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ARTICLE

Legal Conflicts and Gaps in the Context of Labor Legislation of Ukraine

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Abstract
In the conditions of the democratization of the Ukrainian state, the reform of labor legislation is an objective necessity, about which there are many discussions. The current labor legislation was developed during the existence of strict legal regulation of labor relations, when state property was their economic basis. The relevance of the chosen research topic lies in the fact that the current legislation regulating labor relations is outdated and unbalanced, has problems, shortcomings, conflicts and gaps, and is simply not suitable for regulating this area in a market economy. The present study used a set of general and special methods of scientific knowledge. The purpose of this study is to establish the nature of problems, shortcomings and gaps in the legal regulation of labor relations in Ukraine, identify some of them and find ways to solve them, and formulate proposals to improve existing labor legislation in our country.

Keywords Legal conflicts · Gaps in legislation · Labor legislation · Labor · Labor Code of Ukraine

1 Introduction

Important factors in the formation and functioning of any legal system are its efficiency and integrity, which can ensure the actual achievement of its goals and objectives. One of the important tasks of the state is to transform the legal system into an integral mutually agreed system that can really and fully ensure the priority of universally recognized rights and freedoms, access to justice and judicial protection, as well as efficiency and transparency of the restoration of violated rights. There are numerous gaps and contradictions in the current Ukrainian legislation, and some provisions and even legal acts allow for different interpretations of certain labor

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relations, which leads to numerous defects in law enforcement and violation of the rights and legitimate interests of the subjects of labor relations.

In the conditions of the democratization of Ukraine, the issue of reforming the legislation that regulates labor relations in our country is one that traditionally provokes considerable discussion. A large number of scientific papers are devoted to proposals for possible ways to reform labor legislation, as it is obvious that the Labor Code of Ukraine of 1971 does not meet the requirements of the time (Verkhovna Rada of Ukraine 1971). The domestic legislator chose the path of modifying the norms and principles of Soviet labor legislation instead of fundamentally updating the legal regulation of labor relations. Therefore, despite the creation of drafts of the Labor Code, the task of forming a proper and effective regulatory framework in this area is still unresolved. Despite numerous changes, labor relations in our country are still partially regulated by legislation adopted during the existence of strict legal regulation of labor relations, when their economic basis was state property.

For the correct application of labor law, any conflicts between labor law regulations and gaps in existing legislation must be resolved. As for the conflicts between labor laws, the situation is especially relevant given that the jurisprudence has never worked out legal positions to address the latter. One of the most problematic issues related to conflicts and gaps in the law is their solution, which is a process aimed at achieving uniform regulation of legal relations by either permanently eliminating contradictions from the system of legal requirements, or overcoming them in the course of law enforcement. The purpose of this article is to establish the essence of the problems, shortcomings and gaps in the legal regulation of labor relations in Ukraine, identify and find ways to solve selected problems, and develop proposals for ways to resolve such conflicts. These proposals are based on the logic of the labor law system, and therefore can be directly applied by the courts in resolving relevant disputes.

The problems and gaps in the national labor legislation are the subject of scientific research by such authors as V. V. Zvonarev (2021), O. Ivanchenko (2018), Yu. O. Bezusa (2020), B.V. Chernyavska (2019) and T. Kirichenko (2020). The relevance of the chosen research topic lies in the fact that the current legislation governing labor relations is outdated and unbalanced, with problems, shortcomings and gaps, and is simply not suitable for regulating this area in a market economy. Consequently, the study of problems, shortcomings and gaps in the legal regulation of labor relations in Ukraine remains relevant, despite numerous changes to the Labor Code of Ukraine and numerous studies by domestic scientists (Britchenko and Saienko 2017).

2 Materials and Methods

To achieve this goal and solve the problems caused by it, a set of general and specific methods of scientific knowledge was used. With the help of logical-semantic, deductive methods and methods of abstraction and generalization, the conceptual apparatus is deepened—the concept of conflict of law and gaps in law is defined. The comparative method was used when comparing different legal norms governing

labor relations. The dialectical method was used in the analysis of the theoretical foundations of legal conflicts and gaps in the field of labor law. This method made it possible to clarify and specify the concept of legal conflicts and gaps and ways to overcome them (Lutsenko 2019).

The system method (method of system-structural analysis) contributed, in particular, to the study of types of legal conflicts and gaps. The authors used the formal-logical (dogmatic) method in interpreting the normative content of the provisions of laws and formulating definitions of certain legal concepts of the subject of research. The inductive method contributed to the identification of legislative problems of labor law in Ukraine. The structural–functional method helped to identify the necessary ways to improve the current legislation in the field of labor. The hermeneutic method was useful, in particular, during the development of proposals to improve legislation and ways to overcome conflicts in the legal regulation of labor relations (Lytvyn et al. 2022). The theoretical and prognostic method was used to substantiate proposals and recommendations for improving current labor legislation, allowing the authors to propose legislative novelties that can be used to improve the provisions of labor law.

A number of articles related to the research topic were also analyzed, including "Conflicts in law: theoretical and methodological approaches to definition and classification" (Zvonarev 2021), "Overcoming legal conflicts is a priority of modern legal science" (Ivanchenko 2018), "Modern scientific discourse on the nature of legal conflicts" (Bezusa 2020), "Monitoring of legal conflicts and gaps in the legislation of Ukraine" (Onyschuk 2018), "Legal defects in the legal provision of the right to freedom of association in public organizations in Ukraine" (Chernyavska 2019), "Problems of eliminating the shortcomings of the legal regulation of rule-making subjects of labor law" (Venediktov at. 2019), "Problematic aspects of modern law" (Gavrilyuk 2021), "Disadvantages of legal regulation of labor relations in Ukraine" (Kirichenko 2020), "Problems and gaps in the labor legislation of Ukraine" (Lukash 2018), "Codification of labor legislation: theoretical principles and implementation practice" (Zhernakov 2016), "Legal analysis of shortcomings in the draft of the new Labor Code of Ukraine" (Erofeenko 2020a, b), "Principles of the latest concept of legal regulation working hours" (Kostyuk and Yatskevich 2019), "Draft Labor Code: positive and negative aspects" (Soroka 2019), "Legal analysis of shortcomings in the draft of the new Labor Code of Ukraine" (Erofeenko 2020a, b).

3 Results

3.1 The Current State of Laws

No law, even the most perfect, can predict all the unusual situations that may arise in life and require a legal response, because life is immeasurably richer and more diverse than any legal norms. Therefore, nowhere in the world has there ever been an ideal law that adequately reflected reality. Gaps in legislation are undesirable, but objectively they are inevitable.

Gaps in legislation are defined in the scientific literature as the absence (in whole or in part) of a specific legal norm in the legal act that regulates certain social relations. In other words, the existence of gaps in the legal regulation of labor relations indicates the complete or partial absence of legislative regulation of certain of their aspects, and the need for legal regulation of such legal relations objectively exists. This type of legal defect is noted in the legal literature as one of the most common, and one of its key features is a lack of precedence—the existing problem cannot be solved, because regulations that should be applied in this case are lacking (Iserman et al. 2019).

In the literature, there are gaps in the initial oversight of the legislator, and subsequently, there are gaps in the process of legal regulation and law enforcement practice, when there are previously unknown relationships. In any case, there are gaps in the law—a state of unresolved, uncertain, and hence possibly arbitrary, personal discretion of the official. There are also real and imaginary gaps. Imaginary gaps occur when a judgment is made about the existing alleged gap in the law, when in fact the situation is not in the legal space and, therefore, cannot be resolved (Lytvyn et al. 2021). Gaps in the law are caused mainly by the following: the relative conservatism of the law in comparison with the more active dynamics of social relations, the imperfection of laws and legal techniques, and the emergence of new relationships that did not exist at the time a rule was adopted (Sydorenko et al. 2020).

A legal conflict is also a shortcoming of legislation. In scientific works and legal dictionaries, one can come across different terms—conflict, conflict rule, legal conflict, conflict in law, legal conflict, conflict of law—but these concepts are not sufficiently substantiated. The term collision (Latin—collisio, collide) means a conflict. The concept of conflict in law is used in both a broad and narrow sense. In a broad sense, a legal conflict is seen in fact as any conflict, a dispute in the legal sphere. The concept of conflict in law is based on an understanding of conflicts as complex contradictions between legal views, legal acts and norms, actions of the state and foreign structures, and between states. Legal conflict is a contradiction between existing legal acts, institutions and requirements, and actions to change, recognize or reject them (Zvonarev 2021).

Legal conflict, taken as a basic concept, is seen as the main legal contradiction between legal acts, actions and understanding of law and legal norms. Legal conflict is an acute form of conflict, with its characteristic manifestations of confrontation between the parties. As differences in the content of two or more formally applicable regulations relating to the same issue, in a broad understanding of conflicts, they include (1) conflicts between regulations or individual legal norms, (2) conflicts in lawmaking, (3) conflicts in law enforcement and (4) conflicts of authority and status. The concept of legal conflict in a broad sense is defined as material contradictions in the field of legal regulation (inconsistency in legal requirements and social relations that they must regulate) and formal law (contradictions within the legal system).

Therefore, legal conflict is a general term that defines formal contradictions or differences within the legal system of the state, accompanied by authorized subjects of rulemaking, law enforcement, interpretation and interference with its smooth functioning. Legal conflicts are differences or contradictions between individuals regulating the same or related social relations, as well as

contradictions arising in the process of law enforcement and the exercise of their powers by competent bodies and officials (Ivanchenko 2018).

Labor law contains conflicts, i.e. inconsistent, contradictory norms—for example, during the dismissal of a person under Paragraph 6 of Article 40 of the Labor Code of Ukraine (Verkhovna Rada of Ukraine 1971). On the one hand, the employer is obliged to comply with the court's decision to reinstate the employee, and on the other hand, the employer is not always entitled to dismiss a newly hired person who took the place of the fired person. This is because the labor legislation of Ukraine establishes additional guarantees for many categories of persons both when they are hired and when they are fired. In modern conditions, it would be appropriate to focus on clarifying the conflicts that arise during the release under Paragraph 6 of Article 40 of the Labor Code of Ukraine, and to propose ways to overcome these contradictions (Kochkova and Day 2020).

Analyzing the above provisions and norms of the Labor Code of Ukraine, we can conclude that practitioners often face conflicting legal situations when the employer is forced to dismiss the employee under Paragraph 6 of Article 40 of the Labor Code of Ukraine. Because the legislator is obliged to dismiss a newly hired person, as there is a decision of the competent authority to reinstate an illegally dismissed or transferred employee, at the same time he is burdened with established guarantees for a certain category of workers. Imagine a situation where, after the dismissal of an employee, the employer took in his place a person who is pregnant. According to Part 3 of Article 184 of the Labor Code of Ukraine, the release of pregnant women and women with children under 3 years of age (up to 6 years—Part 6 of Article 179), single mothers with a child under 14 years or those with a disabled child at the initiative of the owner or the body authorized by him is not allowed, except in cases of complete liquidation of the enterprise, institution or organization, when dismissal with compulsory employment is allowed (Bezusa 2020).

It should be noted that there are many cases wherein the first court decision to reinstate one employee is then followed by a decision to reinstate another person who was fired in connection with this reinstatement, again raising the issue of dismissal of the employee whose legal status in time and space arose earlier and whose right to work is primary.

There are, for example, such proposals that emphasize that overcoming the contradictions between the two rules should be guided by the act issued later (the temporal rule of overcoming conflicts of law), and should not use outdated rules on the same issue. If there are discrepancies between constitutional norms and norms of laws, the Constitution should be applied, as it has the highest legal force. If general and special norms are available when resolving the same issue, the latter is preferred (substantive rule of overcoming conflicts of law). Thus, resolving conflicts between the norms of the Code and the law by applying the provisions of the latter is justified by the fact that special rules of law are aimed at taking into account the specifics of a particular type of social relation. The application of the norms of the law adopted later by the Code is justified by the fact that such norms take into account the changes that have taken place in public relations since the adoption of the Code (Dei et al. 2020).

The list of such proposals on ways to overcome inconsistencies between the rules of law can be extended, but they will no longer address the issue of dismissal on the grounds contained in Paragraph 6 of Article 40 of the Labor Code of Ukraine. In our opinion, this conflict should be resolved in favor of persons who have additional guarantees of the right to work. It should be borne in mind that the Labor Code was adopted under other socioeconomic conditions. In this way, social problems will be fairly resolved, upholding the Constitution of Ukraine (Verkhovna Rada of Ukraine 1996) as that of paramount importance. This proposal also corresponds to the principle of legal theory, the essence of which is that in the presence of general and special rules, the latter apply, and labor law, which provides additional guarantees to individuals during employment and dismissal, which in turn are of a special nature (Onyschuk 2018).

Also, among the shortcomings of legal regulation of labor relations, in our opinion, the most negative impact on the rights and interests of their subjects is the inconsistency of certain provisions of the Labor Code of Ukraine with respect to the Constitution of Ukraine, so we propose to analyze some of them and suggest possible solutions. For example, one of such shortcomings is the forced employment of an employee with the consent of the elected body of the trade union, provided for in Part 3 of Article 62 and Article 64 of the Labor Code of Ukraine, because forced employment is a violation of the principle of prohibition of forced labor 43 of the Basic Law of Ukraine. In other words, the Constitution of Ukraine stipulates that the use of forced labor is prohibited, while the Labor Code of Ukraine contains a rule that allows forced labor if by consent of the elected body of the trade union (Yaroshenko et al. 2021).

Solving this problem requires amendments to the Labor Code of Ukraine. Thus, Paragraph 1 of Part 3 of Article 62 of this normative legal act should be worded as follows: The owner or his authorized body may use overtime work only in exceptional cases with the written consent of the employee. In turn, Article 64 of the Labor Code of Ukraine should be worded as follows: Overtime work may be carried out only with the permission of the elected body of the primary trade union organization (trade union representative) of the enterprise, institution, organization with the written consent of the employee. Another inconsistency of the norms of the Labor Code of Ukraine with the provisions of the Constitution of Ukraine is that the current code preserves such a procedure for resolving individual labor disputes that do not comply with the norms of the Basic Law (Chernyavska 2019).

In particular, according to Article 224 of the Labor Code of Ukraine, the Labor Disputes Commission is a mandatory primary body for the consideration of individual labor disputes, except in a number of cases provided by law. In this case, the labor dispute is subject to consideration in the commission on labor disputes in the event that the employee alone or with the participation of a trade union representing his interests did not resolve differences during direct negotiations with the owner or his authorized body. These provisions do not comply with Part 2 of Article 124 of the Constitution of Ukraine, which stipulates that the jurisdiction of the courts extends to any legal disputes arising in the state (Kuzheliev and Britchenko 2016). Eliminating such a shortcoming in the legal regulation of labor relations requires amendments to the Labor Code of Ukraine. The rule on the obligation of initial

consideration in the Labor Disputes Commission should be excluded from the content of the Labor Code of Ukraine, and the employee's appeal to the Labor Disputes Commission should be voluntary if he wishes to resolve the dispute out of court. Therefore, Article 224 of the Labor Code of Ukraine should be worded as follows: The Labor Disputes Commission is a body for reviewing labor disputes arising at enterprises, institutions and organizations, except for disputes referred to in Articles 222, 232 of this Code. A labor dispute shall be considered by the Labor Disputes Commission at the request of the employee, if the employee alone or with the participation of a trade union representing his interests has not resolved the dispute during direct negotiations with the owner or his authorized body (Venediktov et al. 2019).

3.2 Contradictions and Their Solutions

Another contradiction between the Labor Code of Ukraine and the Constitution of Ukraine which we propose to draw attention to is related to gender equality of subjects of labor relations. Thus, Part 1 of Article 24 of the Constitution of Ukraine prohibits any privileges, including on the grounds of sex. This means that the state must ensure the equal constitutional rights and freedoms of citizens and their equality before the law. However, the Labor Code of Ukraine contains a large number of norms in which men and women are granted different degrees of rights in labor relations. For example, Article 56 provides: "At the request of a pregnant woman, a woman with a child under the age of fourteen or a child with a disability, including a child in her care, or caring for a sick family member in accordance with a medical opinion, the owner or the body authorized by him is obliged to establish a part-time or part-time working week." Article 63 stipulates that women with children between the ages of three and fourteen or a child with a disability may engage in overtime work only with their consent. In addition, a separate chapter of the Labor Code of Ukraine is devoted to the regulation of women's labor. Providing additional benefits to women in employment, firstly, further reduces their competitiveness in the labor market, and secondly, violates the rights of the other half of humanity—men who are in the same conditions, as well as women and men who have duties for the care of other close relatives (Tatsiy and Serohina 2018).

In addition, the following provisions of current labor law, which we cite above, contradict the International Labor Organization Convention concerning Equal Treatment and Equal Opportunities for Men and Women Workers: Workers with Family Responsibilities of 23 June 1981 No. 156 (International Labor Organization 1981), ratified by Ukraine in October 1999, which provides the wording for a worker with family responsibilities for persons who, due to family circumstances, need additional guarantees in the employment relationship. The solution to this problem can be found by amending the Labor Code of Ukraine. It should be noted that some of the rules that give women an advantage in employment are related to their physiological characteristics. For example, Article 174 of the Labor Code of Ukraine prohibits the use of women in heavy work and work with harmful or dangerous working conditions, as well as in underground work, except for some underground work, and prohibits the involvement of women in lifting and moving exceeding the established

limits for them. Such norms, in our opinion, should not be changed (Gavrilyuk 2021).

However, the provisions of Part 3 of Article 63 of this legal act in accordance with the Convention of the International Labor Organization on Equal Treatment and Equal Opportunities for Men and Women Workers: Workers with Family Responsibilities of 23 June 1981 No. 156 would be appropriate to state as follows: Workers with family responsibilities who have children between the ages of three and fourteen or a child with a disability may be involved in overtime work only with their consent. A number of norms of the current Labor Code of Ukraine need such changes (Pizhova 2020).

Another contradiction between the Labor Code of Ukraine and the Constitution of Ukraine which should be noted is that Article 135-2 of this normative legal act retains the provision on collective (brigade) liability of employees. It is obvious that this norm contradicts Article 61 of the Constitution of Ukraine, which establishes the individual nature of legal liability. In our opinion, this norm should be excluded from the content of the Labor Code of Ukraine, and each employee should be responsible for the misconduct that he committed personally and that caused negative consequences for the other party to the employment relationship (Polishchuk et al. 2019).

An example of a gap in labor law, in our opinion, is the failure to determine the place of decisions of the European Court of Human Rights in the field of labor law. Thus, Article 17 of the Law of Ukraine "On Enforcement of Decisions and Application of the Case Law of the European Court of Human Rights" of 23 February 2006 No. 3477-IV (Verkhovna Rada of Ukraine 2006) establishes that national courts apply the case law of the European Court of Human Rights as a source of law. However, neither the Labor Code of Ukraine nor other acts of legislation governing labor relations in Ukraine specify the place of this source in the labor law system, its legal force or what part of it is used as a source labor law (Kirichenko 2020).

Bridging gaps in the legal regulation of labor relations should be achieved through rulemaking activities by amending laws, issuing new, more advanced legal acts or creating legal precedent, or concluding a normative agreement. For example, until recently, one of the gaps in the legal regulation of labor relations, which is often the focus of domestic scholars, was the legal regulation of remote employment. Neither the provisions of the Labor Code of Ukraine nor the provisions of the Law of Ukraine "On Employment" of 5 July 2012 No. 5067-VI (Verkhovna Rada of Ukraine 2012) did not contain the concept of remote employment and did not define the procedure and requirements for employment contracts on performance of work under the terms of remote employment. However, with the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus" (COVID-19) of 30 March 2020 No. 540-IX (Verkhovna Rada of Ukraine 2020), Article 60 of the Labor Code of Ukraine was amended, and as a result, this gap was eliminated (Yaroshenko et al. 2020).

Therefore, to eliminate the above gap, it is necessary to amend the Labor Code of Ukraine and supplement it with Article 8-2 as follows: The case law of the European Court of Human Rights and the European Commission of Human Rights is a source

of labor law. Note that currently the dominant approach in the scientific literature is that the elimination of existing gaps in the legal regulation of labor relations should be done by adopting a new Labor Code of Ukraine, which will meet modern ideological, social, economic and cultural processes, and will systematize the norms of labor law of Ukraine and International labor law. Until such a legal act is adopted, quite often in practice another method is used to overcome the gaps in the legal regulation of labor relations.

4 Discussion

Thus, the gap in the legal regulation of labor relations in Ukraine is the complete or partial lack of legislative regulation of certain aspects, the essence of which is the lack of labor legislation regulations that should be applied in this case. Overcoming gaps in the legal regulation of labor relations is carried out by eliminating them (adoption of changes in legislation) or overcoming them (applying the analogy of law). Bridging the gaps in the legal regulation of labor relations is carried out in the process of law enforcement activities by analogy with the law.

At the heart of the analogy of the law (analogia legis) is the resolution of the case (if there is a gap in the law) on the basis of legal norms governing such (similar) social relations. Based on the application of the analogy of the law in the legal regulation of labor relations, the limits of the regulatory influence of the norm can be expanded. Therefore, in labor disputes, by analogy, Part 10 of Article 10 of the Civil Procedure Code of Ukraine may be applied, which stipulates that the visibility of which is provided by the Verkhovna Rada of Ukraine, and the case law of the European Court of Human Rights as a source of law.

To resolve legal conflicts and law enforcement, it would be appropriate to clearly distinguish between regulations and legal norms. Legal norms consist of hypotheses and dispositions. Without the construction of legal norms, it is impossible to use the rule lex spesiali derogat generali for the purposes of resolving legal conflicts. Building legal norms is also necessary in other cases, but often legal conflicts are resolved without reaching the level of legal norms (Lukash 2018).

Thus, when it comes to compensation for non-pecuniary damage caused to the employee, it should be borne in mind that Part 1 of Article 9 of the Civil Code of Ukraine (CC of Ukraine) (Verkhovna Rada of Ukraine 2003) does not preclude the application of this Code to labor relations, but the definition of non-pecuniary damage in Article 2371 of the Labor Code of Ukraine, on the one hand, and that in Article 23 of the Central Committee of Ukraine, on the other hand, are different. Therefore, there may be a question of a conflict between these definitions at home. There is no need to construct (or build) legal norms to resolve this conflict. The conflict in question is resolved through analysis and comparison of the relevant legislation. Therefore, there are serious doubts about the feasibility of separating definitive norms or norm definitions. Definitions of concepts given in normative legal acts can be called legal norms only when the provisions of normative legal acts and legal norms will not differ. Thus, a clear distinction between the provisions of regulations and legal norms involves the distinction between conflicts between the provisions of

regulations and conflicts between legal norms. This, however, does not prevent us from combining these two types of conflicts in the generic concept of legal conflicts (Zhernakov 2016).

Contradictions in the lawmaking process, as well as in the law enforcement process if the latter are not a continuation of legal conflicts in the stated sense, should not be considered legal conflicts or conflicts in legal regulation. This statement implies that the category of legal conflicts is already overloaded with content. It needs careful research, and scientists are far behind. Therefore, contradictions in the process of lawmaking, law enforcement (the latter end with separate opinions of judges), contradictions in the legal system that go beyond legal conflicts as understood above, and contradictions between law and public relations governed by it are categories of legal conflicts that should not be covered. Only the contradictions between natural and positive law as a result of enshrining in the Constitution of Ukraine the principle of the rule of law and a number of its components have become a kind of legal conflict (conflicts in legal regulation) (Erofeenko 2020a, b).

It seems that the denial of the fact that with the help of the analysis of conditions and consequence, legal norms that have certain specifics in law enforcement can be studied. However, it excludes the possibility of professional processing of legal normative and individual acts (Kostyuchenko 2018).

It seems that the denial of the fact that with the help of conclusions from the opposite, from conditions to consequence, degree reveals legal norms that have certain specifics in law enforcement. However, do not lose their character of legal norms, excludes the possibility of professional processing of legal, normative and individual acts. Because these legal norms are estimated to be the majority of all legal norms, i.e., most of the legal content of regulations and individual legal acts, this remark will be taken into account in the analysis (further classification) of three types of conflicts, which are resolved according to the rules lex supern derogat interiori, lex posteriori derogat priori and lex spesiali derogat generali, known since ancient Rome (Kostyuk and Yatskevich 2019).

The first of these rules expresses the principle of subordination of normative and individual legal acts and legal norms. Problems of subordination of normative and individual acts and conflicts between acts of different legal force do not go unnoticed by legal science. However, the issues of conflicts between legal norms that are not textually enshrined in acts of higher legal force, but enshrined in them only logically, and legal norms established by acts of lesser legal force are not specifically studied. However, it can be argued that there is no specificity. And this statement is true, but first, the above examples are given when science proves that the conclusions of the opposite and the degree do not reveal legal norms, but only fill gaps in legislation.

Therefore, in accordance with this opinion, such conclusions from acts of higher legal force do not preclude the application of norms established by acts of lower legal force, which contradicts the above conclusions. Secondly, legal practice, including judicial practice, avoids specifically mentioning legal norms that are only logically enshrined in legislation, and indicates the possibility or impossibility of their application. When applying the rule lex superiori derogat interiori and resolving conflicts between legal norms established by acts of different

hierarchical levels, it should be borne in mind that all legal norms established by acts of higher legal force include those found in the interpretation by means of conclusions from the opposite, from conditions to consequence and vice versa, degree (Soroka 2019).

Thus, if subordinate conflicts in law and legislation are considered as a genus, this genus includes such types as conflicts between legal norms, textually enshrined in acts of greater and lesser legal force; conflicts between legal norms that are logically enshrined in acts of greater legal force and which are revealed in the interpretation by means of a conclusion to the contrary, and legal norms that are enshrined (in any way) in acts of lesser legal force; and conflicts between legal norms, which are textually enshrined in acts of greater legal force, and individual acts (their individual provisions or conditions, including those enshrined in them only logically). Further classification of subordinate conflicts in the legal regulation of social relations involves the separation of conflicts involving each of the types of logically established legal norms (those that are manifested by conclusions from the opposite degree, from the previous legal phenomenon to the next or vice versa) (Lutsenko 2017).

The range of conflicts resolved by the lex spesiali derogat generali rule also needs to be comprehensively investigated. In particular, it must be agreed that conflicts between general and specific legal norms differ depending on whether such norms are compatible or incompatible. Incompatible norms are the legal norms established by item 2 of Part 1 of Article 40 of the Labor Code of Ukraine, which gives the owner or his authorized body the right to terminate the employment contract with the employee on its own initiative if there are relevant grounds, on the one hand, and Part 2 of the same article, which limits this right to certain cases, on the other. Since these two legal norms are incompatible (it is impossible to allow termination of the employment contract on relevant grounds, regardless of the possibility of transferring the employee to another job and prohibit termination of the employment contract on the same grounds if possible), the conflict between them is resolved in favor of special norms (norms that have a narrower hypothesis, i.e., norms established by the second part of Article 40 of the Labor Code of Ukraine). The legal norms are established by Part 3 of Article 36 of the Labor Code of Ukraine, on the one hand, and Paragraph 1 of the first Article 40 of the Labor Code of Ukraine, on the other. Therefore, this conflict is resolved in favor of the rule of law established by the third part of Article 36 of the Labor Code of Ukraine (Erofeenko 2020a, b).

The above gives grounds to conclude that the traditional separation of subordinate, temporal and substantive conflicts in the field of labor law is insufficient. Therefore, the types of conflicts mentioned here should be further classified according to the criterion of the method of enshrining legal norms that are in conflict with other norms, in the acts of labor legislation. Conflicts between textual norms that are not fixed in text (but only logically) should be further divided into types according to the method of the interpretation of legal norms that are in conflict with other legal norms. The whole spectrum of conflicts between the norms of labor law can be developed only in this way. Each type of conflict identified needs further study.

5 Conclusions

The formation of democratic principles in Ukraine and the formation of civil society lead to the creation of new approaches to understanding the importance and place of humans in society, their needs and interests and ensuring the protection of their rights and freedoms. Since everyone dedicates most of their life to work, the main task of the state today is to ensure, first of all, enshrining at the regulatory level, proper regulation of labor and relations resulting from it. Therefore, the need to adopt a new codified act of the Labor Code is explained by the need to reflect these changes, creating normal conditions for the development of labor relations by means of labor law.

On the example of the analyzed problems of legal regulation of labor relations in Ukraine, we conclude that they are certain complex practical issues that have a legal basis and address which requires a comprehensive approach, involving long-term study, research, involvement of scientists and experts, and adoption of certain regulations or their complex. Our study showed that the current legal regulation of labor relations in Ukraine is characterized by problems, shortcomings and gaps. Problems are the most extensive characteristics of the current labor legislation.

A characteristic feature of modern labor law is that it includes a large number of laws and regulations. The norms of labor law contained in them often come into conflict with acts of higher legal force. Therefore, the current legislation regulating labor relations in Ukraine contains a significant number of legal conflicts, despite its regular updating; thus, the need to adopt a new Labor Code of Ukraine is still relevant. The shortcomings are due to mistakes and omissions made by the legislator.

In particular, we have analyzed those errors that contradict labor law and the Basic Law to which labor law must comply. Elimination of shortcomings in the legal regulation of labor relations is carried out by amending regulations, in the content of which omissions or errors were made. Regarding the gaps in the legal regulation of labor relations, we have drawn attention to how they are eliminated by the domestic legislator. Overcoming gaps in the legal regulation of labor relations is carried out by eliminating them (adoption of changes in legislation) or overcoming them (applying the analogy of law). At the same time, the adoption of the new Labor Code of Ukraine remains the most effective way to address all existing problems, shortcomings and gaps in the legal regulation of labor relations in Ukraine.

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References

Bezusa, Y. 2020. Modern scientific discourse on the nature of legal conflicts. *Entrepreneurship, Economy and Law* 4: 240–244.

Britchenko, I., and V. Saienko. 2017. The perception movement economy of Ukraine to business. *Ikonomicheski Izsledvania* 26(4): 163–181.

Chernyavska, B.V. 2019. Legal defects in the legal provision of the right to freedom of association in public organizations in Ukraine. *Prykarpattya Legal Bulletin* 3(28): 123–128.

Dei, M., Rudenko, O. and Lunov, V. (Ed.). (2020). Association agreement: driving integrational changes. *Ottawa: Accent Graphics Communications & Publishing*, 362 p.

Erofeenko, L.V. 2020a. Legal analysis of shortcomings in the draft of the new Labor Code of Ukraine. *Right Short Stories* 10: 129–135.

Erofeenko, L.V. 2020b. Legal analysis of shortcomings in the draft of the new Labor Code of Ukraine. *International University of Business and Law* 10: 129–135.

Gavrilyuk, V.S. 2021. Problematic aspects of modern law. *Current Issues of Economics, Accounting, Finance, Marketing and Law* 2: 157–161.

International Labor Organization. 1981. Convention on Equal Treatment and Equal Opportunities for Men and Women Workers: Workers with Family Responsibilities. Retrieved from: https://zakon.rada.gov.ua/laws/show/993_010#Text

Iserman, R., M. Dei, O. Rudenko, and V. Lunov, eds. 2019. *Innovations in science: the challenges of our time*, 16–29. Hamilton: Accent Graphics Communications & Publishing.

Ivanchenko, O. 2018. Overcoming legal conflicts is a priority of modern legal science. *Legal Bulletin* 2: 11–16.

Kirichenko, T. 2020. Disadvantages of legal regulation of labor relations in Ukraine. *Entrepreneurship, Economy and Law* 12: 96–103.

Kochkova, G.V., and M.O. Day. 2020. The impact of international legal standards in the field of protection of labor rights of judges and European. Radio for Ukraine to reform the national legislation on labor relations with judges. *Magazine KUP* 1: 352–356.

Kostyuchenko, O.E. 2018. Social purpose of labor law: problems of theory and practice. Severodonetsk: East Ukrainian National Univ. Volodymyr Dahl, Ministry of Education and Science of Ukraine, 449 p.

Kostyuk, V.L., and I.I. Yatskevich. 2019. Principles of the latest concept of legal regulation working hours. *Scientific Notes of NaUKMA. Juridical Sciences* 4: 42–51.

Kuzheliev, M., and I. Britchenko. 2016. Theoretical and methodological aspects of formation of corporate control system in Ukraine. *Ikonomicheski Izsledvania* 25(2): 3–28.

Lukash, C.C. 2018. Problems and gaps in the labor legislation of Ukraine. *Scientific Bulletin of Uzhhorod National University* 53(1): 148–151.

Lutsenko, O. 2017. Bringing civil servants to liability for disciplinary misconduct in judicial practice of Ukraine, Poland, Bulgaria and Czech Republic. *Journal of Advanced Research in Law and Economics* 8(1): 103–112. https://doi.org/10.14505/jarle.v8.1(23).12.

Lutsenko, O. 2019. Anticorruption compliance: International experience in legal regulation and innovation for Ukraine. *Humanities and Social Sciences Reviews* 7(5): 765–770.

Lytvyn, N.A., O.V. Artemenko, S.S. Kovalova, M.P. Kobets, and E.V. Kashtan. 2021. Administrative and legal mechanisms for combating corruption. *Journal of Financial Crime*. https://doi.org/10.1108/JFC-11-2021-0241.

Lytvyn, N.A., A.I. Berlach, N.M. Kovalko, A.A. Melnyk, and H.V. Berlach. 2022. Legal regulation of the state financial guarantees of medical services for the population: domestic and international experience. *International Journal of Health Governance*. https://doi.org/10.1108/IJHG-01-2022-0008.

Onyschuk, I.I. 2018. Monitoring of legal conflicts and gaps in the legislation of Ukraine. *Scientific Notes of the Institute of Legislation of the Verkhovna Rada of Ukraine* 6: 21–26.

Pizhova, M.O. 2020. Some topical issues of classification of legal guarantees in labor law. *Law and Innovation Society* 2(15): 63–67.

Polishchuk, Y., A. Ivashchenko, I. Britchenko, P. Machashchik, and S. Shkarlet. 2019. European smart specialization for Ukrainian regional development: path from creation to implementation. *Problems and Perspectives in Management* 17 (2): 376–391. https://doi.org/10.21511/ppm.17(2).2019.29.

Soroka, O.B. 2019. Draft labor code: positive and negative aspects. *Legal Science* 1: 473–476.

Sydorenko, V., I. Shorobura, A. Ponomarenko, M. Dei, and O. Dzhus. 2020. Application of technologies of formal and non-formal education for continuous professional development of the modern specialist. *Revista Tempos E Espacos Em Educacao* 13(32): 1–24.

Tatsiy, V., and S. Serohina. 2018. Bicameralism: European tendencies and perspectives for Ukraine. *Baltic Journal of European Studies* 8(1): 101–122. https://doi.org/10.1515/bjes-2018-0007.

Venediktov, S.V., V.V. Zhernakov, and T.A. Zanfirova. 2019. Problems of eliminating the shortcomings of the legal regulation of rule-making subjects of labor law. *Scientific Bulletin of the International Humanities University* 42: 96–101.

Verkhovna Rada of Ukraine. 1971. Labor Code of Ukraine. Retrieved from: https://zakon.rada.gov.ua/laws/show/322-08#Text

Verkhovna Rada of Ukraine. 1996. Constitution of Ukraine. Retrieved from: https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text

Verkhovna Rada of Ukraine. 2003. The Civil Code of Ukraine. Retrieved from: https://zakon.rada.gov.ua/laws/show/435-15#Text

Verkhovna Rada of Ukraine. 2006. On the implementation of decisions and application of the case law of the European Court of Human Rights. Retrieved from: https://zakon.rada.gov.ua/laws/show/3477-15#Text

Verkhovna Rada of Ukraine. 2012. On employment. Retrieved from: https://zakon.rada.gov.ua/laws/show/5067-17#Text

Verkhovna Rada of Ukraine. 2020. On amendments to some legislative acts of Ukraine aimed at providing additional social and economic guarantees in connection with the spread of coronavirus disease (COVID-19). Retrieved from: https://zakon.rada.gov.ua/laws/show/540-20#Text

Yaroshenko, O.M., O. Hyliaka, A. Mernyk, K. Gnatenko, and A. Sliusar. 2020. The right to euthanasy how the fourth generation human right. *Georgian Medical News* 308(11): 175–180.

Yaroshenko, O.M., N.O. Melnychuk, S.V. Moroz, O.O. Havrylova, and Y.P. Yaryhina. 2021. Features of remote work in Ukraine and the European Union: comparative legal aspect. *Hasanuddin Law Review* 7(3): 136–149. https://doi.org/10.20956/halrev.v7i3.3218/.

Zhernakov, V.V. 2016. Codification of labor legislation: theoretical principles and implementation practice. *Law and Innovation* 1: 11–16.

Zvonarev, V.V. 2021. Conflicts in law: theoretical and methodological approaches to definition and classification. *New Ukrainian Law* 6: 84–88.

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