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Contractual Regulation of Employment Relations: Problems and Prospects

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Abstract

The research is devoted to the prospects of the development of labour legislation in the part of contractual regulation of labour relations. The relevance of the study is conditioned upon the necessity to update the regulatory framework governing labour relations, first of all, the relations on the conclusion, amendment, termination of labour contracts, and relations in the field of collective contractual regulation. The purpose of the study is to identify the risks and highlight the shortcomings of draft laws concerning the individual contractual regulation of labour relations, to analyse the prospects for the development of labour legislation on labour and collective agreements, and to develop the authors' proposals to improve the state of legal regulation in this area. To achieve this purpose, the following scientific methods were used: dialectical, Aristotelian, analytical, formal-legal and comparative-legal. As a result of the study, the following priority measures to improve the contractual regulation of labour relations were identified. Ensuring that stakeholders are better informed about collective bargaining as a guarantee of employees' rights (through the development of an information and advisory space, in particular, a virtual one). Intensification of the process of concluding collective agreements for maximum coverage of the employed population and employers, including individual entrepreneurs. Preventing the adoption of the proposed draft law No. 5371 as such, which by its scope may put employees of small and medium-sized enterprises in a worse position in terms of labour relations than employees who will not be subject to the contractual regime of regulation of labour relations. Further work in the area of labour law reform (both on the theoretical and practical levels) should concentrate on exploring options for regulating labour relations that would combine centralised, unified minimum guarantees for all participants in labour relations with special, possibly simplified, rules for particular categories (e.g. micro-enterprises). The generalisations can be used to develop draft regulations for labour law and can also be used to prepare research on the legal regulation of individual and collective labour relations

Keywords: collective contract, employee, collective agreement, employer, employment contract, labour rights, terms and conditions of the employment contract

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Introduction

The reform of labour legislation has been underway in Ukraine for many years. For objective reasons, the main regulatory act – the Labour Code of Ukraine (hereinafter – the Labour Code) [1], which Ukraine "inherited" from the USSR, largely does not correspond to modern economic, social and other realities.

As the analysis of the source base of theoretical and practical nature demonstrates, currently, there are several trends in updating the legislation in the field of labour relations regulation. First of all, since 2003, the Labour Code of Ukraine has been under development. During this time, about ten projects of this regulatory act were developed. However, as of June 2022, they are all still at the level of draft legislation, in fact, due to difficulties in reaching a compromise between the stakeholders (state, employers and employees). The second area of updating the national labour legislation is manifested in the abolition of legislative acts of the ex-USSR and Ukrainian SSR, which were still applied on the territory of Ukraine by the Resolution of the Verkhovna Rada of Ukraine "On the Procedure for Temporary Operation of Certain Legislative Acts of the USSR in Ukraine" of 09/12/1991, No. 1545-XII [2]. Significant steps in this area, notably, among others, the termination of the Ministry of Social Policy of Ukraine Order No. 592 of 04/10/2017 "On Recognition as Not Applicable of Some Regulatory Acts of the USSR on the territory of Ukraine" [3] more than a hundred regulatory acts of the USSR concerning various sectoral aspects of labour protection, and the adoption of the Law of Ukraine "On de-Sovietization of Ukrainian Legislation" of 04/21/2022 No. 2215-IX [4], which amended the Labour Code [1] and terminated the application in Ukraine of the acts of the USSR and Ukrainian SSR state authorities and administration. Finally, the third area is the amendment of some provisions of the current regulations governing labour and related relations. Considering the limited scope of the scientific research, the author would like to highlight the latest legislative originality concerning the improvement of the contractual regime of legal regulation of labour relations.

Notably, the problems of both individual and collective legal regulation of labour relations are actively studied in scientific circles. Among the latest (in time dimension) studies devoted to these issues, one can note the work of N. Hetmantseva and A. Mitrytska, which exposes the legal nature of individual contractual regulation of labour relations, which is based on the employment contract. The authors substantiate the mixed nature of the employment contract through the presence in it of both individual and regulatory legal provisions [5]. S. Gusarov and K. Melnyk emphasise new approaches to the legal regulation and organisation of labour in Ukraine, namely in terms of establishing the content of the prospective Labour Code of Ukraine regarding the labour contract on remote work [6]. The study of prospects and specific features of normative regulation of homework (as the best option in the digital era) in the EU member states was performed by D. Predeţeanu-Dragne, I. Tudor, D. Popescu, V. Nicolae [7] The studies devoted to the improvement of legal regulation of individual components of the content of employment contracts/conditions of work, including by considering international experience, are significant in the context of this research. For example, V. Yarotskiy, Y. Dreval and S. Zaika identified the systemic features of legal regulation of one of the most significant aspects of labour activity – labour protection. The authors performed research on the example of the Republic of Poland as a country that had similar "starting conditions" to Ukraine and is currently demonstrating an intensive process of improving the legal framework in the field of occupational safety and health [8]. Useful proposals to optimise the mandatory condition of the employment contract – wages in the conditions of Europeanisation of the Ukrainian economy through the development of the Unified Wage Scale for all professions in the Classifier of Occupations have been developed by O. Yaroshenko, O. Lutsenko and N. Vapnyarchuk [9]. Noteworthy are works of a more general nature. For example, the study of the conditions for the retention of labour resources based on the sustainable development of production, as a result of which the authors prove the necessity of establishing favourable working conditions, evaluation of special employees as a prerequisite for optimising work processes, increasing their efficiency, and preserving labour resources [10].

At the same time, labour legislation is under active change, in particular, the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine on Enhancing Protection of Employees' Rights" of 05/12/2022, No. 2253-IX [11] became valid, and the Draft Law of Ukraine "Amendments to Certain Legislative Acts Concerning Simplification of Labour Relations in the Sphere of Small and Medium Business and Reduction of Administrative Burdens on Entrepreneurial Activity" was adopted as a foundation [12]. Thus, the authors of this study identify the prospects for contractual regulation of employment relations by identifying the major areas for improvement. To achieve this research purpose, the following objectives are envisaged: to analyse current and prospective legislation, academic writings and international experience regarding the advantages and disadvantages of introducing a special contractual regime for the regulation of labour relations; define the role of collective and contractual regulation of labour relations in modern conditions; highlight the risks of introducing a special contractual regime to regulate labour relations for a limited number of persons; develop proposals for improving the legal regulation of labour relations in Ukraine by contract.

Materials and Methods

The methodological foundation of the study was established by three groups of scientific methods: dialectical,

general scientific (Aristotelian method and method of analysis) and special legal methods (formal-legal method and comparative-legal method). The application of the dialectical method allowed identifying trends in the development of legislation in the area of individual and collective contractual regulation of labour relations. The Aristotelian method was used to clarify the essence of the contractual regime of labour relations regulation. The method of analysis was based on the study of scientific approaches to improving the legal regulation of labour relations. The same method was used to identify contentiously conflicting legal provisions in the area in question, in particular proposals to allow the parties to the employment contract to deviate from the rules governing labour relations established by labour legislation in a way that worsens the position of employees. The comparative legal method was used to compare Ukrainian and international legislation, and to compare the experience of its application. Finally, the content of legal provisions in the area of contractual regulation of labour relations and the development of proposals for their improvement was clarified by using the formal-legal method.

The regulatory framework of the study was based on Ukrainian and international legal acts of various industries. First of all, it is: The Labour Code of Ukraine [1] as the fundamental normative act that currently regulates labour and related relations. The Law of Ukraine "On Collective Contracts and Agreements" [13] – the legal foundation for the collective and contractual regulation of labour relations, and the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine on Enhancing Protection of Employees' Rights" [11] were elaborated. Attention is devoted to the acts of economic and financial legislation – the Commercial Code of Ukraine [14] and the Law of Ukraine "On Accounting and Financial Reporting" [15] in terms of determining the criteria for dividing enterprises into small, medium and large. Considering the significance of international labour standards, the study analysed the provisions of documents such as the International Labour Organisation Declaration of Fundamental Principles and Rights at Work [16] and the International Labour Organisation Convention No. 111 of 06/25/1958 on Discrimination in Respect of Employment and Occupation [17], Directive 2013/34/EU of the European Parliament and the Council of 06/26/2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings [18], International Labour Organisation Convention on the promotion of collective bargaining of 06/19/1981 No. 154 [19]. Prospective legislation has been developed: the draft Labour Code of Ukraine [20] and alternative laws – the Labour Code of Ukraine [21], the draft Law of Ukraine "On Labour" [22], the draft Law of Ukraine "Amendments to Certain Legislative Acts Concerning Simplification of Labour Relations in the Sphere of Small and Medium Business and Reduction of Administrative Burdens on Entrepreneurial Activity" [12], etc.

A summary of the number of small, medium and large enterprises in Ukraine, the number and percentage of employees employed in them, and the unemployment rate are based on official data from the State Statistics Service of Ukraine [23] and specialised information and analytical resources [24].

Results and Discussion

Based on the purpose of this work, the analysis of the identified issues will begin with the prospects of individual contractual legal regulation of labour relations. As N. Hetmantseva and A. Mitrytska argue, it is through individual contractual regulation that the sectoral specifics of labour law emerge and that it establishes the foundation for improving the legal regulation of labour relations. In turn, individual legal regulation of labour relations is based on the employment contract [5, p. 116].

For a comprehensive objective study, first of all, consider the experience of other countries (European countries) in the regulation of individual employment contracts. In the European space, there is no unified approach to the content of the employment contract, the procedure for its conclusion, etc. Each European state has its specific legal regulation of these relations. At the same time, due to globalization processes and the existence of common European labour standards, the process of searching for options for the unification of the legal institution of the employment contract continues [25, p. 340]. In addition, it is significant in the context of this study that Western European countries are shifting their emphasis to the fundamentality of the employment contract (rather than the law) when regulating labour relations while maintaining the rule that the employment contract may define the rights and obligations of the parties without worsening their situation as compared to the law. For example, Article 9 of the Polish Labour Code [26] expressly prohibits the establishment of rules in labour and collective agreements, regulations, and statutes that are less favourable than those established by labour law. Generally, in European countries, the main, fundamental aspects of the interaction between the parties to labour relations are established at the level of legislation. For example, regarding the definition of the list of mandatory terms of the employment contract, the form of the employment contract (Article 34 of the Labour Law of the Czech Republic) [27]. As for the content of the terms of a particular employment contract, the parties are provided with wide freedom to consider the specifics of the respective work. But there is adverse international experience in the field of special regimes of regulation of labour relations. An example is the regulation of non-standard forms of employment in Central and Eastern Europe [28]. The introduction of simplified forms of employment (fixed-term employment contracts), designed to promote the employment of young people, women, and low-skilled workers (i.e. the most vulnerable categories), giving them a chance to escape

from poverty and employment instability, has resulted in the opposite – the lack of guarantees of labour rights. These factors should be considered when reforming Ukrainian labour legislation.

Until recently, legislators have had a unanimous approach to the concept and content of an employment contract (starting with the draft Labour Code of 08/28/2003, No. 1038-1 (Chapter 1, "Labour relations and employment contract" in Book Two "Occurrence, Change and Termination of Labour Relations") [20] and concluding with the draft Labour Code of 11/08/2019, No. 2410-1 (Chapter 1. "Labour relations and employment contract" Book Two "Occurrence and termination of labour relations") [21] and the draft Labour Law of 01/16/2020, No. 2708-2 (Chapter 1. "Labour relations and employment contract" of Section II "Occurrence and termination of labour relations") [22]). The key in this approach was that the content of any employment contract should be based on the acts of labour legislation, comply with it and cannot contain conditions that worsen the position of the employee compared to the current labour legislation. If such conditions were established, they would be invalidated. This position of the lawmakers was correct, but, as noted above, none of the mentioned draft laws was adopted.

But in May 2022 a draft law "Amendments to Certain Legislative Acts Concerning Simplification of Labour Relations in the Sphere of Small and Medium Business and Reduction of Administrative Burdens on Entrepreneurial Activity" of 04/13/2021 (hereinafter – draft law No. 5371) [12] was accepted for consideration, shortening the preparation period, in which cardinal innovations were proposed.

According to the authors of the draft law No. 5371 [12], currently, in Ukraine, there is heavy regulation of labour relations, excessive bureaucratisation of their implementation, complicated procedures for personnel records, maintenance of personnel documentation, unreasonable pressure on employers from the state in the face of regulatory authorities. And all this is against the background of outdated labour legislation that does not comply with the current requirements of the labour market, the principles of human resources management and the principles of market self-regulation. To overcome these difficulties, it was proposed, among other things, to introduce a "contractual regime of regulation of labour relations". The regime was defined as limited, namely: a) for some categories of employees; b) for small and medium-sized enterprises. The essence of the proposed contractual regime is to allow wide freedom to the parties to the employment contract when negotiating its terms and conditions, the content of which may vary even for the worse from those established by the employment law. If the employee and the employer agree on such conditions, they are valid and this will not be considered a deterioration in the position of employees (subparagraph 2) of paragraph 1 of part 1 of the draft law No. 5371 [12]). Evidently, this position is debatable based on the following.

The principles of equality and non-discrimination and the principle of non-deterioration of the employee's position compared to the level stipulated by the legislation are generally recognised both at the Ukrainian and international levels. These fundamental principles are enshrined in Article 2-1 and Article 9 of the Labour Code [1], the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work [16], and the Convention concerning Discrimination in Respect of Employment and Occupation No. 111 [17]. Although experts argue that the proposed amendments to Article 9 of the Labour Code as proposed by Bill 5371 do not fall within the concept of "discrimination" within the meaning of Convention No. 111 on Discrimination in Employment and Occupation [29], however, workers who would be subject to such a contractual regime governing labour relations may be disadvantaged in comparison to other workers, without any objective foundation to justify such differentiation [30].

Consider in more detail the field of the contractual regime of labour relations regulation. Draft Law No. 5371 [12] provides for supplementing the Labour Code of Ukraine [1] with Chapter III-B "Contractual Regime of Labour Relations", and Part 1 of Article 49-5 of this Chapter provides for the application of this regime only to specific categories of participants in labour relations. The criteria for classification as such are: the first - the amount of employee's salary (more than eight minimum wages) and the second – the number of employees per calendar year (not more than 250). At the same time, such employers are called "small and medium entrepreneurship".

Concerning the first criterion, it is not entirely clear what the authors of the draft law No. 5371 [12] were guided by when determining such a minimum wage and generally being bound to such an unstable parameter (given the level of inflation, currency fluctuations, potential changes in the socio-economic life of the population, etc.) The author considers that this may result in the necessity to introduce permanent amendments to the basic normative act of labour legislation – the Labour Code [1]. This proposal is inconsistent with such a feature of the law as a type of legal action as stability. Thus, the author of the research fully supports the thesis that the law is the most stable source of law, and it is this property that allows for achieving a high level of guarantees for the implementation of its provisions. On the contrary – frequent changes in laws (the so-called "legislative instability") are detrimental to the efficiency of legal regulation of social relations [31, p. 21], in particular, labour relations.

As for the second criterion, it is quite controversial. Firstly, according to the current legislation – Part 2 of Article 2 of the Law of Ukraine "On Accounting and Financial Reporting" [15], enterprises are differentiated into micro, small, medium and large enterprises

based on the average number of employees, and the balance value of assets and net income from sales. Thus, to classify an enterprise into a specific category, it must correspond to at least two of the three criteria. This provision of the Ukrainian legislation fully complies with international requirements, reproducing Article 3 of Directive 2013/34/EU of the European Parliament and the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings [18]. Therefore, using the term "small and medium-sized enterprises" by the authors of draft law No. 5371 [12] only based on the number of employees does not comply with the current legislation. Secondly, according to official data of the State Statistics Service of Ukraine [23], in Ukraine over the past decade, there has been a positive trend in the growth of the number of small and medium-sized enterprises. There are many more of them than large businesses (Figures 1-3).

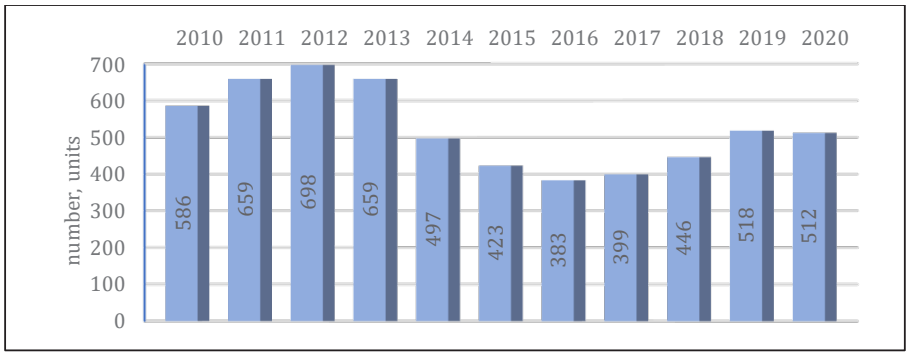

Figure 1. Number of large business entities, units

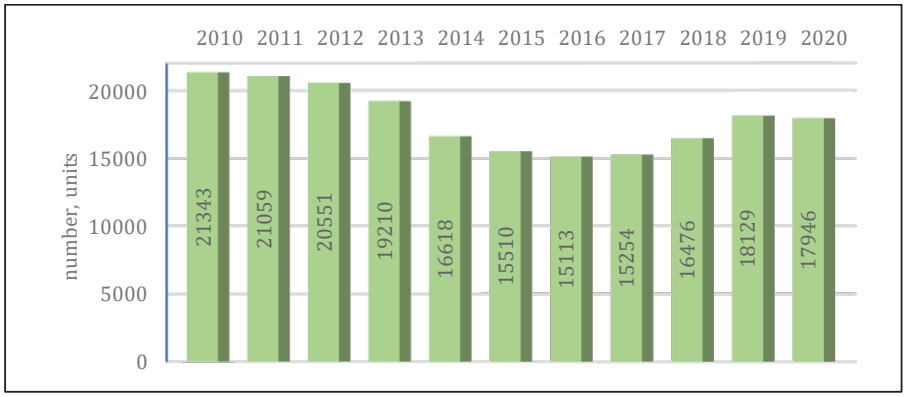

Figure 2. Number of medium-sized enterprises, units

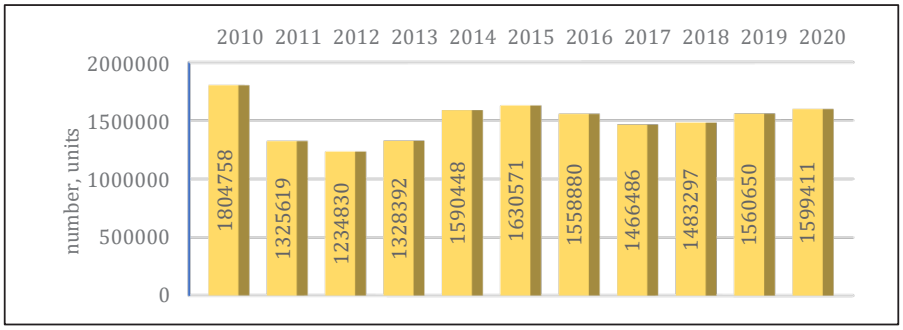

Figure 3. Number of small business entities, units

In addition, the analysis of statistical data on the number of employees in the context of large, medium and small enterprises, from 2010 to 2020 (these are the latest officially published data) demonstrates a steady increase in the number of employees in enterprises belonging to the category of small and medium enterprises. Thus, if as of 2010, 30.6% of employees of the total number worked at large enterprises, in 2020, this figure decreased to 25%. Instead, at medium-sized enterprises, it increased from 43.3% (2010) to 49.1% (2020). The results of generalisations of the dynamics of changes in the number of employees by categories of enterprises are illustrated in Figures 4 and 5.

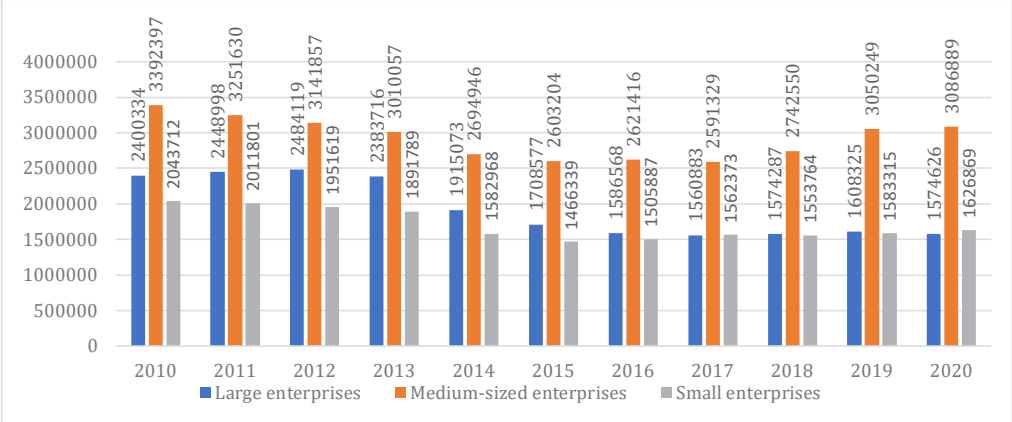

Figure 4. Number of employees at enterprises, persons

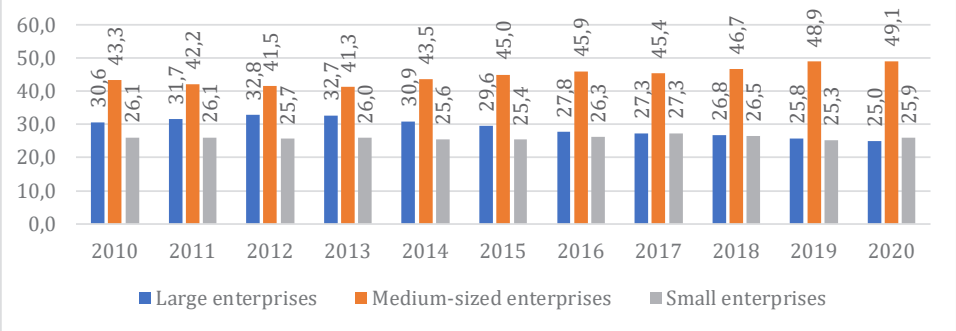

Figure 5. Number of employees at enterprises, in % of the total number of employees

It can be seen that the process of development of small and medium enterprises is underway in Ukraine, it is the right course, based on the positive experience of the European Union. According to the research results, in the European space small and medium-sized enterprises play an essential role in the social and economic development of the European Union countries. These categories of enterprises support the community's economy in times of crisis and ensure competitiveness. The rate of employed workers in small and medium-sized enterprises in the private sector in the European Union is about 67% [32, p. 121]. And the Member States of the European Union, in every possible way, promote the development of small and medium enterprises. In case of considering the proposals for absolute simplification of legal regulation of labour relations between employees and employers – small and medium entrepreneurs, advanced by the authors of the draft law No. 5371 [12], there is a risk of getting the opposite result in Ukraine – to place such employees at a disadvantage compared to those to which the contractual regime of regulation of labour relations will not apply. Such a conclusion follows from the fact that Draft Law No. 5371 [12], firstly, provides the parties to the employment contract with wide freedom to independently resolve all key aspects of the employment relationship, and secondly, explicitly provides worse conditions for the employee (compared to the current labour legislation). For example, it is no longer necessary to obtain permission from the trade union to hire an employee for overtime work, the frequency of wage payments is established at least once a month, the employer has the right to terminate an employment contract at its initiative, in particular, unilaterally (and it is allowed including in the employment contract a condition that no consent of the trade union is required in such termination of the contract even with an employee who is a member of a primary trade union organisation), etc. Finally, the parties may, at their discretion, decide in the employment agreement on the conditions of occurrence and the procedure for resolving conflicts of interest. Thus, it is permitted to "bypass" the regulatory procedures for resolving individual and collective labour disputes (conflicts), which, in the author's opinion, is unacceptable and does not contribute to the efficient and objective protection of the rights and interests of employees.

Despite all the difficulties that may exist for employees if the contractual regime for regulating labour relations as understood in Bill No. 5371 [12] is applied to them, in the current reality, there is a high probability that individuals will agree to the conditions offered by the employer because of the complex situation in the labour market. In the context of military aggression in Ukraine, the unemployment rate is growing rapidly. At the end of 2021, this figure was about 10% [24]. As of May 2022, more than 4.8 million jobs had already been lost in Ukraine due to full-scale Russian aggression, according to the International Labour Organisation.

The International Labour Organisation predicts that Ukraine is capable of restoring 3.4 million jobs if hostilities end quickly. In case of a prolonged war, Ukraine could lose up to 7 million jobs [33].

The potential adverse consequences of changes in the individual-contractual regulation of labour relations can be mitigated by increasing the efficiency of their collective-contractual regulation, i.e. through collective agreements and treaties. As scholars note, the main purpose of collective bargaining is to increase the level of labour rights and guarantees for employees compared to the minimum established by the state centrally in regulations [34, pp. 153-154]. Its purpose is to harmonise the interests of employers and employees by regulating production, labour and socio-economic relations.

Notably, in terms of collective bargaining regulation of labour relations, significant changes have recently occurred due to the adoption of the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine on Enhancing Protection of Employees' Rights" dated 05/12/2022 No. 2253-IX [11]. From then on, collective bargaining agreements can be concluded both with employers who are legal entities and with self-employed individuals. Art. 9 of the Law of Ukraine "On Collective Contracts and Agreements" dated 07/01/1993 No. 3356-XII [13] was changed to introduce the obligation of the employer to provide the employee with the content of the collective bargaining agreement, to ensure free access to the collective bargaining agreement, including the possibility of copying it, before the start of work under the concluded employment agreement. Article 5 of the Law of Ukraine "On Collective Contracts and Agreements" [13] remains unchanged [13], which prohibits the inclusion of conditions that worsen the situation of employees in collective agreements and employment contracts in comparison to the current legislation and invalidates such conditions (if they are still included).

However, the conclusion of a collective agreement is voluntary and initiated by one of the parties. There is no legal liability for the absence of a collective agreement. Moreover, the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine on Enhancing Protection of Employees' Rights" dated 05/12/2022 No. 2253-IX [11] Part 7 of Article 65 of the Commercial Code of Ukraine [14] is presented in a new version to replace the previous one, which contained the phrase "a collective agreement should be concluded". Thus, bringing it into line with International Labour Organisation Convention No. 154 of 06/19/1981 on the Promotion of Collective Bargaining [19].

Conclusions

Considering the above, the authors of this research propose the following measures/areas for improving the contractual regulation of labour relations.

It is essential to intensify the process of concluding collective agreements to achieve the maximum possible coverage of employees by collective agreements. For this purpose, information, education and advisory work among the population should be intensified. Employees should know the concept of the collective agreement, its content, meaning, the procedure of conclusion and other key issues. In addition, the establishment of the simplest possible consultative space is necessary, where all interested parties could receive answers/assistance on the outlined aspects. It, according to the authors of this study, will increase employees' initiative, bring collective bargaining to a new level and prevent employers' abuses in concluding and implementing employment contracts.

It is appropriate to reconsider the legislation that is intended to introduce a specific contractual regime for the regulation of employment relations, primarily concerning its field of application and the possibility of deviations in the content of employment contracts from the prescriptions of the labour law towards the worsening of the situation of employees.

According to the authors of the research, instead of radical changes in terms of introducing a special contractual regime to regulate labour relations for specific categories of employees, further research should be devoted to improving the current labour legislation, establishing an optimal model for the employee, the employer and the state to maintain personnel documentation, expanding opportunities (within specific limits defined by labour legislation) to reflect the specifics of the employment relationship. Ukraine already has positive examples of such improvement. For example, to simplify, streamline and "modernise" the issue of employers determining the necessary personal protective equipment for employees, taking into account the risks in the workplace, the required protective features of personal protective equipment and the employer's choice of protective equipment from the range available on the market. Thus, the relative freedom of choice was ensured without prejudice to the right of employees to labour protection.

The obtained results can become the foundation for the development of the content of normative acts in the field of the contractual regime of labour relations regulation and can be used in theoretical works.

References

[1] Labour Code of Ukraine. (1971, Desember). Retrieved from https://zakon.rada.gov.ua/laws/show/322-08#Text.
[2] Resolution of the Verkhovna Rada of Ukraine No. 1545-XII "On the Procedure for Temporary Operation of Certain Legislative Acts of the USSR in Ukraine". (1991, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1545-12#Text.
[3] Order of the Ministry of Social Policy of Ukraine No. 592 "On Recognition as Not Applicable of Some Regulatory Acts of the USSR on the territory of Ukraine". (2017, April). Retrieved from https://zakon.rada.gov.ua/laws/show/z0561-17#Text.

[4] Law of Ukraine No. 2215-IX "On de-Sovietization of Ukrainian Legislation". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2215-20#Text.
[5] Hetmantseva, N., & Mitrytska, A. (2021). The nature and essence of individual-contractual regulation of social relations in the field of wage labor. *Entrepreneurship, Economy and Law,* 4, 111-117.
[6] Gusarov, S.M., & Melnyk, K.Yu. (2021). New approaches to legal regulation and labor organization in Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(1), 169-178.
[7] Predeţeanu-Dragne, D., Tudor, I., Popescu, D., & Nicolae, V. (2020). Is homeworking a better option in the digital era? An empirical research across EU member states. *European Journal of Sustainable Development*, 9(4), 109-117.
[8] Yarotskiy, V.L., Dreval, Yu.D., & Zaika, S.O. (2021). System signs of statutory regulation of occupational health and safety in the republic of Poland. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(3), 238-247.
[9] Yaroshenko, O.M., Lutsenko, O.Ye., & Vapnyarchuk, N.M. (2021). Salary optimisation in Ukraine in the context of the economy Europeanisation. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 224-237.
[10] Danova, K., Malysheva, V., Rosokha, V., Glushenkova, I., & Popovych, N. (2020). Maintenance of labor resources as fundamentals of sustainable manufacturing development. *European Journal of Sustainable Development,* 9(1), 432-441.
[11] Law of Ukraine No. 2253-IX "On Amending Certain Legislative Acts of Ukraine on Enhancing Protection of Employees' Rights". (2022, May). Retrieved from https://zakon.rada.gov.ua/laws/card/2253-20.
[12] Draft Law of Ukraine No. 5371 "On Amendments to Certain Legislative Acts Concerning Simplification of Labour Relations in the Sphere of Small and Medium Business and Reduction of Administrative Burdens on Entrepreneurial Activity". (2021, April). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71653.
[13] Law of Ukraine No. 3356-XII "On Collective Contracts and Agreements". (1993, July). Retrieved from https://zakon.rada.gov.ua/laws/show/3356-12#Text.
[14] Commercial Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/436-15#Text.
[15] Law of Ukraine No. 996-XIV "On Accounting and Financial Reporting". (1999, July). Retrieved from https://zakon.rada.gov.ua/laws/show/996-14#Text.
[16] International Labour Organisation Declaration of Fundamental Principles and Rights at Work. (1998, June). Retrieved from https://zakon.rada.gov.ua/laws/show/993_260#Text.
[17] International Labour Organisation Convention concerning Discrimination in Respect of Employment and Occupation No. 111. (1958, June). Retrieved from https://zakon.rada.gov.ua/laws/show/993_161#Text.
[18] Directive 2013/34/EU of the European Parliament and of the Council on the Annual Financial Statements, Consolidated Financial Statements and Related Reports of Certain Types of Undertakings. (2013, June). Retrieved from http://search.ligazakon.ua/l_doc2.nsf/link1/MU13169.html.
[19] International Labour Organisation Convention on the Promotion of Collective Bargaining. (1981, June). Retrieved from http://data.europa.eu/eli/dir/2013/34/oj.
[20] Draft Labour Code of Ukraine No. 1038-1. (2003, August). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=15689.
[21] Draft Labour Code of Ukraine No. 2410-1. (2019, November). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/455.
[22] Draft Law of Ukraine No. 2708-2 "On Labour". (2020, January). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67930.
[23] Business performance indicators. (n.d.). *State Statistics Service of Ukraine*. Retrieved from http://www.ukrstat.gov.ua/.
[24] Unemployment rate in Ukraine in 2021. (2022). *Minfin*. Retrieved from https://index.minfin.com.ua/ua/labour/unemploy/.
[25] Sereda, O.G., & Vlasyuk, Yu.S. (2021). Employment contract according to the legislation of Ukraine and foreign countries: Comparative legal analysis. *Legal Scientific Electronic Journal,* 4, 339-341.
[26] Kodeks pracy. Dz. U. 1974 Nr 24 poz. 141. (1974, Czerwiec). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19740240141/U/D19740141Lj.pdf
[27] Zákon zákoník práce č. 262/2006 Sb. (2006, červen). Retrieved from https://www.zakonyprolidi.cz/cs/2006-262/souvislosti
[28] Mihes, C. (Ed.). (2021). Non-standard forms of employment in selected countries in Central and Eastern Europe. A critical glance into regulation and implementation. Budapest: ILO. Retrieved from https://www.ilo.org/budapest/what-we-do/publications/WCMS_793096/lang--en/index.htm.
[29] International Labour Organization. (n.d.). Technical Note: Draft Law on Amendments to Certain Legislative Acts Concerning Simplification of Labour Relations in the Sphere of Small and Medium Business and Reduction of Administrative Burdens on Entrepreneurial Activity. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms_802222.pdf.

[30] Opinion of the Committee of the Verkhovna Rada on Ukraine's Integration into the European Union on the Draft Law "On Amending Certain Legislative Acts Regarding the Simplification of Labour Relations in the Sphere of Small and Medium Entrepreneurship and Reduction of the Administrative Burden on Entrepreneurship" (Registration No. 5371 of 04/13/2021, by People's Deputy H. Tretyakova and Others). (2021, September). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71653.
[31] Hunko, N.Yu. (2018). Laws: General theoretical characteristics. *Scientific Bulletin of Uzhhorod National University. Series: Law*, 53(1), 19-22.
[32] Strelbitska, N.Ye., & Redko, T.V. (2016). Small and medium enterprises as a factor of socio-economic growth of the EU. *Scientific Bulletin of Uzhhorod National University. Series: International Economic Relations and the World Economy,* 7(3), 118-122.
[33] International Labour Organization. (2022). The impact of the Ukraine crisis on the world of work: Initial assessments. *ILO Brief.* Retrieved from https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/documents/briefingnote/wcms_844295.pdf.
[34] Khrabatyn, O. (2021). The effectiveness of the collective agreement as an indicator of the implementation of collective agreement regulation. *Entrepreneurship, Economy and Law,* 3, 151-155.

Договірне регулювання трудових правовідносин: проблеми та перспективи

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Анотація

Статтю присвячено дослідженню перспектив розвитку трудового законодавства в частині договірного регулювання трудових відносин. Актуальність роботи зумовлено потребою в оновленні нормативної бази, що регулює трудові відносини, насамперед відносини щодо укладання, зміни, припинення трудових договорів, а також відносини у сфері колективно-договірного регулювання. Метою дослідження є визначення ризиків та виокремлення недоліків законопроєктів, присвячених питанням індивідуально-договірного регулювання трудових відносин, аналізі перспектив розвитку трудового законодавства про трудові та колективні договори, формулювання авторських пропозицій щодо покращення стану правового регулювання в цій сфері. Досягненню поставленої мети слугувало застосування таких методів науково пізнання, як діалектичний, формально-логічний, метод аналізу, формально-юридичний та порівняльно-правовий. У підсумку проведеного дослідження сформульовано такі першочергові заходи з удосконалення договірного регулювання трудових відносин. Забезпечення підвищення рівня поінформованості зацікавлених осіб у сфері колективно-договірного регулювання трудових відносин як гарантії дотримання прав найманих працівників (через формування інформаційно-консультативного простору, зокрема віртуального). Інтенсифікація процесу укладання колективних договорів для максимального охоплення зайнятого населення та роботодавців, зокрема фізичних осіб-підприємців. Недопущення прийняття законопроєкту № 5371 в запропонованій редакції як такого, що своєю сферою дії може ставити найманих працівників малих та середніх підприємств у гірше становище в частині трудових відносин, ніж працівників, на яких не поширюватиметься договірний режим регулювання трудових відносин. Подальшу роботу в сфері реформування трудового законодавства (як на теоретичному та практичному рівнях) концентрувати на пошуку таких варіантів регулювання трудових відносин, які б поєднували централізовані, уніфіковані для всіх учасників трудових відносин мінімальні гарантії зі спеціальними, можливо спрощеними, правилами для окремих категорій, наприклад мікропідприємств. Отримані узагальнення можуть використовуватися для розробки проєктів нормативно-правових актів трудового законодавства, стануть в пригоді під час роботи над науковими дослідженнями, присвяченими проблематиці правового регулювання індивідуального та колективного регулювання трудових відносин

Ключові слова: колективний договір, найманий працівник, колективна угода, роботодавець, трудовий договір, трудові права, умови трудового договору