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Problems of adaptation of the legislation of Ukraine in the sphere of ensuring the human right to safe working conditions to international and European standards

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Abstract. The provisions of international and European standards that are not properly reflected in the national regulatory framework for labor protection have been identified. International and European standards of safety and hygiene has been systematized, also their content, state of development and implementation in the field of occupational safety have been clarified. The types of EU occupational safety and health regulation documents adopted on the basis of Directive 89/391 / EEC and the general principles of occupational safety and health have been identified. The list of issues that need to be finalized and implemented in the National NEAP has been compiled and the factors that impede this process have been identified.

1 Introduction

After the Association Agreement was signed in 2014 between Ukraine on the one hand and the European Union, the European Atomic Energy Community and their Member States on the other hand, the country has taken a clear course on building European approaches in all fields of activity, including issues related to the creation of safe and favorable working conditions of a person. In the field of occupational safety the generally accepted principles and norms of international and European law on the regulation of occupational safety and health (OHS) are gradually being introduced. The introduction of international labor standards into national legal practice will provide an opportunity for Ukraine to ratify ILO conventions which provide for more rights and guarantees for workers than national legislation. However in order to harmonize national labor protection legislation with important international standards and EU directives, a number of legal acts that will include requirements for the protection of workers in different industries need to be developed.

2 Presenting main material

An important universal right in the field of labor protection is the human right to favorable working conditions which was proclaimed in Art. 23 of the Universal Declaration of Human Rights. In Art. 7 of the International Covenant on Economic, Social and Cultural Rights states that States which takes parts in this Covenant recognize the right of everyone to fair and favorable working conditions, including in particular working conditions that corresponding the requirements of occupational safety and health (OHS). These international standards are implemented in the Constitution of Ukraine, Article 45 of which emphasizes the obligation of the state to ensure the right of everyone to a proper, safe and healthy working environment. According to Article 4 of the Law of Ukraine "On Occupational Safety" the state policy in the field of labor protection is determined in accordance with the Constitution of Ukraine by the Verkhovna Rada of Ukraine and is aimed at creating proper, safe and healthy working conditions, prevention of occupational injuries and occupational diseases.

Starting from 1994 in Ukraine have been developed national, industry, regional and production programs for improving the conditions of work safety and safety at work. They have been laid the foundations for improving the state system of labor protection management, implementing economic management methods, resolving organizational, scientific and regulatory issues, legal support of work in the field of labor protection. Remedies were created for workers, which not previously issued in Ukraine, a number of measures aimed at controlling working conditions, preventing emergencies and introducing a single automated occupational safety information system, etc. were developed.

At the same time, at present, the state of labor protection in Ukraine cannot be considered satisfactory. This is evidenced by the high level of injuries including fatalities, especially in such sectors of the economy as the coal mining, construction, transport, agro-industrial complex. So, in 2019, 3876 people were injured at work, 422 of which were fatal. According to the International Labor Organization (hereinafter - ILO) the death rate in Ukraine is one of the highest among European countries. In addition to human losses, the country's economy is also suffering heavy losses[1]. Considering the above labor protection issues are constantly in the area of attention of Ukrainian scientists (V. Venediktov, V. Groholsky, M. Inshin, N. Kaczynska [4], O.Sereda [6], Yu. Dreval [6, 8], O. Shramko [12] and others.

Domestic scientists emphasize that the unresolved problem in the field of labor protection remains the moral obsolescence of the legal framework. Since a large part of the regulations remain in force since the Soviet Union and one of the reasons for the unsatisfactory state of labor protection arising from the transition from the Soviet system to European, domestic researchers call non-compliance in this area of European and international standards because international standards are more effective and sometimes easier to implement than national [2].

The purpose of this work is to analyze international and European standards on occupational safety and to identify the problematic issues of their adaptation to the legislation of Ukraine.

The process of adaptation of Ukrainian legislation to the norms of international and European law on labor protection regulation is to achieve in practice high European standards of the BWP with a general reduction in the rates of occupational injuries and occupational diseases. At the same time, the results of the analysis show that there are a large number of positions and norms that are not properly reflected in national legislation and that are important in modern labor protection regulation [3]:

a) The sphere of valid national legislation does not ensure its application to all fields of activity both public and private.

b) The issues of cooperation and coordination of safety and health at work of those employers whose employees perform work at one workplace, inform one another, and workers about industrial risks and hazards are not regulated at the legislative level.

c) The term "employee" is interpreted in a very limited way namely that it does not cover employees (and their employers) who do not have an employment contract but who are in an employment relationship (such as, for example, fully undeclared workers, quasi-self-employed persons, service providers, volunteers, students, interns, etc.).

d) The general obligation of employers to prevent accidents and occupational diseases which is a fundamental feature of the European labor law framework is not provided for in national law.

e) The OHS regulatory framework should clearly state employers' responsibilities, which cannot be transferred to others, for the safety and health of workers in all work-related aspects. The use of third-party services or persons and the obligations of OHS employees do not release the employer from his liability.

f) Taking into account the capabilities of employees in assigning them their tasks of OHS and ensuring that employees are properly trained, informed and instructed.

g) The duty of the employer to consult with employees and (or) their representatives regarding preventive measures working conditions and the working environment.

Also some positions of national legislation on occupational safety against special risks that need to be revised in order to comply with both ILO acts and EU legislation are set out in section 5.3. "Analysis of the conformity of the legislation of Ukraine *acquis communautaire*" [3].

It is stated in the scientific literature that the essence of the term "adaptation" lies in a set of interrelated organizational, legal, socio-economic, scientific and technical processes and measures aimed at approximating the legislation of Ukraine with the modern European system of law by designing a new one and amending it into Ukrainian legislation, taking into account the common European standards reflected in the current legislation of the EU and the EU member states, as well as by steadily adhering to the updated legislation [4] The standard is a document: what is meant by the definition of expected (received) quality, the approved model that underlies the evaluation process [2]; drawn up by consensus of specialists approved by a specialized organization and aimed at achieving the optimum degree of orderliness in the field [5]

In domestic science it is generally recognized that international standards are: a) common principles and norms of behavior of the subjects of law which are fixed in the main sources of international law, both universal and regional legal acts; b) optimal legal requirements for the legal systems of Member States of the international community; c) the best legal achievements of international law and cooperation of the Member States of the international community and the Member States of universal and regional international intergovernmental organizations (IMO); d) principles and rules of law; (e) mandatory requirements for States parties to international treaties containing such legal standards; e) the basis for the harmonization of international and national law [5].

European standards of the organization of labor - a kind of regulatory substance of international labor law reflecting the results of the activities of States aimed at introducing social values into the market economy. The content of these standards is a concentrated reflection of the experience of many European countries, the result of a meticulous selection of the most valuable and universally relevant norms and positions of national legal systems that

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have been transformed into international norms [5]. A valid example of the implementation of European standards is their implementation in various fields of the national economy in particular to the agriculture [6].

It is advisable to divide the international and European standards in the field of occupational safety by the subject of development into five groups.

The first group of international and European standards in the field of occupational safety should include the universal standards developed and adopted by the ILO. In addition to the ILO, the International Atomic Energy Agency (IAEA), the World Health Organization (WHO), the International Aviation Organization (ICAO) and others are contributing.

The ILO's rule-making is to develop and adopt international labor standards (conventions and recommendations). The ILO-approved norms form the International Labor Code which is governed by States in the development and implementation of national labor laws [7]. European Union (EU) legislation on OHS takes into account the fact that EU member states have ratified international labor standards on public policy on OHS. These include the following ILO Conventions: the Occupational Safety and Health Convention 1981 (No. 155); the Convention on Occupational Health Services 1985 (No. 161); the Convention of the Basics Promoting Safety and Health at Work 2006 (No. 187); the Labor Inspection Convention 1947 (No. 81); the Convention on Labor Inspection in Agriculture 1969 (No. 129). Ukraine has already ratified 71 ILO conventions including 8 fundamental conventions, 4 priority conventions and 59 of 177 technical conventions. As a rule, States ratifying ILO conventions voluntarily agree to abide by them [8].

The next group of international and European standards should be drafted by Council of Europe legal documents. The Council of Europe has adopted over 160 conventions, charters, agreements and protocols thereto. The most important European standards for work organization are set out in the Council of Europe documents - European Convention on Human Rights and Fundamental Freedoms (1950), Universal Declaration of Human Rights (1966), European Social Charter (1961), European Social Charter (revised) (1996). , The Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989) [9].

The main acts of the Council of Europe's are embody a fundamental right of human to work which includes the prohibition of forced and compulsory labor (Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms) and the right to safe and healthy working conditions (Article 3 of the European Social Charter (revised)). Having become a member of the Council of Europe in 1995, Ukraine has undertaken a number of commitments to reform existing legislation based on norms and standards. The vast majority of these commitments have already been fulfilled. Ukraine has signed and ratified 77 of the Council of Europe's international legal documents.[10].

EU documents should be included into the third group of international and European standards. The pan-European labor protection policy is formed by approving the relevant regulatory acts (EU directives) which are of a recommendatory nature and sets out the basic principles that the legislation of the EU Member States must comply with. However forms, methods and terms of practical implementation of the relevant provisions remain at the discretion of the States themselves. This "soft" approach allows us to create a pan-European legal space while preserving the specificities and traditions of each national legislative system [3].

Labor protection is one of the most important areas of EU social policy. The right of every worker to work in conditions that ensure the protection of his health, safety and dignity is enshrined in Art. 31 EU Charter of Fundamental Rights. The legal bases for labor protection have been developed in a sound EU legislative framework and underpinned by a large number of non-legislative instruments. In 1989 a major document was adopted in the field of occupational safety and health which created the EU legal basis for OHS - Framework Directive 89/391 / EEC «On the implementation of measures to improve the safety and health of workers at work» The aim of the directive is to increase the level of protection in the EU Member States by implementing preventive measures to protect against industrial accidents and occupational diseases, as well as through the provision of information, advice, proportionate participation and training for workers and their representatives in the process of ensuring occupational safety [3].

The framework nature of Directive 89/391 / EEC is that its provisions are worded in a general form and several dozen other regulations have been adopted to implement them. The OHS Framework Directive is based on a preventive, goal-oriented approach that focuses on risk management cycles. The Directive contains general principles for the prevention of industrial risks, safety, health, avoidance of risk factors and accidents, information, consultation, balanced participation in their implementation, in accordance with national legislation, practice, education of workers. The purpose of the directive is to provide a clear, stable and flexible legal basis for overcoming the risks arising from production processes and to give general importance to the by-laws. Subject to regulation, all EU labor law legislation adopted on the basis of Directive 89/391 / EEC includes [11]:

1. General principles for the provision of OHS (Council Directive 89/391 / EEC):

- the obligation of the employer to take the necessary measures for the safety and health of workers, including measures to prevent occupational hazards, information and training, as well as to prepare appropriate organizational measures and necessary means. The employer should ensure that such measures take account of changing

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circumstances and direct efforts to improve existing working conditions, to inform employees in a timely and timely manner by means of instructions, special courses on the proper use of equipment, etc. ;

- the duty of every employee to promote the protection of their own health and safety, the safety of other workers by following safety instructions, the proper use of technical means;
- the absence and / or limitation of the liability of the employer for damage caused to the employee due to force majeure.

2. Workplace safety requirements (Directive 89/654 / EEC on requirements for the workplace, Directive 92/57 / EEC on temporary or mobile construction sites which became the first Directive adopted under the Framework Directive, Directive 92/91 / EEC on occupational safety at mineral extraction enterprises through wells, Directive 92/104 / EEC on the protection of underground and opencast mining, Directive 93/103 / EC on the protection on the board fishing vessels, Directive 1999/92 / EC about for the number of workers exposed to potential hazards in explosive environments).

3. Requirements for occupational safety when using equipment (Directive 89/655 / EEC on the use of safety equipment by workers, Directive 89/656 / EEC on the use of personal protective equipment at work, Directive 90/269 / EEC on the manual movement of goods when available the risk of injury to the back of the employee, Directive 90/270 / EEC on the operation of screens, Directive 92/58 / EEC on the minimum requirements for signs on the enterprise concerning the threat to the safety and health of workers).

4. Occupational health and safety requirements for chemical, physical and biological substances (Directive 2004/37 / EC on the protection of workers from the risks associated with the use of carcinogens and mutagens at the plant, Directive 2000/54 / EC on minimum safety and health requirements health of workers from the risks associated with the use of biological agents in production, Directive 98/24 / EC on the protection of the health and safety of workers from the harmful effects of chemical agents on production, Directive 2002/44 / EC on the protection of workers from risks related from physical agents (vibration), Directive 2003/10 / EC on the protection of workers from the dangers posed by physical agents (noise), Directive 2004/40 / EC on the minimum safety and health requirements for workers from the risks posed by physical agents (in electromagnetic field), Directive 2006/25 / EC laying down minimum requirements for the protection of the health and safety of workers from the risks posed by physical agents (artificial optical radiation).

5. Protection of certain groups of workers in the workplace (Directive 92/85 / EEC on the promotion of the safety and health protection of pregnant workers and recently-born mothers in the workplace, Directive 94/33 / EC on the protection of young people at work, Directive 91/383 / EEC on temporary workers).

6. Working time requirements (Directive 2003/88 / EC on certain aspects of the organization of working time. The Directive establishes minimum safety and health requirements of the organization of working time applicable to periods of daily rest, breaks, weekly rest, maximum weekly working hours, annual leave and some aspects of night work, shift work and work hours). The adaptation of the NEAP to the positions of Directive 89/391 / EEC is foreseen in the Association Agreement between Ukraine on the one hand and the European Union, the European Atomic Energy Community and their Member States on the other. The concept of reforming the safety management system in Ukraine and approving a plan of measures for its implementation are directed to the implementation in the national legislation of the norms of Directive 89/391 / EEC. The concept was implemented by the decree of the Cabinet of Ministers of Ukraine No. 989-r of December 12, 2018. The purpose of the implementation of the measures of the Concept is to create a national system of prevention of industrial risks based on the introduction of a risk-oriented approach in the system of management of occupational safety to ensure the effective exercise of the right of workers to safe and healthy working conditions [12].

At the same time, Ukraine has not yet sufficiently harmonized national labor legislation with some important international standards and EU directives. According to the annual plans of measures related to the implementation of the National Program of Adaptation of the Legislation of Ukraine to the EU legislation in the field of labor protection. The state should develop draft normative legal acts containing general requirements for labor protection of workers of mining industries, labor safety rules for labor protection on board of fishing vessels, general requirements for providing employers with occupational safety [13].

The fourth group of international and European standards should include OHSAS universal standards. OHSAS - a certification system that combines the requirements of OHSAS 18001: 2007 «Occupational Health and Safety Management Systems» - International Occupational Health and Safety Management Standard, ILO - OSH (International Labor Organization (ILO)) - Guidelines on Occupational Safety and Health Management Systems (ILO / OSH 2001) and National Standards Requirements. The OHSAS International Standard OHSAS 18001: 2007 developed with the active involvement of national standardization bodies in countries such as the United Kingdom, Japan, Ireland and South Africa is a particularly significant. OHSAS standard is necessary for effective work in the field of occupational safety, health and safety of workers. [14]

A review of OHSAS standards and certifications in 2011 showed that 127 countries apply OHSAS standards mainly based on the adoption or adaptation of OHSAS 18001: 2007 which necessitated the development of a basic international standard in this area. Because OHSAS is similar in structure to ISO 9001, ISO 14001, ISO 50001 standards it has made it possible to integrate OHSAS 18001 with many ISO standards which should be attributed to

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the fifth group of international and European standards. In 2013 the basic standard ISO 45001: 2007 was introduced. "Hygiene and safety management systems". Further, in 2019 the OHSAS Task Force approved ISO 45001: 2018 as a replacement for OHSAS 18001: 2007. Therefore after the publication of ISO 45001: 2018 the official status of OHSAS 18001: 2007 is considered to be "Canceled" subject to a three-year transition period.

According to the results of consideration and analysis of European and international standards issues requiring refinement and implementation in national NEAP can be attributed [13]:

- the elimination of duplicate, outdated and contradictory provisions of the laws of Ukraine: "On, Occupational Safety" (regarding occupational safety against special risks, determination of the main factors of physical impact), "Code of Labor Laws" (Labor Code of Ukraine does not contain the definition of "production environment", "Special risks" and "special risks at work"), bringing them into line with international EU standards on occupational safety and health;

- identify the hazards associated with the nature of the work such as night-time loaders;

- prohibition, restriction of use and other ways of reducing the influence of hazardous processes, machines, substances such as asbestos;

- determination of the maximum permissible level of concentrations of harmful substances in the production environment;

- improving measures to prevent occupational hazards through the introduction of a risk-oriented approach in the occupational health and safety management system;

- finalization of the main provisions of the normative acts for ensuring the requirements of occupational safety against the negative effects of carcinogens and mutagens;

- determination of requirements for the levels of electromagnetic impact on workers;

- finalization of requirements for protection of workers from the risk of exposure to chemicals, physical and biological substances at work;

- since the Ukrainian legislation does not prohibit the use of temporary and temporary workers in hazardous jobs there is a need to ensure that such workers undergo special medical examinations.

The analysis and evaluation of the implementation of the obligations on the adaptation of national legislation in the field of occupational safety to the requirements of Directive 89/391 / EEC, as of November 1, 2017 which were made by NGO "Ukrainian Center for European Policy" shows that the positions of the Directive are not completely fulfilled. Among the factors that impede the adaptation process and need a solution are the following [13]:

- insufficient staffing capacity of responsible institutions to provide for the process of legislative adaptation and too bureaucratic procedure for drafting, approving and adopting legislation;

- conflicts of interest between different state bodies regarding the division of powers which causes a delay in the process of consideration and approval (disagreement) of draft legislative acts;

- failure to take into account the rules of the current legislation in the process of adaptation of legislation which causes duplication of rules;

- blocking the passage of acts by various stakeholders and interest groups who are afraid of changes which implies the adaptation of legislation which causes a long consideration of bills in the Verkhovna Rada committees in the absence of constructive dialogue between participants in the process and finding compromise solutions.

3 Conclusions from the conducted research

Summarizing the main research results it is established that an unresolved problem in the field of labor protection in Ukraine is the moral obsolescence of the legal framework remains and one of the reasons for the unsatisfactory state of labor protection is the failure to comply with the positions and norms of international and European standards in this field.

As a result of reviewing and analyzing international and European occupational safety and health standards it has been found that Ukraine has not yet sufficiently harmonized national occupational safety legislation with some important international EU standards and directives. It is necessary to develop draft normative legal acts that will contain general requirements for labor protection of workers of the mining industries, the rules of labor protection when performing work at the board of fishing vessels, general requirements for providing employers with labor protection. Also a number of issues that need to be finalized and implemented in the National NEAP are identified. Taking into account the conclusions of the analysis and evaluation of the fulfillment of obligations to adapt national legislation in the field of labor protection to the requirements of Directive 89/391 / EEC, the factors that hinder the adaptation process and need to be addressed are identified.

Therefore the main areas of improvement of the state of labor protection in Ukraine by adapting legislation in the field of ensuring the right to safe working conditions to international and European standards are the introduction of rules and regulations which in particular will include the elimination of duplicate, outdated and contradictory positions of laws and NAPAE in accordance with international standards of the European Union on occupational safety and health.

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