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LEGAL REGULATION OF RELATIONS IN THE FIELD OF PUBLIC EMPLOYMENT

The article analyzes the system of legal acts regulating relations in the field of public employment. In the research paper peculiarities of its development in modern social and economic conditions are defined.

Keywords: employment of population, employment law, labor law norms.

Problem statement. Ukrainian employment law constitutes a system of normative legal acts that determines legal, economic, organizational fundamentals of relations that arise in connection with ensuring the employment right and implementing the right to work. The adoption of the Law of Ukraine “On Employment of Population” of July 5, 2012 [1] impulsed a dynamic development of national legislation in this field as an independent institute of labor legislation.

Analysis of recent researches and publications. The works of many scientists are dedicated to legal aspects of ensuring the employment of population. They are: A. J. Babaskin, V. V. Bezusov, N. B. Bolotina, T. G. Markina, S. M. Prylypko, M. M. Feskov, G. I. Chanysheva, R. I. Shabanova, J. M. Shchotova, O. M. Jaroshenko, etc.

Paper purpose. The aim of the article is to characterize the modern system of legal acts that regulate relations in the field of employment of population, to determine peculiarities of its development in modern social and economic conditions.

Paper main body. Article 46 of the Constitution of Ukraine [2], which assigns the right of citizens to social protection against unemployment for reasons beyond their control, is the most significant for the institute of employment. This constitutional norm as well as the International Covenant on Economic, Social and Cultural Rights, other international acts ratified by Ukraine allocate fundamental principles of mutual relations of subjects in the field of ensuring employment.

In case when an international treaty for which consent to be bound was given by the Verkhovna Rada of Ukraine assigns rules that differ from those assigned by the employment law of Ukraine, the rules of an international treaty are applied (Para. 2 of Art. 2 of the Law of Ukraine “On Employment of Population”).

Ratified conventions and recommendations of the International Labor Organization (hereinafter – ILO) on employment and unemployment are also a part of national legislation: ILO Employment Policy Convention № 122, 1964 (ratified by the Ukrainian SSR, May 29, 1968) [3], ILO Unemployment Convention № 2, 1919 (ratified by the Law of Ukraine of February 4, 1994) [4].

Simultaneously a number of other important conventions in the field of employment and unemployment were assigned by the ILO but still not ratified by Ukraine: ILO Maternity Protection Convention № 3, 1919, ILO Employment Promotion and Protection against Unemployment Convention № 168, 1988, ILO Private Employment Agencies Convention № 181, 1977 (this convention is a result of reconsideration of two previous conventions on the issue: Fee-Charging Employment Agencies Convention № 96 (reconsidered), 1949 and Social Security (Minimum Standards) Convention №102, 1952.

Other ILO recommendations that act in the field of employment and unemployment are: № 44 on unemployment, 1934, № 83 on employment service, № 169 on the politics in the field of employment (subsidiary regulations), 1984, № 176 on employment promotion and protection against unemployment, 1988, № 188 on private employment agencies, 1997, № 167 on safety and health in construction, 1988.

A number of articles of the European Social Charter (reconsidered) (hereinafter – ESC (r)) [5] are dedicated to the problems of employment and job placement. The main demand of ESC (r) is to ensure real implementation of the human right to work and to treat reaching and maintaining a high stable level of employment as a main task of the state, having an aim of reaching full employment. Duties of the state in the field of the employment right and job placement are the following: to create special services for job placement and to

maintain this activity on the appropriate level; to ensure necessary career-guideness, training and re-training of employees; to provide services in this field for free; to ensure equal possibilities and prohibition of discrimination; to pay special attention to job placement of socially vulnerable groups, particularly invalids, protractedly unemployed, teenagers, women, etc.

Relations in the field of employment apart from the Constitution of Ukraine are regulated by the Law Of Ukraine “On Employment of Population” of July 5, 2012, the Code of Labor Laws of Ukraine (section III-A “Ensuring Employment of Liberated Employees”) [6], the Economic Code of Ukraine [7], the Civil Code of Ukraine [8], the Law of Ukraine “On Common Compulsory State Insurance in case of Unemployment” of March 2, 2000 [9] and other legal acts.

Distinctive features of ensuring employment of particular categories of citizens are additionally regulated by such special laws of Ukraine as “On the Fundamentals of Social Immunity of Invalids in Ukraine” of March 21, 1991 [10], “On Social and Legal Protection of Military Servants and Members of Their Families” of December 20, 1991 [11], “On Assistance of Social Formation and Development of Young People in Ukraine” of February 5, 1993 (in edition of the Law of Ukraine of March 23, 2000) [12], “On Fundamental Principles of Social Protection of Veterans of Labor and Other Aged Citizens in Ukraine” of December 16, 1993 [13], “On Ensuring Rights and Liberties of Internally Displaced Persons” of October 20, 2014 [14], etc.

The Law of Ukraine “On Employment of Population” that defines legal, economic and organizational conditions of implementing state policy in the field of employment of population, state assurance of protection the rights of citizens to work and implementation of their rights to social protection against unemployment plays a leading role in legal regulation of relations in the field of employment of population.

Article 1 of the Law of Ukraine “On Employment of Population” defines employment as not forbidden by law activity of persons which is connected with satisfaction of their personal and common wants for the purpose of acquisition of

income (remuneration) in pecuniary or another form as well as activity of members of the family that provide economic activity or work for economic agents based on their property, including working for free. Working population in Ukraine includes persons that live on the state territory on legal basis. Working population includes not only persons that work for hire on terms of labor contract or on other legal terms but also those who provide work for themselves on their own (including members of personal agricultures), pass military or alternative (not military) service, work abroad on legal terms and have income from such kind of employment as well as persons that study full-time at establishments of general education, technical colleges and higher educational establishments and mix studying with work.

Working population also includes: non-working able-bodied persons, who factually take care of a child-invalid, invalid of the group I or an aged person who, according to a medical conclusion, needs permanent exterior care or reached the age of 80 years and receive help, compensation and/or bonus according to the law; parents-educators of children's homes of family type, adoptive parents if they receive money provision according to the law; a person who lives together with an invalid of the group I or II because of mental disorder, who, according to a medical conclusion of a medical institution, needs permanent exterior care and receives money help for care according to the law.

According to Para. 2 of Art. 4 of the Law Of Ukraine "On Employment of Population" foreigners and stateless persons who stay in Ukraine and whose employment is connected with ensuring activity of foreign embassies and missions, or performing their professional or labor duties to employer-non-resident do not relate to working population.

Thus, the concept of employment is considerably wider then of work for hire, dependent, collective work as a subject of labor law.

Article 5 of the Law of Ukraine "On Employment of Population" provides guarantees in the field of employment of population. There are the following state guarantees: 1) free choice of place of application of labor and kind of activity, free

choice or change of occupation; 2) receiving the remuneration; 3) career-guideness for the purpose of self-determination and realization of person's capability for work; 4) professional training according to abilities and taking into account labor market needs; 5) affirmation of the results of non-formal professional training of persons for worker professions; 6) free assistance for job placement, choice of the appropriate work and getting information about the situation on labor market and perspectives of its development; 7) social protection in case of unemployment; 8) protection against discrimination in the field of employment, groundless refusal for recruitment and illegal discharge; 9) accessory assistance for job placement of particular categories of citizens. Furthermore, Art. 14 of the Law assigns additional guarantees for job placement assistance of particular categories of citizens. The condition of referring citizens to such category is a need of social protection and incapability to compete on the labor market at the same rate.

The Law Of Ukraine "On Employment of Population" provides the employment right for the first time. According to Art. 3 of the Law, everybody has a right to a freely chosen employment. Part 2 allocates an important norm about the fact that any compulsion to work is prohibited. Arbitrary employment of the person cannot be the basis for calling him or her to account.

Another novel of the Law Of Ukraine "On Employment of Population" is providing a complex of rights in the field of employment of population and their assurance: rights of a person to choose the place, kind of activity and occupation (Art. 6); rights of a person to career-guidance (Art. 7); rights of a person to professional training (Art. 8); rights of a person to social protection in case of unemployment (Art. 9); rights of a person to work abroad (Art. 10); rights of a person to protection against discrimination in the field of employment of population (Art. 11); right of a person to have an access to information in the field of employment of population (Art. 12). In addition, a right to protection of the rights in the field of employment of population (Art. 13) is severally provided.

If the Law Of Ukraine "On Employment of Population" contains general norms that regulate relations in the field of employment, then the above laws

assign special norms that extend their action on particular categories of citizens. Thus, according to Para. 3 of Art. 11 of the Law of Ukraine “On Ensuring Rights and Liberties of Internally Displaced Persons”, the executive authority central agency that implements policy in the field of employment of population and labor migration is liable for providing internally displaced persons with information about potential job placement in appropriate locality as well as for assisting job placement of internally displaced persons who received status of unemployed, organizing training, re-training and professional development of such persons.

The Law of Ukraine “On Employment of Population”, other legal acts in this field implement the state policy which is, first of all, directed at ensuring full, productive and freely chosen employment. The aim of state policy in the field of employment according to Para. 2 of Art. 15 of the Law is: 1) ensuring equal possibilities for persons in implementing their right to work; 2) assistance of improving the professional level of able-bodied population according to common needs; 3) procurement of employment of population including people in countryside and depressive territories; 4) ensuring qualified personnel for economics; 5) balancing the demand for labor force (creating appropriate number of working places) and its supply (creating conditions for professional development, adequate working conditions); 6) priority of ensuring full and productive freely chosen employment; 7) ensuring social protection of persons in case of unemployment; 8) strengthening social and legal protection of Ukrainian citizens who work abroad, including activation of international cooperation and treaty-making on labor migrators’ rights protection.

Subordinate legal acts constitute a significant part of sources related to the institution of employment of population. They are: the acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, central and local agencies of executive authority, local authorities. Thus, the Program of Assistance in Employment of Population and Stimulating Creation of New Working Places for the period up to 2017 [17] is asserted by the Resolution of the Cabinet of Ministers of Ukraine of October 15, 2012 №1008. This Program defines arrangements and

ways of solving problems in the field of employment of population and provides consolidation of energies of all sides of the social dialogue that are directed at rising the level of economic activity of population, assistance in its productive employment and strengthening social protection from unemployment. The aim of the Program is broadening possibilities of implementation of the right of the citizens to worthy work, raising their income by: creating conditions for rising the level of employment of population; stimulating interest for the employer in creating new working places; preservation and development of working potential; raising the role of the participants of social dialogue who are interested in transformations in the labor market (association of employers organizations and trade unions).

There was also published a number of subordinate legal acts for development of the Law of Ukraine “On Employment of Population”. They are the following: the Statute on the State Employment Service of Ukraine, approved by the Decree of the President of Ukraine of January 16, 2013 № 19/2013 [16], the Order of Registration, Re-registration of the Unemployed and Accounting the Persons Who Search for Employment, approved by the Resolution of the Cabinet of Ministers of Ukraine, March 20, 2013 № 198 [17], the Order of Organization of Temporary Public and Other Works, approved by the Resolution of the Cabinet of Ministers of Ukraine, March 20, 2013 № 175 [18], the Order of Issuing Vouchers for Maintaining Competitiveness in the Labor Market, approved by the Resolution of the Cabinet of Ministers of Ukraine, March 20, 2013 № 207 [19], the Order of Issuing Permissions for Hiring Employees for the Subsequent Working for Another Employer, approved by the Resolution of the Cabinet of Ministers of Ukraine, March 20, 2013 № 359 [20], etc.

Norms on ensuring employment of population are also established by the acts of social dialogue – collective agreements and collective contracts. The Law of Ukraine “On Employment of Population” provided a special section IX “Social Dialogue in the Labor Market” for the first time. The norms of this section regulate

participation of employers, organizations of employers, their associations, trade unions, their associations in ensuring employment of population.

The General Agreement on Regulating Fundamental Principles and Norms of Implementation of Social and Economic Policy and Labor Relations in Ukraine for 2010-2012 of November 9, 2010 [21], contains section 1 “Development of Native Manufacture for Ensuring Productive Employment” that provides measures for improving the situation in the labor market. In the field of ensuring productive employment the sides agreed, in particular, upon creating conditions for ensuring professional development of employees at least once in five years (the extent of professional training of employees and general expenses for such aims are defined by collective agreements); to recommend defining the criteria of mass liberation of employees and the order of providing such liberation while signing sectoral or territorial contracts; to recommend contemplating in sectoral and collective agreements the liability of employers for attracting employees from other enterprises on terms of civil contracts after preliminary informing of trade unions. Measures of ensuring effective employment of employees, including measures directed at decreasing personnel defections, are provided by sectoral agreements.

Conclusions. Consequently, as of today, relations arising in connection with ensuring employment of population and protection against unemployment in Ukraine are legally regulated by both domestic acts and international acts that are ratified by Ukraine. The laws of Ukraine in this field constitute a numerous hierarchy of legal acts – laws, subordinate legal acts, acts of social dialogue. The institute of labor legislation has a complex character and includes not only labor norms but also administrative, financial ones and norms of other branches of law. A distinctive feature of the new law is the fact that state guarantees of employment attach not only citizens of Ukraine but also foreigners and stateless persons (Para. 4 of Art. 3 of the law). Not only citizens of Ukraine own a right to employment – that is a human right, according to Para. 1 of Art. 3 of the law, everybody has a right to freely chosen employment. In connection with that the disposition of Para. 2 of Art. 43 of the Constitution of Ukraine that provides the duty of the state

to create all the conditions for a full implementation of the right to work, to guarantee equal possibilities of choosing career and kind of labor activity only for citizens of Ukraine does not correspond to international acts. That is why, it is necessary to make changes in Art. 43 of the Constitution of Ukraine directed at elimination of the above default and extension of state guarantees of employment on all the persons who stay on the territory of Ukraine on the legal basis.

After accepting a new Labor Code of Ukraine where there is a Chapter 4 “Job Placement” of Book 1 “General Provisions”, it will be possible to approve the formation of such a normative base in the field of employment and job placement that meets the requirements of economics.

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