

THE RIGHT TO EMPLOYMENT AND ITS GUARANTEES IN THE CONDITIONS OF MARTIAL ARTS

ПРАВО НА ЗАЙНЯТІСТЬ ТА ЙОГО ГАРАНТІЇ В УМОВАХ ВОЄННОГО СТАНУ

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The article analyses the concepts of «employment of the population», «right to employment», «full employment», «productive employment», «guarantees in the field of employment». International and national acts in the field of employment of the population and social protection against unemployment are considered. Special attention is paid to the laws that were adopted during martial law in Ukraine.

The main areas of legal regulation in the field of employment of the population at the international level are highlighted. International conventions of the United Nations and the International Labour Organization, devoted to general issues of employment of the population and employment of individual categories.

It was established that at the national level, the category of «employment of the population» was first introduced in 1991. The right to employment is not enshrined in the Constitution of Ukraine. The right to employment and its guarantees are enshrined in the Law of Ukraine «On Employment of Population» of 2012. The main goal of the Law is to improve mechanisms for ensuring employment of the population.

The dissertation research of Shabanov A.R. is considered, in which he proposed to use qualitative indicators of population employment. The work of Shtunderv I.O. is studied, which analyses the main challenges in the field of ensuring productive employment, and the work of Seryogina N.O., who believes that population employment is an integral element of ensuring national security in Ukraine.

Large-scale losses of jobs and incomes of the population, a decrease in the number of vacancies on the labour market, a reduction in opportunities for financial support for their staff in small businesses, an additional burden on the social protection system exacerbated the problems of employment of the population and increased the number of unemployed people in Ukraine. Therefore, during the martial law, a number of regulatory and legal acts were adopted that relate to the sphere of employment of the population and social protection against unemployment.

Attention was drawn to the Law «On Employment» of 2016, adopted by the Republic of Lithuania, which enshrines measures to support employment of the population.

It is proposed to take into account the experience of individual foreign countries when improving national legislation in order to introduce new mechanisms for ensuring employment of the population.

Key words: right to employment, employment of the population, employment guarantees, forms of employment, productive employment, full employment, part-time employment, unemployment, employment, national security, legislation of Ukraine, legislation of certain foreign countries.

У статті здійснено аналіз понять «зайнятість населення», «право на зайнятість», «повна зайнятість», «продуктивна зайнятість», «гарантії у сфері зайнятості». Розглянуто міжнародні та національні акти у сфері зайнятості населення та соціального захисту від безробіття. Особливу увагу приділено законам, які було прийнято під час воєнного стану в Україні.

Виокремлено основні напрями правового регулювання у сфері зайнятості населення на міжнародному рівні. Міжнародні конвенції Організації Об'єднаних Націй та Міжнародної організації праці, присвячені загальним питанням зайнятості населення та зайнятості окремих категорій.

Встановлено, що на національному рівні вперше було введено категорію «зайнятість населення» у 1991 році. Право на зайнятість не закріплено в Конституції України. Право на зайнятість та його гарантії закріплено у Законі України «Про зайнятість населення» від 2012 року. Основною метою Закону є вдосконалення механізмів забезпечення зайнятості населення.

Розглянуто дисертаційне дослідження Шабанова А.Р., в якому він запропонував використовувати якісні показники щодо зайнятості населення. Досліджено роботу Штундєра І.О., в якій аналізуються основні виклики у сфері забезпечення продуктивної зайнятості та роботу Серьогіної Н.О., яка вважає, що зайнятість населення виступає невід'ємним елементом забезпечення національної безпеки в Україні.

Масштабні втрати робочих місць та доходів населення, зменшення кількості вакансій на ринку праці, скорочення можливостей з фінансової підтримки свого штату у малому бізнесі, додаткове навантаження на систему соціального захисту загострило проблеми зайнятості населення та збільшило кількість безробітних в Україні. Тому протягом дії воєнного стану було прийнято цілу низку нормативно-правових актів, які стосуються сфери зайнятості населення та соціального захисту від безробіття.

Звернуто увагу на Закон Литовської Республіки «Про зайнятість» від 2016 року, в якому закріплені заходи із підтримки зайнятості населення.

Запропоновано враховувати досвід окремих зарубіжних країн при вдосконаленні національного законодавства з метою запровадження нових механізмів забезпечення зайнятості населення.

Ключові слова: право на зайнятість, зайнятість населення, гарантії у сфері зайнятості, форми зайнятості, продуктивна зайнятість, повна зайнятість, неповна зайнятість, безробіття, працевлаштування, національна безпека, законодавство України, законодавство окремих зарубіжних країн.

Statement of the problem. In conditions of martial law, the issues of ensuring the right to employment and its guarantees become particularly relevant. The International Labour Organization analysed the labour market in Ukraine in 2022 and drew attention to the need to solve the problems of employment of the population. The problems are related to mass internal displacement of the population, increased flows of refugees to neighbouring countries, additional burden on the social protection system, damage to infrastructure, etc. Over the past three years, the implementation of state

guarantees in the field of employment of the population has become more difficult. The decrease in the number of jobs in Ukraine disrupts the balance between supply and demand, which affects the spread of social instability. In order to ensure the right to employment of the population, it is necessary to regulate at the legislative level the issues of creating new jobs, using modern technologies in production, attracting workers in scarce professions, etc.

The purpose of the article: to outline the problems of implementing the right to employment of the population in

modern conditions; to analyse the main guarantees; to characterize the latest changes that have been made to the national legislation in the field of employment of the population.

The state of development of this issue. Domestic scientists studied problematic issues in the field of employment of the population: N.B. Bolotina, M.I. Inshin, I.M. Syrot, S.P. Prylypko, G.I. Chanysheva, N.M. Khutoryan, O.M. Yaroshenko and others. Additional study is required for the problems of ensuring the right to employment and its guarantees under martial law.

Presentation of the main material. The right to employment is one of the basic labour rights proclaimed in international acts and laws of Ukraine. The United Nations has adopted international conventions that enshrine the right to employment. They concern general issues of employment of the population and regulate issues of employment of certain categories of the population. For example, Convention on the Rights of Persons with Disabilities. The International Labour Organization has adopted conventions that enshrine employment rights and guarantees. For example: ILO Unemployment Convention, Employment Service Convention, Employment Policy Convention, Vocational Guidance and Training Convention, ILO Labour Administration: Role, Functions and Organization Convention, Vocational Rehabilitation and Employment (Disabled Persons) Convention, Labour Statistics Convention, Employment Promotion and Protection against Unemployment Convention.

At the international level, the main areas of regulation in the field of employment of the population concern the following issues:

- 1) State policy that promotes freely chosen employment;
- 2) A system of bodies that promote employment of the population;
- 3) Free employment through employment service bodies;
- 4) Vocational training of unemployed citizens;
- 5) Use of social dialogue;
- 6) Creation of a system of social protection against unemployment, etc.

At the national level, in 1991, the Law of Ukraine «On Employment of Population» first introduced the category of «employment of the population», which was defined as «the activity of citizens related to the satisfaction of personal and social needs and which, as a rule, brings them income in monetary or other form» [1].

Today, the right to employment, guarantees regarding the protection of citizens' rights to work are enshrined in the Law of Ukraine «On Employment of Population» of 2012. The right to employment is not enshrined in the Constitution of Ukraine. According to Article 3 of the aforementioned Law, «everyone has the right to freely chosen employment» [2]. The law also enshrines the following definitions: «employment», «part-time employment», «full-time employment», «productive employment». This Law established a system of influence on employers to stimulate their activities in terms of promoting and ensuring employment of the population, organizing additional jobs, establishing clear responsibilities and liability for failure to comply with or violation of the rules established by law. The main goal of the Law is to improve mechanisms for ensuring employment of the population.

A.R. Shabanov believes that population employment is a «complex phenomenon that is reflected in social relations related to the realization by the economically active population of its ability to work, has the characteristics of productivity, efficiency (rationality), freedom of choice and dignity, and is revealed in various types of human activity» [3, c. 22]. His dissertation research proved that the following qualitative indicators characterize population employment: full, effective, productive, freely chosen, and decent work.

In 2022, UN recommendations on measuring employment were prepared and published «Handbook on Forms of Employment» [4]. This document examines forms of employment

and provides a classification of new forms. Income, working environment, work-life balance, skills development, social protection, work motivation and social dialogue should be taken into account when analysing the quality of employment. High-quality employment, from the employer's perspective, can correspond to the availability of a skilled and efficient workforce. Workers can highly value the quality of their employment if workplace security meets their needs and compensation is favourable to them. In martial law, workplace security and social support for employees become the main indicators.

Article 5 of the Law of Ukraine «On Employment of Population» provides for state guarantees in the field of employment of the population. In the field of employment, the state guarantees «free choice of place of employment and type of activity, free choice or change of profession» [2]. Today, the demand for work significantly exceeds its supply, which indicates a crisis situation on the labour market. Vacancies are opened mainly to replace employees who left for other regions of Ukraine or abroad. In addition, enterprises are looking for new employees as a result of evacuation. Now the employer has the opportunity to choose, since dozens of candidates apply for one position. It is more difficult for employees to exercise the right to free employment in conditions of martial law.

Workers face the following problems: employers do not pay wages on time, send employees on unpaid leave, and reduce wages.

The provision of some other state guarantees in the field of employment of the population also remains problematic: professional orientation for the purpose of self-determination and realization of a person's ability to work, professional training in accordance with abilities and taking into account the needs of the labour market, etc.

I.O. Shtunder among the main challenges in the field of ensuring productive employment highlights: «Slowing down the pace of economic growth, worsening employment conditions and increasing unemployment, a significant outflow of human capital abroad, other shocks in the spheres of public life. Corruption, which has spread and taken root in the entire system of public administration. The implementation of activities by state bodies in corporate and personal interests, which leads to the violation of the rights, freedoms and legitimate interests of citizens related to the right to work and the sphere of employment» [5].

N.O. Seregina, analysing employment problems in Ukraine, emphasizes that employment is an indicator of social welfare, is of great importance in the functioning of the national economic system and is an integral element of ensuring national security [6, c. 182].

In May 2022, the ILO issued a report on the impact of the Ukrainian crisis on the labour market (initial assessments) [7]. It exacerbated the problems of employment of the population and increased the number of unemployed people in Ukraine: large-scale losses of jobs and incomes of the population, a decrease in the number of vacancies in the labour market, a reduction in opportunities to financially support their staff in small businesses, and an additional burden on the social protection system.

At the same time, it is necessary to note positive developments in the implementation of such a guarantee as social protection in the event of unemployment. During the martial law, a number of regulatory and legal acts were adopted that relate to the sphere of employment of the population and social protection against unemployment.

April 21, 2022 – The Law of Ukraine «On Amendments to Certain Laws of Ukraine Regarding the Functioning of Employment Spheres and Compulsory State Social Insurance in the Event of Unemployment During Martial Law» and on June 21, the new «Procedure for Providing Unemployment Assistance» were approved by the Resolution of the Cabinet of Ministers of Ukraine. The law is aimed at ensuring social protec-

tion of the unemployed, determines the features of providing this status and the assignment of unemployment assistance, and establishes mechanisms for preserving jobs and employing unemployed persons and internally displaced persons.

May 22, 2022 – Law of Ukraine «On amendments to certain legislative acts of Ukraine regarding strengthening the protection of employees' rights», which should have a positive impact on the labour market through social dialogue. In addition, it increases the level of employment of the population through the achievement by the parties of collective agreements and contracts of agreements on determining the conditions for creating new jobs, ensuring productive employment, preventing the growth of unemployment and mass layoffs of workers, increasing their wages and social protection.

On September 21, 2022, the Law of Ukraine «On amendments to certain legislative acts of Ukraine regarding the reform of the employment service, social insurance in case of unemployment, promotion of productive employment of the population, including youth, and the introduction of new active programs in the labour market» was adopted. It reformed the Employment Service and Social Insurance for Unemployment.

The Law of Ukraine «On Amendments to Certain Laws of Ukraine Regarding the Use of Labour of Foreigners and Stateless Persons in Ukraine and the Provision of Employment Intermediation Services Abroad» simplified the procedure for employers to use the labour of foreigners and stateless persons, i.e., de-shadowing labour relations in Ukraine.

On March 20, 2023, the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on the Protection of the Rights of Labour Migrants and Combating Fraud in Employment Abroad» was adopted, aimed at protecting citizens who expressed a desire to work outside our country.

We must state that the reform of the employment service and numerous changes to national employment legislation have yielded a positive result: fewer unemployed people were registered in 2024 than in 2023.

Under martial law, the state, in order to ensure the right to employment of the population and reduce the unemployment rate in our country, should take urgent measures regarding:

- Legalization of shadow employment;
- Increasing the level of competitiveness of the unemployed population;
- Reducing the period of forced unemployment through professional retraining;

– Creating a favourable climate for employment of people (security);

- Preserving existing and creating new jobs;
- Development of defence complex enterprises;
- Involvement of internally displaced persons in labour activity;
- Development of self-employment of the population.

The experience of the Republic of Lithuania is interesting, where the 2016 Law «On Employment» enshrines measures to support employment of the population [8]. The Lithuanian government considers employment of people with disabilities to be one of the priority areas of social policy development. In 2016, the «National Program for Social Integration and Development of People with Disabilities» was adopted, which provides for measures on employment, in particular, the creation of favorable conditions for the employment of people with disabilities, improving the level of education and vocational training, ensuring access to information about the labor market and vacancies.

Recently, in Ukraine, taking into account digitalization, there has been a trend towards creating new mechanisms for obtaining public services, applying atypical forms of employment, changing key concepts and principles, and new forms of employment are emerging, therefore it is necessary to study the experience of individual foreign countries in this area.

Conclusions. To sum up the results of the research, we must state that the right to employment is enshrined at the legislative level. Moreover, it belongs to the basic labour rights. The right to employment is not enshrined in the Constitution of Ukraine. The basis of legislation in the field of employment is the Law of Ukraine «On Employment of Population», which enshrines the basic concepts, rights and guarantees in the field of employment of the population.

During the martial law period, unemployment problems worsened due to the reduction in jobs. Therefore, regulatory and legal acts were adopted that concern the functioning of mandatory state social insurance in case of unemployment, reform of the employment service, simplification of the procedure for employers to employ foreigners and stateless persons, protection of the rights of labour migrants, and combating fraud in employment abroad.

However, solving all the problems faced by our citizens in the field of employment is not possible without systematic improvement of national legislation, taking into account the positive experience of individual foreign countries.

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