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UKRAINE'S EUROPEAN INTEGRATION: FUNDAMENTALS OF LABOUR AND EMPLOYMENT REGULATION

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Abstract. The purpose of the paper is to identify the foundations, problems and prospects of modernization of labour legislation and employment sphere in the process of European integration of Ukraine, which is discussed in the context of optimisation of factors of competitiveness of the national economy in the globalised world. Methodology. A significant number of commitments regarding the convergence of labour legislation and regulatory principles of the Ukrainian labour sphere with the EU acquis communautaire require a broad intersectoral and inter-ministerial approach to the study, development and implementation of relevant processes and measures. Results. Activities aimed at bringing Ukrainian labour legislation into line with the provisions of EU law take place in the following areas: standardisation of the basic principles of labour legislation; prevention of discrimination and ensuring gender equality of employees; ensuring their safety at work. The difficulties in meeting the requirements of the EU acquis communautaire in the field of employment and ensuring the social and labour rights of the working population are largely connected with the contradictory interpretations of Ukraine's obligations under the Association Agreement by the EU itself and by representatives of the national legislative and executive authorities, oriented towards the development of a neoliberal economy with the rejection of a large part of the usual social guarantees, a significant strengthening of employers' rights. Practical implications. The identified problems of the reform of the labour legislation of Ukraine within the framework of the obligations of the Association Agreement with the EU testify to the necessity of more careful consideration of the achievements of the established national practice of regulating the labour sphere together with activation of the acquis communautaire in the sphere of observance of social and labour rights of certain categories of employees and labour collectives, ensuring labour safety in the conditions of modernisation and diversification of the technological base of the economy, as well as to the necessity of implementation of the best world standards and benchmarks of improving the quality of working life. Value/originality. Expectations for a sustainable adaptation of the Ukrainian labour sphere to the common EU legal framework are closely linked to the overcoming of the identified contradictions in the interpretation of the Association Agreement obligations by the national authorities, and also to the focus on the foundations of the harmonisation of legislative norms through increasing the effectiveness of the social dialogue.

Key words: European integration, employment, labour legislation, competitiveness, socio-economic policy of Ukraine.

JEL Classification: F66, J20, J80, J88, K31

1. Introduction

The search for administrative, financial and marketing resources to radically increase the competitiveness of national producers, expand the markets for goods and services, and optimise security guarantees argued for Ukraine's European integration aspirations. As part of the Association Agreement with the EU, Ukraine has unilaterally and voluntarily undertaken to

implement a set of consistent measures that create the basis for integration into the political and administrative structures, labour market, internal market and social protection systems of this powerful cross-border community. A significant number of commitments regarding the convergence of labour legislation and regulatory bases of the functioning of the Ukrainian labour sphere with the EU acquis

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communautaire require a broad intersectoral and interdepartmental approach to the development and implementation of relevant measures.

At the same time, there are significant difficulties in fulfilling the requirements for implementing the EU's common legal heritage (acquis communautaire) in the field of employment and ensuring the social and labour rights of the working population, largely due to contradictory interpretations of Ukraine's obligations under the Association Agreement by the EU itself and by representatives of the national legislative and executive authorities, which are focused on the development of a neoliberal economy with the rejection of a large part of the usual social guarantees, a significant strengthening employers' rights and freedom of action. An effective way of solving a number of problems in the reform of labour legislation and the employment sphere within the framework of the EU Association Agreement is to take due account of the best global practices in employment regulation, in particular as reflected in the recommendations of the ILO, as well as the best practices of the Ukrainian legal system.

2. Methodology of Ukraine's European Integration in the Literature Review

In addition to the annual government reports on the implementation of the Association Agreement between Ukraine and the EU (Office of the Deputy Prime Minister of Ukraine, 2018, 2023), the documents of the EU itself, which assess the degree of Ukraine's readiness for membership (European Commission, 2023), the general and sectoral problems of European integration are highlighted in papers that:

- Outline the principles (Dorohikh, 2020; Makohon, 2023), peculiarities and shortcomings of Ukraine's progress towards the implementation of the EU Association Agreement in the pre-war realities (Kvasha, Syniakova, 2019) and in the conditions of martial law (Davymuka, 2022; The Razumkov Centre, 2022);
- determine the peculiarities, threats and shortcomings in the fulfilment of Ukraine's European integration obligations in the context of various aspects of the national socioeconomic situation (Sirenko, 2018; Khevtsuriani, 2020); develop the approaches to optimising competitiveness as a result of using and increasing the potential of the advantages and

opportunities of the candidate status for EU membership (Vovkanych, Andrejko, 2013; Movchan, 2022);

- analyse the potential, best results and acute problems of improvement of labour legislation and employment sphere of Ukraine in accordance with the objective and documented coverage of European integration processes, as well as the conjunctural approaches of legislative and executive authorities to their implementation (Makohon, 2023; Chyzhmar, 2020; Shevchenko, 2023);
- substantiate the priorities of the processes of simultaneous acceleration of European integration and modernisation of the national economy through the development of the spectrum of segments of the innovation sphere of Ukraine, stimulation of innovative activity of the workforce (Chyzhmar, 2020; Pidorycheva, 2021).

The analysis of these works proves the necessity of further research of both problems and contradictions in approaches to modernisation of labour legislation in the process of European integration of Ukraine, and also the determination of priorities for improvement of the national labour sphere in order to increase the efficiency of implementation and growth of the competitive potential of the Ukrainian labour force and business entities. Thus, the purpose of the article is to identify the problems and peculiarities of reforming the national labour legislation and the employment sector against the background of contradictory interpretations of the European integration principles; to substantiate the priorities for improving sectoral integration processes in order to optimise Ukraine's competitive potential.

3. Assessment of the Level of Fulfilment of Ukraine's Commitments

Activities to harmonise national labour legislation with the norms, regulations and standards of the European Union have been ongoing since Ukraine signed the Association Agreement with the EU and approved the National Programme for the Adaptation of Ukrainian Legislation to the Legislation of the European Union (Law of 18.03.2004 No. 1629-IV).

Attempts by governmental and nongovernmental expert structures to quantitatively and qualitatively assess the pace and scope of

implementation of Ukraine's obligations under the Association Agreement reveal numerous problems with the spread of EU acquis communautaire norms and practices in a number of areas of labour law, particularly in the field of social protection of employed and selfemployed workers at the individual collective level, policy and practice of occupational health and safety of workers, their antidiscrimination and gender equality (Vovkanych, Sirenko, 2013; 2018; Syniakova, 2019; Chyzhmar, 2020; Dorohikh, 2020; Khevtsuriani, 2020; Pidorycheva, 2021; Davymuka, 2022; Movchan, 2022; The Razumkov Centre, 2022; Makohon, 2023; Shevchenko, 2023).

In general, the progress of implementation of the Association Agreement with the EU in the area of Ukrainian social policy and labour relations in 2017 was estimated at 52%; this indicator at that time was ahead of the indicators for most areas of harmonisation of national legislation and the EU acquis communautaire (Office of the Deputy Prime Minister of Ukraine, 2018). As of 2022, the results of the implementation of commitments in the field of social policy, organisation and regulation of labour relations were estimated at 54%, which was one of the lowest indicators of the corresponding screening against the background of the overall progress in the implementation of the Association Agreement, which was determined at 72% (among the worst indicators - the fulfilment of commitments in the field of financial cooperation and measures against fraud - 24%, protection of consumer rights - 48%, transport, transport infrastructure, postal and courier services – 53%) (Office of the Deputy Prime Minister of Ukraine, 2023). After analysing the progress in the implementation of the principles and tasks in the field of social policy, employment and equal opportunities from Articles 419-420 of the Association Agreement, the European Commission assessed Ukraine's level of preparation as initial in early February 2023 (European Commission, 2023).

Activities in the sphere of adaptation of Ukrainian labour legislation to the provisions of the law of the European Union take place in three main areas: normalisation of the basic principles of labour legislation, prevention of discrimination and ensuring gender equality of employees, ensuring their safe work (Office of

the Deputy Prime Minister of Ukraine, 2018, 2023). The period of adaptation of Ukrainian and EU legislation that has already passed has shown that the process of bringing national labour legislation in line with the current EU directives, regulations and recommendations is now underway:

- Harmonisation of production norms, rules and standards (both technical and technological processes in particular, in aspects that directly determine the conditions and level of safety of employees, and the final product itself);
- provision of certain standards of social equality for the entire spectrum of population groups in terms of exercising the right to employment, an adequate material base for preserving and reproducing professional and qualification potential (their own and their family members'), and accumulation of certain pension savings after the end of the socially active working period of life;
- balancing the interests of employers and employees with regard to: the level and pace of capitalisation of individual and collective labour potential, its value in production costs, parameters of distribution and redistribution of income from economic activity; approaches to maintaining the desired flexibility of business entities and production processes in the dynamic conditions of the national, macroregional and global economy, outlined by the latest technological modes.

In general, the monitoring results show that activities related to the adaptation and implementation of EU norms and standards have significantly intensified in recent years in the following areas: stimulating an increase in the level of employment; creating and preserving jobs, in particular for internally displaced persons; reducing tensions in the labour market by involving clients of the State Employment Service in active employment promotion programmes; improving labour relations in line international norms and monitored and disseminated by the ILO; raising the level of wages; resolving the problems of temporary workers, collective dismissals, ensuring requirements for labour safety and labour of women (pregnant women and employees who have given birth to children), the amount of social leave, remote work of employees at home, prohibition of discrimination based on race,

gender, skin colour, health status, sexual orientation, and so forth (Dorohikh, 2020; Makohon, 2023; The Razumkov Centre, 2022; Chyzhmar, 2020; Shevchenko, 2023).

4. Problems and Principles of Adaptation of Common EU Standards

The main shortcomings and problems of adaptation and implementation of common EU norms and standards into Ukrainian labour legislation, business and management practices, which were summarised in the European Commission's Analytical Report, revealed an urgent need for additional steps, first of all, in the following areas (European Commission, 2023; Makohon, 2023; Shevchenko, 2023): further repayment of wage arrears; improvement of social dialogue (in particular, the provisions of the Law of Ukraine "On Social Dialogue in Ukraine" and their implementation), strengthening of non-discrimination in employment; increase the level of harmonisation of principles in the field of hygiene, occupational health and safety; improve the labour inspection system; harmonisation of labour legislation in the transport sector; regulation of informal employment, strengthening the protection of part-time workers in the private and public sectors, including those with non-standard forms of employment (e.g., freelancers) and fixedterm contracts; ensuring freedom of movement of employees; improving gender equality of employees.

In addition to the above-mentioned problems, experts who analysed the European Commission's report also add the lack of doctrine Ukrainian of socio-economic development, unsatisfactory systematisation of the national policy of labour legislation reform in accordance with EU legislation; the chaotic planning of appropriate measures and the low quality of preparatory analyses; the ambiguity of the formulation and interpretation of the concept of "safe flexibility" of labour relations, business, the economy as a whole, which is used to substantiate the legislative and governmental initiatives on the reform of the labour sphere that are most discussed in the national society today; disadvantages and contradictions of social dialogue (Makohon, 2023).

According to the broad scientific community, the tactics of labour law reform chosen by the

government structures do not correspond to the standards of European social policy; hence, tactic can't ensure the growth and stabilisation economic and development indicators, either now or in the more or less distant future, which is extremely important for increasing production volumes and profits, as well as for improving the competitiveness of labour and products on foreign markets (Sirenko, 2018; Kvasha, Syniakova, 2019; Chyzhmar, 2020; Pidorycheva, 2021; The Razumkov Centre, 2022; Shevchenko, 2023). In particular, it is emphasized that further increase of competitiveness of the production base and products in the conditions of adaptation of the EU value guidelines in the field of hired labour and entrepreneurial activity includes: increase of costs of material, technical and organisational support of the production base and also its resource part; transition of employers in the field of technologies from their established determinism to choice (Chyzhmar, 2020).

That is why, in the process of modernisation of labour relations and macro-regional unification, it is necessary to emphasise the urgency of measures to stimulate employees to decent reproduction and increase of their own professional and qualification potential, innovative activity, which is largely based on the corporate policy of development of labour collectives (especially in terms of team cooperation, professional mobility, career growth). At the same time, the role of legislative and executive authorities in maintaining the correlation between such corporate activities and national and regional socio-political and socio-economic guidelines is increasing.

In addition to the obligation to harmonise the main provisions of labour law, the conditions for this are also guaranteed by EU legislation. According to Articles 145-150 of Chapter IX "Employment" and Articles 151-161 of Chapter X "Social Policy" of the Treaty on the Functioning of the European Union, which is based on the fundamental social rights set out in the European Social Charter (signed in 1961) and the Community Charter on the Fundamental Social Rights of Workers (1989), EU Member States and EU candidate countries have the possibility and legal incentives to further develop national labour legislation. Thus, national labour legislation (including that of Ukraine as an EU

candidate) should take into account the following (Makohon, 2023):

- Efficiency of the implemented approaches within the framework of the current legal technique and law enforcement; typical level of legal maturity, legal awareness, legal culture of the subjects of individual and collective labour relations in their activities, which creates certain legal consequences for them;
- the range of national and European objectives to promote employment, improve living and working conditions in accordance with the following guiding principles: ensuring their coherence while maintaining improvements; ensuring adequate social protection, dialogue between management and employees; maintaining high employment levels and measures against exclusion as priorities of the long-term human resources development strategy; the principle of not using labour standards for protectionist purposes in trade;
- the goals of sustainable economic, social and environmental (environmental protection) progress of developing countries aimed at poverty eradication; the principle of consistency of national labour legislation with the effective implementation of fundamental and priority ILO Conventions. Each of the EU Member States independently determines which ILO Conventions are in line with its national vision of ensuring the social and labour rights of the parties to labour relations, but the EU encourages Member States to ratify ILO Conventions in view of their shared fundamental values.

On the other hand, Article 153 of the Treaty on the Functioning of the EU defines the legal institutions in the regulation of which the Union should support and complement the activities of the Member States in the framework of formulating common requirements for them: improvement of working conditions to protect the health and safety of employees; enhancement of social security and social protection of employees, the working and retirement age population as a whole, modernisation of relevant national systems and institutions; protection of employees in case of termination of employment; increasing the effectiveness of the practice of informing and consulting employees, coordinating positions on representation and collective protection of their interests and the interests of employers; employment conditions for thirdcountry nationals legally residing in the Union; social integration of people whose opportunities and resources for finding a job and receiving decent wages are limited; gender equality in the labour market and in terms of the attitude of the employer and the workforce to people in the workplace; mitigation and prevention of marginalisation and social exclusion.

ILO Declaration The on Fundamental Principles and Rights at Work (adopted on June 18, 1998), which the EU recommends Member States to ratify, has been further developed in the documents of this authoritative international body. For example, the 111th International Labour Conference stressed the need for systematic coordination of political action at the international, regional and national levels with social issues, primarily by setting priorities for: ensuring a balanced consideration of ecological (environmental), economic and social aspects, in particular in the restructuring of the international financial system; implementing a coordinated policy on issues of social protection and decent work, which must be accompanied by increased investment in this sphere (Federation of Trade Unions of Ukraine, 2023). The ILO rightly links the objective of intensifying relevant measures with the need to counteract growing economic inequality (in particular in its manifestations of: deprivation of social protection of broad strata of the population; wages below the subsistence level; tendencies of bankruptcy of micro and small enterprises; gender inequality in wages with a gap of at least 20% in favour of men) (Federation of Trade Unions of Ukraine, 2023). In the context of the increasingly clear signs of recession in the world economy and the global financial crisis, the ILO considers significant economic inequality as an obstacle to economic development, social progress and the eradication of extreme forms and manifestations of poverty, including working poverty.

Consequently, taking into account the content of the Treaty on the Functioning of the European Union, the modernisation of labour legislation and employment policies in the EU Member States and candidate countries is aimed at the implementation of balanced and coordinated employment strategies aimed at the reproduction of a skilled labour force well adapted to the market economy environment, together with the development of labour market

institutions capable of responding quickly and effectively to dynamic economic changes.

5. Contradictions and Priorities in the Implementation of the EU Acquis Communautaire

In general, the above-mentioned approaches of the EU acquis communautaire to the adaptation of national labour legislation and its systemic reform are extremely relevant for Ukraine, as they largely contradict the consistent efforts of government institutions (since 2014) to stimulate entrepreneurship by drastically reducing its social burden, as well as to reduce social guarantees as a mechanism for significantly strengthening competition in the labour market.

The pace and quality of fulfilment of obligations under the Association Agreement should be aligned with the realities of the national socio-economic situation, in particular with:

- The social protection needs of vulnerable categories of citizens and other target groups (including in the area of shadow employment, non-standard labour relations, legal and illegal interstate pendulum labour migration and emigration of the working age population);
- the priorities of the policy of social inclusion, social protection and solidarity in meeting the common and socially necessary needs of the entire population, the range of territorial and functional communities (agrarian, resource extraction and other mono-specialisation communities in the first case, and by industries, sectors, types of economic activity and their clusters in the latter case);
- the tendency for the labour shortage in the economy of Ukraine and its regions to increase as a result of military operations and the expected irreversible migration of a significant part of the working population up to 23-32%.

The business-oriented approach to reforming labour relations and labour legislation in Ukraine under the pretext of its adaptation to the EU acquis communautaire has been fully implemented in the Draft Law of Ukraine "On Labour" (as amended in 2022). The need to increase the flexibility of national enterprises and industries in response to the challenges of modern economic realities and competitiveness issues, and also to expand their representation in foreign commodity markets (in particular, in the European Union) is related to the need to

increase the flexibility of national enterprises and industries in response to the challenges of modern economic realities and competitiveness issues, which are related to this draft law:

- Sharp reduction in the social burden on employers (as a result, a reduction in contributions that will be redistributed through social protection and employment funds);
- simplification of procedures for individual and collective dismissal of employees, including their duration and cost for the employer;
- proliferation of mechanisms that guarantee payment only for the actual time worked (without taking into account force majeure and forced absences that are not the fault of the hired personnel) and according to informal company standards (within the framework of non-tariff wage systems), which will further encourage the proliferation of non-standard labour relations with the mediation of the employer's socially significant functions, civil law contracts (as a basis for regulating the employment of an average worker), and will also create manipulative grounds for the regular extension of working hours (especially in companies with a significant share of logistics in the production cycle).

The obvious objectives of such changes are to increase the supply of national products on the foreign markets of Europe and the world by means of social dumping (reduction of labour costs, of the cost of reproducing the labour force as a factor of production); to strengthen the competitive relations in the labour collectives and in the sectoral markets of the hired workers, in order to speed up the turnover of the labour force, to select personnel of the highest possible quality; to transfer the main responsibility, material and time costs for the reproduction of the professional and qualification potential of a worker (as well as that of his family members of pre-working and working age) to the households themselves.

Such a strategy is quite acceptable and reasonable if the long-term priority of Ukraine's socio-economic policy is the development of extractive industries, intensive agriculture and a limited range of agro-industrial sectors (with a low level of processing of agricultural raw materials), a number of service industries within the structure of systemic services for international transport corridors and the tourism industry. At the same time, it seems

to be the shortest way to establishing Ukraine as a raw material appendage of the EU and the world economy; stagnation of social and economic processes (especially in the aspects of diversification of territorial economic complexes, their science-intensive modernisation, increase of income and living standards); deterioration of the national professional and qualification potential, social institutions and systemic mechanisms for its reproduction improvement (including through stimulation of cross-border irreversible labour migration of highly qualified workers, reduction of mobility and marginalisation of other segments of the labour force, especially the low-skilled, informally employed and in seasonal activities).

The set of measures for the adaptation of Ukrainian legislation to the EU acquis communautaire highlights a significant part of the requirements for the technical and technological support of production processes and the standardisation of products in accordance with the most up-to-date and newest technological modes. A technologically backward country implementing a long-term strategy reproducing its own technological backwardness, narrow specialisation and poverty stagnation (including as a result of deliberate limitation of income redistribution through the systems of education, professional development, solidarity welfare and social protection) will not have reasonable prospects of joining the EU and improving the competitive positions of a wide range of national producers.

6. Conclusions

A peculiarity of the reform of Ukrainian labour legislation and the labour sphere on the way to the realisation of macro-regional integration aspirations is the significant contradiction in the interpretation of Ukraine's obligations under the Association Agreement by the EU itself and by the representatives of the national legislative and executive authorities.

Among the mandatory requirements of the EU, which Ukraine must implement unilaterally,

one can note the dominance of commitments to technical and technological standardisation and improvement of the appropriate base of production and economic processes in general, the improvement of social dialogue mechanisms and practices as a broad toolkit for ensuring the rights of employees (especially those of hired personnel), the settlement of labour disputes, the provision of effective methodological support for the reorganisation of enterprises of various forms of ownership. Instead, among the main goals of the modernisation of labour legislation and the transformation of the labour sphere, the national government authorities pay much more attention to the radical reduction of the social burden on business, the significant expansion of the employer's rights in matters of selection, personnel turnover, revision of the standards of working hours, safety, remuneration, the application of appropriate business concepts. Taking into account the specialisation of the national economy, the lobbyists of such changes consider the implementation of these neoliberal economic principles as an effective tool for increasing the profitability of the national producer, its competitiveness on foreign markets of goods and services.

The identified problems and difficulties of reforming the Ukrainian labour legislation within the framework of the obligations of the EU Association Agreement testify to the necessity of more careful consideration of the already formed national practice of regulating employment sphere together intensification of the implementation of the acquis communautaire in the areas of observance of the social and labour rights of an average employee and labour teams, ensuring labour safety in the conditions of diversification of the technological base of the economy, as well as legitimisation of the best world standards and benchmarks for improving the quality of working life. Only in this case it is possible to expect a sustainable adaptation of Ukrainian labour legislation and employment sphere to the common legal framework of the European Union.

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