

ALIGNING UKRAINIAN LABOR LEGISLATION WITH EU STANDARDS: A COMPARATIVE ANALYSIS OF TRANSPARENCY AND PREDICTABILITY IN EMPLOYMENT CONDITIONS

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Abstract

As Ukraine is moving closer to European integration and trying to adapt to the current challenges of globalization, the relevance and need for transforming the national labor legislation becomes obvious. The article aims to determine whether the current innovations in the labor legislation of Ukraine comply with the 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 leading research method is a comparative method used to examine legal frameworks and regulatory practices in the EU Member States and Ukraine and define common grounds and areas in the national legislation requiring improvement. 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.

Keywords: comparative analysis; industrial relations; labor conditions; normative act; on-demand contract.

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 (European Parliament and the Council, 2019) entails Ukraine implementing a reformation in the field of labor and social policy to bring its legislation into line with the EU one. However, the implications of these provisions for Ukraine require detailed analysis.

Article 8 of Section 1 of the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996) stipulates that the rule of law shall be in force and efficient in Ukraine. The rule of law is not limited to legislation but is one of its manifestations. It goes beyond legislation, involving 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 (Verkhovna Rada of Ukraine, 1996), unifies all the mentioned constituents of law. A vital element of the rule of law principle is Ukraine's acceptance of the supremacy of international labor legislation over domestic one.

As per the rule of law principle, legal rules to be applied contain higher standards for human rights and legal guarantees, regardless of their belonging to international or national legislation. 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 it (the interpretation) puts an individual in a more favorable position as opposed to the interpretation delivered by the European Court (Gorshkova, 2001). Therefore, any state can expand the scope of rights provided by an international legal act when such opportunities arise (Zhernakov, 2017). Thus, the rule of law principle acts as a measure of justice in the state's attitude towards an employee and the quality of national labor legislation.

Directive No. 2019/1152 on transparent and predictable working conditions in the European Union (European Parliament and the Council, 2019) is the first EU directive of an ideological nature. It includes fundamental provisions that serve as reference points for improving labor legislation. Revising its social policy, Ukraine makes adjustments to the focus area, which, in turn, transforms labor and social legislation. The result of these innovations is Draft Law No. 2708, "On Labor" (Honcharuk, 2019). Since this Draft Law has become an object of criticism among scholars and trade unions, this article aims to provide its impartial analysis. The provisions of this Draft Law will be subject to critical understanding and determining for compliance with the international legal acts ratified by Ukraine or those that are a part of the EU 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 article applies a theoretical framework centered on the European and Ukrainian legal instruments in the field of labor, including Directive 2019/1152 on Predictable and Transparent Working Conditions, Draft Law "On labor" No. 2708, Labor Code of Ukraine, and other international legislative acts. The article also considers scientific papers devoted to the topic under study in order to determine and define the key concepts and theories regarding labor regulation within national and international domains, to prove or disprove the set hypothesis, and to provide valid conclusions. The relevance and significance of the study lie in Ukraine's endeavor to align its labor legislation with European standards as it moves towards European integration, aiming to address challenges posed by globalization. The research methodology primarily involves a comparative analysis of legal frameworks and regulatory practices in the EU Member States and Ukraine to identify common grounds and areas in the national legislation requiring improvement. The findings identify shortcomings in Ukrainian labor legislation, such as the unclear definition of employee status and vague provisions regarding probationary periods and compensation for on-demand work refusal. The main contributions of this article are the suggested recommendations for amending Ukrainian legal acts to enhance transparency and protect employees' rights as to meet the requirements of the EU labor legislation.

The structure of the article is divided into 5 sections and 5 subsections. Section 1 is an introduction that outlines the aims, relevance, and problematics of this study. This section provides a short discussion on the significance of transparency and predictability in labor laws and Ukraine's efforts to align its legislation with EU standards. Section 2 is devoted to the analysis of the existing scientific papers on the issue under study to identify the research gaps and substantiate the scientific novelty of this article. Section

3 presents the methodological framework of this study, where the central place is occupied by the comparative method. Section 4 combines results and discussion and is the largest section in the article divided into five logical subsections. Subsections draw a comparison between the provisions of Directive No. 2019/1152 and the Draft Law "On labor" No. 2708, focusing on key aspects such as the maximum duration of probationary periods, evaluation of professional competence during employment acceptance, and the right of employees to enter into employment contracts with multiple employers. These subsections also highlight the discrepancies and areas for improvement in Ukrainian labor legislation. Section 5 represents the conclusions of the article and defines the prospects for further research in the same area.

2. Materials and Methods

The research methodology for examining transparent and predictable labor conditions in the European Union involved a comprehensive comparative analysis of legal texts, directives, and conventions from both national and European legislation. Given the focus on labor market flexibility and the dynamics of employer-employee interactions in evolving economic landscapes, particular emphasis was placed on exploring these aspects within the European Union context.

The methodological framework encompasses the method of formalization used to outline and codify the statutory instruments governing labor conditions within the EU and Ukraine, such as Draft Law "On Labor," Directive No. 2019/1152, Labor Code of Ukraine, etc. This method allowed for selecting the relevant directives, regulations, and national laws on transparent and predictable labor conditions. As the material for analysis was selected, the method of generalization was applied to synthesize and determine common trends, principles, and standards observed within Ukrainian and EU labor legislations. This method facilitated the identification of overarching themes and principles governing transparent and predictable labor conditions across Member States and Ukraine.

The induction method was employed to identify general principles and conclusions regarding transparent and predictable labor conditions based on the specific provisions of statutory documents. Through in-depth analysis of individual legal provisions and case studies, this method provided broader insights into the implementation and effectiveness of labor laws across different contexts. The deduction method applied general principles and theories of Ukrainian and EU labor legislations to specific cases or scenarios. By extrapolating from established legal frameworks and precedents, this method allowed for assessing how transparent and predictable labor conditions are upheld within national labor legislation.

The primary research method was the comparative research method applied to regulatory legal acts. This approach enabled a thorough understanding of the selected issue, considering Ukraine's commitment to European integration and efforts to align its legislation with European norms. By comparing legal frameworks and regulatory practices across different jurisdictions within the European Union, the study aimed to identify commonalities, differences, and emerging trends in labor regulations.

The comparative analysis encompassed an examination of various aspects related to transparent and predictable labor conditions, including contractual arrangements, working hours, wage regulations, social security provisions, and mechanisms for dispute resolution. Through this method, the study assessed the effectiveness of existing legal frameworks in promoting transparency, fairness, and stability in employment relationships across different European Union member states.

Furthermore, the research methodology involved collecting and analyzing empirical data, such as case studies, statistical information, and qualitative interviews with relevant stakeholders, including employers, employees, trade unions, and government representatives. These empirical insights complemented the comparative

legal analysis, providing real-world perspectives on the implementation and impact of labor regulations in practice.

Thus, through formalization, generalization, induction, deduction, and comparative methods, this study aims to offer a comprehensive understanding of transparent and predictable labor conditions in the European Union. By examining both legal frameworks and practical realities, the study aims to provide valuable insights for policymakers, practitioners, and researchers seeking to enhance labor market governance and promote inclusive economic development.

3. Results and Discussion

Directive No. 2019/1152 on transparent and predictable working conditions in the European Union (European Parliament and the Council, 2019) is a political and legal or rather ideological document that determines basic policy directions for labor regulation in any European state. The Directive is a crucial legislative instrument adopted by the 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.

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.

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 (Shcherbyna, 2007).

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 yet been reflected in the national labor legislation either after the adoption of the Constitution or after signing the Ukraine-EU Association Agreement (European Union and Ukraine, 2014). There are concerns about whether the new labor laws adequately uphold the broad protection and rights outlined in the constitution related to labor issues. Instead of addressing these concerns, a trend toward relaxing labor regulations has appeared. This makes Ukrainian employees find themselves beyond the scope of the rules that have a strong social and defensive orientation (Lazovski, 2020).

Provisions of Chapter 3 of the Directive that establish minimum requirements for working conditions are of prime importance. Article 8 of the Directive establishes the maximum duration of any probationary period. Section 1 of Article 8 of Chapter 3 of the Directive defines that any probation period shall not exceed six months. As for the Draft Law (Honcharuk, 2019), it stipulates that the duration of the probation period shall not exceed three months unless the legislation provides otherwise. Norms regarding the extension of the probation period for specific categories of employees shall comply with provisions of Article 8 of 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.

The comparison between Article 8 of Chapter 3 of the Directive and Section 1 of Article 27 of the Draft Law shows that special categories of employees are subject to shorter probation periods; this period is two months longer for regular employees.

It is worth noting that Article 27 of the Draft contains no significant provisions that Section 2 of Article 8 of the Directive does. A probation period shall be equal to the contract duration expected and the specificity of the work provided a clearly defined period of employment relations. Given the spread of fixed-term employment relationships in Ukraine, this provision should be a safety measure when applying maximum probation periods.

Section 4 of Article 27 of the Draft Law (Honcharuk, 2019) provides for cases when a probation period is not used. The number of such cases has decreased compared to cases described in Section 3 of Article 26 of the Labor Code of Ukraine. However, Article 8 of Chapter 2 of the Directive states that there shall be no probation period again when a contract for the same work activity is renewed. Section 2 of Article 27 of the Draft law stipulates that days on which an employee does not perform their work during the probation period shall not be counted, regardless of the reason. This provision fully complies with Section 2 of Article 8 of the Directive, which allows the Member States of the European Union to extend the probationary period in proportion to the duration of the absence. The absence of standards on general approaches to the assessment of the professional competence of employees at the time of recruitment is one of the main shortcomings of the Directive and the Draft. Its content can be expressed in the following wording:

“Article... assessment of the professional competence of employees at the time of recruitment”

1. The employer is entrusted to hold job interviews, surveys, tests, internships, or contests, consult the documents, obtain information, and use other methods that are not prohibited by the law for assessing the professional competence of an employee.

2. The employer is prohibited from using professional competence assessment methods that encroach upon a person's life, health, honor, dignity, inviolability, and security and interfere in their personal and family lives.

3. Medical check-ups of employees 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.

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 Section 2 of Article 15 of the Draft Law (Honcharuk, 2019), an employee has a right to enter into an employment contract with one or several employers in parallel unless the law or employment contract says otherwise. The content of this provision is similar to the one found in Section 2 of Article 21 of the Labor Code of Ukraine but has a wider set of restrictions in collective agreements in regard to other work. Both the Draft Law and the Labor Code of Ukraine contain restrictions in regard to other work established by the parties in the employment contract. However, these acts do not contain any legal conditions for such restrictions. According to Article 9 of Chapter 2 of the Directive, Member States have the right to establish requirements for an 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.

For the first time in the history of national legislative practice, Section 5 of Chapter 1 of Article 17 of the Draft Law provides for the possibility of entering into an employment contract without a fixed term. The desire of business entities to increase the flexibility

and elasticity of labor relations is a major problem for market economies in terms of legal regulation of these relations. This refers to legalization of flexible, mobile working hours.

Such employment contract when an employee undertakes obligations to perform specific work in future, meaning that the employer decides when to involve an employee 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 saturation, however. Germany, for instance, has a law that establishes three separate restrictions that protect an employee to a certain extent. Firstly, this law obliges an employer to inform an employee of the resumption of work at least four days before it.

Alternatively, an employee is not obliged to execute 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 guaranteed duration of employment relationship (Shcherbyna, 2007). Italian laws recognize on-demand work as an interrupted employment contract or an agreement that can be interrupted. There are fixed-term and non-fixed-term employment contracts. This type of agreement entitles the employer to engage employees 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 (Garashchenko, 2013)

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 employees. 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 employees, time of on-demand contracts, conditions for calling an employee to work (Prylypko, 2013).

On-demand contracts can be divided into two types. First type is called min-max contracts. These contracts establish a lower and upper limit of working hours. The former one is to be provided to an employee by the employer and the latter one is how much the employee is required to work when summoned. In cases when the employer engages an employee in work that lasts less than the lower limit an employee is subject to a compensation that is equal the number of hours to the lower limit. Second type is called zero-hours contract. According to these contracts, an employer is not obliged to provide employees with work and bears no responsibility for not providing it. At the same time neither minimum working hours nor work mode are decided. It is possible that the employee will never be summoned to fulfill work which provides no employment and remuneration guarantees. Zero-hours contracts, for their part, can be divided into two types. The first one obliges employees to perform on-demand work when summoned by the employer, while the second one provides an employee with an option to refuse such work (Svichkarova, 2014).

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 an employee 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, there is a need to understand what "a special form of employment contracts" is for the authors of the Draft Law. Article 205 of the Civil Code of Ukraine (Verkhovna Rada of Ukraine, 2003) defines the 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 form of the transaction unless otherwise provided by the statute. It remains unclear what is the special form the definition mentioned in the Draft Law. This type of employment contracts, as is the rest of them, is concluded in written form as indicated by the provisions of Article 15 of the Draft Law.

Secondly, Section 1 of Article 22 of the Draft Law (Honcharuk, 2019) characterizes this type of employment contract using two distinct features:

- 1) employee is obliged to perform only when provided with available work by the employer.
- 2) employee performs work without guarantees for availability of such work on an ongoing basis.

The question is as follows: 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 Section 4 of Article 22 of the Draft Law (Honcharuk, 2019) where it states that an employer independently determines the amount of work to be performed and agrees the working regime, the number of working hours needed to complete a given job with an employee within a reasonable time frame. However, this contradicts the provisions stipulated by paragraph “M” of Article 4 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 employee 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 employees and obliges the employer to consider the employee’s interests. The Draft Law promotes total disregard for the interest of employees 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 for this type of contracts set out in the Directive are the following. Section 1 of Article 4 of the Directive states that member states shall ensure that employers are required to inform employees 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:

- 1) 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;
- 2) the days and hours when an employer anticipates an employee to execute work;
- 3) 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 States are obliged to secure an employee from being demanded by an employer to execute the work unless the following requirements are met:

- a) the work is carried out at a predefined time;
- b) 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. Section 3 of Article 22 of the Draft Law provides 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 employees of the availability

of work and method for employees 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. Section 5 of the same article points at the notice period established by the employment contract. These are not the same things, however.

Section 5 of Article 22 of the Draft Law, in author's 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 employees of the essential aspects of the employment relationship set out in paragraph "M" of Article 4 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 Law completely ignores the key characteristic that define this type of employment contracts.

Section 6 of Article 22 of the Draft Law deals with remuneration guarantees in these types of employment contracts. Salary of employees who work under the employment contract without fixed working hours is counted based of the actual amount of work done. However, it remains unclear what criteria were used by the drafters of the Draft Law to set the minimum working hours for employees working under an employment contract with a non-fixed working time at eight hours per month. The same section contains a rule under which an employee 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 Section 7 of Article 22 of the Draft Law can be seen as consolation for poor employment and remuneration guarantees for employees performing under employment contracts without fixed working hours. According to these provisions the employer is prohibited from restricting or interrupting work performed by an employee under a different employment contract for a different employer.

Article 22 of the Draft Law (Honcharuk, 2019) also provides no guarantees for employees when the employer cancels a work assignment. Section 3 of Article 10 of the Directive confirms the right of Member States to authorize an employer to revoke 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:

- a) to limit the conclusion and duration of on-demand or analogous employment agreements;
- b) 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;
- c) to meet other analogous requirements guaranteeing efficient prevention of abusive practices.

According to Article 22(2) of the Draft Law, one employee may be a party to an employment contract with non-fixed working hours in an amount not exceeding 1/10 of

all employment contracts concluded with this employer. 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.

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 obtain 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 there is any. However, the Member States are entitled to impose restrictions on the frequency of such requests.

Draft Law does not contain such a norm, even though the latter one contains basic provisions for working conditions of employees. Section 4 of Article 19 of the Draft Law provides for the obligation of the employer to inform employees performing under fixed-term contracts about vacant positions that envisage the possibility of entering into an indefinite employment contract and to provide employees with equal opportunities for such actions. In order to develop these vital norms, it is necessary to examine what the Directive means by "more predictable and safer working conditions." According to Section 4 of Article 43 of the Constitution of Ukraine everyone has the right to proper, safe and healthy work conditions. Article 88 of the Labor Code of Ukraine 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.

Section 3 of Article 32 of the Labor Code of Ukraine 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) (Plenum of the Supreme Court of the USSR, 1984).

It was possible to consider other conditions as essential when certain factual circumstances were present. Ukrainian judicial practice in paragraph 3 of Section 31 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" (Plenum of the Supreme Court of the USSR, 1992).

Chapter 4 of the Minimum Age Recommendation, No. 146 (International Labor Organisation, 1973), named "Conditions of Employment" explains the application of this term in regards to underaged employees. The Chapter states it is obligatory to take all measures to guarantee satisfactory working conditions for underage employees. These conditions are subject to close control, with particular attention paid to the following:

- 1) compliance with and protection of the fair payment policy;
- 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) ensuring regular days off and the night's repose that lasts at least 12 hours without any exceptions except for emergencies;
- 4) guarantee for annual paid leave that lasts at least 4 weeks and is equal to that guaranteed to adults;
- 5) obligatory compliance with social welfare programs such as occupational injuries, health care, and sickness benefits, despite the working conditions or employment;
- 6) the maintenance of acceptable health and safety norms and proper training

and control.

Thus, safe working conditions are those that meet the norms and standards of safety, occupational sanitation, occupational health and fire protection. We share the view of Huk (2013) 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. The forms of employment that divide labor activity by the criterion of permanence are permanent and temporary employment. Full-time, part-time, visible, invisible, and flexible employment divide labor activity by the criterion of working time organization (Huk, 2013).

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 employees (core personnel) that is relatively small. A significant number of employees (up to 20-30 % in different countries) perform under non-standard employment contracts. They are: temporary, "borrowed," part-time employees, home-based employees 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 employees is the diversity of forms for organization and use of work time. They are increasingly replacing traditional, strict working regimes (Slezinger, 2000). 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 employee 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 (Nikiforova, 1999).

Thus, in our opinion, the provision of the Directive "Form of Employment with Predominantly Predictable and Safe Working Conditions" refers to full-time employment with an adequate number of daily and weekly working hours, guaranteed and predictable rest periods and work with essential working conditions that meet safety, industrial hygiene, occupational health and fire protection norms and standards. Moreover, provisions of Section 2 of Article 12 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. Member States are also instructed to extend the deadlines for employers of micro, small and medium-sized businesses to provide responses. The extension period may not exceed three months, and an oral response is allowed only if the same employee repeatedly applies for the same situation, which remains unchanged.

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 Law contains no provision obliging an employer to provide an employee with free of cost vocational training. Article 23, "Student employment contract," of the Draft Law has nothing in common with the mentioned provisions of the Directive. The reason for including these provisions in the Directive is that training has long become an essential feature of Western employment contracts.

The necessity for a focus on modern labor norms coincides well with Ukraine's social goals. Modern labor law norms require training, retraining, and skill development directly in the workplace. In 1979, the Ukrainian SSR ratified the Human Resources Development Convention, No. 142 (International Labor Organization, 1975). This Convention obliged Ukraine to develop and implement open, adaptable, and interconnected systems for

general, technical, and vocational education, regardless of their formality (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 underage persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility.

The legal basis for the professional training of employees in Ukraine consists of Articles 201-204 of the Labor Code of Ukraine (Verkhovna Rada of Ukraine, 1971). The provisions of labor legislation were enhanced by many adopted normative acts that regulate the professional training of employees directly in the workplace. For example, Chapter 3 of the Law of Ukraine, "On professional development of employees," (Verkhovna Rada of Ukraine, 2012) establishes legal foundations for the professional training of employees. These relationships are also governed by the Regulation on Vocational In-Work Training of Staff (Ministry of Social Policy of Ukraine and Ministry of Education and Science of Ukraine, 2001) and the Regulation on the Organization of Industrial In-Work Training (Ministry of Social Policy of Ukraine and Ministry of Education and Science of Ukraine, 2006). According to the Regulation on Vocational In-Work Training of Staff, training should enhance staff development at companies with different forms of ownership and subordination. The purpose of this training is to improve the professional skills and contemporary economic thinking of employees. It is also designed to develop employees' ability to work in changing economic conditions, increase labor productivity, and promote effective employment. Staff receive continuous vocational training throughout their employment to expand and improve their knowledge, abilities, and skills in accordance with job requirements.

The Draft Law does not comply with Ukraine's international obligations or legislation in force regarding the in-work vocational training of staff. Sections 1 and 3 of Article 22 of the Constitution of Ukraine outline legitimacy criteria for amending the legislation. The rights and freedoms of a person and citizen 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 Law shows neglect of provisions on staff development; it constricts a person's right to accessible and free education of different forms as provided by Section 3 of Article 53 of the Constitution of Ukraine.

4. Conclusions

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. Given that Ukraine is at one of the key stages of acquiring the status of a member of the EU, an action plan is currently being agreed upon to harmonize all national legislation in accordance with EU requirements. Thus, at the moment, we cannot predict which legal norms will have an imperative character, and which will be recognized as dispositive ones. This constitutes a limitation and further prospects of our research.

References

- Blikhar, M., Ostapenko, O., Khomyshyn, I., Ostapenko, L., & Vinichuk, M. (2023). 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*, 1(48), 351-361.
- Bozhko, V. M. (2020). Comparative legal analysis of Directive 2019/1152 of the European Parliament and of the Council with Directive 91/533/EEC and the current labor law of all its member countries. *Constitutional State*, 40, 102-112. <https://doi.org/10.18524/2411-2054.2020.40.217595>
- Craig, P. (2013). EU Accession to the ECHR: Competence, Procedure and Substance. *Fordham International Law Journal*, 36(5), 1115-1150.
- European Parliament and the Council. (2019). Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1152>
- European Union and Ukraine. (2014). Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. http://data.europa.eu/eli/agree_internation/2014/295/oj
- Garashchenko, L.P. (2013). Types of employment contracts in accordance with Italian law. In M.I. Inshyn, N.M. Khutorian, & V.I. Shcherbyna (Eds.). *Trends in the development of the science of labor law and social security law* (pp. 152-156). Kyiv: Nika-Center.
- Georgiou, D. (2022). The new EU Directive on Transparent and Predictable Working Conditions in the context of new forms of employment. *European Journal of Industrial Relations*, 28(2), 193-210. <https://doi.org/10.1177/09596801211043717>
- Gorshkova, S.A. (2001). Council of Europe standards on human rights and Russian legislation. Moscow: Independent Institute of International Law.
- Honcharuk, O.V. (2019). Draft Law of Ukraine “On Labor.” No. 2708. http://w1.cl.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67833
- Huk, N.A. (2013). The growth of species diversity of the form of employment in the priority areas of social development. *Bulletin of Socio-Economic Research*, 1(48), 347-353.
- Inshyn, M., Sokolov, V., Pavlichenko, V., Danilova, M., & Dzhura, K. (2022). Violations of Health Workers’ Labor Rights during the COVID-19 Pandemic. *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, 14(3), [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000545](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000545).
- International Labor Organization. (1973). Minimum Age Recommendation. No. 146. [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.](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.)

- International Labor Organization. (1975). Human Resources Development Convention. No. 142. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C142
- Lazovski, A. (2020). *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*. Kyiv: Association4U, 539 p.
- Lopushniak, H., Poplavska, O., Danylevych, N., Kostyshyna, T., & Raupov, R. (2023). Organization of labor under conditions of uncertainty: The case of Ukraine. *Problems and Perspectives in Management*, 21(2), 294-308.
- Maliuha, L. Ju., Zhuravel, V. O., Shabanova, S. O., Hnidenko, V. I., & Pikul, V. P. (2023). Legal Conflicts and Gaps in the Context of Labor Legislation of Ukraine. *The Indian Journal of Labour Economics*, 66, 583-597. <https://doi.org/10.1007/s41027-022-00410-9>
- Melnychuk, O.F., Melnychuk, A.O., Polishchuk, A.S., & Ishchuk, A.M. (2022). Transformation of legal regulation of labor in Ukraine in the context of the experience of foreign countries under Covid-19 conditions. *ECS Transactions*, 107(1), 18215-18226.
- Ministry of Social Policy of Ukraine and Ministry of Education and Science of Ukraine. (2001). Order on the Approval of the Regulation on Professional Training of Workers in Production. No. 127/151. <https://zakon.rada.gov.ua/laws/show/z0315-01#Text>
- Ministry of Social Policy of Ukraine and Ministry of Education and Science of Ukraine. (2006). Order on the Approval of the Regulation on the Organization of the Educational and Production Process at the Factory. No. 500/861. <https://zakon.rada.gov.ua/laws/show/z0032-07#Text>
- Nikiforova, A.A. (1999). Non-standard forms of employment and working hours (experience of a country with a retail economy). *Labor Abroad*, 1(41), 54-59.
- Orlovska, I. H. (2022). The European pillar of social rights as a reference point for Ukraine's social policy in the conditions of the European vector of development. *Southern Ukrainian Law Journal*, 2(4), 40-46. <https://doi.org/10.32850/sulj.2022.4.2.7>
- Pham, T., Talavera, O., & Wu, Z. (2023). Labor markets during war time: Evidence from online job advertisements. *Journal of Comparative Economics*, 51(4), 1316-1333. <https://doi.org/10.1016/j.jce.2023.06.002>
- Plenum of the Supreme Court of the USSR. (1984). Resolution on the application by the courts of legislation governing the conclusion, amendment and termination of an employment contract. <http://xn--blazaj.xn--plai/USSR/postanovlenie-plenuma-vs-sssr/N03-ot-26.04.1984-sssr.html>
- Plenum of the Supreme Court of the USSR. (1992). Resolution on the practice of consideration of labor disputes by courts. <https://zakon.rada.gov.ua/laws/show/v0009700-92#Text>
- Prylypko, O.S. (2013). Differentiation of legal regulation of non-traditional employment contracts. In M.I. Inshyn, N.M. Khutorian, & V.I. Shcherbyna (Eds.). *Trends in the development of the science of labor law and social security law* (pp. 152-156). Kyiv: Nika-Center.
- Rym, O. M. (2019). Legal aspects of implementation by the European Union policies in the sphere of employment. *Scientific Bulletin of the International Humanitarian University*, 37, 154-158.
- Rym, O. M. (2020). *Labor Law of the European Union*. Lviv: Halych-Press.
- Shcherbyna, V.I. (2007). *Functions of labor law: monograph*. Dnipropetrovsk: Academy of Customs Service of Ukraine, 425 p.
- Slezinger, G.E. (2000). Issues of labor organization and social relations (based on foreign scientific publications). *Labor Abroad*, 3, 106-120.
- Svichkarova, Yu.V. (2014). Regarding the peculiarities of the «zero hours» contract with the employee's right to refuse work. In V.V. Zhernakov (Ed.). *The law of regulation of relations in the sphere of labor and social security: problems and prospects for development* (pp. 170-174). Kharkiv: Pravo.

- Verkhovna Rada of Ukraine. (1971). Labor Code of Ukraine. <https://zakon.rada.gov.ua/laws/show/322-08#Text>
- Verkhovna Rada of Ukraine. (1996). Constitution of Ukraine. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>
- Verkhovna Rada of Ukraine. (2003). Civil Code of Ukraine. <https://zakon.rada.gov.ua/laws/show/435-15>
- Verkhovna Rada of Ukraine. (2012). Law of Ukraine On Professional Development of Employees. No. 4312-VI. <https://zakon.rada.gov.ua/laws/show/4312-17#Text>
- Vnuchko, S. & Skoryk, M. (2021). *Standards for regulating labor relations: legal norms of the EU and Ukraine*. Kyiv: Kyiv Institute of Gender Studies.
- Zhernakov, V.V. (2017). Problems for social and labor rights in the process of development of Ukrainian legislation. *Law & Innovations*, 2(18), 9-14.