

Review Paper

# Implementation of EU Standards in the Labor Sphere while Establishing the New Labor Code of Ukraine

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## ABSTRACT

The academic paper provides a comprehensive analysis of the content of the right to work in the context of Ukraine's European integration. Special attention is paid to the issue of compliance with the morality of the current legislation of Ukraine and the morality of transnational law. The possibility of borrowing transnational experience in the legal regulation of the right to work and adaptation has been studied. The labor legislation of Ukraine should be adapted to European norms, which will clearly contribute to protecting the employees' rights, their income and social well-being. Therefore, the purpose of writing an academic paper is to study the issue of the right to work in the conditions of Ukraine's European integration, the possibility of borrowing European experience and enshrining it in the legislation of Ukraine. The research methods were analysis, synthesis, generalization, explanation and data qualification. The primary sources for comprehending the present research were the fundamental scientific provisions highlighted in the works of famous scientists. Theoretical developments and abstract shortcomings of legal issues regarding the implementation of labor law have been worked out for centuries. This issue requires a new vision from the perspective of the criteria of necessity, reasonableness and wisdom, and most importantly, taking into account the conditions of Ukraine's European integration into the European Union and its legislation.

## HIGHLIGHTS

- The purpose of research is to study the issue of the right to work in the conditions of Ukraine's European integration, the possibility of borrowing European experience and enshrining it in the legislation of Ukraine.
- The possibility of borrowing transnational experience in the legal regulation of the right to work and adaptation has been studied.

**Keywords:** Right to work, European integration, international legal standards, labor legislation, European Union, Ukraine

The process of joining the leading European association of the European Union is one of the most significant issues of state policy, as well as one of the proper ways of implementing society's public interests in the ultra-modern conditions

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of the development of Ukraine. Therefore, the strategy of European integration is manifested in all spheres of public and state life, and labor legislation is no exception. For this purpose, essential metamorphoses are carried out in the commercial, social, political and legal spheres. The Agreement “On the Association between Ukraine and the European Union” was concluded, one of the subsections of which is devoted to the issue of bringing state labor legislation into line with the European Union’s legislation.

Important European integration processes, the need to strengthen the position of protecting the citizens’ rights, the realities of the times and the speed of these metamorphoses in social life make it necessary to continue reforming state labor legislation ( Ella Mamontova, Zoriana Buryk, Liudmyla Strikha, Sergiy Vonsovykh, Tatiana Voropayeva, Olena Baranova, 2021). The development of an effective legal model for exercising the right to work and adapting state labor legislation to the European Union’s legislation requires specialists’ joint work in the field of labor law and social security law and the operation of scientifically balanced, reasoned approaches in this direction.

The research’s special features include the implementation of the right to work in the conditions of Ukraine’s European integration, and the possibility of borrowing European experience and enshrining it in Ukraine’s legislation.

The purpose of the academic paper is to study, establish, define and analyze the observance and features of implementing the right to work in Ukraine, as well as possible problematic issues arising on the way to its fulfillment.

## Literature review

It has been constantly emphasized in the legal literature that in order to create a legal state and establish the principle of the rule of law, natural, inalienable human rights and freedoms must play a decisive role in relations between people and state power. The supremacy of the Constitution of Ukraine is one of the decisive factors. In this regard, the existing exercise of the right to work, including on the terms of cohabitation as the fundamental right of every person, requires special legal mechanisms to ensure it (Kozyubra, 2007).

Therefore, the scientific provisions contained in the works of the following famous scientists constitute the basis of studying the features of the right to work, namely: O.A. Abramova, M.G. Aleksandrov, O.T. Barabash, N.B. Bolotina, V.S. Venediktov, S.F. Gutsu, M.O. Day, O.V. Zakharov, M.S. Ivanov, M.I. Inshin, I. Ya. Kiselyov, M.I. Kozyubra, E.V. Kotov, D.I. Kurytsya, V.V. Lazor, R.Z. Livshitsy, O.L. Omelchynko, S.M. Prilypko, O.P. Solovtsov, A.M. Slyusar, K.N. Tkachuk, V.S. Furtatov, N.I. Khodachkov, N.A. Tsyganchuk, A., O.M Yaroshenko, etc.

In order to give a thorough author’s description of “exercising the right to work”, primarily, it is necessary to find out what the concept of the right to work means and what is understood by the implementation of this right in Ukraine.

Therefore, according to Article 43 of the Constitution of Ukraine, the concept of the right to work means a reason to earn a living through work that a person freely chooses or freely agrees to (Constitution of Ukraine, 1996).

A similar characteristic in its content is given in the Labor Law of Ukraine. Article 2 of this Law declares the right of citizens of Ukraine to work, as the right to receive a job with a wage not lower than the minimum amount established by the state, including the right to freely choose a profession, occupation and work assigned by the state (Labor Code of Ukraine, 1972).

This right is determined by the material composition of the person and reflects his natural need for work. It acts as a kind of basis on which all other earthly rights and freedoms in the field of work are based. It is honored as the main and defining right in the system of mortal rights granted to society members. The right to work and the conditions for its implementation determine the content of all morals of labor law as a field of law and their internal depth in accordance with the objective requirements of developing social and labor relations. In turn, the implementation of the right to work can be interpreted as a certain behavior procedure aimed at exercising this right and aimed at determining the content of the entire morality of labor law as a field of law and its internal depth in accordance with the objective requirements of developing social and labor relations (Alona Kliuchnyk, Vyacheslav

Shebanin, Olena Shebanina, Yuri Kormyshkin, Volodymyr Rybachuk, Zoriana Buryk, 2021).

As for the concept of European integration, this is a complex socially beneficial process aimed at establishing close cooperation with European countries and further communication of civilized related public communities.

Based on the statements outlined, encroachment on the right to work in the conditions of Ukraine's European integration should be perceived as a tool and process of our state's implementation of strategic claims and objects of public, socially useful, social-political and artistic development, which has become an integral part of the reality of the moment (Arabadzhyiev, Dmytro Kupin, Arnold Bukanov, Hrygorii Pasichna, Iryna Buryk, Zoriana. 2021; Tropina, V., Melnyk, V., Rippa, M., Yevtushenko, N., Rybakova, T. 2021).

Most of the documents and directives of the European Union, which increase in their content the right to work, and to which the Ukrainian legislation has been striving nowadays, including the labor legislation of Ukraine, were adopted quite a long time ago, in contrast to public legislation, which is quite mobile (Mykola, I., Vadym, A., Anatoliy, P., Yurii, H., Nataliia, R. 2020).

Legal regulation through directives is a complex and lengthy process. From the moment the European Commission approves the established draft directive, it takes a long time until this directive is supported by the Council of the European Union and the European Parliament and, finally, enters into force. Admittedly, after the entry of the directive into force, the countries of the European Union are given quite a long time to bring their state legislation in line with their conditions (up to five times).

As a result, the directives of the European Union, being applicable at the time of their development and rejection, gradually turn into certain thickets for labor legislation over time, namely, for exercising the right to work. Consequently, they lose the positive possibility of legal regulation over time. Ensuring this right, the Ukrainian legislation should determine which norms of European legislation regulating the right to work are effective and should be introduced into the current legislation of Ukraine, and which fundamentals are ineffective, outdated and should not be taken into account in the process of establishing new Ukrainian laws.

At this moment, there is a great danger that such morality can be "transferred" into the new Ukrainian legislation, creating new obstacles to establishing new, effective mechanisms for implementing the right to work.

An important condition for the successful European integration of Ukraine into the European Union is the elevation of state labor legislation to a new position and the provision of opportunities for Ukraine's citizens to exercise the right to work as much as possible. The first manifestations of the European integration course in the direction of exercising the right to work were Bourne and the desire of our people to live in a popular, economically developed, socially well-known and stable state (Day, 2009).

After Ukraine had gained state independence in 1991, the primary task was establishing relations with developed countries. The Decree of the President of Ukraine dated June 11, 1998 "On the approval of the strategy of Ukraine's integration into the European Union", notes that one of the promising foreign policy claims of Ukraine is its accession to the European Union, that is, European integration and membership in the European Union, the purpose of which is to modernize the public legal system taking into account European legislation (Decree of the President of Ukraine, 2008).

Recently, these instances and the fundamentals of restructuring have found their embodiment in the National Program for the Adaptation of the Legislation of Ukraine to the Legislation of the European Union. According to the outlined document, priorities should be given to legislative acts of Ukraine, the approximation of which to the current legislative acts of the European Union will contribute to implementing the right to work.

The process of exercising the right to work in the conditions of Ukraine's European integration has been taking place in the direction of merging the labor legislation of Ukraine with the ultra-modern European legal system. Such integration promotes the development of artistic, social, entrepreneurial manifestations of Ukraine's citizens, which in turn will contribute to the gradual enrichment of citizens and their approach to the level of the European Union's member states (Vasylkevych, Y.Z., Lomak,

O.M., Zozulia, I.M., Kochereva, D.V., Kikinezhdii, O.M. 2020). This process is a strategic matter for Ukraine. After all, it is a relevant way of exercising the public interests of building an economically developed state, strengthening its position in the world. Ukraine strives to take into account the conditions of the European Union's legislation as much as possible during regulatory design, training qualified specialists, creating relevant conditions for institutional, scientific and educational, regulatory design, specialized, and fiscal support of the process of adapting the legislation of Ukraine. Currently, the main political, legal and organizational fundamentals for adapting the legislation have been created (Omelchynko, 2010). In the conditions of digital transformation of science and education, the problem of the development of information and research competence of graduate students and doctoral students was studied (Leshchenko, M.P., Kolomiets, A.M., Iatsyshyn, A.V., Kovalenko, V.V., Dakal, A.V., & Radchenko, O.O., 2021), the use of online was considered - coding platform as one of the additional remote tools in learning programming (Zinovieva, I.S., Artemchuk, V. O., Iatsyshyn, A.V., Popov, O.O., Kovach, V.O., Iatsyshyn, A.V., ... Radchenko, O.V., 2021). Ways of using cloud services for the training of future PhDs have been developed for higher education (Iatsyshyn, A.V., Kovach, V.O., Romanenko, Y.O., & Iatsyshyn, A.V., 2019).

The right to work is one of the basic mortal rights. At the current stage of the development of our country, the transformative value of work is increasing, and the possibilities of its functioning are expanding.

Nevertheless, the legal morals regulating social relations related to implementing the right to work are relatively inappropriate and contain several contradictions. Due to this, several labor contradictions and conflicts, the resolution of which requires a new abstract approach, increases significantly. In case the right to work is violated in the conditions of European integration, an "inspection" must be carried out.

The current legal morality should be applied in order to identify and organize positive experience on particular issues of regulating labor relations, as well as to determine their compliance with international moral standards and the implementation of those transnational regulatory and legal acts. Such acts

have a positive impact and are aimed at regulating labor relations on demand and mitigating conflicts between employees and employers, and in case of conflicts between them, they will be resolved through social dialogue (Tsyganchuk, 2013).

According to the viewpoint of S.F. Squat, for the fuller and better possibility of implementing the right to work, every non-supervisory act in the system of labor legislation of Ukraine, and above all norms of the Labor Law of Ukraine, should consider the person, the main subject of legal relations, as the highest social value.

Therefore, Yu.Vilkov, investigating the issue of European integration, defined it as a set of political processes aimed at connecting, incorporating social, political, profit-making structures or ethnic groups within the framework of one state or several countries in order to combat destructive internal and external factors.

At the same time, special attention is paid to European integration as the most typical embodiment of this process. The compass of the term "European integration" includes political or profitable institutions of the commonwealth of European countries, and also scientific, technological, social and environmental spheres (Hutsu, 2013).

V. Kopyko and T. Shinkarenko adhere to a slightly different opinion. The scholars understand European integration as a process that takes place at the junction of political, economic and social structures into a single complex, which can have the outlines of a formal political and beneficial union or remain an informal union. The profitable and political aspects of European integration acquire special importance in the framework of this process (McLean, McMillan, 2009).

The crucial moment, the primary step in the process of reforming labor legislation and ensuring perfect observance of the right to work in the conditions of Ukraine's European integration is the rejection of the new Labor Code of Ukraine, the morality of which will correspond to the transnational legal norms of acts ratified by Ukraine. Such a law should (1) be free from ideological concepts and declarative morality of the legislation of the Soviet government; (2) correspond to the socially beneficial and artistic processes of our time; (3) organize all morals and principles of work into a single whole system, as

well as all general and universal legal morality of the spheres of Ukrainian and transnational labor law; (4) define in detail the powers of state authorities and primary state administration in the field of regulating labor relations.

One can agree with the opinion of S.F. Squat, who noted that the main principles of violation of the right to work in the context of Ukraine's European integration should be based on the need to facilitate violations of employees' labor rights; freezing the acceptability of clearly defined labor rights and guarantees and opportunities for their implementation. Such introductory principles, primarily, can be the optimal balance of the protective and productive functions of labor law, through which a balance of interests of employees and employers should be ensured (Kopiyka and Shinkarenko, 2001).

Both functions in ultra-modern conditions aim to protect both parties' rights and interests to the employment contract. However, the product function also relates to protecting employers' interests, if the protective function relates to the protecting employees' interests.

The first directly follows from the social nature of labor legislation. It is commonly known that labor law emerged in the legal systems of all world countries with the emergence of commercial demand for goods and hired labor precisely for the purpose of ensuring the protection of labor rights and legitimate interests of hired workers.

Secondly, the principles of reforming legislation in Ukraine should be the observance of previously established social norms in the field of labor. At the same time, the fulfillment of the Constitution's conditions must be ensured, which establishes that when adopting new laws, it is not allowed to narrow the content and scope of rights and freedoms.

Thirdly, the basis of legislative reform in Ukraine is the evolutionary nature of implementing such reforms. At the same time, only those clauses of the current legislation that do not meet the conditions of economy of requirements should undergo drastic changes.

Fourthly, in the process of preparing the new law, the experience of the International Labor Organization and the shortcomings of the legislation of the European Union and countries with economies

in transition are taken into account in order to ensure the proper harmonization of Ukraine's labor legislation with transnational legal morality in this sphere.

Fifthly, the principles of legislative reform in Ukraine shift the center of seriousness of legal protection of labor relations from a legislative position to a position of contractual regulation, primarily, cooperative logrolling, with maximum use of social cooperation mechanisms involving employers and trade unions.

Sixthly, the basis of reforming the legislation is the elimination of any manifestations of separating employees based on gender, race, political beliefs and other circumstances defined in the Constitution of Ukraine, while preserving the increased conditions of women's labor protection and youth and the real prohibition of child and forced (compulsory) labor.

Based on the above, the implementation of the right to work in the conditions of Ukraine's European integration should take place precisely on the basis of maximum consideration and observance of transnational experience in this area, which is expressed in transnational legal acts.

At the same time, Article 9 of the Constitution of Ukraine should also be taken into account, according to which international agreements, the binding consent of which was given by the Verkhovna Rada of Ukraine, are part of the public legislation of Ukraine. The most significant transnational legal acts include as follows: the Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights; European Social Charter (revised); Conventions and Recommendations of the International Labor Organization; Charter of communities on the employees' introductory social rights; Charter of Fundamental Rights of the European Union, etc. According to these acts, the freezing of citizens' entry social rights, and in our case it concerns the right to work, rests with the state. Thus, guaranteeing the right to work, the state is obliged to create conditions for its implementation.

Granting the right to rest, it is obliged to promote rest for employees, their children and the elderly people. Increasing the right of a person to a sufficient standard of living for himself and his family, the duty of the state is to ensure such a

standard of living that is as close to “good, relevant” as possible (Yaroshenko, 2014).

The Universal Declaration of Human Rights is one of the first such acts. Article 23 of this document indicates the increase of the following introductory labor rights of each person, namely: the right to work, to free choice of work, to fair and favorable working conditions and to protection against dismissal; the right to equal payment for equal work without any distinction; the right to a fair and satisfactory remuneration, which ensures a stable life of the person and his family and which, if necessary, is supplemented by other social security means; the right to form and join trade unions to protect one’s interests (Decree of the President of Ukraine, 2008).

The International Covenant on Economic, Social and Cultural Rights is a significant future source of transnational labor regulation. Unlike the Universal Declaration of Human Rights, this document has a contractual nature. Therefore, the implementation of its provisions is universally obligatory for the participating countries. The International Covenant on Economic, Social and Cultural Rights, which was ratified by Ukraine in 1973, provides for recognizing and providing the right to work, by each common state, which includes the right of every person to earn his living by work which he engages in, freely chooses, or freely consents to; the right to fair and favorable working conditions, including, in particular, remuneration that would ensure at least a fair wage package and equal remuneration for work of equal value for all workers without any distinction, the same opportunity for everyone to receive the relevant promotion based on work experience and qualifications; holiday, rest time and reasonable limitation of working hours and paid periodic leave and holiday payment etc. (United Nations Human Rights, 1996).

In turn, Article 1 of Part II of the European Social Commitment, which was ratified by Ukraine in 2006, contains a separate section “Right to Work”. It establishes the relevant clauses in order to ensure the effective implementation of the right to work, which the parties to the Charter undertake as a whole. Their most significant claims and one of their most important values are achieving and maintaining the highest possible and stable position

at work, finalizing with the achievement of full-time employment.

The activity of the International Labor Organization is of particular importance for the recognition and protection of the right to work. During the times of its relevance, it supported numerous conventions and recommendations. The principal strategic claims of the International Labor Organization are establishing the right to work; creating more opportunities for women and men to secure decent employment and affordable scholarships; increasing the effectiveness of social protection for all segments of the population, as well as strengthening the principle of tripartism and social dialogue.

It can be argued that the right to work and other labor rights are the most important element of socially beneficial mortal rights. A significant number of transnational agreements on human rights guarantee everyone the right to work and the labor rights of others.

Along with this, some problematic issues and inaccuracies may arise in addition to all the listed advantages of convergence, approximation and adaptation of the labor legislation of Ukraine in the conditions of European integration.

Currently, the issue of codification of the labor legislation of Ukraine has become acute. The shortcomings of the new Criminal Code do not completely contradict international moral norms; however, they contain several gaps and contradictions. Bringing the morality of labor legislation of Ukraine in line with European norms will contribute to the protection of the employees’ rights, their income and social well-being. Studying employees’ individual rights in the normative legal acts of domestic and foreign legislation will make it possible to reveal the possibilities of their implementation in practice.

Therefore, O. Omelchynko singles out similar problems of reforming the legislation of Ukraine, which influences the process of implementing the right to work in the conditions of European integration, namely: (a) due to non-supervisory and legal basis, provision of mechanisms of adaptation of existence; (b) inconsistency of domestic labor legislation with European legal norms in the sphere of regulation of hired labor; (c) the need to stimulate adaptation processes in order to bring the

social system of labor legislation in line with the provisions of the European Union's law as soon as possible; (d) the insufficiency of a single theoretical and methodological basis for effective legal reforms in the field of labor legislation of Ukraine in order to ensure its adaptation to the European Union's labor legislation; (e) the necessity to strengthen the social and legal protection of employees in Ukraine in order to achieve a high position of the association of uncontrolled exercise of their labor rights and legal interests established in the European Union (United Nations Human Rights, 1996).

## DISCUSSION

According to the standpoint of S.F. Squat, every non-supervisory act in the system of labor legislation of Ukraine, and above all the norms of the Law on Labor of Ukraine, should consider the person, the main subject of legal relations, as the highest social value for a more complete and better opportunity to exercise the right to work.

Yu. Vilkov, investigating the issue of European integration, defined it as a set of political processes aimed at connecting, incorporating social, political, profitable structures or ethnic groups within the framework of one state or several countries in order to fight against destructive internal and external factors. At the same time, particular attention is paid to European integration as the most typical embodiment of this process. The compass of using the term "European integration" includes political or profitable examples of the commonwealth of European countries, and also scientific, technical, social, and environmental spheres.

V. Kopyyko and T. Shinkarenko adhere to a slightly different opinion. The scholars understand European integration as a process that takes place at the junction of political, economic and social structures into a single complex, which can have the outlines of a formal political and beneficial union or remain an informal union. The profitable and political aspects of European integration acquire special importance in the framework of this process.

On the other hand, O. Omelchynko singles out similar problems of reforming the legislation of Ukraine, which affect the process of implementing the right to work in the conditions of European integration.

Therefore, drawing conclusions from the above-mentioned theoretical developments and abstract details of legal wisdom regarding implementing the right to work, which have been developed over the centuries, require a new vision from the perspective of the criteria of necessity, reasonableness and wisdom, and most importantly, taking into account the conditions of the European integration of Ukraine into the European Union and its legislation.

## CONCLUSION

Based on the conducted scientific review and analysis of methods of encroachment on the right to work in the conditions of Ukraine's European integration, certain reasoned conclusions should be drawn. In general, the studied issue of the right to work in the conditions of Ukraine's European integration is of great importance for ultra-modern doctrine and practice, for-as-much as it is one of the starting points for improving and further reforming legislation in this area. Theoretical developments and abstract details of legal wisdom regarding implementing the right to work, which have been developed over the centuries, require a new vision from the perspective of the criteria of necessity, reasonableness and wisdom, and most importantly, taking into account the conditions of the European integration of Ukraine into the European Union and its legislation. Ukraine should develop its own approaches to labor issues related to exercising the right to work in the conditions of the European integration of our country. After all, the resolution of these issues will open opportunities for the operation of the morality of European Union law within the framework of domestic labor legislation. Primarily, this concerns the foreseen cases of transferring the European Union's directives into the domestic legislation of Ukraine and the direct effect of certain provisions of EU law on public office. It should also be taken into account that the process of harmonizing the legislation of our country with the law of European associations has its own tricks.

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