

UDC 349.2

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Husarov, Oleksandr (2023). Guarantees for protection of labour rights of hired workers in the context of atypical forms of employment. *Entrepreneurship, Economy and Law*, 1, 23–27, doi <https://doi.org/10.32849/2663-5313/2023.1.04>

GUARANTEES FOR PROTECTION OF LABOUR RIGHTS OF HIRED WORKERS IN THE CONTEXT OF ATYPICAL FORMS OF EMPLOYMENT

Abstract. Purpose. The purpose of the article is to determine the scope and reveal the content of guarantees for protection of labour rights of hired workers in the context of atypical forms of employment. **Results.** The article, relying on the analysis of scientific perspectives and provisions of current legislation, reveals the scope and content of guarantees for protection of labour rights of hired workers in the context of atypical forms of employment. It is emphasised that guarantees for protection of labour rights of hired workers in the context of atypical forms of employment are a set of legally defined conditions, instruments and means used by the State, employer and employees themselves to ensure the actual exercise of their rights, freedoms and interests in the relevant field. The author determines that legal guarantees are enshrined in a large number of legal regulations of various legal force: from the Constitution of Ukraine and international treaties and agreements to local legal regulations adopted by each individual employer. These guarantees are aimed at creating an appropriate and effective regulatory framework for the protection of the legitimate rights, freedoms and interests of hired workers in the context of atypical forms of employment. In addition, the existence of these guarantees, a priori, is a guarantee that the employee's rights will not be violated and, in case of violation, will be restored. It is revealed that the main state social guarantees are: 1) the minimum wage rate; 2) the minimum old-age pension rate; 3) the tax-free minimum income of citizens; 4) the amount of state social assistance and other social benefits. The basic state social guarantees, which are the main source of subsistence, cannot be lower than the subsistence minimum established by law. **Conclusions.** It is concluded that to date, the legislator has developed a fairly broad system of guarantees for the protection of rights of hired workers in the context of atypical forms of employment. However, a common drawback is the fact that, despite their legal consolidation, currently no effective mechanisms for their practical implementation exist.

Key words: guarantees, protection, labour rights, hired workers, atypical forms of employment, legislation.

1. Introduction

In the context of atypical forms of employment, the legislator and employers should create an enabling environment of an organisational, legal, economic nature, etc. for protecting the labour rights of the category of employees under study. The system of such conditions is commonly referred to as guarantees. In general, the creation of guarantees is the main goal of the State, and it is the State that guarantees human rights and freedoms. The law secures the rights and freedoms of every individual and, by regulating human relations, prevents their violation. Moreover, it defines the role of the law as a guarantor only through the prism of the use or application of punitive forces (Lokk, 1960, p. 50).

Therefore, the creation of a system of guarantees for the protection of labour rights of hired workers in the context of atypical forms of employment is of great theoretical and practical importance.

The problem of protection of labour rights of hired workers in the context of atypical forms of employment has been considered in the scientific works by: T.M. Zavorotchenko, I.V. Zub, Yu.Yu. Ivchuk, V.V. Pavchuk, V.H. Rotan, V.M. Sloma, O.Ye. Sonin, I.M. Shopina, I.I. Yatskevych, and many others. However, despite a considerable number of scientific achievements, the above-mentioned scholars have not focused on the analysis of guarantees for protection of labour rights of hired workers in the context of atypical forms of employment.

That is why the purpose of the article is to determine the scope and reveal the content of guarantees for protection of labour rights of hired workers in the context of atypical forms of employment.

2. Legal guarantees for protection of labour rights of hired workers

At the outset of the research, it should be noted that guarantees for protection of labour rights of hired workers in the context of atypical forms of employment are a set of legally defined conditions, instruments and means used by the State, employer and employees themselves to ensure the actual exercise of their rights, freedoms and interests in the relevant field. These guarantees can best be divided into: a) Legal (juridical) guarantees are a set of legal conditions and means by which social relations in the field under study are regulated and ordered; b) Economic guarantees are activities aimed at ensuring the economic and financial rights and interests of employees; c) Social guarantees are aimed at implementing social measures in relation to the specified category of employees; d) Procedural guarantees are activities to protect the rights of employees in court or out of court; d) Political guarantees imply the activities of the State to ensure the rights and freedoms of citizens in general and in the field of labour, in particular; e) Organisational guarantees.

First, legal guarantees should be under focus, which, in turn, are a basis for the formation and implementation of other guarantees. For example, according to V.S. Nersesiants, legal (juridical) guarantees are a system of interrelated forms and means (regulatory, institutional, procedural) that ensure proper recognition, protection and enforcement of certain rights and their obligations. Legal guarantees are a constructive expression of the principle of self-defence of rights. They embody the idea of the coordinated action of law and the State, when some forms, directions and functions of State regulatory framework and performance serve as a protective mechanism for others and vice versa. It is only in this general context of mutual support and coherence of various parts and aspects of the entire state legal complex that certain special forms and constructions of legal guarantees of individual rights and freedoms can actually fulfil their protective role. In short, legal guarantees themselves require legal guarantees, and these can ultimately only be provided by the legal State and legal laws (Nersesiants, 1999, p.142).

According to T.M. Zavorotchenko, legal guarantees have their own characteristics, such as: standardisation, which provides for the definition of guarantees only in the texts of legal

regulations; systemic nature, which means that all legal guarantees are closely interconnected, interdependent and interrelated, that is, form a certain system; comprehensiveness of legal guarantees, which follows from the previous feature and means that in real life legal guarantees act jointly (systematically), support and mutually reinforce each other; permanence of guarantees, due to which guarantees of rights do not cease to be valid and do not arise sporadically, but are permanent; legal reliability, which reflects, on the one hand, the link between the guarantee and the social situation, and, on the other hand, the stability of its social content (the question of the reasons for the unreliability of certain legal guarantees deserves special consideration; it may, in particular, be due to the unsuccessful design of the regulatory framework, the lack of specific sanctions); the reality, that is, legal guarantees should ensure that a person actually enjoys the rights granted by Ukrainian legislation (Zavorotchenko, 2002).

Legal guarantees are enshrined in a large number of legal regulations of various legal force: from the Constitution of Ukraine and international treaties and agreements to local legal regulations adopted by each individual employer. These guarantees are aimed at creating an appropriate and effective regulatory framework for the protection of the legitimate rights, freedoms and interests of hired workers in the context of atypical forms of employment. In addition, the existence of these guarantees, a priori, is a guarantee that the employee's rights will not be violated and, in case of violation, will be restored.

The next group of guarantees is economic. Purposefully, we distinguish these guarantees after the legal ones, as any employee's work is to receive benefits in monetary terms. O. Taranenko argues that, in general, economic guarantees are: 1) an efficient economy; 2) an appropriate level of public welfare; 3) fair competition; 4) actual freedom of collective and individual participants in economic relations; 5) awareness of the need for economic entities to comply with their fiscal obligations to the State; 6) growth in labour productivity and output; 7) equal economic opportunities of participants in social relations, etc. Therefore, economic guarantees are aimed at ensuring that the legislator and the employer create a material and financial basis for a person, including an employee who works from home, remotely or on a flexible schedule, to fully ensure a decent standard of living for themselves and their family. These guarantees include timely and full payment of salaries, social security for employees, and the growth of employee welfare.

Further, in the context of the issues being studied, social guarantees should be under

focus. In essence, social guarantees of rights are the conditions that the State shall create for the implementation of human and civil rights and freedoms. In terms of content, it is a system of measures aimed at realising the relevant rights (organisation of healthcare, recreation, social security). In terms of form, it is the organisational and legal forms of realisation of social rights and freedoms of man and a citizen provided for by the Constitution and laws of Ukraine (Makhnovskyi, 2003, p. 138). According to Vitruk, social guarantees are the social means and conditions for ensuring the freedom and personal inviolability of man and a citizen, as enshrined in the constitutional provisions. In addition, these guarantees are characterised as raising the level of education and culture of all members of society, which are necessary conditions for ensuring all rights, including the right to personal integrity (Vytruk, 1985, p. 39). Basic state social guarantees are established by law to ensure the constitutional right of citizens to an adequate standard of living. The main state social guarantees include: 1) the minimum wage rate; 2) the minimum old-age pension rate; 3) the tax-free minimum income of citizens; 4) the amount of state social assistance and other social benefits. The basic state social guarantees, which are the main source of subsistence, cannot be lower than the subsistence minimum established by law (Stashkiv, 2005, p. 91).

V. Horyn argues that social guarantees can rightly be defined as a key lever for achieving social security. By allocating its own financial resources to provide for them, allowing for economic opportunities and public expectations, the State guarantees each citizen a certain level of satisfaction of his or her tangible and intangible needs, i.e., a certain level of social security. Public policy on financing of social guarantees should meet the following criteria: 1) concentration of state resources on meeting priority social interests; 2) sufficiency of state funding to ensure neutralisation or prevention of threats to the social interests of both individuals and entire society; 3) creation of an effective mechanism for achieving social security, which implies development of the system of financial support for social guarantees. This creates the preconditions for a targeted policy on protecting the social interests of both individuals and entire society (Horyn, 2013). Social guarantees are manifested in the system of social protection of labour rights of hired workers in the context of atypical forms of employment.

3. Procedural guarantees for the protection of labour rights of hired workers

The next are procedural guarantees. Procedural guarantees are guarantees aimed at ensuring the protection of the rights of hired workers

in the context of atypical forms of employment through the courts. These guarantees are enshrined in the Constitution of Ukraine and the provisions of the Labour Code of Ukraine, which, according to Article 232, provides that labour disputes are heard directly by local general courts upon application of:

1) employees of enterprises, institutions and organisations where labour dispute commissions are not elected;

2) employees on reinstatement regardless of the grounds for termination of the employment agreement, change of the date and wording of the reason for dismissal, payment for the period of forced absence from work or performance of lower-paid work, except for disputes of employees referred to in part 3 of Article 221 and Article 222 of this Code;

3) the head of an enterprise, institution, organisation (branch, representative office, department and other separate subdivision), his/her deputies, chief accountant of an enterprise, institution, organisation, his/her deputies, as well as officials of tax and customs authorities who have been awarded special titles, and officials of central executive authorities implementing public policy on state financial control and price control; and managers elected, approved or appointed by state authorities, local self-government bodies, as well as public organisations and other associations of citizens, on issues of dismissal, change of date and wording of the reason for dismissal, transfer to another job, payment for the period of forced absence and imposition of disciplinary sanctions, except for employee disputes referred to in part 3 of Article 221 and Article 222 of this Code;

4) an employer for compensation by employees for material damage caused to an enterprise, institution or organisation;

5) employees on the issue of applying labour legislation, which, in accordance with the current legislation, was previously resolved by the employer and the elected body of the primary trade union organisation (trade union representative) of the enterprise, institution, organisation (subdivision) within the scope of their rights;

6) employees for formalisation of labour relations in case they perform work without entering into an employment contract and establishing the period of such work (Labour Code of Ukraine, 1971).

It should be noted that the interests of employers and employees do not always coincide, and it is quite logical that these interests may clash at any stage of the employment relationship. Therefore, in times of a difficult economic situation in Ukraine, the problem of resolving labour disputes arising between the owner of an enter-

prise, institution, organisation or an authorised body or a physical person, on the one hand, and a particular employee or labour collective, on the other hand, is very relevant [10, p.76]. Nowadays, according to I. Diorditsa, the current legal provisions that create an effective system for exercising labour rights and interests of workers and employees are enshrined in a number of legislative regulations. In employment relations, an employee and an employer have certain rights and obligations that may be breached by either party. In view of this, certain controversies arise in the application of labour law, including disputes over the reinstatement of employees following their dismissal by their employers. Given the large number of legal regulations on labour relations, it is necessary to note the existence of certain problems in law application and the ambiguity of judicial practice in resolving relevant labour disputes (Diorditsa, Shevchuk, 2021).

The penultimate group of guarantees is political. In this context, A.Yu. Oliinyk argues that political guarantees are political conditions and means enshrined in constitutional provisions and principles that ensure the exercise of a person's freedom to engage in entrepreneurial activity. These include constitutional provisions that enshrine the duties of the state and its bodies and other actors of the political system of society to create conditions and use means for the exercise of this constitutional freedom (Oliinyk, 2020). For example, according to the scholar, Article 3 of the Constitution of Ukraine enshrines the need to establish and ensure human rights and freedoms as the main duty of the State. According to Article 92 of the Basic Law, the Parliament of Ukraine shall determine exclusively by law the freedoms (including the freedom to engage in entrepreneurial activity) and guarantees

for their implementation. The Constitution of Ukraine recognises a number of functions of the Parliament of Ukraine (Article 85), including ensuring the freedom of a person to engage in entrepreneurial activity. The people have the right to form the parliament and the head of the State. The President of Ukraine is defined as the head of the Ukrainian State (Article 102), who is the guarantor of constitutional freedoms of man and citizen. The President of Ukraine and the Verkhovna Rada of Ukraine (Parliament) form the Government (CMU), powers thereof include the functions of ensuring constitutional freedoms of individuals (Article 116). The government ensures constitutional freedoms through the system of central and local state authorities (Oliinyk, 2020).

The last group of guarantees for protection of the rights of hired workers in the context of atypical forms of employment is organisational. According to V.M. Beschastnyi, organisational guarantees are systematic organisational activities of the State and all its bodies, officials, and public organisations aimed at creating an enabling environment for citizens to really enjoy their rights and freedoms. Such guarantees include the existence of a clear system of interconnection between a person and the State. It is manifested in a well-established mechanism for checking citizens' complaints and responding to them promptly, etc. (Beschastnyi, Filonov, Subbotin, Pashkov, 2007).

4. Conclusions

To sum up, it should be noted that to date, the legislator has developed a fairly broad system of guarantees for the protection of rights of hired workers in the context of atypical forms of employment. However, a common drawback is the fact that, despite their legal consolidation, currently no effective mechanisms for their practical implementation exist.

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ГАРАНТІЇ ЗАХИСТУ ТРУДОВИХ ПРАВ НАЙМАНИХ ПРАЦІВНИКІВ У РАЗІ ВИКОРИСТАННЯ НЕТИПОВИХ ФОРМ ЗАЙНЯТОСТІ

Анотація. Мета. Мета статті полягає у встановленні кола та розкритті змісту гарантій захисту трудових прав найманих працівників у разі використання нетипових форм зайнятості. **Результати.** У статті з огляду на аналіз наукових поглядів учених і норм чинного законодавства розкрито коло та зміст гарантій захисту трудових прав найманих працівників у разі використання нетипових форм зайнятості. Наголошено на тому, що гарантії захисту трудових прав найманих працівників у разі використання нетипових форм зайнятості являють собою сукупність законодавчо визначених умов, інструментів і засобів, які використовують держава, роботодавець та самі працівники з метою забезпечення фактичної реалізації своїх прав, свобод та інтересів у відповідній сфері. Визначено, що юридичні гарантії закріплені великою кількістю нормативно-правових актів різної юридичної сили: від Конституції України, міжнародних договорів та угод до локальних нормативно-правових актів, що приймаються кожним окремим роботодавцем. Зазначені гарантії спрямовані на те, щоб створити належне й ефективне нормативно-правове підґрунтя для захисту законних прав, свобод та інтересів найманих працівників у разі використання нетипових форм зайнятості. Окрім того, наявність таких гарантій апіорі є запорукою того, що права працівника не будуть порушені, а в разі порушення будуть відновлені. З'ясовано, що до переліку основних державних соціальних гарантій належать: 1) мінімальний розмір заробітної плати; 2) мінімальний розмір пенсії за віком; 3) неоподатковуваний мінімум доходів громадян; 4) розміри державної соціальної допомоги та інших соціальних виплат. Основні державні соціальні гарантії, які є основним джерелом існування, не можуть бути нижчими від прожиткового мінімуму, встановленого законом. **Висновки.** Зроблено висновок, що на сьогодні законодавцем розроблено досить широку систему гарантій захисту прав найманих працівників у разі використання нетипових форм зайнятості. Водночас як спільний недолік варто назвати той факт, що, незважаючи на юридичну закріпленість гарантій, на цей час фактично відсутні дієві механізми їх практичної реалізації.

Ключові слова: гарантії, захист, трудові права, наймані працівники, нетипові форми зайнятості, законодавство.

The article was submitted 15.12.2022

The article was revised 05.01.2023

The article was accepted 24.01.2023