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Yurii Chyzhmar,
Doctor of Law, Associate Professor, Professor at the Department of Law Theory and International and Political Relations, Open International University of Human Development "Ukraine", 23, Lvivska street, Kyiv, Ukraine, postal code 03067, Chyzhmar_Yurii@ukr.net
ORCID: *orcid.org/0000-0001-9187-1162*

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THE ROLE OF INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS IN THE SYSTEM OF SOURCES OF LABOUR LAW OF UKRAINE

Abstract. ***Purpose.*** The aim of the article is to study the meaning and role of International Labour Organization Conventions in the system of sources of labour law in Ukraine.

Results. In the article, the author comprehensively studies the main International Labour Organization regulations and describes their individual provisions. The basic principles of labour law enshrined in the Declaration of the International Labour Organization are analysed as the basis of Ukraine's labour relations in the State. Acts of the International Labour Organization that contain provisions regulating important sectors of labour relations and require ratification by Ukrainian legislation are defined. The importance of implementing the provisions of selected International Labour Organization Conventions and Recommendations into domestic labour legislation is underlined. The author argues that, despite the advisory and non-binding nature of the Recommendations of the International Labour Organization, they contained important provisions and clarifications to the Conventions of the International Labour Organization and can also be an effective tool in adjudicating labour disputes or conflicts. It is noted that the acts of the International Labour Organization are of importance in the system of sources of labour law in Ukraine, thereby require its full harmonization with their provisions.

Conclusions. The author makes a conclusion that, in the context of European integration, modern and effective labour legislation is required in Ukraine. Accordingly, in order to accomplish this task, our State must actively introduce international experience, on the basis of law-making of the International Labour Organization. The acts of the International Labour Organization can be considered a full-fledged source of labour law in Ukraine, their provisions should be binding and have a positive impact on the protection of labour rights. An analysis of the Conventions and Recommendations of the International Labour Organization enables to state that their provisions are aimed at protecting the labour rights of employees, are incumbent not only on the State but also on employers. The use of international labour standards requires a well-thought-out and stable labour-law policy and the fulfilment of all the international obligations entered into.

Key words: sources of law, labour law, labour legislation, International Labour Organization, International Labour Organization conventions, international standards.

1. Introduction

International labour standards are important for regulating labour relations and are developed on the basis of the study and compilation of the practical experience of many countries in this field. Moreover, a market economy in Ukraine and Ukraine's further accession to international institutions require the development of new approaches to the legal regulatory mechanism for labour relations and the broadening of its sources.

The legal basis for the establishment of sources of labour law is provided for by the Constitution, which defines the legal regime for legal regulations adopted by the various State authorities, as well as the principles of the legal regulatory mechanism for labour relations. International legal instruments play a leading role in the system of sources of labour law in Ukraine.

The significance of the ratified international legal regulations is the fact that, even though they are generally binding and take precedence over instruments of Ukrainian labour legislation, further incorporation of this type of source into domestic labour legislation is an important condition for Ukraine's integration into the international community. Moreover, not

only the process of ratifying international legislation and bringing domestic legislation into line with international standards, but also its practical implementation in modern labour relations, is of great importance.

Furthermore, the central role of the Conventions of the International Labour Organization as a world organization established to regulate international cooperation in the field of labour with a view to promoting peace and social protection for workers should be underlined. Therefore, the place and role of International Labour Organization Conventions in the system of sources of labour law in Ukraine require specifying.

The aim of the article is to study the meaning and role of International Labour Organization Conventions in the system of sources of labour law in Ukraine.

The issues of the legal regulatory mechanism for labour relations in international law are studied by leading domestic and foreign scholars: N.B. Bolovina, S.V. Venedictov, S.V. Vyshnovetska, L.V. Vakariuk, O.O. Vostretsova, L.P. Harashchenko, N.D. Hetmantseva, O.S. Herasimova, W. Jencks, S.O. Ivanov, M.I. Inshin, J.-C. Javillier, V.V. Zhernakov, I.Ya. Kiselev, V. Leri, K.Yu. Melnyk, Zh. Potobski, S.M. Prylypko, L. Svepston, K.L. Tomashevskyi, H.I. Chanysheva, D.V. Cherniaieva, Yu.V. Chyzhmar, M. Shumylo, V.M. Shcherbyna, O.M. Yaroshenko, et al.

2. International labour agreements

The international regulatory framework for employment regulates, through international agreements between States, issues relating to the use of labour, the improvement of its conditions, labour protection and the protection of the individual and collective interests of employees. Formally, such regulatory framework is the labour norms (standards) embodied in instruments adopted by the United Nations, ILO, regional groupings of States in Europe, America, Africa and the Middle East, as well as in bilateral treaties between States (Chornous, 2012, p. 250).

The International Labour Organization was the only attempt to grant universal rights to workers. The development of the labour movement in certain countries of the world coincided with other objective processes, which significantly influenced international labour law, the growth of the division of labour in the international arena, increase in economic interdependence of States and development of global economic relations.

The main objectives of the ILO are to promote economic and social progress, achieve peace and social justice, improve working and living conditions, and protect human rights. These objectives are pursued primarily through law-making by the ILO, as well as all its organizational and practical work, research and publication activities.

With regard to the sources of international labour law, the focus should be on the International Labour Organization Conventions. According to the Constitution, the ILO is a specific international governmental organization aimed at regulating labour relations in the countries, parties to its Convention in accordance with the principles of equality and justice. It is this organization that has adopted most of the special international labour standards. ILO Conventions regulate a wide range of issues that are almost nowhere covered at this level and often exceed the content of Ukraine's national legislation (Constitution of the International Labour Organization, 1919).

The basic ILO instruments are sources of universally accepted international standards and norms of labour law. Universal instruments include the ILO Declaration on Fundamental Principles and Rights at Work (1998) (Declaration of the International Labour Organization on Fundamental Principles and Rights at Work, 1998).

According to I.Ya. Kiselev, the content of these standards is a concentrated expression of the experience of many countries, the produce of a careful selection of valuable and universally relevant norms and provisions of national systems of labour law, their transformation into international provisions (Kiselev, 1997, p. 468).

ILO Conventions and Recommendations constitute the International Labour Code (over 180 Conventions and over 190 Recommendations). The main ILO Conventions are: Night Work (Women) Convention (No. 4, 1919), Night Work of Yang Persons (Industry) Convention (No. 6, 1919), Workmen's Compensation (Accidents) Convention (No. 17, 1925), etc.

Recent Recommendations adopted by the ILO include HIV and AIDS Recommendation, 2010 (No. 200) on, Domestic Workers Recommendation, 2011 (No. 201), Social Protection Floors Recommendation, 2012 (No. 202), Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203). However, the ILO has not been able to adopt relevant Conventions on all of these issues (Bilous, 2017, p. 156).

The ILO Declaration on Fundamental Principles and Rights at Work (1998) lists the priority areas of the ILO standard-setting in this field and the fundamental principles to be followed by Member States, regardless of whether or not they have ratified an ILO Convention, but only by virtue of their accession to the Consti-

tution of the Organization and the ILO Declaration of Philadelphia (1944), which is annexed thereto. The principles of international labour law are: a) freedom of association and recognition of the right to collective bargaining, b) elimination of all forms of forced or compulsory labour, c) effective abolition of child labour and d) prohibition of discrimination in employment and occupation (Declaration of the International Labour Organization of basic principles and rights in the world of Labour, 1948).

The Declaration states that all Member States of the ILO, in accordance with its Constitution, are bound by the principles relating to fundamental rights and have to promote and implement them in good faith. These are: a) freedom of association and the effective recognition of the right to collective bargaining, b) elimination of all forms of forced or compulsory labour, c) effective abolition of child labour, d) elimination of discrimination in respect of work and employment (Kiselev, 1999, p. 461).

In view of the fact that not all ILO Member States have ratified the fundamental Conventions, the Declaration proclaims the principle that all ILO member States, even if they have not ratified the Conventions in question, have obligation arising from the very fact of their membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions (Batrymenko, 2012, p. 207).

For our State, the Conventions and Recommendations of the ILO are very important because, in addition to the fundamental principles at work, they contain provisions governing all sectors of labour, helping to resolve disputes, and, above all, the obligation to respect labour human rights.

3. Ratification of International Conventions by Ukraine

Ukraine, as a member of the Organization since 1954, has ratified more than sixty ILO Conventions, of which about two dozen since independence. Among these 20 Conventions there are fundamental ones, such as Worst Forms of Child Labour Convention No. 182, Abolition of Forced Labour Convention No. 105, Conventions No. 87 and No. 98, related to freedom of association and right to organise and collective bargaining. During independence, about 30 ILO projects totalling over $10 million were implemented in Ukraine. The ILO standard-setting activities are mainly in the form of Conventions and Recommendations. The total number is now over 370, and only one third has been ratified by Ukraine (Volokhov, 2012).

For example, ILO Forced Labour Convention No. 29 of 1930 defines forced or compulsory labour as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. This document contains definitions of the time limit for the use of forced labour and also specifies what work is not considered forced labour. Ukraine ratified the Convention on 10 August 1956.

With regard to regulating holidays, ILO Holidays with Pay Convention No. 132 of 1970, ratified by Ukraine on 29 May 2001, applies. The Convention applies to all employed persons, with the exception of seafarers. Under Art. 3 of this Convention, every person to whom this Convention applies shall be entitled to an annual paid holiday of a specified minimum length. In no case may leave be less than three working weeks for one year of service. The holiday shall in no case be less than three working weeks for one year of service. The Convention sets time limits for the use of leave. In particular, Part 1 of Art. 9 provides for that the uninterrupted part of the annual holiday with pay referred to in Article 8, paragraph 2, of this Convention shall be granted and taken no later than one year, and the remainder of the annual holiday with pay no later than eighteen months, from the end of the year in respect of which the holiday entitlement has arisen (International Labour Organization Holidays with Pay Convention, 1970).

ILO Protection of Wages Convention No. 95 of 1949, ratified on August 4, 1961, defines the concept of "wage," determines the procedure for payment of wages, the conditions for payment of wages in the form of allowances in kind. Article 14 of the Convention provides that, where necessary, effective measures shall be taken to ensure that workers are informed, in an appropriate and easily understandable manner: a) before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed; b) at the time of each payment of wages, of the particulars of their wages for the pay period concerned, in so far as such particulars may be subject to change (International Labour Organization Protection of Wages Convention, 1949).

Moreover, an advantageous geopolitical position and the liberalization of visa procedures contribute to Ukraine's status as one of the leading countries supplying workforce abroad. In addition, within the country itself, there had recently been an increase in the flow of migrants from other countries. Issues of the legal status of migrant workers are generally determined by international organizations, primarily the International Labour Organization and the United Nations.

For example, ILO Conventions 97 and 143 provide for the following rules: States are given the right to restrict access to limited categories of employment where this is necessary in the interests of the State; the public authority shall require a copy of the contract of employment to be delivered to the migrant before his or her departure or be issued to him or her at the reception centre at the time of his or her arrival in the territory of the receiving country and that the migrant should inform in writing before his or her departure of the general conditions of life and work, enjoyed in the country of migration; the migrant may make the free choice of employment, subject to the conditions that he or she has resided lawfully in the territory for of this State for a prescribed period not exceeding two years; in countries where the employment of migrant workers is subject to certain restrictions, where possible, the latter should not apply to migrant workers residing in the country of migration for a certain period, usually longer than 5 years; on condition that he or she has resided legally in the country of migration, the mere fact of the loss of employment by the migrant worker shall not imply the withdrawal of his authorisation of residence or work permit; a migrant for employment shall not be returned to their country of origin because the migrant is unable to follow his occupation by reason of illness or injury sustained subsequent to entry (International Labour Organization Migrant Workers Convention, 1949; International Labour Organization Convention on the Abuse of Migration and on Equal Opportunities and Equality of Treatment for Migrant Workers, 1975).

However, Ukraine has not yet ratified these Conventions. In Ukraine, the legal status of migrants and other issues related to the regulatory mechanism for their work are regulated by the European Convention on the Legal Status of Migrant Workers. Taking into account the provisions of the Law of Ukraine "On Foreign Labour Migration," according to which the rights of migrant workers are regulated by the legislation of the State of residence and international treaties of Ukraine, to which the Verkhovna Rada of Ukraine consented to be bound, public policy on migration should start the ratification and accession of Ukraine to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and ILO Conventions on migration that declare the fundamental rights of migrants and guarantee the protection of the rights of migrants, including illegal workers.

In modern context, ILO Home Work Convention No. 177 (1996) and ILO Recommendation No. 184 establish ILO standards on home work, which, in accordance with Art. 1 of the Convention means work, carried out by a person, to be referred to as a homeworker: a) in his or her home or in other premises of his or her choice, other than the workplace of the employer; b) for remuneration; c) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions (International Labour Organization Convention on Home Work, 1996).

The Convention has not yet been ratified by Ukraine. The work of persons working at home is regulated by the Regulation on Working Conditions for Home Workers, approved by the Resolution 275/17-99 of the State Labour Committee of the USSR and the Secretariat of the All-Union Central Soviet of Trade Unions of 29 September 1998, considering that its provisions contrary to the legislation of Ukraine are not valid, as well as collective and labour contracts. They are subject to the provisions of the Labour Code. Considering that this legal regulation is clearly outdated and does not meet the new requirements and standards applicable to home workers, Ukraine needs to ratify ILO Home Work Convention No. 177, and to harmonize domestic legislation with its main provisions.

To protect the rights and interests of part-time workers, ILO Part-Time Work Convention No. 175 (1994) obliges Member States to ensure that part-time workers enjoy conditions equivalent to those of comparable full-time workers (International Labour Organization Part-Time Work Convention, 1994).

For example, Art. 7 of the Convention contains provisions on the need to provide part-time workers with conditions equivalent to those enjoyed by part-time workers in comparable situations in the fields of: a) maternity protection; b) termination of employment; c) paid annual leave and paid public holidays; d) sick leave; e) it being understood that pecuniary entitlements may be determined in proportion to hours of work or earnings (International Labour Organization Part-Time Work Convention, 1994).

The Convention has not yet been ratified by Ukraine, and the procedure for establishing or modifying part-time work is governed by the provisions of the Labour Code. However, the legislation does not clearly define whether part-time work is permitted because of the reduction of both working hours

and working weeks. The law does not regulate the number of days or hours of work that may be set as part-time. In addition, there are other contradictions and gaps that make it necessary to ratify Part-Time Work Convention No. 175.

Recommendation No. 130 of the ILO contains rules on the handling of employees' individual grievances arising from individual legal disputes. The procedure established in this instrument is a kind of complicated arbitration. Under this procedure, an attempt should initially be made to settle grievances directly between the worker affected and his immediate supervisor. Where such attempt at settlement has failed or where the grievance is of such a nature that a discussion in this manner would be inappropriate, the worker should be entitled to have his case considered at one or more higher steps, in accordance with the rules set out in the collective agreements. Where all efforts have failed, the dispute may be settled through conciliation, recourse to a judicial authority or other procedures provided for in a collective agreement, as well as through voluntary arbitration (Recommendation of the International Labour Organization on the consideration of complaints at enterprises in order to resolve them, 1967)

Therefore, ILO Recommendation No. 92 calls upon States to establish voluntary conciliation bodies to assist in the prevention and settlement of industrial of labour disputes. Such bodies should include equal representation of employers and workers. The conciliation procedure should be free of charge and expeditious; such time limits for the proceedings should be kept to a minimum. The Recommendation provides for that its procedures may not be interpreted as limiting the right to strike (International Labour Organization Voluntary Conciliation and Arbitration Recommendation, 1951).

It should be noted that ILO Recommendations contain advisory provisions for States to harmonize national legislation with ILO Conventions and are not binding. At the same time, they should not be underestimated.

ILO Recommendations often accompany particular Conventions, clarifying their provisions, offering more rights and extending their scope. However, unlike Conventions, which are intended to create legal obligations for States that ratify them, Recommendations are needed to ensure that, without obliging the State to do so, they serve as a model for the preparation of national labour standards.

4. Conclusions

Therefore, in the context of European integration, modern and effective labour legislation is required in Ukraine. Accordingly, in order to accomplish this task, our State should actively introduce international experience, on the basis of law-making of the International Labour Organization. The ILO acts can be considered as a full-fledged source of labour law in Ukraine, their provisions should be binding and have a positive impact on the protection of labour rights

An analysis of the Conventions and Recommendations of the International Labour Organization enables to state that their provisions are aimed at protecting the labour rights of employees, are incumbent not only on the State but also on employers. The use of international labour standards requires a well-thought-out and stable labour-law policy and the fulfilment of all the international obligations entered into.

Ukraine's labour legislation has not yet been fully brought into line with international standards and therefore needs to be reviewed and amended in accordance with the provisions of international legal instruments, including ILO instruments.

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Юрій Чижмарь,
доктор юридичних наук, доцент, професор кафедри теорії права та міжнародних і політичних відносин, Відкритий міжнародний університет розвитку людини «Україна», вул. Львівська, 23, Київ, Україна, індекс 03067, Chyzhmar_Yurii@ukr.net
ORCID: *orcid.org/0000-0001-9187-1162*

РОЛЬ КОНВЕНЦІЙ МІЖНАРОДНОЇ ОРГАНІЗАЦІЇ ПРАЦІ В СИСТЕМІ ДЖЕРЕЛА ТРУДОВОГО ПРАВА УКРАЇНИ

Анотація. ***Метою статті*** є дослідження значення та ролі конвенцій Міжнародної організації праці в системі джерел трудового права України.

Результати. У статті автором проведено комплексне дослідження основоположних нормативно-правових актів Міжнародної організації праці, охарактеризовано окремі їх положення. Проаналізовано основні засади трудового права, які закріплені в Декларації Міжнародної організації праці та на які повинна спиратися Україна під час регулювання трудових відносин у державі. Визначе-

но акти Міжнародної організації праці, які містять положення, що регламентують важливі сфери трудових відносин, та потребують ратифікації відповідно до законодавства України. Вказано на важливість імплементації положень окремих конвенцій та рекомендацій Міжнародної організації праці у вітчизняне трудове законодавство. Автором зауважено, що, незважаючи на рекомендаційний і необов'язковий характер рекомендацій Міжнародної організації праці, вони містять важливі положення й уточнення до конвенцій Міжнародної організації праці, можуть слугувати ефективним інструментом у вирішенні трудових спорів чи конфліктів. Зазначено, що акти Міжнародної організації праці посідають вагоме місце в системі джерел трудового права України та вимагають повного узгодження його норм із їхніми положеннями.

Висновки. Констатовано, що в умовах євроінтеграції виникла необхідність створення сучасного й ефективного трудового законодавства України. Відповідно, для виконання цього завдання наша держава повинна активно впроваджувати у трудове законодавство міжнародний досвід з огляду на нормотворчу практику Міжнародної організації праці. Акти Міжнародної організації праці можна вважати повноцінним джерелом трудового права України, положення якого повинні мати обов'язковий характер і позитивно впливати на захист трудових прав. Унаслідок аналізу конвенцій та рекомендацій Міжнародної організації праці можна зазначити, що їхні норми спрямовані на захист трудових прав працівників, забезпечення яких покладається не лише на державу, а й на роботодавців. Використання міжнародних стандартів праці потребує від держави ведення продуманої та стабільної трудоправової політики, виконання всіх прийнятих на себе міжнародних зобов'язань.

Ключові слова: джерела права, трудове право, трудове законодавство, Міжнародна організація праці, конвенції Міжнародної організації праці, міжнародні стандарти.

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