way, L. R. Nalyvaiko asserts that economic human and citizen's rights and freedoms are an independent type of rights and freedoms in the general system of constitutional human and civil rights and freedoms, which should be understood as the ability of human and citizen to own, use and dispose of economic goods, and acquire and protect them in the manner, within the limits, in forms and way provided by the Constitution and the laws of Ukraine. In her opinion, on the basis of an object feature, such a social human and civil right and freedom as the right to work should be distinguished [9, p. 282].

The Scientific and Practical Commentary on the Constitution of Ukraine states that social rights: 'the right to work", "the right to education", "the right to social insurance" cannot be exercised if the state has not established an appropriate legal procedure. At the same time, "human freedoms" can be exercised without such state involvement ("freedom of speech", "freedom of conscience" and "freedom of choice of residence") [10, p. 21].

The issue of which list of rights in the field of labour can be or should be enshrined in the Constitution is not only theoretical but also practical. In the theory of constitutional law, the constitutional (basic) rights of citizens and sectoral (derivative) rights of citizens are distinguished [11, p. 86]. In the context of constitutional complaints, the distinction between these two groups of subjective rights is of crucial importance, as only the first group of rights is subject to constitutional protection, while the second group of rights can be protected in proceedings of courts of general jurisdiction [12, p. 51].

The practice is based on the fact that constitutional rights should be enshrined in the Constitution, and sectoral, correspondingly, in any other normative legal act. However, when considering specific cases, the bodies of constitutional justice follow a rather broad approach of interpretation of the subjective human and civil rights and freedoms, set forth in the Constitution, that is largely justified by the abstract content of the constitutional provisions themselves. Furthermore, the problem of differentiation of constitutional rights from sectoral ones is also connected with the fact that the list of fundamental rights is open. The rules of international law can be, in particular, the sources of fundamental rights and freedoms [12, p. 142–143]. It cannot be denied that the vast majority of individual rights and freedoms become constitutional owing to the fact that they are guaranteed in accordance with generally accepted principles and norms of international law [13, p. 261].

The content of the right to work is the subject of a long-term scientific discussion among domestic and foreign scholars. We share the opinion of those ones, who argue, that within a market economy the right to work cannot have a legal mechanism for implementation, if we understand it in the sense it was enshrined in the socialist constitutions: as the right to receive guaranteed work with wages by its number and quality (Part 1 of Article 118 of the USSR Constitution of 1936, Part 1 of Article 40 of the USSR Constitution of 1977). L. R. Nalyvaiko reasonably points out, that enshrining this right it is necessary find the optimal wording, which would, on the one hand, meet social expectations, but, on the other hand, wouldn't allow to sue the state with the requirement to provide a job on the basis of the constitutional norm. For example, in the Constitution of Italy the right to work isn't established in part I "Rights and responsibilities of citizens", but in the introductory part "Basic principles", which contains norms-principles and norms-goals [9, p. 282–283].

Part 1 of Article 43 of the Constitution of Ukraine [14] provides that everyone has the right to work,

which includes the opportunity to earn a living by work, which one freely chooses or freely agrees to. Disclosing the content of the right to work, the Constitutional Court of Ukraine referred to other provisions of Art. 43 of the Constitution, and to other provisions of the Basic Law. Thus, in the Decision of the Constitutional Court of Ukraine of July 9, 1998, № 12-рп/1998 [15] the Court for the first time interpreted the content of the right to work. According to paragraph 3 of item 4 of the motivating part of this Decision: "the content of the right to work is the opportunity of each person to earn a living by work, which one freely chooses or freely agrees to (Article 43 of the Constitution of Ukraine). This right is ensured by the obligation of the state to create conditions for its full implementation, to guarantee equal opportunities in choosing a profession and type of labour activity, to carry out programs of vocational and technical education, staff training and retraining in accordance with public needs. However, this constitutional right of a citizen cannot be connected only with a certain form of labour contract, which is concluded by a citizen in accordance with his expression of will".

However, already in the Decision of January 29, 2008, № 2-рп/2008 [16] the Constitutional Court of Ukraine tried to reveal the content of the right to work even more widely and pointed out a number of key provisions necessary for the interpretation of this term:

«6.1. In terms of the constitutional appeal the priority of natural human rights should be considered as one of the fundamental principles of the Constitu-tion of Ukraine, according to which the Verkhovna Rada of Ukraine, as a legisla-tive body, should adopt legal acts following this approach.

6.1.1. A system of human rights as the determinative fundamentals of the legal status of a physical person has been developed in international law. Nowadays, this system includes: the Universal Declaration of Human Rights of 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the Encyclical of Human Rights (Pacem in terris) of 1963, the International Covenant on Economic, Social and Cultural Rights of 1966, the International Covenant on Civil and political rights in 1966, etc. The set of rights specified in these documents was reflected in the Constitution of Ukraine of 1996. According to the content of these documents, natural rights are exclusive, inherent from human, inalienable and inviolable by anyone, in particular, the state.

The right to earn a living is inherent from the right to life itself, as the latter is real only when materially secured. The right to work is inherent in human nature itself. Every human has it, it is inalienable, so the person himself has the exclusive right to dispose of his own abilities to work.

The Constitutional Court of Ukraine considers the right to work, specified in Art. 43 of the Constitution of Ukraine, as a natural human need to provide one's life by means of one's own physical and mental abilities. This right includes both the opportunity to work independently (self-employment, farming, etc.) and the opportunity to work under a labour agreement or contract. The Constitutional Court of Ukraine has adhered to such legal position, in particular with regard to the right to work, which is inalienable, in its previous decisions (subparagraph 4.1 of paragraph 4 of the motivating part of the Decision of 7 July 2004 № 14-рп/2004; subparagraph 3.1 of paragraph 3 of the motivating part of the Decision of October 16, 2007 № 8- рп/2007)".

Subparagraph 4.1 of paragraph 4 of the motivating part of the Decision of the Constitutional Court of Ukraine of July 7, 2004 № 14-рп/2004 [17] stipulates:

«4.1. According to Article 43 of the Constitution of Ukraine, everyone has the right to work, which includes the opportunity to earn a living by work which one freely chooses or freely agrees to (part one); the state creates conditions for the full exercise of the right to work by citizens, guarantees equal opportunities in choosing a profession and type of labour activity (part two).

Freedom of labour implies the opportunity of a person to work or not to work, and if work, then freely to choose a type of labour; ensuring that everyone enters into labour relations without discrimination for realization one's abilities. By its nature, the right to work is inalienable and, in essence, means providing equal opportunities for everyone to realize this right.

The realization of the citizen's right to work is implemented by concluding a labour agreement and fulfilling the range of responsibilities according to one's specialty, qualification or position, which is provided by the structure and staff list of the enterprise, institution or organization.

The constitutional principle of equality does not exclude the possibility of the legislator in regulating labour relations to establish certain differences in the legal status of persons which belong to various by type and conditions of activity categories, in particular to impose special regulations concerning the grounds and conditions of replacement of certain positions, if the character of professional activity requires it.

Thus, taking into account the especial (specific) character of the activity, the legislation of Ukraine establishes certain differences among which are the age limits for holding positions of public servants (law enforcement officers), ser-vicemen, employees serving in local governments, etc.

The Constitutional Court of Ukraine in its Decision of 18 April 2000 № 5-рп/2000 (case on age requirement) defined that the Constitution of Ukraine establishes appropriate qualification requirements for candidates for certain government positions; often such requirements for certain categories of public servants are established by the relevant laws of Ukraine (paragraph 2 of the motivating part).

However, the purpose of establishing certain differences (requirements) in the legal status of employees should be significant, and the differences (requirements) that pursue such a goal should comply with

the constitutional provisions, be objectively justified, substantiated and fair. Otherwise, placing restrictions on holding post would mean discrimination.

Cited interpretation of the provisions of Art. 43 of the Constitution of Ukraine corresponds to international legal acts. Thus, according to the International Covenant on Economic, Social and Cultural Rights of 1966, a state may place only such restrictions on these rights, which are prescribed by law, and only in so far, as it is compatible with the nature of those rights, and solely with the purpose of common welfare in democratic society (Article 4)".

Subparagraph 3.1 of paragraph 3 of the motivating part of the Decision of the Constitutional Court of Ukraine of October 16, 2007, № 8-рп/2007 [18 provides:

«3.1. According to parts one and two of Article 43 of the Constitution of Ukraine, everyone has the right to work, which includes the opportunity to earn a living by work which one freely chooses or freely agrees to. The state creates conditions for the full exercise of the right to work by citizens, guarantees equal opportunities in choosing a profession and type of labour activity.

The constitutional right of citizens to work means the opportunity for eve-ryone to earn a living by work, to freely choose a profession or specialty accord-ing to their abilities and desires, to realize their desires to work under a labour agreement (contract) at an enterprise, institution, organization regardless of own-ership or provide oneself with work independently.

The Constitutional Court of Ukraine in the Decision of July 7, 2004, № 14рп/2004 (case on the age limit of a candidate for the position of the head of a higher education institution) formulated a legal position that the right to work by its nature is inalienable and essentially means ensuring equal opportunities for everyone to implement it. The realization of the citizen's right to work is performed by concluding a labour agreement and fulfilling the range of responsibilities according to one's specialty, qualification or position (paragraphs two and three of sub-clause 4.1 of clause 4 of the motivating part).

Based on cited position, it can be argued, that the right to work does not mean that the state guarantees employment to every person, but provides equal opportunities for the exercise of this right.

Public service and service in local governments are some of the types of labour activity of citizens".

Consequently, the key ideas in the above cited interpretations of the right to work made by the Constitutional Court of Ukraine are as follows:

1) the right to work is inherent in human nature itself;

2) the right to work is an inalienable right of every human;

3) the right to work is an opportunity to earn a living, and this right is in-herent from the very right to life;

4) the right to work is connected with the freedom of a person to work or not to work, and if one chooses to work, then with the freedom to opt for the type of activity or occupation;

5) the right to work is realized in the conditions of guarantee by the state of equal opportunities in revealing the abilities to work by human, instead of guarantee of employment;

6) the right to work can be realized through various forms of human involvement in socially useful activities, which somehow are regulated by the norms of various branches of law of Ukraine.

For a correct understanding of the right to work as a constitutional value, we should identify the historical role and place of labour in modern life of human and society.

Thus, Thomas Aquinas wrote: "Labour has four purposes. First and fore-most, it must give food; secondly, it must eliminate idleness, the source of many troubles; thirdly, it must quench lust, kill the flesh; fourth, it allows to do alms" [19, p. 209].

At the intersection of the XX-XXI century there was a redefinition of the essence of labour activity, and the improvement of its own potential became its main motive. In this regard V. L. Inozemtsev points out that with the change of the motivational structure a type of personality focused not on maximizing material consumption, but on achieving inner harmony and perfection begins to form... The progress of post-industrial society is conditional upon the release of creative forces of human and the development of his personality [20, p. 36-37]. I. S. Hunoiev notes the socio-cultural value of labour and its dynamics in an innovative, informational, globalizing society. If in industrial society technological development took place under the slogan "freedom of entrepreneurship", then in post-industrial society a comprehensive "freedom of innovation" has become the central idea, which is inseparable from the idea of the worker not as a kind of production mechanism and not as a "calculator" of expenditures and revenues, but as an individual who has, according to E. Fromm, human nature that is the desire for creativity, freedom, self-realization of the personality. Nowadays, intellectual knowledge, creative skills of the personality, which are manifested in the information society, definitely displace by the degree of their necessity the material capital itself [21, p. 17, 20]. We also agree with O. I. Bohdanova, who notes that labour is a source of moral development of society, the basis for the accumulation of healthy, positive moral qualities of people: honesty, kindness, conscientiousness, diligence [22].

In this way, labour in modern society is considered as a socio-cultural and moral value. The vision of labour as a good, without which other values lose their value, increases its significance in the axiological hierarchy. In addition, defining it as an opportunity for person and his relatives to secure their livelihood, puts work and its derivatives on a par with such a value as human life. This scientific position was enshrined in the decisions of the Constitutional Court of Ukraine which were quoted above.

Thus, labour is a socio-cultural and moral value, which is equally im-portant for society, group and

person. It is the object of normative fixation in the sources of international and national law of a system of legal values, some of which (freedom of labour, prohibition of forced labour, the right to freely dispose of their abilities to work, etc.) belong to the highest constitutional values, which determine the system of sectoral legal regulation of those public relations at the harmonisation of which they are aimed.

Constitutional value is a complex legal category, around the content of which there has been debate. Constitutional values are seemed to be explicitly or implicitly expressed in the Constitution ideas, ideals, principles, standards and goals, which are designed to have a positive impact through their practical implementation in life, and which citizens, their associations, society as a whole or public authority should focus on, adhere to or achieve in their activity [23, p. 3].

The right to work should be considered as the highest value in the hierarchical system of constitutional values h24, p. 156]. This stems from a number of reasons. The deep essence of constitutional values lies in the ordering of ideas, principles, patterns, in the establishment and preservation of harmonious and commensurate phenomena, processes, notions, categories. It is the constitutional values that help to distinguish invariants in labour law, a kind of fulcrum, encrypted in the genetic code of labour law, the sacred essence of which lies in its social orientation, the fundamental, starting point of which is the priority of rights and legitimate interests of employee [25, p. 32].

Labour and its derivatives (freedom of labour, the right to work, etc.), being a fundamental and universal value, are the object not only of constitutional but also of international legal regulation.

I. I. Yatskevych draws attention to the fact that in the Constitution of the Ukrainian SSR of 1978 the content of the right to work consisted in guaranteed employment, and in the Constitution of Ukraine of 1996 the main emphasis in the content of the right to work is on freedom of labour, which is more in line with international standards [26, p. 390]. We can only partially agree with this statement. Indeed, not only Part 1 and Part 3 of Art. 43 of the Constitution of Ukraine, but also a number of international acts contain the provisions on freedom of labour.

Article 23 of the Universal Declaration of Human Rights of 1948 [27] provides for the right to work, to free choice of work, to just and favourable conditions of work and to protection from unemployment. Part 1 of Article 6 of the International Covenant on Economic, Social and Cultural Rights of 1966 [28] indicates that States parties to this Covenant recognize the right to work, including the right of everyone to have the opportunity to earn a living by work which one freely chooses or freely agrees to, and will take appropriate steps to ensure that right.

Pursuant to paragraph 1 of Part I of the European Social Charter of 1996 (revised) [29], the Parties recognize the achievement of the conditions, under which given below rights and principles can be effectively exercised, as the aim of their policy, which they will conduct by all appropriate means, both national and international: "Everyone should have the opportunity to earn a living by profession which one freely chooses". It is stated in Paragraph 4 of the Community Charter of the Fundamental Social Rights of Workers of 1989 [30] that everyone is free to choose and work in one's specialty in accordance with the regulations, which regulate each type of activity. Specifically, this vision of the right to work, which is based on the principle of the rule of law, the priority of international law over national as regards of establishment and endorsement of fundamental human rights and freedoms, is realized in the acts of interpretation of the Constitutional Court of Ukraine.

However, the emphasis made by the Constitutional Court of Ukraine on freedom of labour, freedom of choice of activities, non-derogability of this human right, "overshadowed" another part of the content of this right, which is contained in Part 2 of Art. 43 of the Constitution of Ukraine, and in several international acts. In our opinion, such an approach significantly narrows the content of the right to work, which was originally enshrined in the Universal Declaration of Human Rights in 1948.

Thus, Part 2 of Art. 6 of the International Covenant on Economic, Social and Cultural Rights of 1966 somewhat broadens the understanding of the content of the right to work and indicates, that the measures to be taken by State parties of the Covenant with the purpose of full exercise of this right include vocational and technical education and training programs, ways and methods of achieving productive employment in circumstances that guarantee basic political and economic freedoms.

Article 1 of the European Social Charter of 1996 (revised) already shifts the emphasis not so much on freedom of labour, but on guarantees of the realization of the right to work. Article 1 of the Charter, entitled "The Right to Work", pro-vides that with a view to ensuring the effective exercise of the right to work, the Parties undertake:

1) to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

2) to protect effectively the right of the worker to earn his living in an occupation freely entered upon;

3) to establish or maintain free employment services for all workers;

4) to provide or promote appropriate vocational guidance, training and rehabilitation.

Another important conclusion that can be reached by analysing international legal acts is that the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights, and the European Social Charter of 1996 (revised) consider the right to work in the context of the relationship between the individual and the state, while in the provisions of the conventions of the Internation-

al Labour Organization the right to work is considered within the framework of labour legal relations.

The right to work is a form of expression of both the social and economic essence of labour in society. Let us illustrate this with examples of norms that enshrine the right to work in the constitutions of some foreign countries. Thus, in accordance with Part 1 of Art. 35 of the Constitution of the Republic of Azerbaijan, labour is the basis of personal and public welfare [31, p. 137]. According to the provisions of Art. 4 of the Constitution of Italy, labour is defined as the activity or performance of functions that contribute to the material or spiritual development of society [32, p. 270].

Art. 23 of the Constitution of Belgium guarantees the right to work in order for everyone to have the right to live a life that corresponds to human dignity [31, p. 344]. According to the provisions of Part 1 and Part 2 of Art. 41 of the Constitution of the Republic of Belarus [33], citizens of the Republic of Belarus are guaranteed the right to work as the most dignified way of person's self-affirmation, that is the right to choose a profession, occupation and job according to vocation, abilities, education, vocational training and public needs, and the right to healthy and safe working conditions.

The state creates conditions for full employment of the population. In case of unemployment for reasons beyond one's control, a person is guaranteed a training in new specialties and advanced training, taking into account social needs, as well as unemployment benefits in accordance with the law. Strange as it may see, the provisions of the Constitution of the Republic of Belarus are most in line with the provisions of the International Covenant on Economic, Social and Cultural Rights of 1966 and the European Social Charter of 1996 (revised) in terms of the fullest reflection of the content of the right to work in the Basic Law.

Various forms of realization of the right to work are mentioned in the cited above decisions of the Constitutional Court of Ukraine. Insofar as the right to work includes both self-employment and independent work (entrepreneurial, creative, amateur, etc.), the Constitution of Ukraine lays the foundations for guaranteeing the realization of the right to work, creating the necessary economic, social, political conditions for the realization of the right to work in the form of entrepreneurial activity, conclusion of a labour agreement, creation of production cooperatives, etc. [26, p. 389].

Constitutional rights can be realized in various ways, the choice of which determines the assignment of the appropriate legal status of a citizen. Thus, the constitutional right to work can be exercised by a citizen in various forms, including by entering the public service, concluding a labour agreement and entering into labour relations, independent economic activity, acquiring the status of a lawyer, etc. In this regard, we share the point of view of scientists, that the right to use freely own abilities and property for entrepreneurial and other not prohibited by law economic activity is needed to be considered as a form of realization of the right to work [34, p. 155]. Thus, H. A. Hadzhiiev treats any entrepreneurial and economic activity as labour [35, p. 198].

In this context, A. M. Khurmatulina rightly notes that depending on the form of implementation in the normative content of the constitutional right to work, there are general and special eligibilities. General ones as the right to freely dispose of one's abilities to work, to choose the type of activity and profession, the right to protection from unemployment are common for all forms of realization of the constitutional right to work. Special eligibilities include the right to work in conditions that meet the requirements of safety and hygiene, remuneration for work without any discrimination, the right to individual and collective labour disputes with the use of established means of resolving them, the right to strike, the right to rest and are typical mainly for the implementation of the constitutional right to work in the form of employment or public service [34, p. 157].

Consequently, it can be argued, that the rights in the field of labour, enshrined in Art. 1, 3, 8, 13, 38, 41, 42, 43, 44, 45, 54 of the Constitution of Ukraine, in different variations constitute the content of the constitutional right to work, which, in turn, is conditional upon the legal form of its implementation.

Hence, the right to work can be considered in the context of the unity of ax-iological and formal-legal approaches and which is defined as a state-provided opportunity to realize the values of the highest order in the field of labour through the use of certain legal instruments and institutions.

In the context of the formal-legal approach and internal systemic links of the constitutional norms, the right to work has a complex normative content, the elements of which are: a) constitutional principles in the field of labour (recognition and guarantee of constitutional rights in the field of labour in accordance with generally recognized principles and norms of international law, the direct effect of constitutional norms in the field of labour, equality of constitutional rights in the field of labour, freedom of labour, prohibition of forced labour); b) constitutional presumptions in the field of labour (inalienability of constitutional rights in the field of labour, integrity in the exercise of constitutional rights in the field of labour); c) constitutional rights in the field of labour (the right to freely dispose of their abilities to work, choose the type of activity and profession, the right to work in conditions that meet the requirements of safety and hygiene, the right to remuneration for work without any discrimination, the right to protection from unemployment, the right to resolve labour disputes, the right to strike, the right to rest, etc.) [34, p. 157].

CONCLUSION

Hence, considering the right to work as a constitutional value, it is neces-sary to distinguish the following special features:

1) the constitutional right to work is a supreme

value, which is derived from the highest good – labour;

2) the constitutional right to work is a value of a complex structure, its con-tent consists of relatively independent constitutional values of the highest order and are determined by the chosen form of realization of the constitutional right to work (labour relations, public service, entrepreneurial activity, etc.);

3) realization of the constitutional right to work is based on the adoption of interim measures by other subjects of law, with a particularly important role of the state in this process.

It is the latter aspect that is not included in the decisions of the Constitutional Court of Ukraine on the interpretation of the right to work and precisely this aspect needs further in-depth and comprehensive study.

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