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## LEGAL REGULATION OF THE LABOUR OF DOMESTIC WORKERS

*The article highlights the vulnerability of domestic workers, which limits their independence, dignity and security. Of particular importance is ensuring decent work for domestic workers after adopted the ILO Convention № 189 on domestic workers, along with recommendations № 201, which establish that domestic workers worldwide, providing care for family members and perform other housework, should enjoy the same fundamental rights as other categories of workers.*

**Key words:** decent work, personal non-property labour rights, domestic workers, occupational safety and health, prohibition of discrimination in the workplace.

**Problem setting.** In order to ensure decent work for domestic workers is necessary implementation of international legal standards into national legislation and legal practice. On 16 June 2011, the International Labour Conference of the International Labour Organization adopted the Convention concerning decent work for domestic workers, which is also referred to as the Domestic Workers Convention, 2011 (No. 189).

Delegates adopted a historic set of international standards aimed at improving the working conditions of tens of millions of domestic workers worldwide.

Domestic work has been an ILO concern since its earliest days and gender equality is at the core of the ILO's Decent Work Agenda. Domestic workers form a significant part of the working population. Given their vulnerability to dangerous, discriminatory and abusive working conditions, the ILO recognizes the need to promote decent work for domestic workers.

**Analysis of recent researches and publications.** Topical issues of legal regulation the labour of domestic workers is the subject of study of Ukrainian and foreign scientists, such as: A. Bartkyv, A. Basten, P. Belser, E. Castagnone, M. Chamorro, G. Chanysheva, E. Frantz, M. Gallotti, H. Goldberg, M. Goldsmith, C. Hobden, M. Inshyn, K. Jones, J. Mertens, P. Nadasen, M. Oelz, A. Olsen, N. Piper, M. Pozzan, V. Premazzi S. Prylypko, U. Rani, B. Sachs, E. Salis, M. Segatti, H. Schwenken, M. Shree, E. Sjöberg, M. Valenzuela, O. Yaroshenko etc.

The purpose of this article is to provide a general characteristic and analysis of the ILO Domestic Workers Convention, 2011 (No. 189)

as well as the Recommendation (No. 201), to research issues of ensuring the individual and collective labour rights of domestic workers.

**Article's main body.** The situation of domestic workers has been a concern of the ILO for decades. As early as 1965 the International Labour Conference adopted a resolution on the conditions of employment of domestic workers, 27 which recognized the "urgent need" to establish minimum living standards "compatible with the self-respect and human dignity which are essential to social justice" for domestic workers in both developed and developing countries.

The new ILO standards set out that domestic workers around the world who care for families and households must have the same basic labour rights as those available to other workers: reasonable hours of work, weekly rest of at least 24 consecutive hours, a limit on in-kind payment and clear information on terms and conditions of employment, as well as respect for fundamental principles and rights at work including freedom of association and the right to collective bargaining.

The Convention defines domestic work as work performed in or for a household or households (Art. 1(a)). A "domestic worker" is defined in Convention No. 189 as "any person engaged in domestic work within an employment relationship" (Art. 1(b)). This definition includes domestic workers engaged on a part-time basis and those working for multiple employers, nationals and non-nationals, as well as both live-in and live-out domestic workers.

It is important to note that the new instruments cover all domestic workers, they provide

for special measures to protect those workers who, because of their young age or nationality or live in status, may be exposed to additional risks relative to their peers, among others, especially taking into account the fact that domestic workers may work for a single employer, on an on-call basis or under multiple part-time contracts for different households and may provide their services either informally or within the formal economy.

The employers of domestic workers may be household members, enterprises rendering commercial services, private agencies that place workers at the household's disposal, or even public institutions. The law in most countries recognizes the different type of employers in the sector, but doubts arise where the work is rendered to multiple employers, especially if they live in the same household. To clarify this, Spanish legislation establishes that "for the purposes of this special employment relationship, the employer shall be deemed to be the householder, who may be the homeowner or the resident in whose name the home or place of residence where the domestic services are performed is owned or rented. If these services are performed for two or more persons who live together in the same house unit but do not constitute a family or a legal entity, the householder is deemed to be either the resident of the housing unit or the person representing the residents, a status which may be held successively by each member of the group" [1].

Thus, domestic workers may be recruited through private or employment agencies. Private employment agencies are becoming strong actors in the labour market of Ukraine.

Article 15 of the Domestic Workers Convention, 2011 (No. 189) asks governments, in consultation with the most representative organizations of employers and workers and, where they exist, organizations representing the sector, to regulate and monitor the activity of private employment agencies by: determining the conditions governing the operation of such agencies; ensuring that adequate mechanisms exist for the investigation of complaints, alleged abuses and fraudulent practices; adopting measures, where possible with other member States, to provide adequate protection and prevent abuses of domestic workers recruited or placed in their territory by private employment agencies, including by prohibiting agencies that engage in such practices and abuses; considering concluding bilateral, regional or multilateral agreements with other countries to prevent abuses in recruitment, placement and employment; taking measures to ensure that fees charged by the agencies are not deducted from the remuneration of domestic workers.

In general labour law coverage for domestic workers has historically been weak and minimum wage regulation has been even more so [2, p. 13]. An ILO survey of national laws on domestic work published in 1971 noted that only 20 out of 68 countries that had replied to the survey had legislation fixing a minimum wage rate for domestic workers in private households. Twelve of these countries were in Africa, while "elsewhere the determination of the wage is left to the free determination of the parties and the free market forces" [3, p. 28]. In 2008, during the preparation of the ILO standard-setting on domestic workers it was found that out of 66 countries, only two-third had minimum wage legislations for domestic worker [4]. A very small group of countries regulate wages through collective bargaining agreements for domestic workers (France, Germany and Italy). Though there has been an increase in the number of countries having minimum wage legislation for domestic workers, still a large proportion of the global labour force in this sector remain without such protection. According to ILO estimates, some 42.5 per cent of domestic workers globally did not enjoy minimum wage coverage in 2010, although the countries where they lived and worked did set minimum wages for other workers. Another 5.9 per cent of the domestic workers were covered by a minimum wage, but at a lower level than other workers [5, p. 13].

Furthermore, domestic workers are particularly vulnerable to discrimination and other human rights abuses. Certain groups of domestic workers, such as migrant domestic workers, child domestic workers, or workers that reside in the household for which they work ("live-in" domestic workers) face particular vulnerabilities.

Domestic workers, a large majority of whom are women and migrants, are particularly vulnerable to physical, sexual, psychological or other forms of abuse, harassment and violence because their workplace is shielded from the public and they generally lack co-workers. Live-in workers are particularly concerned. The Convention requires Members to take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence (Art. 5).

Discrimination may be direct (e.g. where an employer employs only women in the household although this is not an inherent requirement of the job, or where live-in domestic workers receive different treatment as regards accommodation on the basis of their national extraction, social origin or other grounds) or indirect (e.g. giving a bonus to some domestic workers but not to others in the same household as compensation for availability for flexible working hours

may be discriminatory as it places workers who assume family responsibilities, typically women, at a disadvantage) [6, p. 7].

In Convention No. 189 and Recommendation No. 201, the International Labour Conference gave a clear message: domestic workers, like other workers, have the right to decent working and living conditions. The Convention provides for minimum protection of domestic workers, while allowing for flexibility in implementation.

16 June 2016 marks the 5th anniversary of the adoption of Convention No. 189 and its accompanying Recommendation No. 201. These standards have stimulated countries around the world to take action to reverse a history of exclusion, and the momentum for change continues to grow. Making decent work a reality for domestic workers will undoubtedly require many more years of such efforts. Continuing to build on current progress will not only help raise the standards and quality of domestic work worldwide, it will also contribute to the achievement of the sustainable development goals, including poverty (Goal 1), gender equality (Goal 5), decent work (Goal 8), and inequality (Goal 10) [7].

Convention No. 189, which becomes binding under international law for countries that ratify it, lays down basic principles and measures regarding the promotion of decent work for domestic worker. By contrast, Recommendation No. 201 is a non-binding instrument that offers practical guidance for the strengthening of national law and polices on domestic work. The Recommendation builds on the provisions of the Convention and needs to be read in conjunction with it. It serves as a source of guidance for Members with regard to measures they may take to apply the Convention.

The Convention affirms that domestic workers are, like other workers, entitled to the respect and protection of their fundamental principles and rights at work relating to: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

The Convention recognizes that every domestic worker has the right to a safe and healthy working environment (Art. 13) and requires Members are to take effective measures to ensure the occupational safety and health of domestic workers. Exposure to occupational hazards is an area of concern for all categories of domestic workers. Performing the duties that are related to cooking, cleaning, ironing, and other household chores, gardening, gathering

fuel, water and groceries can lead to such potential health problems, as cuts, burns, respiratory diseases, dermatitis, allergies, sleep disturbances, exhaustion, hunger, psychosocial disorders.

The Convention requires Members to take measures to ensure that domestic workers, like other workers generally, should enjoy fair terms of employment (Art. 6). The other provisions of the Convention set out specific obligations in this regard. Where the domestic workers reside in the household for which they work, they should also enjoy decent living conditions that respect their privacy.

Domestic workers are mostly immigrants in developed countries, and many are undocumented. In particular, a series of decentralized workshops for the regional members of the three main Trade Union Confederations (Trade Union of Education and Science Workers of Ukraine – FTUU, All Ukrainian Organization of Workers Solidarity – VOST “VOLYA” and Confederation of Free Trade Union of Ukraine – CFTUU) was organized by the Global Action Programme on Migrant Domestic Workers (GAP-MDW). The workshops were conducted under a common thematic umbrella “Role of Trade Unions in the Protection of Migrant Domestic Workers in Ukraine” [8].

The Global Action Programme on Migrant Domestic Workers and their Families (Migrant Domestic Workers in Action) seeks to address the specific challenges migrant domestic workers face by implementing global advocacy and knowledge development initiatives in “migration corridor” – Ukraine-Poland. The Programme’s framework is rights-based and employment-centred, with the overall goal to promote human rights and decent work for domestic workers at all stages of the migration cycle.

The Programme will promote good labour migration governance by:

1. Developing knowledge on the situation and characteristics of migrant domestic workers and on the factors that affect their opportunities to exercise their human rights and access decent work in conditions of freedom and equality.
2. Expanding avenues for informed decision-making on migration, based on solid, evidence-based information and analysis.
3. Developing tools and guidelines for policy-making, grounded in international human rights, including labour standards.
4. Promoting dialogue and cooperation between countries of origin and destination to design migration policies that respond to genuine labour market needs and respect, protect and fulfil workers’ rights.
5. Ensuring policy coherence in countries of origin and destination [9].

Also, it is important to note that the Convention covers all domestic workers, including migrant domestic workers. Nonetheless, because of their specific vulnerabilities, the Convention has provisions that specifically concern migrant domestic workers or are especially relevant to the needs and risks they face. Domestic workers must be informed of their terms and conditions of employment in an easily understandable manner, preferably through a written contract (Art. 7).

The access to courts and other dispute settlement procedures is essential for domestic workers to seek justice and redress in case of violations of their rights. Indeed, access to courts is a fundamental human right.

In this regard, the Convention requires Members to: 1) take measures to ensure that domestic workers have effective access to the court, tribunals or other dispute settlement mechanisms under conditions not less favourable than those available to workers generally (Art. 16); 2) establish effective and accessible complaint mechanisms and means of compliance with national laws and regulation for the protection of domestic workers (Art. 17(1)); and 3) develop and implement measures for labour inspection, enforcement and penalties, with due regard for the special characteristics of domestic work, in accordance with national laws and regulations (Art. 17(2)).

It should be emphasized that the adoption of ILO Convention No. 189 has set the world on a path to correcting a history of exclusion of domestic workers; but the journey to make decent work a reality for domestic workers has just begun. Ensuring effective protections for domestic workers will require continued efforts among workers, employers and governments to raise public awareness of the value of domestic work to societies, the rights and responsibilities of workers and employers, and the importance of formalizing the sector. Since the adoption of the Convention, 22 countries have ratified it [10].

Obviously, domestic workers comprise a significant part of the global workforce in informal employment and only 10 per cent of all domestic workers (or 5.3 million) are covered by general labour legislation to the same extent as other workers. By contrast, more than one-quarter – 29.9 per cent, or some 15.7 million domestic workers – are completely excluded from the scope of national labour legislation (not including child domestic workers, and this number is increasing steadily in developed and developing countries) [11, p. 80].

According to the State Statistics Service of Ukraine, the total number of workers who care for families and households is around 162 thousand persons [12].

## Conclusions

Thus, it is clear that national approaches to regulating domestic work are diverse. In a number of jurisdictions, domestic work is regulated by specific chapters, titles or selected provisions of labour or employment acts, while in other such work is regulated by separate legislative acts.

The legal status of domestic workers in labour legislation of Ukraine is not defined. Most employers conclude civil contracts with domestic workers instead of employment contracts. At the same time Convention No 189 states that, where possible, domestic workers should have written contracts (Art. 7). Recommendation No. 201 suggests that countries should consider establishing model contracts of employment for domestic work, in consultation with the most representative organizations of employers and workers and, where they exist, their representative organizations.

This makes it impossible the spread for these workers a legal mechanism for ensuring labour rights, including personal non-property labour rights.

Consequently, it is necessary to ratify ILO Convention No. 189 and adjust the features of domestic workers's labour in the draft Labour Code of Ukraine to ensure compliance, promote and implement the fundamental principles and rights at work: freedom of association and effective recognition of the right to collective bargaining, the abolition of all forms of forced or compulsory labour, effective prohibition of child labour; non-discrimination in employment and occupation.

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*У статті підкреслюється вразливість домашніх працівників, яка обмежує їхню самостійність, гідність і захищеність. Особливого значення набуває забезпечення гідної праці для домашніх працівників після прийнятих МОП Конвенції № 189 про домашніх працівників, а також відповідної рекомендації № 201, які встановлюють, що в усьому світі домашні працівники, що забезпечують догляд за членами сімей і виконують іншу роботу по дому, повинні користуватися тими ж основними правами, що й інші категорії працівників.*

**Ключові слова:** гідна праця, особисті немайнові трудові права, домашні працівники, охорона праці, заборона дискримінації у сфері праці.

*В статье подчеркивается уязвимость домашних работников, которая ограничивает их самостоятельность, достоинство и защищенность. Особое значение приобретает обеспечение достойного труда для домашних работников после принятых МОТ Конвенции № 189 о домашних работниках, а также соответствующей рекомендации № 201, которые устанавливают, что во всем мире домашние работники, которые обеспечивают уход за членами семей и выполняют другую работу по дому, должны пользоваться теми же основными правами, что и другие категории работников.*

**Ключевые слова:** достойный труд, личные неимущественные трудовые права, домашние работники, охрана труда, запрет дискриминации в сфере труда.

