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## **THE LABOR LEGISLATION OF UKRAINE: THE ISSUES OF ADAPTATION TO THE EUROPEAN UNION STANDARTS**

The article aims to study universal, international and the European standards in the labour organization field. Such standarts formalized and represented in some of the most important international legal acts and charters of international organizations. It's considered the feature of modern legal regulation and labour organization at both European and national level. Comparative legal analysis of labour organization standards in international legal documents has been conducted. Also it's studied all the main legal documents that enshrine European standards of labour organization and its impact on national policy and legislation of Ukraine. It's determined the most important features that are inherent to structural level of the labour organization standards system in the member states of the European Union and its possible implementation in Ukraine.

**Key words:** standard, organization of labour, European Union, international labor law.

Gradually, the issue of organization and protection of human labour goes beyond each state that contributed to its international extension. That is why there is a need to study the universal, international, and, in our case, the European standards in the labour organization field. Such standarts formalized and represented in some of the most important international legal acts and charters of international organizations. These standards should be based on universal standards of human rights and interests determined by the level that must be provided for each person and state.

Currently the issue of labour organization is the subject of scientific and the object of practical activity of enterprises, organizations and institutions, because the rationally and effectively organized labour process is an important factor of the labour productivity growth, production's cost cutting. This, in turn, promotes the competitiveness of market economy subjects.

The labour organization standards should provide abovementioned aspects, because its main task is the optimal combination of working conditions and production goods in the labour process for creation the efficiency work places and production structures.

The purpose of the study is to define, to set and to analyze the basic European standards of labour organizations, to reveal its values and to define the features of its formalization and implementation.

Among the famous scholars, who have been studied the European standards of labour organization, we should note following: V. F. Bezpyata, V. S. Venediktova, L. P. Garashchenko, K. N. Husova, N. I. Yesinova, V. V. Zhernakova, G.T. Zavinovska, V. V. Zakharov, I. Ya. Kiselev, L. I. Lazor, M. O. Lysyuk, V. M. Lukashevich, K. V. Melnik, S. M. Prylypko, V. I. Prokopenko, V. M. Repin, V. B. Rurinkevich, O. A. Telichko, G. I. Chanysheva, O. M. Yaroshenko.

Before we start the research of the European labour organization standards, it's necessary to determine the definition of labour organization and the definition of standard. Labour organization refers to bringing people's work in a system characterized by internal ordering, coherence and cooperation direction for joint programs realization and goals achieving. Organization of work has both static aspect, the structure of the work, and dynamic aspect, functioning, behavior, human interaction during work activity. Organization of work can also be considered as a way of combining the direct producers with the production goods in order to create favorable conditions for obtaining high social and economic results<sup>1</sup>. As for standards, it refers to determine the expected (received) quality, ratified model that is the basis of the evaluation process<sup>2</sup>, a document drawn up as a result of a experts consensus approved by specialized

<sup>1</sup> Організація праці, її форми та принципи. *Бізнес портал Луцька*. <[http://toplutsk.com/articles-article\\_1518.html](http://toplutsk.com/articles-article_1518.html)>.

<sup>2</sup> Кашкин, С.Ю. (2001). *Хартия Европейского союза об основных правах: комментарий: научное издание*. Москва: Юриспруденция, 36.

organization and aims to achieve an optimum degree of order in this field<sup>1</sup>.

Every field of public life has its own requirements for standards, including the labour organization field. Firstly, it is advisable to turn attention to human rights standards. Mr. Rabinovich points to the need to clarify the meaning of international human rights standards, particularly European. According to his definition, European human rights standards - are fixed in legal acts and documents of international organizations principles and provisions concerning human rights and freedoms, designed to serve as benchmarks for respective internal legal practice<sup>2</sup>.

Therefore, it's possible to determine the definition of labour organization European standards. It considers as ordered system of international norms and principles, developed on the basis of mutual agreements between states on the issues related to the recognition and consolidation of fundamental rights in the labour organization field, hired labour regulation and its certain conditions, individual and collective employees' interests protection, migrant employees legal status definition, labour regulation of certain categories of employees, social policy formation and the definition of its priorities. The creation of this system, ensuring its integrity, unity and functional capacity is the result of legislative activities carried out within the most European and international organizations. This activity has orderly and systematic character that achieved through a clear redistribution of tasks and functions of international organizations, coordination of interest between the states and compliance with universally recognized provisions and principles of modern law<sup>3</sup>.

European labour organization standards - are the kind of normative substance of international labour law that reflects the results of countries' activity aimed by bringing the social values to market economy. The content of these standards is the concentrated reflection of the experience of many European countries, the result of meticulous selection of the most important and universal norms and provisions of national legal systems transformed into international standards<sup>4</sup>.

Considering the feature of modern labour organization European standards and its impact on national policy and legislation of some states, we can conclude that after the Second World War the international community has begun intensive comprehension of the importance and significance of human rights issue and the problem of its protection, the value of human life and health and the need to meet social and economic needs.

It started to create numerous international organizations that developed the minimum labour organization standards, that involvement the various specialists to resolve issues related to the impact on states that violate fixed standards, that provide various assistance to states that need it<sup>5</sup>.

Gradually, the issue of protection and defense of labour rights has gone beyond each state and became an international problem. Therefore, there was need for the universal international legal and particular European standards of labour organization that are reflected in a number of important international legal acts<sup>6</sup>.

The most important European standards of labour organization fixed in the Charter and Conventions of the International Labour Organization. This organization was originally established as a specialized agency of the League of Nations, and after the Second World War - the United Nations that was founded in 1919 by the governments of various countries to promote international cooperation in ensuring the safeguarding of world peace and to reduce the social inequities by improving the working conditions<sup>7</sup>.

The International Labour Organization adopts various conventions, develops recommendations and

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<sup>1</sup> Международные акты о правах человека. Сборник документов (2000). *Европейская конвенция про защиту прав человека и основоположных свобод от 4 октября 1950 р.* Москва. Издательская группа Норма-Инфра, 539.

<sup>2</sup> Міністерство юстиції України. Центр порівняльного права (2001). *Ніццький договір та розширення Європейського Союзу.* Київ: Логос, 21.

<sup>3</sup> Телічко, О.А. (2011). Процес адаптації трудового законодавства України в сфері охорони праці до європейських стандарті. *Юридична наука і практика, 1*, 24-30.

<sup>4</sup> Мельник, К.В. (2011). До питання адаптації трудового законодавства до міжнародних норм. *Форум права, 1*, 647-649.

<sup>5</sup> Безп'ята, В.Ф. (2011). Використання міжнародно-правових актів при захисті права на працю. *Форум права, 1*, 47-49.

<sup>6</sup> Вавженчук, С.Я. (2011). Сутність та зміст захисту й охорони трудових прав у законодавстві України. *Юридична наука і практика, 1*, 89-91.

<sup>7</sup> Міжнародна організація праці. *Вікіпедія. Вільна енциклопедія.* <[https://uk.wikipedia.org/wiki/Міжнародна\\_організація\\_праці](https://uk.wikipedia.org/wiki/Міжнародна_організація_праці)>.

sets international standards in the labour organization, employment, training, working conditions, social security, work safety and health care fields. During its activities, the organization has adopted nearly 190 conventions and 200 recommendations.

International Labour Organization responsible for the development of international standards of labour organization and for the supervision over its observance. This is the one tripartite institution within the United Nations, bringing together representatives of government, employers and employees for the aim of general policymaking and programs determination to ensure the worthy work to all citizens.

The primary task of this organization is to support the democracy and social dialogue, the fight against poverty and unemployment, the prohibition of child labour. As a global organization, it is responsible for the development of international standards in the labour organization field and supervises over its observance. In cooperation with the organization's member countries, it seeks to follow with the labour organization standards in law and in practice. It also adopts international legal acts in the work field in the following areas: the right to labour, the prohibition of forced labour, the right to collective bargaining, the right to strike, employment and employment, work conditions, work safety, social cooperation between employees and employers, peaceful means of labour disputes resolving, the right of employees to form the trade organizations, etc.<sup>1</sup>.

International Labour Organization, with other UN agencies, carries out in Ukraine important projects related to the development of social budget model, labour market and vocational training of the unemployed, the development of small and medium enterprises<sup>2</sup>.

In 2013, a Memorandum of Cooperation between the Office of the Human Rights Commissioner of the Verkhovna Rada of Ukraine and the International Labour Organization has been signed. As a result, activity in the labour organization field should carry out on certain public and private standards. The scope of the common standards is not limited by issues of labour organization, they are universal and it's important to follow them during conducting research and practice activity, particularly, concerning with improving the labour organization<sup>3</sup>.

European standards of labour organization are an objective necessity and an essential part of employment rights. It should help to improve all the labour processes, production structures to achieve the highest efficiency of social production<sup>4</sup>.

The main and most important European labour organization standards enshrined in the documents of the Council of Europe - European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Universal Declaration of Human Rights (1966), European Social Charter (1961), European Social Charter (revised) (1996), International Convention on the Elimination of All Forms of Racial Discrimination (1966), Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention on the Rights of the Child (1989) and documents of European Union - European Union Treaty, Charter of the Fundamental Social Rights of Workers (1989), United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Charter of Fundamental Rights of the European Union (2000), Constitution of the European Union, signed in December 2004 by the Heads of States and Governments of the European Union, in directives and regulations of the European Union<sup>5</sup>.

The European Convention on human rights and fundamental freedoms in Art. 4 fixed such an important labour organization standard as the prohibition of forced labour that is understood like nobody can be forced to compulsory labour<sup>6</sup>.

<sup>1</sup> Міжнародно-правове регулювання праці. *Юридичні послуги online. Трудове право*. <[http://yurist-online.com/ukr/uslugi/yuristam/literatura/trud\\_pravo/031.php](http://yurist-online.com/ukr/uslugi/yuristam/literatura/trud_pravo/031.php)>.

<sup>2</sup> The socio-economic impact of HIV/AIDS in Ukraine. *The International Labour Organization*. <[http://www.ilo.org/aids/Publications/WCMS\\_116312/lang--en/index.htm](http://www.ilo.org/aids/Publications/WCMS_116312/lang--en/index.htm)>.

<sup>3</sup> Підписано Меморандум про співробітництво між Офісом Уповноваженого Верховної Ради України з прав людини та Міжнародною організацією праці. *Уповноважений Верховної Ради України з прав людини*. <<http://www1.ombudsman.gov.ua/index.php>>.

<sup>4</sup> Матюха, М.М. (2007). *Економіка праці та соціально-трудова відносини : навч. посібник для дистанційного навчання*. Київ: Університет «Україна», 121.

<sup>5</sup> Міжнародно-правові стандарти у сфері праці і трудових відносин. *Ebook Time*. <[http://www.ebooktime.net/book\\_75\\_glava\\_73.html](http://www.ebooktime.net/book_75_glava_73.html)>.

<sup>6</sup> Конвенція про захист прав людини і основоположних свобод: Міжнародний документ від 04.11.1950. (1998). *Офіційний вісник України*, 13, 270.

The Universal Declaration of Human Rights proclaims a number of basic standards of labour organization, including:

- Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality (Art. 22);
- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (par. 1, Art. 23);
- Everyone, without any discrimination, has the right to equal pay for equal work (par. 2, Art. 23);
- Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection (par. 3, Art. 23);
- Everyone has the right to form and to join trade unions for the protection of his interests (par. 4, Art. 23);
- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay (Art. 24)<sup>1</sup>.

In turn, European Social Charter, signed by Ukraine on May 7, 1999 and ratified by the Law of Ukraine on September 14, 2006 № 137-U, also contains some basic standards of labour organization that have an influence sphere in Europe and in Ukraine<sup>2</sup>.

Basic labour rights in International Covenant on Economic, Social and Cultural Rights enshrining the same provisions as the provisions of the Covenant on Civil and Political Rights. It provides strong standards of organization and execution of work for its implementation into national law of states that ratified the international legal documents.

Among such standards are: the right to work and to its components (Art. 6); recognition of everyone's right to just and favorable conditions of work (Art. 7), namely: fair wages and equal remuneration for work of equal value without any discrimination; safe and healthy working conditions; equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays; the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social, interests, the right to strike (art. 8); right to social security (art. 9); special protection to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. Also this document provides the special measures to protect the labour of all children and young persons (Art. 10)<sup>3</sup>.

Covenant on Civil and Political Rights as a certain standard of labour organization foresaw prohibition of forced or compulsory labour and freedom of association that include the right to form and join trade unions for the protection of its interests<sup>4</sup>.

Another important European labour organization standard is the provision of the Convention on the Elimination of All Forms of Discrimination against Women (Art. 11). The Member States should take all appropriate measures to eliminate the discrimination against women in employment field with the aim to ensure on a basis of equality of men and women the equal rights to work and employment, free choice of profession or type of work, elevation in office, receiving vocational training and retraining, the right to equal pay, social security, the right to paid vacation. States are also obligated to take appropriate measures to prevent discrimination against women because of marriage or maternity and to ensure their effective

<sup>1</sup> Загальна декларація прав людини: Міжнародний документ від 10.12.1948 (2008). *Офіційний вісник України*, 93, 3103.

<sup>2</sup> Європейська соціальна хартія (переглянута): Міжнародний документ від 03.05.1996 № ETS N 163. (2006). *Офіційний вісник України*, 40, 37.

<sup>3</sup> Міжнародний пакт про економічні, соціальні і культурні права: Міжнародний документ від 16.12.1966. *Офіційний веб-сайт Верховної Ради України*. <[http://zakon5.rada.gov.ua/laws/show/995\\_042](http://zakon5.rada.gov.ua/laws/show/995_042)>

<sup>4</sup> Міжнародний пакт про громадянські і політичні права: Міжнародний документ від 16.12.1966. *Офіційний веб-сайт Верховної Ради України*. <[http://zakon5.rada.gov.ua/laws/show/995\\_043](http://zakon5.rada.gov.ua/laws/show/995_043)>.

right to work<sup>1</sup>.

The Convention on the Rights of the Child fixed states' obligation and a certain labour organization standards that show itself in the training of children for employment, recognition of child's right to use the benefit of social security, protection from economic exploitation.

The Convention on the Rights of the Child fixed states' obligation and a certain labour organization standards that show itself in the training of children for employment, recognition of child's right to use the benefit of social security, protection from economic exploitation. States take appropriate legislative, administrative and social measure that set the minimum employment age, that determine the appropriate regulation of the hours and conditions of work that provide for responsibility of persons that prevent this<sup>2</sup>.

Convention on the Protection of the Rights of All Migrant workers and their families provides a number of important and necessary labour organization standards and guarantees of its securing for people working outside the State of nationality or permanent residence<sup>3</sup>.

Adaptation of Ukrainian legislation to the European Union legislation involves the rapprochement with modern European legal system and provides the reforming of the national legal system and gradual harmonization with European standards of legislation in different fields, including European labour organization standards. In accordance with the President Decree "On approval of the Strategy of Ukraine's integration into the European Union" adaptation of social policy of Ukraine involves in reforming insurance systems, organization and safety of work, and other areas of social policy in line with EU standards and the gradual achievement of European level of social security and protection<sup>4</sup>.

The process of adaptation of labour legislation of Ukraine in the work field to the European labour organizations standards can be considered as: (a) the activities of the competent state bodies concerning with the studying of the regulatory framework of the European Union in this area, (b) comparative assessment of national labour law against European standards of organization and regulation of such relations, (c) draw conclusions and make proposals concern with changing current legislation and implementation of ongoing monitoring in EU labour organization standards policy<sup>5</sup>.

In the near future Ukraine expects integration with Euro-Atlantic political and economic structures. Increasing of the labour organization and industrial safety level, preventing production accidents and accidents at work, strengthening of the prevention of occupational injuries and occupational diseases in accordance with European standards are the top tasks. All this factors requires further adaptation of the regulations to the European and international legislation and using of global scientific and practical experience and deepening of the international cooperation in the labour organization field and bringing it to certain standards<sup>6</sup>.

In Ukraine the right to work determined as one of the most important human right and as the key element of civil society that is why it should have its own ideal European labour organization standards, because abovementioned right wouldn't work without them. In Ukraine the right to work determined as one of the most important human right and as the key element of civil society that is why it should have its own ideal European labour organization standards, because abovementioned right wouldn't work without them. At this time, the key issue of post-industrial societies is the role of the social responsibility of business activity participants. Therefore, integration of social measurement in the economic field by means of its standards has been considered as the main direction. Economic growth contributes to social cohesion. But economic development should be seen primarily as a means of achieving "human development"<sup>7</sup>.

<sup>1</sup> Конвенція Організації Об'єднаних Націй про ліквідацію всіх форм дискримінації щодо жінок : Міжнародний документ від 18.12.1979. *Офіційний веб-сайт Верховної Ради України*. <[http://zakon5.rada.gov.ua/laws/show/995\\_207](http://zakon5.rada.gov.ua/laws/show/995_207)>.

<sup>2</sup> Конвенція про права дитини: Міжнародний документ від 20.11.1989 (1990). *Зібрання чинних міжнародних договорів України, 1*, 205.

<sup>3</sup> Міжнародна конвенція про захист прав всіх трудящих-мігрантів та членів їх сімей: Міжнародний документ від 18.12.1990. *Офіційний веб-сайт Верховної Ради України*. <[http://zakon2.rada.gov.ua/laws/show/995\\_203](http://zakon2.rada.gov.ua/laws/show/995_203)>.

<sup>4</sup> Рурінкевіч, В.Б. (2005). Функції системи охорони праці в країнах-учасниць Європейського союзу з огляду на входження до нього України. *Інформаційний бюлетень з охорони праці, 4*, 21-23.

<sup>5</sup> Телічко, О.А. (2011). Процес адаптації трудового законодавства України в сфері охорони праці до європейських стандартів. *Юридична наука і практика, 1*, 29.

<sup>6</sup> Гаращенко, Л.П. (2011). Кодифікація трудового законодавства України: цілі та принципи. *Юридична наука, 1(1)*, 121.

<sup>7</sup> Венедиктов, В.С. (1997). Трудове право України в умовах ринкової економіки: проблеми та перспективи. *Вісник університету внутрішніх справ, 2*, 187.

However, the bodies of the European Union recently take an active stand in reference to labour legislation and bringing it in line with new conditions at the labour market. On 22 November 2006 the European Commission entered a public debate on the modernization of European Union labour law. On 22 November 2006 the European Commission opened a public debate on the modernization of labour law of the European Union. The need for this was due to the fact that in recent years the share of a new type of labour contracts beside the traditional termless contract with full working time, that are also needed to bring them in line with the standards has been increased across Europe. The rapid development of technology and globalization has changed labour markets in Europe. Atypical forms of work as: fixed-term contracts, part-time work, on-call work or work with "zero working hours", work on the basis of lease contracts and freelancers contracts became a real part of the labour markets in Europe and covering 25% of the workforce. Clear and understandable harmonization of labour relations to standards is important for both employers and employees. Although many labour law issues could be regulated at the level of European Union member states, the basic rules of the game should be set at EU level<sup>1</sup>.

That is why, according to the Cabinet of Ministers of Ukraine Resolution "On Approval of the Regulations for Ministry of Social Policy of Ukraine», Ministry of Social Policy of Ukraine should implement within its competence all possible measures for cooperation with the EU for Ukrainian legislation adaptation to the European labour organizations standards<sup>2</sup>.

**Conclusions.** Consequently, European labour organization standards allow ensuring the organization of work at high level. However, each state should care about resolving this issue by its own, and therefore we should intensify the activity concerning with the harmonization of the requirements of laws and regulations in accordance with EU standards. The adoption of modern national legislation on the labour organization and industrial safety, its harmonization with relevant laws and standards of the European Union is a significant step forward but not sufficient to achieve the effective activity of labour organization standards system at the national level. It is essential to achieve effective implementation and actual application of these standards at the level of individual enterprises. Ensuring of appropriate and effective labour organization development at the national level and an effective implementation at the level of each enterprise and industry through the creation of safe and harmless working conditions for employees will prevent occupational disease, injury, and will give the opportunity to extend the period of active employability of employees. Harmonious, coordinated and effective cooperation of all structures involved in the system of labour organization, interactive communication of employers and employees are especially important for the introduction of European labour organization standards and for the improving of its efficiency.

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<sup>1</sup> Болотіна, Н.Б. (2008). *Трудове право України: навч. посіб.* Київ: Знання, 113-115.

<sup>2</sup> *Постанова про затвердження Положення про Міністерство соціальної політики України 2015* (Кабінет Міністрів України). *Офіційний вісник України*, 51, 52.

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