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TRANSPARENT AND PREDICTABLE LABOR CONDITIONS IN THE EUROPEAN UNION: LEGAL AND COMPARATIVE STUDY

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ABSTRACT

The article aims to evaluate the current innovations in Ukraine's labor legislation for compliance with main legal acts that provide for transparent and predictable working conditions in the European Union. This article attempts to identify problems and shortcomings of the normative work of state bodies in this area and elaborate on the amendments to particular domestic legislative acts. The article analyzed the labor framework of the European Union and distinguished such shortcomings in the domestic legislation as the unclear definition of employee status, vague duration of probationary periods, undefined criteria for refusal and compensation for employees to refuse on-demand work, unresolved issue of minimum working hours, etc. The developed recommendations for amending legal acts of Ukraine make it possible to address the mentioned issues and receive timely and complete information about significant aspects of the work of Ukrainian employees.

1. Introduction

Modern working conditions are crucial components of the socio-economic development of countries, especially when it comes to the context of the European Union. Transparency and predictability of working conditions determine the efficiency of economic systems and ensure the protection of the rights of individuals in the labor market. Annex XL to the Ukraine-EU

Association Agreement[1] entails Ukraine implementing a reformation policy in the field of labor and social policy to bring its legislation into line with the EU law. But what do these provisions mean for Ukraine from the practical point of view? Article 8, Section 1 of the Constitution of Ukraine stipulates that the rule of law shall be in force and efficient in Ukraine[2]. The Constitutional Court of Ukraine in the explanatory section of its ruling stated the following: "Article 8, Section 1 of the Constitution of Ukraine stipulates that the rule of law shall be in force and efficient in Ukraine."[3]

The rule of law manifests in the unboundedness of the concept of law to legislation solely, which is just one of its forms. It goes beyond that and involves other constants established and legitimized by a particular society, such as standards of morality, traditions, and customs. The ideology of justice, the concept of law, enshrined in the Constitution of Ukraine, unifies all the mentioned constituents of law[4]. A vital element of the rule of law principle is Ukraine's acceptance of the supremacy of international labor legislation over domestic one. The following legal acts provide legal basis for such acceptance:

According to the principle of the rule of law norms to be applied are the ones containing higher standards for human rights and legal guarantees, regardless of whether they belong to international legislation or domestic one. "No national court shall be criticized for its wider interpretation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms if puts an individual in a more favourable position as opposed to the interpretation given by the European Court"[5]. Therefore, any state can expand the scope of rights provided by an international legal act when such opportunities arise[6]. Thus, the principle of the rule of law acts as a measure of justice in the state's attitude towards a working person and the quality of Ukraine's labor legislation.

Directive No. 2019/1152 on transparent and predictable working conditions in the European Union is the EU prime directive of the ideological nature. It includes a range of fundamental provisions that act as reference points for

1 European Parliament and the Council., *Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions in the European Union*, EUR-LEX.eu, Accessed 28 March 2023, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1152

2 Verkhovna Rada of Ukraine., *Constitution of Ukraine,* Zakon.rada.gov.ua, Accessed 8 April 2023, https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text,.

3. Constitutional Court of Ukraine., *Decision In The Case On The Constitutional Appeal Of The Supreme Court Of Ukraine On The Compliance With The Constitution Of Ukraine (Constitutionality) Of The Provisions Of Article 69 Of The Criminal Code Of Ukraine (The Case On The Imposition Of A Milder Sentence By The Court)*, Zakon.rada.gov.ua, Accessed 22 March 2023, https://zakon.rada.gov.ua/laws/show/v015p710-04#Text

4 Verkhovna Rada of Ukraine., *Constitution of Ukraine,* Zakon.rada.gov.ua, Accessed 8 April 2023, https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text

5 Gorshkova SA., *Council of Europe Standards on Human Rights and Russian Legislation,* Independent Institute of International Law, 2001, page.147

6 Zhernakov VV., Problems for Social and Labor Rights in the Process of Development of Ukrainian legislation, *Law & Innovations,* Vol. 2 No.9, 2017

improvement of labor legislation[7]. Currently Ukraine is going through a phase of correcting its social policy that includes adjustments to focus areas which consequently brings changes to labor and social legislation. Draft Law "On labor" No. 2708 became the result of these innovations[8]. Scholars and trade unions, however, started criticizing the Draft when it first appeared as therefore this comparative and legal research will become a part of the Draft's impartial analysis, will guarantee a public discussion and critical understanding of its provisions to test it for compliance with the international legal acts that have been ratified by Ukraine or are a part of the European Union's legislation.

Therefore, the article aims to analyze the system of legislative acts and the practice of applying the rules of transparency and predictability of working conditions in the EU and compare them with the current innovations in the labor legislation of Ukraine for compliance with the main legal acts that ensure transparent and predictable working conditions in the European Union.

The research methodology encompasses a comparative analysis of the texts of legal acts, directives, and conventions of national and European legislation. Particular attention is paid to issues of labor market flexibility and interaction between employers and employees in the changing economic environment. The leading research method is the comparative research method on regulatory legal acts. This method makes it possible to comprehensively understand the chosen problem since Ukraine, given its European integration direction, is trying to harmonize its legislation under European norms.

Many aspects of EU labor law were the subject of research by international scholars. It is necessary to mention the following scientific works by Georgiou[9], Blikhar et al.[10], Lopushniak et al.[11], and Melnychuk et al.[12], which contribute to clarifying the problems of legal regulation of labor relations in the countries of the European Union. Melnychuk et al. see the legalization of non-traditional forms of labor as a measure to maintain labor relations' stability and ensure social distancing during times of emergency. Blikhar et al. emphasize the need

7 European Parliament and the Council., *Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union,* EUR-LEX.eu, Accessed 28 March 2023, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1152

8 Honcharuk OV., *Draft Law of Ukraine On Labor No. 2708*, Zakon.rada.gov.ua, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67833, Accessed 12 February 2023.

9 Georgiou D., The new EU Directive on Transparent and Predictable Working Conditions in the Context of New Forms Of Employment, *European Journal of Industrial Relations*, Vol.28 No.2, 2023

10 Blikhar M, Ostapenko O, Khomyshyn I, Ostapenko L, Vinichuk M., Transformation of hired Labor as One of The Conditions for Reforming Labor Legislation of Ukraine: Economic and Legal Dimension, *Financial and Credit Activity: Problems of Theory and Practice*, Vol.1 No.48, 2023

11 Lopushniak H, Poplavska O, Danylevych N, Kostyshyna T, Raupov R., Organization of Labor Under Conditions of Uncertainty: The case of Ukraine, *Problems and Perspectives in Management*, Vol.21 No.2, 2023

12 Melnychuk OF, Melnychuk AO, Polishchuk AS, Ishchuk AM., Transformation of Legal Regulation of Labor in Ukraine in The Context of The Experience of Foreign Countries Under Covid-19 Conditions, *ECS Transactions*, Vol.107 No.1, 2022

for a fundamental rethink and modernization of the principles underlying labor legislation in Ukraine. The article proposes a shift toward voluntary employment and a focus on the quality of work. Lopushniak et al. note atypical employment, which has become a new norm, and the acceleration of trends, such as remote work. Types and scope of protection of labor rights are the issues that are permanently raised in science by Craig[13], Vnuchko and Skoryk[14], and Inshin et al.[15]. However, their works require a more thorough examination, especially in the context of transparency and predictability of working conditions in the EU.

2. Research Methods

This article is designed to identify the problems and shortcomings of the rule-making activity of state bodies in this area and dwell in detail on the introduction of changes to particular domestic legislative acts. The scientific novelty of this article lies in a thorough analysis and comparative study of the system of legal regulation of labor conditions in the countries of the European Union. The study considers the current challenges arising from globalization, technological and social changes, and their impact on the labor market. The developed recommendations on amendments to the legislative acts of Ukraine provide for timely and complete information on the essential aspects of the work of Ukrainian employees, such as the place of work, its conditions, and the principles of fair remuneration.

The results of the study are expected to provide a valuable contribution to the understanding of the EU labor system's effectiveness and serve as a basis for further recommendations for improving legislation and practice in this area in Ukraine.

3. Results and Discussion

3.1 Theoretical Overview of Directive No. 2019/1152: Its Objective, Role, and Compliance with the EU Social Pillar

Directive No. 2019/1152 on transparent and predictable working conditions in the European Union is a political and legal document that determines basic policy directions for certain aspects of labor regulation in any modern democratic European, social and law-based state. The Directive is a crucial legislative instrument adopted by the European Union (EU) to enhance the quality of employment and ensure equal treatment of employees within the EU member states. The Directive is designed to improve transparency and predictability in labor relations, strengthen employees' rights, and contribute to social cohesion.

13 Craig P., EU Accession to the ECHR: Competence, Procedure and Substance, *Fordham International Law Journal*, Vol.36 No.5, 2013

14 Vnuchko S, Skoryk M., *Standards for Regulating Labor Relations: Legal Norms of the EU and Ukraine*, Kyiv Institute of Gender Studies, 2021, page.63

15 Inshyn M, Sokolov V, Pavlichenko V, Danilova M, Dzhura K., Violations of Health Workers, Labor Rights during the COVID-19 Pandemic, *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, Vol.14 No.3, 2022

According to Directive No. 2019/1152, employees become aware of clear conditions of their employment from the moment the employment contract is concluded. This includes details about their rights and obligations, working hours, remuneration, and any applicable benefits. The Directive grants workers with the right to make informed decisions about their employment and enables them to exercise their rights effectively[16].

Furthermore, the Directive should eliminate such a problem as vulnerable employment and non-standard forms of employment, which can contribute to a predictable working environment. It outlines regulations designed to prevent the mistreatment and misuse of employees, including measures to govern the use of on-demand, intermittent, or casual work[17].

Directive No. 2019/1152 is closely linked to the EU Social Pillar, a set of principles and rights intended to build fair and inclusive societies across the EU. The directive aligns with the Social Pillar's objectives of promoting fair working conditions, ensuring social protection, and enhancing social dialogue. Since Directive No. 2019/1152 is designed to increase transparency and predictability in working conditions, it supports the Social Pillar's objective of improving the quality of life for all EU citizens and promoting social convergence among member states. Thus, the Directive contributes to the implementation of the EU Social Pillar's objectives of social fairness and inclusion.

Unfortunately, the described tendencies have not been reflected in Ukraine's labor legislation either after the adoption of the Constitution or after signing the Ukraine-EU Association Agreement[18]. Visible concerns about full realization of constitutional provisions regarding the wide scope of labor law in the new labor legislation have now turned into reckless attempts for liberalization of labor regulation. Today many working Ukrainians are finding themselves beyond the scope of the rules that have a strong social and defensive orientation as a consequence of such actions[19].

3.2 Directive No. 2019/1152 vs. Draft Law of Ukraine No. 2708: Analysis of the Basic Provisions

Provisions of Chapter 3 of the Directive that establish minimum requirements for working conditions are of prime importance. Article 8 of the Directive focuses on the topic of maximum duration of any probationary period. Article 8, section 1 of the Directive states that any probation period shall not exceed six months. According to article 27, section 2 of the Draft duration of the probation

16 European Parliament and the Council., *Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union,* EUR-LEX.eu, Accessed 28 March 2023, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1152,

17 Shcherbyna VI., *Functions of labor law: monograph*, Academy of Customs Service of Ukraine 2007, page.495].

18 European Union and Ukraine., *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part,* EUR-LEX.eu, Accessed 28 March 2023, http://data.europa.eu/eli/agree_internation/2014/295/oj,

19 Lazovski A., *Overview of the case law of the Court of Justice of the European Union in the areas regulated by the Association Agreement between Ukraine and the EU*, Association4U 2020, page.529

period shall not exceed three months unless the legislation provides otherwise[20]. Norms regarding the extension of the probation period for specific categories of workers shall comply with provisions of Article 8, Chapter 3 of the Directive. If an extended probation period is required, its justification shall be an employee's interest or the specificity of the work. However, when comparing the aforementioned norm to article 27, section 1 of the Code it becomes clear that workers who are not workers are subject to shorter probation periods but for workers this period is two months longer.

It is worth noting that article 27 of the Draft contains no significant norms that are present in article 8, section 2 of the Directive. A probation period shall be equal to the contract duration expected and the specificity of the work, provided that the employment relations have a clearly defined period. Considering the spread of fixed-term employment relationships in Ukraine this norm must be used as a safety measure when applying maximum probation periods.

Article 27, section 4 of the Draft[21] provides for cases when a probation period is not used. The number of such cases has obviously decreased compared to cases in article 26, section 3 of the Code. However, Article 8, Chapter 2 of the Directive contains another significant norm stating that there shall be no probation period again, provided that it is a renewal of a contract for the same work activity. Article 27, section 2, paragraph 2 of the Draft provides that days when the worker has not been performing their work during probation period are not counted regardless of the reason for it. This norm fully complies with the provisions set out in the second sentence of article 8, section of the Directive that allows the European Union member states to correspondingly extend the probationary period in relation to the duration of the absence. Absence of norms regarding general approaches to evaluating professional competence of workers during acceptance for employment is one of the substantial shortcomings of the Directive and the Draft. Its content can be put into the following wording:

"Article… evaluation of professional competence of workers during acceptance for employment"

3.2.1 The employer is given the rights to hold job interviews, surveys, tests, internships, contests, consulting the documents, obtaining information and using other methods for evaluating professional competence of the worker that are not prohibited by the law.

3.2.2 The employer is prohibited from using professional competence evaluation methods that encroach upon the life and health, honour and dignity, inviolability and security of other persons and interfere in their personal and family life.

20 Honcharuk OV., *Draft Law of Ukraine On Labor No. 2708,* Zakon.rada.gov.ua, Accessed 12 February 2023, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67833.

21 *Ibid.*

3.2.3 Medical check-ups of workers for compliance with the work they perform is to be conducted using medical criteria on the grounds of and in compliance with the procedure established by law.

3.2.4 The employer is obliged to adhere to the procedures established by the law of Ukraine "On information" regarding collecting, storing, using and sharing confidential information about people.

According to Article 15, section of the Draft[22] a worker has a right to enter into employment contract with one or several employers at the same time unless the law or employment contract say otherwise. This norm is similar by its content to the one found in article 21, section 2 of the Code but with wider set of restrictions in collective agreements in regards to other work. Both the Draft and the Code contain restrictions in regards to other work established by the parties in the employment contract. However, these acts contain no legal conditions that have been established by the law regarding such restrictions. According to Article 9, Chapter 2 of the Directive, Member Countries have the right to establish requirements for the employer to impose nonconformance restrictions based on reasonable grounds, including health and safety, the security of business confidential information, the integrity of the public service or the avoidance of conflicts of interests. It is believed that the structure of restriction established by contract and based on the criteria specified by law fit the objective demand criteria more.

3.3 Legal Regulation of Employment Relationships that Arise from On-Demand Contracts

For the first time in the history of national legislative practice Article 17, Chapter 1, paragraph 5 of the Draft provides for an employment contract without a fixed schedule. The desire of business entities to enhance the flexibility and elasticity of employment relations resembles a significant problem for countries with market economies in regards to the legal regulations of these relationships. This refers to legalization of flexible, mobile working hours.

Such employment contract when a worker undertakes obligations to perform specific work in future, meaning that the employer decides when to involve a worker in work are becoming increasingly common. These contracts provide for on-demand work. They are commonly used in tourism, air traveling, service industry. There is barely any legal regulation in the usage of such contracts. There are some exceptions to this satiation, however. Germany, for instance, has a law that establishes three separate restrictions that protect the worker to a certain extent. Firstly, this law obliges the employer to inform the worker of the resumption of work at least four days before it. Alternatively, the worker is not obliged to executes their work. Secondly, the employer guarantees that duration of work per day will be at least three uninterrupted hours. Thirdly, the employment contract must contain a paragraph regarding the minimum

22 Honcharuk OV., *Draft Law of Ukraine On Labor No. 2708*, Zakon.rada.gov.ua, Accessed 12 February 2023, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67833.

guaranteed duration of employment relationship[23]. Italian laws recognize on-demand work as an interrupted employment contractor an agreement that can be interrupted. They are fixed-term and non-fixed-term employment contract. This type of agreement entitled the employer to engage workers to specific work throughout the duration of the agreement depending on the situation on a given enterprise. They are mainly used for office workers, tourism and seasonal types of activity. Remuneration depends on the actual amount of performed work during employment[24].

A need for legal regulation of employment relationships that arise from on-demand contracts stems from temporary nature of such work, absence of continuous work, absence of the exact moment from which work can be counted, absence of legal regulation in the matter of remuneration to on-demand workers. This type of employment contract has to be regulated by a separate normative act with clear definition of on-demand work, remuneration payment procedures for on-demand workers, time of on-demand contracts, conditions for calling a worker to work[25].

On-demand contracts can be divided into two type. First type is called min-max contracts. These contracts establish lower and upper limits of working hours. The former one is to be provided to the worker by the employer and the latter one is how much the worker is required to work when summoned. In cases when the employer engages the worker in work that lasts less than the lower limit the worker is subject to a compensation that equal the amount of hours to the lower limit. Second type is called zero-hours contract. According to these contracts employer is not obliged to provide worker with work and bears no responsibility for non-provision of it. At the same time neither minimum working hours nor work mode are decided. It is possible that worker will never be summoned to fulfill work which provides no employment and remuneration guarantees. Zero-hours contracts, for their part, can be divided into types: the first one obliges worker to perform on-demand work when summoned by employer, the second one provides worker with an option to refuse such work[26].

What model of on-demand contracts has the Ukrainian legislator chosen and how much does it correspond to the Directive provisions? Article 22, Chapter 1 of the Draft defines employment contracts without fixed working hours as a special form of employment contracts under which a worker is obliged to perform work only when provided with it by the employer with no guarantees for such work to be available on an ongoing basis. Firstly, we need to

23 Lushnikov AM and Fomina MA., Features Of The Legal Regulation of Labor Relations in Non-Standard Forms of Employment: The Experience of Western Countries, *Labor Abroad,* Vol. 2, 2007, page.88.

24 Garashchenko LP., *Types of Employment Contracts in Accordance with Italian Law*, Nika-Center, 2013, page.152

25 Prylypko OS., *Differentiation of Legal Regulation of Non-Traditional Employment Contracts* Nika-Center, 2013, page.152].

26 Svichkarova YuV., *Regarding The Peculiarities of The "Zero Hours" Contract with The Employee's Right to Refuse Work*, Pravo, 2014, page.171

understand what "a special form of employment contracts" is for the authors of the Draft. Article 205 of the Civil Code of Ukraine[27] defines form of transaction (including agreement as a form of the latter one) and ways of expressing will. According to part 1 of this Article, the verbal or written form is permitted for closing a transaction. The parties are entitled to decide upon the transaction form unless otherwise provided by the statute. It remains unclear what special form the definition mentioned in the Draft talks about. This type of employment contracts, as the rest of them, is concluded in written form as indicated by provisions of Article 15 of the Draft.

Secondly, article 22, section 1 of the Draft characterizes this type of employment contract using two distinct features:

3.3.1 worker is obliged to perform work only when provided with available work by the employer.
3.3.2 worker performs work without guarantees for availability of such work on an ongoing basis[28].

But why is it named "contract without fixed working hours" and not "on-demand contract"? A responsibility for an employee to execute work arises only when such work is available and provided by an employer. Confirmation for this can be found in provisions of article 22, section 4 of the Draft[29] where it states that employer independently determines the amount of work to be performed and agrees the working regime, amount of working hours needed to complete a given job with the worker within a reasonable time frame. However, this contradicts the provisions stipulated by Article 4, paragraph "M" of the Directive. According to the said Article, employers shall inform employees of the reference days and hours they need employees to execute work provided that the work pattern is thoroughly or predominantly unforeseeable. Thus, the Directive guarantees that any worker can plan their working day for several different employers. The same idea is outlined in article 10 of the Directive. Therefore, the Directive establishes guarantees for minimum predictability of work for workers and obliges the employer to consider the worker's interest. The Draft promotes total disregard for the interest of workers by the employer.

It is evident that Ukrainian legislator has somewhat of a simplified understanding of the nature of such employment contracts and the employer's limits of authority established by the Directive. Requirements to this type of contracts set out in the Directive are the following. Article 4, section 1 of the Directive states that member states shall ensure that employers are required to inform workers of the essential aspects of the employment relationship. Paragraph "M" of the said Article envisages the obligation of an employer to provide an employee with the following information provided that the work pattern is thoroughly or predominantly unforeseeable:

27 Verkhovna Rada of Ukraine., *Civil Code of Ukraine*, Zakon.rada.gov.ua, Accessed 16 April 2023, https://zakon.rada.gov.ua/laws/show/435-15
28 Honcharuk OV., *Draft Law of Ukraine On Labor No. 2708,* Zakon.rada.gov.ua, Accessed 12 February 2023, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67833
29 *Ibid*.

3.3.3 the mechanism of the changeable work pattern, the number of secured billable hours, and the payment for executed work in addition to these billable hours;
3.3.4 the days and hours when an employer anticipates an employee to execute work;
3.3.5 the right of employees to be notified about the minimum period they have to begin working and, if relevant, the deadline for revocation outlined in Article 10(3).

Article 10 of the Directive establishes requirements for minimum predictability of work for employment contracts without fixed working hours. In case of employee's work pattern is thoroughly or predominantly unforeseeable, Member Countries are obliged to secure an employee from being demanded by an employer to execute the work unless the following requirements are met:

3.3.6 the work is carried out at a predefined time;
3.3.7 an employer notifies an employee about the work to perform within a reasonable period specified by domestic legislation, practices, or collective agreements.

If one or both of these conditions is not met, an employee is entitled to decline a work assignment being subject to no adverse consequences. Article 22, section 3 of the Draft provide that in addition to compulsory conditions of employment contract set out in the Draft an employment contract without fixed working hours shall contain conditions regarding the method of informing the worker of the availability of work and method for workers to confirm their readiness to begin work. However, according to section 4 of the same article reasonable notice period is determined not by the employment contract but by the employer themselves. But section 5 of the same article points at the notice period established by the employment contract. These are not the same things, however.

Article 22, section 5 of the Draft, in our view, does not comply with article 10 of the Directive as the former one only emphasizes a single condition for refusal to work which is delay in the notice period deadline set out in the employment contract. This norm, however, ignores the requirement under which the work is carried out at a predefined time because this requirement restricts the arbitrariness of the employer regarding sudden work assignments without a reasonable notice period. This problem would have never arisen if the legislator had adhered to provisions regarding informing workers of the essential aspects of the employment relationship set out in Article 4, paragraph "M" of the Directive when defining "employment contract without fixed working hours". The conditions outlined in Chapter 12 of the preamble to the Directive put employees working on-demand or within unsecured time (on zero-hour) in a particularly assailable situation. Therefore, the provisions of this Directive should apply to them regardless of the number of hours they actually work. This means that the Draft completely ignores the key characteristic that define this type of employment contracts.

Article 22, section 6 of the Draft deals with remuneration guarantees in thus type of employment contracts. Salary of workers who work under the employment contract without fixed working hours is counted based of the actual amount of work done. It remains unclear, however, what criteria the developers of the Draft were guided by when establishing minimum working hours for workers who work under employment contracts without fixed working hours at a mark of eight hours per month. The same section contains a rule under which a worker who worked less than eight hours during a given month is subject to a compensation in the amount that is equal to eight hours of work. It must be noted that eight hours of work equals one full working day. Provisions of article 22, section 7 of the Draft can be seen as consolation for poor employment and remuneration guarantees for workers performing under employment contacts without fixed working hours. According to these provisions, the employer is prohibited from restricting or interrupting work performed by a worker under a different employment contract for a different employer.

Article 22 of the Draft also provides no guarantees for workers when the employer cancels a work assignment[30]. Article 10, section 3 of the Directive confirms the right of Member States to authorize an employer to revocate a work assignment without remuneration. However, this Article also imposes the obligation on the Member States to take all the measures required for guaranteeing remuneration to an employee in case of the revocation of the previously agreed work assignment by an employer after an established reasonable deadline. Moreover, Article 11 of the Directive establishes additional measures for on-demand agreements. In order to avoid acts of abuse in cases of on-demand or analogous employment agreements, the Member States are obliged to ensure the fulfillment of one of the below requirements:

3.3.8 to limit the conclusion and duration of on-demand or analogous employment agreements;
3.3.9 to dispute the assumption of the existing employment agreement under which a minimum amount of billable hours is provided based on the average hours worked within a defined period;
3.3.10 to meet other analogous requirements guaranteeing efficient prevention of abusive practices.

Under article 22, section 2 of the Draft a single worker shall be a party to employment contracts without fixed working hours in the amount that does not exceed 1/10 of all employment contracts this employer is a party to. The aforementioned restrictions are to be applied to employers in the form of legal entities or individual entrepreneurs. The Draft limits the amount of such contract to only 10% from the overall amount of contracts. But it is unclear why this number was given to on-demand contracts.

3.4 Concept of Employment with Predictable and Secure Working Conditions

30 Honcharuk OV., *Draft Law of Ukraine On Labor No. 2708*, Zakon.rada.gov.ua, Accessed 12 February 2023, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67833.

Article 12 of the Directive envisages the right of an employee to turn to another form of employment. According to section 1 of this Article, Member States are obliged to provide the possibility for an employee to ask for and obtained a reasoned written answer about another form of employment, characterized by more foreseeable and safer working conditions, provided that an employee has been working for at least six months with the same employer and has accomplished the probation period if any. However, the Member States are entitled to impose restrictions on the frequency of such requests.

Draft law "On labor" does not contain such a norm, even though the latter one contains basic provisions for working conditions of workers. Article 19, section 4 of the Draft provides for the obligation of the employer to inform workers performing under fixed-term contracts about vacant positions that envisage the possibility of entering into an indefinite employment contract and to provide workers with equal opportunities for such actions. For development of these vital norms it must be studied what the Directive means by "more predictable and secure working conditions." According to article 43, section 4 of the Constitution of Ukraine everyone has the right to proper, safe and healthy work conditions. Article 88 of the Code contains normal working conditions that are the following: 1) operating condition of machines and devices; 2) good quality of materials and tools that are necessary for the performance of the job and their timely delivery; 3) timely provision of electricity, gas and other energy sources to the manufacturing site; 4) timely provision of technical documentation; 5) secure and healthy working conditions.

Article 32, section 3 of the Code point at essential working conditions that are the following: systems and amounts of remuneration of labor, benefits, schedule, establishment or cancellation of part-time work, combination of jobs, changes in categories and denominations of offices. Soviet judicial practice considered as essential working conditions the following elements: amount and system of remuneration; working hours (schedule and shifts); benefits (extra vacation, retirement benefits etc)[31]. It was possible to consider other conditions as essential when certain factual circumstances were present. Ukrainian judicial practice in section 31, paragraph 3 of the decision of the Plenum of the Supreme Court of Ukraine No. 9 "On judicial practice in cases of labor disputes" basically copied the aforementioned interpretation of the term "essential working conditions"[32].

Chapter IV of the Minimum Age Recommendation, No. 146, named "Conditions of Employment" explains the application of this term in regards to underaged workers. The Chapter states it is obligatory to take all measures to guarantee

31 Plenum of the Supreme Court of the USSR., *Resolution on The Application by The Courts of Legislation Governing The Conclusion, Amendment And Termination of an Employment Contract,* Supreme Court of the USSR, Accessed 21 February 2023, http://xn--b1azaj.xn--p1ai/USSR/postanovlenie-plenuma-vs-sssr/N03-ot-26.04.1984-sssr.html

32 Plenum of the Supreme Court of the USSR., *Resolution on The Practice of Consideration of Labor Disputes by Courts*, Supreme Court of the USSR, Accessed 21 February 2023, https://zakon.rada.gov.ua/laws/show/v0009700-92#Text.

satisfactory working conditions for underage employees[33]. These conditions are subject to close control, with particular attention paid to the following:

3.4.1 compliance with and protection of the fair payment policy;
3.4.2 close control over the working time and the prohibition of overwork since underage employees shall have enough time for leisure-time activities and rest as well as learning, training, and doing home assignments;
3.4.3 ensuring regular days off and the night's repose that lasts at least 12 hours without any exceptions except for emergencies;
3.4.4 guarantee for annual paid leave that lasts at least 4 weeks and is equal to that guaranteed to adults;
3.4.5 obligatory compliance with social welfare programs such as occupational injuries, health care, and sickness benefits, despite the working conditions or employment;
3.4.6 the maintenance of acceptable health and safety norms and proper training and control.

Thus, secure working conditions are such working conditions that comply with the safety norms and standards, industrial hygiene, workplace health and fire protection regulations. We share the view of Huk that types of employment characterize the division of economically active part of society by spheres and sectors of national economy, professions, specialties etc. However, forms of employment act as organizational and legal methods and conditions for the use of human labor. Forms of employment that divide labor activity by criterion of consistency are permanent and temporary ones. Full, partial, visible, invisible and flexible one divide labor activity by the criterion of organization of work time[34].

There is a steady trend in Ukraine under which a traditional employment agreement (a non-fixed-term and full-time agreement) is often replaced by a fixed-term agreement (remote and part-time work). This involves the use of non-standard employment agreements. A standard employment agreement with continue to be used but only for a privileged group of workers (core personnel) that is relatively small. A significant number of workers (up to 20-30 % in different countries) perform under non-standard employment contracts. They are: temporary, "borrowed," part-time workers, home-based workers and foreigners. They are hired when the economy of an enterprise improves and they are fired when it worsens. One of the contemporary trends in establishing working regime for workers is the diversity of forms for organization and use of work time. They are increasingly replacing traditional, strict working regimes[35].

33 International Labour Organization., *Minimum Age Recommendation. No. 146,* ILO, Accessed 17 March 2023, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312484#:~:text=(1)%20Members%20should%20take%20as,the%20Minimum%20Age%20Convention%2C%201973

34 Huk NA., The Growth of Species Diversity of The Form of Employment in The Priority Areas of Social Development, *Bulletin of Socio-Economic Research*, Vol.1, 2013, page.347

35 Slezinger GE, Issues Of Labor Organization And Social Relations (Based On Foreign Scientific Publications, *Labor Abroad*, Vol.3, 2000, page.106

Non-standard working regimes and forms are those that, as opposed to standard ones, provide for consistent work in one workplace (usually for 8 hours), allow both the worker and the employer to choose the most suitable employment option in current circumstances. They include: temporary work, on-demand work, seasonal work, home-based work, part-time work etc. Non-standard working hours include both full and part-time regimes[36].

Thus, in our view the provisions "employment form with mostly predictable and secure working conditions" stated in the Directive refers to full time employment with adequate amount of daily and weekly working hours, guaranteed and predictable rest period and work with essential working conditions that comply with safety norms and standards, industrial hygiene, workplace health and fire protection regulations. Moreover, provisions of Article 12, section 2 of the Directive stipulate that the Member States are obliged to guarantee that an employee receives the reasoned written answer from an employer within one month of the appeal. The Member States are also entrusted with the extension of deadlines for answers by employers of micro-, small-, and medium-sized businesses. The extension period shall not exceed three months, and the oral answer is permitted only in case of a similar repeated appeal of the same employee in regard to the same situation that remains unchanged.

3.5 Training and Development in the Workplace: Legal Framework and Obligations

Article 13 of the Directive obliges the Member States to guarantee free training for an employee if the need for such training arises due to the requirements of the Union or domestic law or by collective agreements. Moreover, such training shall count as working time and be conducted within working hours if possible. The Draft contains no norms obliging the employer to provide workers with free of cost vocational training. Article 23 "Student employment contract" of the Draft has nothing in common with the aforementioned provisions of the Directive. And here arises a question as to why these provisions are located in Chapter 3 of the Directive that established minimum requirements relating to working conditions?

The answer is really simple: training has long become an essential feature of Western employment contracts. Necessity for such focus of modern labor norms happens to coincide well with Ukraine's goals from social perspective. Training, retraining and skill development directly in the workplace are the inseparable elements of modern labor law norms. Human Resources Development Convention, No. 142, was ratified by Ukrainian SSR in 1979[37]. It obliges Ukraine to elaborate and implement open, adaptable, and

36 Nikiforova AA., Non-Standard Forms of Employment and Working Hours, (Experience of a Country with a Retail Economy, *Labor Abroad,* Vol.1, 1999, page.54

37 International Labour Organization., Human Resources Development Convention. No. 142, *ILO,* Accessed 23 February 2023, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C142

interconnected systems of general, technical, and vocational education without no regard to their form (formal or informal). According to the Convention, Ukraine is also entrusted with reforming its vocational education systems to meet the requirements for lifelong learning and training of both underage persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility.

Articles 201 – 204 of the Code[38] serves as legal basis for professional training of workers in Ukraine. A number of significant normative acts that regulate professional training of workers directly in the workplace has been adopted for the development of provisions of labor legislation. Chapter II of the Law of Ukraine "On professional development of workers," for instance, establishes legal foundations legal framework for professional training of workers[39]. These relationships are also governed by Regulation on vocational in-work training of staff[40] and Regulation on organization of industrial in-work training[41]. According to Regulation on vocation in-work training of staff – this training is aimed at enhancing staff development processes at companies with different forms of ownership and subordination. This is done with the purpose of improving the professional skill and contemporary economic thinking of workers; with the purpose of developing their ability to work in changing economic conditions and to provide for high labor productivity and effective employment. Vocational in-work training of staff is continuous by nature and is carried out during the whole term of employment in order to gradually expand and improve their knowledge, abilities and skills in accordance with the job requirements.

The Draft does not comply with either Ukraine's international obligations or legislation in force that contain provisions regarding vocation in-work training of staff. Article 22, sections 1 and 3 of the Constitution of Ukraine contain legitimacy criteria for amending the legislation. Rights and freedoms of man and citizens established in this article are infinite. It is prohibited to constrict the content and scope of existing rights and freedoms when adopting new laws or amending the ones in force. The Draft shows neglect of provisions on staff development, constricts the right of man ensured by the state to accessible and free education of different forms as provided by Article 53, section 3 of the Constitution.

38 Verkhovna Rada of Ukraine., *Labor Code of Ukraine,* Zakon.rada.gov.ua, Accessed 15 April 2023, https://zakon.rada.gov.ua/laws/show/322-08#Text

39 Verkhovna Rada of Ukraine., *Law of Ukraine On Professional Development of Employees. No. 4312-VI*, Zakon.rada.gov.ua, Accessed 5 March 2023, https://zakon.rada.gov.ua/laws/show/4312-17#Text.

40 Ministry of Social Policy of Ukraine and Ministry of Education and Science of Ukraine., *Order on the Approval of the Regulation on Professional Training of Workers in Production. No. 127/151,* Zakon.rada.gov.ua, Accessed 11 April 2023, https://zakon.rada.gov.ua/laws/show/z0315-01#Text

41 Ministry of Social Policy of Ukraine and Ministry of Education and Science of Ukraine., *Order on the Approval of the Regulation on the Organization of the Educational and Production Process at the Factory. No. 500/861,* Zakon.rada.gov.ua, Accessed 11 April 2023, https://zakon.rada.gov.ua/laws/show/z0032-07#Text

4. Conclusion

Based on the comparative examination of Directive No. 2019/1152 on transparent and predictable working conditions and Ukrainian legislation, the article suggested the below recommendations to improve Ukraine's labor legislation in several key areas to comply with European legislation. The Ukrainian labor legislation should clearly define employee status to distinguish between employees with partially regulated social statuses and self-employed individuals. The criteria for determining employee status should be based on factual work performance rather than the description provided by the parties. Following European trends, Ukraine should encourage innovative forms of labor by enshrining equitable and equable working conditions in the legislation and supporting professional mobility.

Employment contracts without fixed working hours, if introduced in Ukraine, present an opportunity for the country to address the challenges arising from on-demand work. However, since the provisions of the analyzed Draft fall short of aligning with the EU Directive No. 2019/1152, it is advisable to shift from the concept of "employment contracts without fixed working hours" to a legally defined and regulated "on-demand contract." The Directive emphasizes informing employees of essential aspects, including the mechanism of work pattern changes, anticipated work days and hours, and the right to be notified about the minimum period to begin working. Ukraine should incorporate these provisions to ensure minimum predictability and protect workers' interests. The Draft should enshrine that employees are not subject to adverse consequences when refusing work assignment due to unforeseeable work patterns. Additionally, the legislation should include provisions for adequate compensation when work assignments are revoked after an established reasonable deadline. The criteria for establishing minimum working hours should be clarified in the legislation of Ukraine and aligned with the principles of fairness and equitable remuneration. The legislation should ensure that workers are fairly compensated, even if they work less than a predefined minimum.

Thus, the very definition of "transparent and predictable working conditions" should be refined in the legislation of Ukraine and encompass such factors as fair payment, reasonable working hours, regular days off, and compliance with safety norms.

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