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MAIN ASPECTS OF THE IMPLEMENTATION OF FAIR RECRUITMENT POLICY IN THE UKRAINIAN LEGAL REGULATORY MODEL

Abstract. Purpose. The purpose of the article is to reveal the system of international sources of specialised orientation which provide for the regulatory consolidation of standards for the provision of recruitment services. **Results.** The article describes the main aspects of fair recruitment policy in the discourse of its conceptual rules and standards from the perspective of key international organisations. It is specified that fair recruitment policy covers a number of key international documents. In particular, the main legally binding treaties define the duties of states to ensure fair recruitment and use the link between the topic of recruitment and other areas of international law such as forced labour, migrant workers' rights, employment policy, etc. As for the relevant conventions, they focus on specific sectors of employment, defining the basic standards for recruitment and employment procedures for certain categories of workers. It is revealed that international standards and rules specialised in fair recruitment are a more specific characteristic of the general standards on forced labour, labour of migrant workers and the specifics of regulating their employment. Although there are some indications of what a fair recruitment process should be, we have not found a clear algorithm for ensuring this. This leads to the conclusion that it is the exclusive national prerogative to regulate the implementation of fair recruitment policies in the national legal system of a particular country. **Conclusions.** It is determined that optimisation of domestic legislation with regard to implementation of fair recruitment policy into the Ukrainian regulatory model should focus on: 1) the basic key principles of counteracting global negative factors and phenomena operating in the employment sector – forced labour and other types of exploitation (including human trafficking), discriminatory manifestations, etc., which are largely related to unfair recruitment practices; 2) creating conditions for the development of the labour potential of Ukrainians, expanding their talents and abilities; 3) ensuring a favourable business climate in the country, which will allow organisations to engage in internal development unencumbered by external obstacles (e.g., confusing regulatory frameworks, unbalanced approach to tax administration, or excessive bureaucracy in general).

Key words: administrative and legal framework, international standards, employment mediation, recruiting, recruiting services, recruitment, labour relations, rights of labour emigrants.

1. Introduction

Fair recruitment policy covers a number of key international documents. In particular, the main legally binding treaties define the duties of states to ensure fair recruitment and use the link between the topic of recruitment and other areas of international law such as forced labour, migrant workers' rights, employment policy, etc. As for the relevant conventions, they focus on specific sectors of employment, defining the basic standards for recruitment and employment procedures for certain categories of workers.

In this context, it is relevant to study the main aspects of fair recruitment policy in

the discourse of its conceptual rules and standards from the perspective of key international organisations, which will be appropriate for the development of specific initiatives to regulate and optimise the recruitment services market in Ukraine.

In general, the issue of recruitment services in the context of their content and features is a relevant area for the development of scientific discussion. This is particularly true because domestic legislation appeals to a significant number of terminological units that can denote the phenomenon under study both in the general context and highlight its individual components. Accordingly, its legal nature is gen-

eralised or simplified by means of designation with other categories which do not fully reflect its essence. Due to the presence of a significant amount of scientific subjectivity in the disclosure of these issues, the study presented for analysis can be considered to have a significant degree of novelty, since the domestic administrative and legal field of scientific knowledge has not sufficiently focused on the aspects of implementing fair recruitment policy in the Ukrainian legal regulatory model, as evidenced by the absence of any scientific works on this issue at the time of this study.

The purpose of the article is to reveal the system of international sources of specialised orientation which provide for regulatory consolidation of standards for the provision of recruitment services.

2. Standards and rules for the provision of recruitment services

With regard to specialised standards and rules for the provision of recruitment services, primarily the General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs (International Labour Organisation, 2023), published by the International Labour Organisation (hereinafter – the ILO) in 2019 should be considered.

The purpose of these non-binding ILO General principles and operational guidelines for fair recruitment is to inform the current and future work of the ILO and other organizations, national legislatures and social partners on promoting and ensuring fair recruitment. They apply to recruitment, regardless of the location of the worker, within or across national borders, as well as to recruitment through temporary work agencies, and cover all sectors of the economy. Implementation of these principles and guidelines at the national level should occur after consultation between the social partners and the government (International Labour Organisation, 2023).

The following are the thirteen general principles of fair recruitment:

1) Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation;

2) Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages, or

working conditions, or to otherwise undermine decent work;

3) Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers;

4) Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications;

5) Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons;

6) Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination;

7) No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers;

8) The terms and conditions of a worker's employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable;

9) Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion;

10) Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment;

11) Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained;

12) Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant

workers should not require the employer's or recruiter's permission to change employer;

13) Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred (International Labour Organisation, 2023).

The instrument also establishes rules and standards for governments, employers and their associations, recruitment service providers (public and private), employee associations, and the media.

In particular, governments bear the ultimate responsibility for advancing fair recruitment, both when acting as regulatory bodies and public employment services. To reduce abuses practised against workers, both nationals and migrants, during recruitment, gaps in laws and regulations should be closed, and their full enforcement pursued. To fulfil this duty, it is important that governments strengthen national laws and regulations related to fair recruitment and, more importantly, engage social partners in meaningful social dialogue to adopt them. To be effective, such laws should cover all aspects of the recruitment process and apply to all workers, especially those in vulnerable situations. However, it is not enough to pass laws on fair recruitment or employment; governments should also ensure that they are effectively enforced, through the work of labour inspectorates.

It should be noted that, according to the recommendations analysed, the main responsibilities of recruiters are: 1) respect for human rights, labour law and current legislation. They should treat workers with dignity and respect, should not abuse or allow abuse of, workers who are under their protection. 2) respect for bilateral or multilateral migration agreements between the countries; 3) ensuring that workers are not deceived with respect to their working and living conditions; 4) with regard to employment agencies and user enterprises, these two actors should agree on the allocation of responsibilities, and inform the workers concerned. Although not exclusively or specifically for them, recruiters are also subject to the following principles and guidelines: a) they should ensure that the workers' written employment contracts are clear and transparent and understandable; b) workers cannot be forced or deceived into signing them, and measures must be taken to prevent contract substitution; c) contract substitution is the practice of changing the terms of employment to which the worker has agreed, usually after arrival in

the country of destination; 5) recruiters should respect the freedom of workers to terminate or change jobs or return to their country of origin; 6) they should not retaliate against workers or blacklist them when they report abuse or fraud in the course of employment; 7) workers should be recruited to meet labour market needs, not as a means of displacing or reducing the existing workforce; 8) recruiters should not charge workers any fees or expenses; 9) they should not keep workers' passports and other identification documents; 10) they should respect workers' privacy and not disclose any personal data to third parties without the worker's consent; 11) recruiters may consider establishing schemes to guide professional recruitment standards (International Labour Organisation, 2023).

The above clearly reveals the ILO's focus on the specifics of international recruitment regulation, which is generally understandable given the risks of abuse within its framework. Therefore, in 2019, during a global conference held in Montreal (Canada) and attended by leading experts and practitioners from more than 30 countries, practical guidance and ideas for policymakers and regulators to improve the effectiveness of regulation and control of international recruitment, and protect the rights of migrant workers were developed. They are known as The Montreal Recommendations on Recruitment: A Road Map towards Better Regulation (2020). This document covers a wide range of topics, including the following: (a) recruitment fees; (b) licensing and registration of recruitment agencies; (c) inspections and enforcement; (d) access to grievance mechanisms and dispute resolution; (e) bilateral and multilateral mechanisms; and (f) social security and migrant assistance (The Montreal Recommendations on Recruitment: A Road Map towards Better Regulation, 2023).

It should be noted that these recommendations are based on the IRIS Standard: Ethical Recruitment. This is the ILO's flagship initiative on the ethical recruitment of migrant workers. IRIS priorities include: 1) awareness raising and capacity building, 2) migrant worker voice and empowerment, 3) the regulation of international recruitment, 4) voluntary certification of private recruitment agencies, and 5) stakeholder partnership and dialogue (International Labour Organisation, 2023).

This Standard consists of two main principles and five specific ones, each of which is supported by one or more criteria with corresponding sets of indicators that recruiters must meet. These principles are as follows: a) respect for laws, fundamental principles and rights at work; b) respect for ethical and professional conduct; 1) prohibition of recruitment fees

and related costs to migrant workers; 2) respect for freedom of movement; 3) respect for transparency of terms and conditions of employment; 4) respect for confidentiality and data protection; 5) respect for access to remedy (International Labour Organisation, 2023).

3. Regulations of the World Employment Confederation

In addition, the following instruments, information and analytical documents of the World Employment Confederation should be mentioned:

- "Promoting Fair Recruitment and Employment Practices (Code of Conduct)", which was designed as a tool to distinguish between honest, ethical recruitment and employment agencies and fraudsters (World Employment Confederation, 2023). The Code provides for ten key guidelines for the above, in particular: 1) respect for law; 2) adherence to the highest standards of professional conduct; 3) focus on the social component of recruitment services, in particular, free-of-charge provision of services to jobseekers; 4) compliance with the conditions of transparency of the recruitment process; 5) consideration of specific working conditions in correlation with employee health and safety risks; 6) adherence to the principles of non-discrimination; 7) respect for labour rights; 8) compliance with confidentiality rules; 9) provision of quality services and fair business practices; 10) provision of all possible variations of legal remedies for employees;

- "Compendium of Voluntary Initiatives Promoting Ethical Recruitment Practices (World Employment Confederation, 2023), which highlights the most important initiatives of voluntary associations from different countries in the field of recruitment;

- "Defining the Business Case: Ethical Recruitment" (World Employment Confederation, 2023) – as an informational and educational material, explains why recruitment should always be ethical;

- "Code of Ethical Principles in the use of Artificial Intelligence: What the World Employment Confederation Believes in" (World Employment Confederation, 2023), which contains generalised advantages and key rules for the use of artificial intelligence in the recruitment and employment process.

Therefore, these international standards and rules specialised in fair recruitment are a more specific characteristic of the general standards on forced labour, labour of migrant workers and the specifics of regulating their employment. Although there are some indications of what a fair recruitment process should be, we have not found a clear algorithm for ensuring this, and this leads to the conclusion

that it is the exclusive national prerogative to regulate the implementation of fair recruitment policies in the national legal system of a particular country.

However, it should be considered that fair recruitment policy is more than just about avoiding the negative impacts of unfair recruitment (International Organisation of Employers, 2021) (it is aimed both at protecting the rights of a potential employee and at preventing the organisation from unnecessary costs and expenses that can be seen, at least in part, by high employee turnover, low productivity, and an inability to attract the talent they need vis-à-vis other employers in the market) (International Organisation of Employers, 2021), since it is about optimising one of the most important investments a business – labour potential.

Therefore, fair recruitment is about ensuring human rights in the workplace, which should be an important priority for employers. It is not just a matter of avoiding violations, but also a proactive strategy for attracting and developing the best talent. Ensuring that employees can make full use of their skills and experience has always been a key asset for any business. Fair recruitment not only promotes high productivity, but also creates an environment for development and collaboration within the organisation.

4. Conclusions

The main purpose of this study is to reveal the procedure for introducing fair recruitment policy into the Ukrainian legal regulatory model. The study enables to determine that optimisation of domestic legislation with regard to implementation of fair recruitment policy into the Ukrainian regulatory model should focus on: 1) the basic key principles of counteracting global negative factors and phenomena operating in the employment sector – forced labour and other types of exploitation (including human trafficking), discriminatory manifestations, etc., which are largely related to unfair recruitment practices; 2) creating conditions for the development of the labour potential of Ukrainians, expanding their talents and abilities; 3) ensuring a favourable business climate in the country, which will allow organisations to engage in internal development unencumbered by external obstacles (e.g., confusing regulatory frameworks, unbalanced approach to tax administration, or excessive bureaucracy in general).

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ОСНОВНІ АСПЕКТИ ВПРОВАДЖЕННЯ В УКРАЇНСЬКУ МОДЕЛЬ ПРАВОВОГО РЕГУЛЮВАННЯ ПОЛІТИКИ СПРАВЕДЛИВОГО РЕКРУТИНГУ

Анотація. Мета. Метою статті є розкриття системи міжнародних джерел спеціалізованого спрямування, що здійснюють нормативну фіксацію стандартів надання рекрутингових послуг. **Результати.** У статті охарактеризовано основні аспекти політики справедливого рекрутингу у дискурсі її концепційних правил та стандартів із позиції ключових міжнародних організацій. Уточнено, що політика справедливого рекрутингу охоплює низку ключових міжнародних документів. Зокрема, основні юридично обов'язкові договори визначають зобов'язання держав щодо забезпечення справедливого рекрутингу та використовують зв'язок між темою найму і такими сферами міжнародного права, як примусова праця, права працюючих-мігрантів, політика зайнятості тощо. Своєю чергою, відповідні конвенції зосереджуються на конкретних секторах зайнятості, визначаючи основні нормативи до процедур рекрутингу та працевлаштування окремих категорій працівників. Виявлено, що міжнародні стандарти і правила спеціалізованого спрямування щодо справедливого рекрутингу є більш конкретизованою характеристикою загальних нормативів щодо примусової праці, праці трудових мігрантів та особливостей регулювання їх зайнятості. Хоча і містяться окремі вказівки на те, яким має бути процес справедливого рекрутингу, чіткого алгоритму щодо забезпечення означеного нами не виявлено. Це спонукає до висновку про виняткову національну прерогативу регулювання питань забезпечення впровадження політики справедливого рекрутингу в національну правову систему конкретної країни. Визначено, що під час оптимізації вітчизняного законодавства щодо впровадження в українську модель правового регулювання політики справедливого рекрутингу необхідно акцентуватися на: 1) базових ключових засадах протидії глобальним негативним чинникам та явищам, що функціонують у сфері зайнятості: примусова праця та інші види експлуатації (у тому числі торгівля людьми), дискримінаційні прояви тощо, що більшою мірою пов'язані з веденням нечесної практики рекрутингу; 2) створенні умов для розвитку трудового потенціалу українців, розширенні їхніх талантів та здібностей; 3) забезпеченні сприятливого бізнес-клімату в країні, що дасть змогу організаціям сконцентруватися на внутрішньому розвитку, необтяженому зовнішніми перешкодами (наприклад, заплутаному регулюванні, незбалансованому підході до адміністрування податків чи надмірній бюрократії загалом).

Ключові слова: адміністративно-правове регулювання, міжнародні стандарти, посередництво у працевлаштуванні, рекрутинг, рекрутингові послуги, рекрутмент, трудові відносини, права трудових емігрантів.

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