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ENSURING FREEDOM OF LABOR IN UKRAINE IN THE CONTEXT OF LABOR EMIGRATION

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ABSTRACT

The article is devoted to substantiating the necessity of using existing tools and means of labor law science in certain aspects of labor migration, particularly, concerning the provision of labor freedom for Ukrainian workers - labor emigrants. The integrated approach to the development of methodological foundations for such provision and the development of relevant legal provisions at various stages of realization of a person's right to labor, as well as in part of ensuring the prohibition of compulsory labor, can qualitatively

raise the level of legal regulation of labor migration through the inclusion of labor law science. In support of its argument the article provides a wide range of statistical data on Ukrainian labor emigration. It is determined that the existing problems of Ukrainian labor emigration in the context of ensuring freedom of work can be systematized at the stages of their occurrence in the following way: 1) before the emergence of labor relations with a foreign employer, that is, as long as a Ukrainian citizen is still in Ukraine and acts for the purpose of employment abroad; 2) the emergence of labor relations with a foreign employer, that is, the legal registration of such relationships; 3) the actual beginning of labor relations outside Ukraine, the course of labor relations and the presence of a Ukrainian labor emigrant in them; 4) termination of labor relations of the Ukrainian labor emigrant and return to the territory of Ukraine. The emergence of labor disputes is the optional stage.

KEYWORDS

Labor freedom, labor migration, Ukrainian worker, labor emigrant, forced labor, right to labor, proposals.

INTRODUCTION

More and more Ukrainians are implementing the right to labor outside Ukraine, which was proclaimed in Art. 43 of the Constitution of Ukraine. Over the past 20 years, the number of economically active citizens who have left Ukraine for earnings money abroad increased from 7% to 15%. A study conducted by the International Organization for Migration (IOM) found that for June 2017 around 915,000 Ukrainians were working abroad.¹ These are Ukrainian citizens who, in the long-term or short-term, are outside the country of origin, and they legally or illegally are engaged in employment in the host country.

On the basis of the results of the IOM survey, the total annual cost of money transfers through official and unofficial channels, for example in 2014, is estimated at about \$2.8 billion and long-term labor migrants made most of all listed. Besides, about \$0.1 billion was received in-kind. The contribution of long-term migrant workers to this financial infusion in Ukraine made 61%, short-term migrants about 25%, and the rest (14%) of money transfers received households without migrant labor. It is interesting that from 2013 to 2014, personal remittances made up a larger percentage of GDP than foreign direct investment and official development assistance combined. This emphasizes the importance of remittances as a stabilizing economic factor.² And although the data presented in this study is somewhat dated, since it is already 3 years on, it should be noted that the situation has probably not changed today. IOM notes in the same report: "Contrary to the conclusions in the literature on this issue and the expectation that money transfers will have an anti-cyclical character, which would manifest itself in the growth of their volumes in response to the deterioration of the socio-economic situation in Ukraine, they remained relatively stable (in currency expression)."³

Two conclusions can be drawn: firstly, in recent years the number of Ukrainian labor emigrants has increased; secondly, money transfers from labor emigrants to Ukraine are an important factor for the enriching the Ukrainian economy. That is why the issue of legal regulation of labor migration is becoming increasingly relevant and acute in the present crisis period. At the same time, it is important to note that still the appropriate laws have not been adopted on the national level for the protection of the rights of migrant workers, and the recently

¹ "Doslidzhennya z pytan' mihratsiyi ta torhivli lyud'my v Ukrayini" (Studies on migration and trafficking of people in Ukraine), Kyiv, MOM (2017): 3 // http://www.iom.org.ua/sites/default/files/migration_and_human_trafficking_in_ukraine_2017_ukr.pdf.

² "Mihratsiya yak chynnyk rozvytku v Ukrayini" (Migration as a factor of development in Ukraine). Kyiv, MOM (2016): 13–14 // http://www.iom.org.ua/sites/default/files/ff_ukr_21_10_press.pdf.

³ *Ibid.*: 14.

adopted Law of Ukraine "On Foreign Labor Migration"⁴ quite rightly faced a series of sharp criticisms, among which the most important is the declarative character of its provisions. This is amplified by the fact that from 21 Articles, 11 have a referenced nature, which means that there is lack of norms of direct action. Besides, in the law there are no mechanisms for the implementation of the declared norms or any other specifics, which indicates a formal approach to the problem of migrant workers. Actually, the new law does not regulate adequately the issue of external labor migration, including the protection of the rights of migrant workers. However, its adoption, though only upon the demand of the Action plan for liberalization of the visa regime,⁵ is still a positive step, which requires in future some actions in order to improve the already established platform for the legal settlement of these social relations.

The problem of labor migration can be found in various scientific fields - in economics, in sociology, in politics, but very little attention is paid to it in the science of labor law. The most common approach is that the issue of labor migration is predominantly the subject of study of constitutional or administrative law, migration law is allocated as well, but very rarely the question of the protection of the rights of Ukrainian labor emigrants is the subject of research on the science of labor law. Thus, in 2009, the thesis for the candidate of legal sciences of O.V. Zhurby ("Peculiarities of Legal Regulation of Labor of Ukrainian Citizens Abroad")⁶ was defended. Its provisions have already partially lost their relevance, and those that still retain it must be subjected to substantial modifications as a result of those circumstances, that our country have passed over the past 10 years. Also, in 2011, a thesis by O.V. Mahogon was defended for the candidate of legal sciences "Harmonization of labor legislation of Ukraine with the legislation of the European Union on regulation of labor relations of migrant workers"⁷, which, although connected with the subject of this study, still reveals it in a slightly different aspect. For example, it reveals not from the standpoint of ensuring freedom of work, but from the point of view of bringing national legislation according to EU standards. All the other dissertations on this subject are mainly on the subject of administrative and constitutional law. However, the problem of the

⁴ *Pro zovnishnyu trudovu mihratsiyu (On Foreign Labor Migration)*, Zakon Ukrainy vid 05.11.2015 No. 761-VIII, VVR (2015, No. 49-50, St. 463).

⁵ *Plan diy shchodo liberalizatsiyi YeS vizovoho rezhyumu dlya Ukrainy (Action Plan on EU Visa Liberalization for Ukraine)* // <http://zakon3.rada.gov.ua/laws/file/text/16/f401732n5.pdf>.

⁶ Oleksandr Zhurba, *Pratsya hromadyan Ukrainy za kordonom: osoblyvosti pravovoho rehulyuvannya* (The Work of Ukrainian Citizens Abroad: Peculiarities of Legal Regulation) (Kharkiv: Khark. nats. un-t vnutr. sprav, 2008).

⁷ Olga Makohon, *Harmonizatsiya trudovoho zakonodavstva Ukrainy iz zakonodavstvom Yevropeys'koho Soyuzu pro rehulyuvannya trudovykh vidnosyn pratsivnykiv-mihrantiv* (Harmonization of labor legislation of Ukraine with the legislation of the European Union on regulation of labor relations of migrant workers) (Kyiv: NAN Ukrainy, In-t derzhavy i prava im. V. M. Korets'koho, 2011).

protection of the rights of labor emigrants is an integral part of a deeper issue of ensuring the freedom of labor in Ukraine. After all, the question arises logically: does Ukraine ensure its citizens' freedom of work if the choice between all types of employment, including abroad, is not equivalent, because it is complicated by the lack of proper guarantees for a Ukrainian from his Motherland? A significant part of Ukrainian labor migrants work illegally and this is an indicator of improper regulation of labor migration issues, when citizens of Ukraine need to violate the laws in order to exercise their right to work in another country. According to experts, the most common problems faced by migrants who work without an official permit are the refusal of employers to pay salaries, a refusal of signing a contract of employment, undervaluation of the promised remuneration, overtime work, blackmail, taking of documents. But, with legal, officially employed migrant workers, there are also a number of legal problems, which are directly related to labor law: starting from the moment of finding a job abroad and ending with the moment of returning Ukrainians to Ukraine after work abroad (for example, guarantees on employment, qualification confirmation, acquired abroad).

The right to labor in the modern world of globalization and interculturalism cannot be limited by the right to work within one country, because even the content of the above-mentioned norm of the Constitution is not limited by indicating that fact, that everyone has the right to work only on the territory of Ukraine. In order to provide Ukrainians with the opportunity to perform their right to work in the territories of other countries is part of the task of ensuring the freedom of work in our country. Such scientists as V.O. Zhernakov⁸, O.Ya. Lavriv,⁹ V.O. Protseviskyi,¹⁰ S.M. Prylypko and O.M. Yaroshenko¹¹, V. Khromey¹² and others have paid attention to the issue of freedom of labor law of Ukraine, and they have revealed this issue in general research on the theory of law (for example, the study of M.V. Osiadla¹³). In addition, this topic was deeply and comprehensively disclosed

⁸ Vladimir Zhernakov, "Svoboda truda y zapreshchenye prynuditel'nogo truda v sovremennom trudovom prave" (Freedom of labor and the prohibition of forced labor in modern labor law), *Vestnik Permskogo universiteta, Ser.: Yurydychni nauky* No. 3 (21) (2013).

⁹ Oksana Lavriv, "Pryntsyp svobody pratsi v trudovomu zakonodavstvi Ukrainy" (Principle of Freedom of Labor in the Labor Legislation of Ukraine), *Aktualni problemy derzhavy i prava* Vyp. 46 (2009).

¹⁰ Viktor Protseviskyi, "Vplyv pryntsypu svobody pratsi pry zastosuvanni pravovoho prypysu st. 38 KZpP Ukrainy" (Influence of the principle of freedom of labor in applying the legal prescription of art. 38 Labor Code of Ukraine), *Zbirnyk naukovykh prats' Kharkivskogo natsionalnogo pedagogichnogo universitetu im. H.S. Skovorody, Ser.: 'Pravo'* Vyp. 20 (2013).

¹¹ Sergii Prylypko and Oleg Yaroshenko, "Pravo na pratsyu v systemi prav lyudyny" (The right to labor in the human rights system), *Pravo Ukrainy* No. 6 (2014).

¹² Vasyl Khromey, "Svoboda pratsi yak vazhlyva harantiya konstytutsiynoho prava na pratsyu" (Freedom of work is an important guarantee of the constitutional right to labor), *Natsional'nyy yurydychnyy zhurnal: Teoriya i praktyka* (Lyutyi, 2016) // http://www.jurnaluljuristic.in.ua/archive/2016/1/part_2/6.pdf.

¹³ Marija Osiadla, *Svoboda yak tsinnist' prava (teoretyko-pravovyy aspekt)* (Freedom as the value of law (theoretical and legal aspect)) (Kyiv, 2016).

recently in the dissertation study of T.A. Zanfirova¹⁴. She pays attention to ensuring labor freedom of labor migrants in Ukraine; however, she makes it in the context of ensuring the freedom of labor of immigrant workers, i.e. those who arrived in the territory of Ukraine and work in our country. At the same time, the aspect of ensuring freedom of labor for Ukrainian labor emigrants has not yet been raised in Ukrainian science of labor law. At the same time, the problem of ensuring the freedom of labor of labor migrants has recently been updated among foreign researchers. Á.G.R. Moreno¹⁵, D. Toomey¹⁶, J.I.C. Solís¹⁷ – they all studied the general issues of labor freedom of migrants have already been addressed: Á.G.R. Moreno, D. Toomey, J.I.C. Solís. Such scientists as V. Özdemir, I. Kickbusch, Y. Coşkun¹⁸, Kirkwood S. Goodman S., C. McVittie, A. McKinlay¹⁹ – they study the freedom of labor of migrants in the context of the right to labor of refugees from Syria. Apart from ensuring the freedom of labor of refugees from Syria, the attention of scholars is also drawn to the migrant workers in the EU countries from the states of Eastern and Central Europe, particularly, the experience of granting an unlimited temporary work permit for migrant workers from Romania and Bulgaria (country A2) in the United Kingdom (M. Ruhs, J. Wadsworth²⁰) was considered; also, for example, the legal status of migrants in the context of the possibility of legally exercising freedom of labor was investigated using Mexico's experience, resulting in the authors conclusion that this regulation is not sufficient, since the acquisition of a migrant with the necessary status is not reliable (T. Basok, Rojas M. L. Wiesner²¹, A.M.A. Castañer, U.S. Nieto²²). The issue of ensuring freedom of labor is a concern among psychologists, who draw attention to the fact that the insecurity

¹⁴ Tetyana Zanfirova, *Problemy pravovoho zabezpechennya svobody pratsi v Ukraini* (Problems of Legal Protection of Freedom of Labor in Ukraine) (Kharkiv: Zolota mylya, 2017).

¹⁵ Ángel Guillermo Ruiz Moreno, "El derecho humano al trabajo de los migrantes" (The human right to work for migrants), *Revista Latinoamericana de Derecho Social* Vol. 22 (2016) // DOI: 10.1016/j.rlds.2015.09.004.

¹⁶ Deirdre Toomey, "Employment Rights for Migrant Workers in Ireland: Towards A Human Rights Framework," *Journal of International Migration and Integration* Vol. 16, Issue 2 (2015) // DOI: 10.1007/s12134-015-0426-0.

¹⁷ Julio Ismael Camacho Solís, "Los derechos de los trabajadores migrantes," *Revista Latinoamericana de Derecho Social* Vol. 17 (2013) // DOI: 10.1016/S1870-4670(13)71979-1.

¹⁸ Vural Özdemir, Ilona Kickbusch, and Yavuz Coşkun, "Rethinking the right to work for refugee Syrian healthcare professionals: a call for innovation in global governance," *BMJ: British Medical Journal* Vol. 357 (2017) // DOI: 10.1136/bmj.j2710.

¹⁹ Steve Kirkwood, Simon Goodman, Chris McVittie, and Andy McKinlay, "Asylum-Seekers and the Right to Work"; in: *The Language of Asylum* (London: Palgrave Macmillan, 2017) // DOI: 10.1007/978-1-137-46116-2_7.

²⁰ Martin Ruhs and Jonathan Wadsworth, "The Impact of Acquiring Unrestricted Work Authorization on Romanian and Bulgarian Migrants in the United Kingdom," *ILR Review* Vol. 20, Issue 10 (2017) // DOI: 10.1177/0019793917735100.

²¹ Tanya Basok and Martha L. Rojas Wiesner, "Precarious legality: regularizing Central American migrants in Mexico," *Ethnic and Racial Studies* Vol. Spec. (2017) // DOI: 10.1080/01419870.2017.1291983.

²² Ana María Aragonés Castañer and Uberto Salgado Nieto, "La migración laboral México-Estados Unidos a veinte años del Tratado de Libre Comercio de América del Norte" (Labor migration of the US and Mexico twenty years after the North American Free Trade Agreement), *Revista Mexicana de Ciencias Políticas y Sociales* Vol. 60 (2015) // DOI: 10.1016/S0185-1918(15)30011-8.

of the right to labor of migrants is negatively reflected in the mental health of migrants (G.H. Popescu²³). Today academics actively study the impact of exploitation and the inadequate provision of labor freedom on migrants in general (L. Waite, G. Craig, H. Lewis, K. Skrivankova²⁴).

As a significant contribution to the ongoing conversation on this topic mapped out in the preceding paragraphs, this article aims are based on the need to analyze the problems of Ukrainian labor emigration from the standpoint of ensuring freedom of labor for Ukrainian emigrants. We need to look more deeply at the process of securing such freedom on the one hand; having identified the existing gaps in this field in Ukraine. And from the other hand, we need to systematically identify existing problems in the part of Ukrainian labor emigration in terms of ensuring the freedom of work for Ukrainian workers, and we need to formulate perspective tasks and proposals for improving the legal regulation of the specified process in the specified context. So, this research is both theoretical and conceptual, and it is action-oriented, by illustrating life examples and highlighting the real problems that exist in this field and suggesting concrete steps for the improvement.

1. THE THEORETICAL AND LEGAL CHARACTERISTICS OF PROVIDING FREEDOM OF LABOR IN UKRAINE IN THE CONTEXT OF UKRAINIAN LABOR EMIGRATION

According to professor; Dr T.A. Zanfirova:

In the philosophical and legal context, freedom of labor is the realization or refusal of a person to realize a conscious goal, it is subjection of his will to achieve the desired result in the course of work, and for the implementation of work, during which this person concedes his autonomy to the employer, which he has due to nature and legislation by virtue of its belonging to the human species.²⁵

Labor freedom is a consolidated legal category as a principle of labor law, according to which, on the one hand, everyone has the right to labor, which includes a free choice of kind and type of occupation, and on the other - everyone should be guaranteed protection from the forced labor. That means that the rules on the prohibition of forced labor should have a direct effect in the state.

²³ Gheorghe H. Popescu, "The Relevance of the Right to Work and Securing Employment for the Mental Health of Asylum Seekers," *Psychosociological Issues in Human Resource Management* Vol. 4, No. 2 (2016).

²⁴ Louise Waite, Gary Craig, Hannah Lewis, and Klara Skrivankova, *Vulnerability, Exploitation and Migrants: Insecure Work in a Globalised Economy* (Basingstoke: Palgrave Macmillan, 2015).

²⁵ Tetyana Zanfirova, *supra* note 14, 429.

In the context of labor migration, both aspects of labor freedom are gaining new meaning. Thus, the free choice of kind and type of occupation expands its territorial action, going beyond the borders of one country and entering into the scope of international treaties, supranational acts, and norms of international law. The free choice of kind and type of occupation is highly expressed on the territory of the EU, where the freedom of movement of persons for the purpose of residence, work and education is one of the four bases of the founding of the European Union. It should be noted that by proclaiming labor freedom, the EU guarantees that every citizen of the EU can seek employment in another state that is part of the Union, under the same conditions as the residents of the corresponding state (as specified in the Directive of the European Parliament and of the Council 2004/38 / EC²⁶). This means that an EU citizen can choose any job in the territory of the 28 countries that are currently part of the EU. Moreover, in the Art. 15 of the Charter of Fundamental Rights of the EU is defined that:

1) Every person has the right to labor and to carry out professional activities, which he freely chooses or freely agrees to; 2) Every citizen of the Union has the right to seek employment, work, to establish his own affairs or provide services in the territory of any Member State; 3) immigrants from third countries who have a work permit in any Member State of the European Union have the right to the equal working conditions along with EU citizens.²⁷

In Ukraine, it becomes easier to exercise the right to work abroad in recent years, because in this field there is a constant work for improvement. Thus, for example, in 2015 the Licensing conditions for conducting economic activities for mediation in employment abroad were approved²⁸. As the positive moment of it we can mention the requirement that: 1) the subjects of such activity must have a room (office) in which they must provide their services, which in some way guarantees the migrant workers from falling into the hands of "scammers" and firms engaged in criminal activity against migrants; as well as 2) the licensee is not entitled to receive from clients payment for the services of mediation in employment abroad until the day of receipt of a copy of the employment contract

²⁶ *On the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) № 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC*, European Parliament and Council Directive 2004/38/ EC of 29.04.2004, Official Journal of EU (2004, L 158).

²⁷ *Khartyya osnovnykh prav Evropeyskoho Soyuzu (The Charter of Fundamental Rights of the European Union)*, Prynyata v h. Nytstse 07.12.2000 h, Moskovskyy zhurnal mezhdunarodnogo prava (2003, No. 2, S. 302–314), Art. 15.

²⁸ *Pro zatverdzhennya litsenziynykh umov provadzhennya hospodars'koyi diyal'nosti z poserednytstva u pratsyevlashtuvanni za kordonom (On Approval of Licensing Conditions for Conducting Business Activity on Mediation in the Employment of Abroad)*, Postanova Kabinetu Ministriv Ukrayiny vid 16.12.2015 No. 1060 // <http://zakon2.rada.gov.ua/laws/show/1060-2015-n?test=4/UMfPEGznhhjao.ZigSaBOQHI4YEs80msh8Ie6>.

signed by a foreign employer (contract of employment) and the signing of an act of the services rendered.

At the same time, such an important component of the proper realization of the right to labor as an opportunity to work legally abroad, despite mentioned positive changes, is still not sufficiently secured in Ukraine. Particularly, the IOM Report states the following:

Violation of the rules of staying in the destination countries by the Ukrainians is usually connected with work without registration of labor relations and appropriate permits, exceeding the terms of stay. A study by GFK-Ukraine commissioned by IOM in 2015 found that due to the economic crisis, unregulated migration has increased again: 41% of the interviewed migrants were unemployed without registration of labor relations. According to the Frontex European Frontier Agency, the number of detained Ukrainian citizens on the EU borders of increased from 12,472 in 2013 to 16,744 in 2014, 17,096 in 2015. Also, the number of Ukrainians expelled from the EU territory has increased: from 7,763 in 2013 to 9,882 in 2014, 15,010 in 2015.²⁹

But the increase in the indicators does not mean that the number of people willing to cross the border illegally has increased. This means that the quality of border control has increased due to the conducting combat operations in the east of the state, and consequently the border and internal control over the movement of persons has also increased. At the same time, the given data indicate the need for further appropriate work in order to eliminate the prerequisites for illegal employment.

It is important to note that, illegally, Ukrainians are employed by the scheme of travel abroad, for example, for tourist purposes, but then they find the right job for themselves, and instead of the actual purpose of staying in the destination country as tourism, they carry out illegal employment. At the same time, introducing a visa-free regime for our fellow citizens is a platform for using the possibilities of such a regime for the mentioned employment. However, the visa-free regime does not provide legal grounds for employment. EU countries are interested in the Ukrainian workers, particularly, in Hungary and Poland, which both saw the introduction of a visa-free regime for Ukraine. There were also a number of amendments to legislative acts adopted, which simplified the procedure for the employment of foreigners on some kinds of works (such as, for example, seasonal). And in some cases the demand for a special work permit was canceled too. It

²⁹ "Mihratsiya v Ukrayini: fakty i tsyfry" (Migration in Ukraine: Facts and Figures), Kyiv, MOM (2016): 32
// http://www.iom.org.ua/sites/default/files/ff_ukr_21_10_press.pdf.

seems at points that foreign countries are more interested in Ukrainian workers than their own country, and this interest is supported by legislative norms.

It is important to emphasize the positive achievements of the Law of Ukraine "On Foreign Labor Migration." The adoption of this is a significant achievement. At the same time, an important innovation in the current legislation is that labor migrants are recognized as either those who officially and legally work abroad, or illegal Ukrainian workers. Secondly, the Law first mentioned the reintegration of Ukrainian labor migrants, that is, the importance of this problem was recognized at the state level. Regarding the second component of freedom of labor, namely the prohibition of forced labor, this problem has become significant in relation to Ukrainian migrants. Thus, according to the IOM estimate in the years 2014-2017 - 60,900 Ukrainians were affected by human trafficking, particularly, Volyn and Lviv regions - 6600 people, Zakarpattia and Ivano-Frankivsk - 6600, Ternopil and Chernihiv - 4100, Rivne and Khmelnytsky - 7100, Zhytomyr and Cherkasy and Kirovohrad - 4600, Sumy and Poltava - 800, Kharkiv and Dnipropetrovsk - 9200, Kherson and Zaporizhzhya - 800, Odesa and Mykolaiv - 1700, the territory of Lugansk and Donetsk Oblast, which is controlled by the Government - 800 people.³⁰

From the IOM office in Ukraine for the period from January 2000 to June 2016, 12,186 victims of human trafficking received comprehensive reintegration assistance, and among the recipients of assistance are those who have suffered labor exploitation (over 90%), and almost half of them are men. The majority (52%) of the victims in 2015, as well as during 2014, are young people under 35 years old; 73% of the victims have secondary or higher education; 57% come from regional centers (although by 2014 most were from rural areas). All these reflect the general deterioration of the economic situation in Ukraine.³¹

Ensuring labor freedom in the context of labor migration is an important and topical issue nowadays, which is distinguished by vulnerability and delicacy through an output of this phenomenon for the territory of one country and adding to the process of ensuring, along with labor law, a number of norms of other branches of law, in particular, international, administrative, constitutional, criminal, tax, social security law. The vulnerability of the provision of labor freedom in this aspect is primarily manifested in the fact that it faces problems of a practical and legal nature, which can be solved only in a complex way.

³⁰ "Doslidzhennya z pytan' mihratsiyi ta torhivli lyud'my v Ukrayini" (Studies on migration and trafficking of people in Ukraine), *supra* note 1: 9.

³¹ "Mihratsiya v Ukrayini: fakty i tsyfry" (Migration in Ukraine: Facts and Figures), *supra* note 29: 32.

Thus, from the above material the following is clear (Fig. 1):

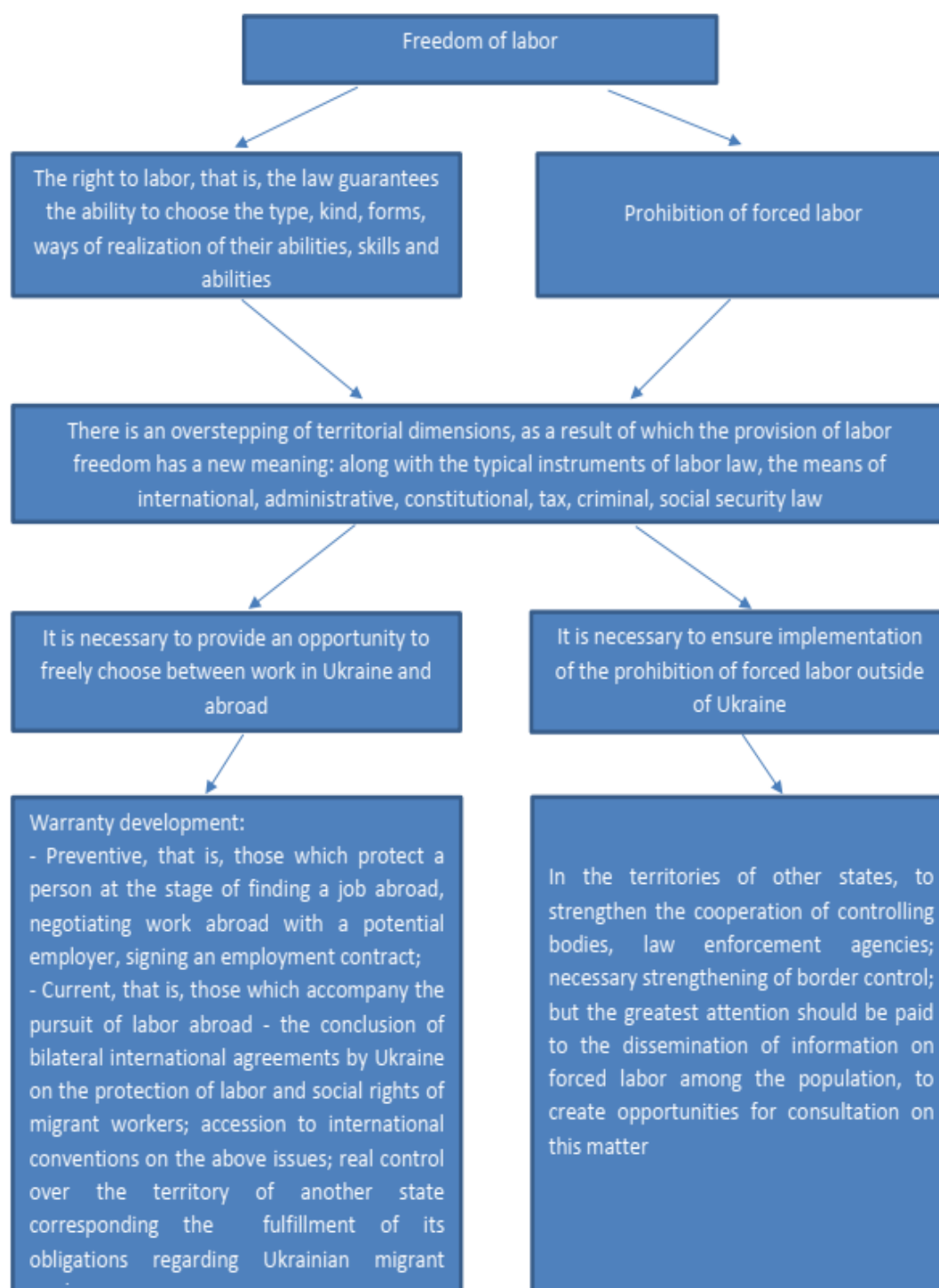


Fig. 1. Ensuring freedom of labor in the context of labor emigration of Ukrainians.

2. THE PROBLEMS OF UKRAINIAN LABOR EMIGRATION IN THE CONTEXT OF PROVISION OF FREEDOM OF LABOR

Problems of Ukrainian labor emigration can be divided into several types according to the relevant criteria: 1) by subjects: (a) problems relating directly to migrant workers; (b) problems relating to migrant families; (c) problems relating to the State as a functioning entity as a result of the departure of a part of its citizens beyond its borders; 2) by consequences: (a) economic; (b) social; (c) legal; (d) organizational and material resources; 3) depending on the reasons of the strengthening of Ukrainian labor migration (for the main thesis we take into account the fact that migration as a phenomenon has existed for a long time and never ceases, at certain periods of increasing, and in certain - falling in intensity): (a) economic; (b) social; (c) psychological; at which the migration, depending on the reasons, may be voluntary, forced (forced evictions by the authorities of the indigenous population from the territory of residence) or voluntary conditional (i.e., the pressure of certain objective circumstances, such as the war in the country, famine, etc. influences significantly on the person's voluntarily decision to emigrate). Surely, the classification can be continued, but it is clear that migration is a very multidimensional phenomenon that needs comprehensive coverage and the introduction of its significant aspects in the legal field. Because, for example, taking into account the reasons of migration at the legislative level may allow reducing it in a certain way: during the antiterrorist operation conducted in Ukraine, along with migrant workers, such migrants have appeared who, taking advantage of the opportunity to work abroad, evade the call to the ranks of the current Ukrainian army. And, vice versa, the conducted research by A. Solodko and A. Fetisiva (Independent Society Research Center - CEDOS) regarding the fact of applications for refugee status submitted to the EU for 2015-2016 shows that most of the applicants receive denials (reason: "an alternative to an internal escape"), but at the same time they are not really refugees, but labor migrants. Particularly, the researchers point out that "there is an opinion that an increase in the number of asylum seekers from Ukraine is indicative of new ways of legalizing labor migration" (for 2015-2016 15405 people from Ukraine were actually asylum seekers in the EU, according to Eurostat).³²

According to ILO data, which was obtained during the development of the Program of Decent Work for Ukraine by the International Labor Organization:

³² Andrii Solod'ko and Anastasia Fitisova, "Ukrayintsi prosyat' prytulok u YeS: spravdi bizhentsi chy ekonomichni mihranty?" (Ukrainians are asking for asylum in the EU: are they really refugees or economic migrants?) // <https://cedos.org.ua/uk/migration/ukrainsi-prosiat-prytulok-u-yes-spravdi-bizhentsi-chy-ekonomichni-mihranty>.

The working conditions of Ukrainian migrant workers are a cause for concern. According to the survey, only 38 percent of the labor migrants signed a written labor contract with foreign employers. This problem is particularly serious in some neighboring countries of Ukraine. In Russia, only 28.9 percent of migrant workers formalized their writing arrangements, while in Poland - only 11.7 percent. Only in the Czech Republic, Belarus and Germany, more than half of Ukrainian migrants signed written contracts (58.1, 56.9 and 52.9 per cent respectively). In most cases, a written labor contract between labor migrants and employers was signed in the language of the country of employment, and only in 25% of cases it was translated into Ukrainian. Labor migrants who work as domestic workers are particularly vulnerable to violations of their labor rights (18.3% of labor migrants were employed in households in 2013). This category of Ukrainian migrants (mostly women), as a rule, does not formalize their labor relations (in 16.5 per cent of cases) in writing form.³³

In addition, there are problems with the return of Ukrainian migrant workers to their homes. This problem is widely stressed at the moment. In particular, a state program of reintegration was developed, but however, it is still in the implementation phase. The publication *Useful Information for Ukrainian Citizens* is stated on the website of the State Border Guard Service of Ukraine for the implementation of the reintegration tasks. This publication is for those who return to Ukraine after a long stay abroad, it was developed at the expense of the EU and with the assistance of IOM.³⁴ The development of such a manual should be considered an important step towards the real creation of conditions for Ukrainian migrant workers to return to their Motherland.

However, the manual is not without defects, which are related both to the quality of its development and to the quality of the current national legislation. Regarding its content, there is an important remark: mainly it copies the rules of the laws and regulations of the by-laws. Instead, there are no detailed explanations that may lead to a situation in which only a person with legal education and practical legal experience can deal with what is outlined in it. Therefore, we must state that this manual contains rather generalized information that gives only a general idea of what awaits a Ukrainian migrant worker in case he decides to return to Ukraine. Regarding the quality of current legislation in relation to this category of workers, it also has its shortcomings. Thus, for example, a citizen of Ukraine who

³³ "Prohrama hidnoyi pratsi MOP dlya Ukrayiny 2016-2019" (ILO Decent Work Program for Ukraine 2016-2019) // http://www.ilo.org/budapest/countries-covered/ukraine/WCMS_470684/lang-en/index.htm.

³⁴ "Korysna informatsiya hromadyanam Ukrayiny. Dlya tykh, khto povertayet'sya do Ukrayiny pislya tryvaloho perebuvannya za kordonom" (Useful information for Ukrainian citizens. For those who return to Ukraine after a long stay abroad), Ministerstvo zakordonnykh sprav Ukrayiny // <http://mfa.gov.ua/ua/news-feeds/foreign-offices-news/54453-korisna-informacija-gromadyanam-ukrajini-dlya-tih-khto-povertajetysya-do-ukrajini-pislya-trivalogo-perebuvannya-za-kordono>.

returns to his homeland from illegal labor migration cannot register as unemployed at the employment center because of the fact that among the list of necessary documents the employment book is indicated (or a civil law contract or other document confirming the period of employment), which / with a high degree of probability such employee will not have. This cancels the achievement of the above-mentioned Law of Ukraine "On Foreign Labor Migration" in the part concerning the recognition as migrant workers all (both legal and illegal) persons who work abroad.

Secondly, according to the paragraph 8 of the Procedure of registration, re-registration of the unemployed and keeping records of persons seeking employment, which was approved by the Resolution of the Cabinet of Ministers of Ukraine dated March 20, 2013, No. 198,³⁵ persons who do not have an insurance record cannot be granted the status of the unemployed. The same situation is observed in the pension provision for such workers (par. 8, Article 12 of the Law of Ukraine "On Compulsory State Pension Insurance"³⁶): the right to a pension on the territory of Ukraine, such workers-labor emigrants have only in case, if they voluntarily pay insurance premiums on the basis of a signed agreement on voluntary participation in the system of compulsory state social insurance. At the same time, it is important to emphasize the indication in the norm of Art. 12 of the mentioned Law "unless other is not provided by international treaties"³⁷, because Ukraine has concluded a number of international agreements with other countries on pensions and social security. In particular, international agreements on pensions and social security have been concluded on the basis of the territorial principle with 14 countries (Belarus, Armenia, Kazakhstan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan, Uzbekistan, Hungary, Moldova, Georgia, Azerbaijan, Mongolia, Romania), i.e., the corresponding payments are made by the state in which their recipient is located; and with 9 countries (Latvia, the Kingdom of Spain, Lithuania, Estonia, Slovakia, Czech Republic, Bulgaria, Portugal, Poland), international agreements were concluded on a proportional basis (i.e., each contracting party appoints and pays a pension for the corresponding insurance (work) experience acquired in the territory of the state of this party). These facts are not mentioned in this manual, which, of course, restricts citizens of Ukraine in full access to information and creates a misconception about their proper provision

³⁵ *Poryadok reyestratsiyi, perereyestratsiyi bezrobitnykh ta vedennya obliku osib, yaki shukayut' robotu (Procedure for registration, re-registration of the unemployed and keeping records of persons seeking employment)*, Postanova Kabinetu Ministriv Ukrayiny vid 20 bereznya 2013 roku No. 198 // <http://zakon2.rada.gov.ua/laws/show/198-2013-p>.

³⁶ *Pro zahal'noobov'yazkove derzhavne pensiyne strakhuvannya (On Compulsory State Pension Insurance)*, Zakon Ukrayiny vid 09.07.2003 No. 1058-IV, VVR (2003, No. 49-51, St. 376), Art. 12, par. 8.

³⁷ *Ibid.*, Art. 12.

of pensions. Also, during work on the draft law on foreign labor migration, a number of proposals were made from representatives of various Ukrainian diasporas from other countries on guaranteeing their reintegration into national society and support in the desire to return. Among them, for example, it was noted that the right of members of the families of labor emigrants to full secondary education was ensured through the opening of educational institutions in the countries of mass employment of our employees. So, according to IOM, the number of Ukrainians living on EU territory is constantly growing. For example, in 2015 there were 905.2 thousand of them. They make up more than 6% of foreigners from third countries in the European Union. The largest number of Ukrainians lived in Italy (238000), Poland (336000), Germany (112000), the Czech Republic (113000), and Spain (84000).³⁸ However, Ukrainian children can study Ukrainian language, history, and geography only if there is a public association, created by activists in the country of staying, because there are no schools established by the state (or with the support of the Ukrainian state).

A number of suggestions were made regarding: 1) the establishment of a priority right to receive, for example, a land plot for the building and maintenance of the house after returning to the Motherland (if such a right was not used before the leaving Ukraine); 2) the equation of investments made by labor migrants who have lived outside Ukraine for at least two years in the development of the domestic economy, equated with foreign investments.³⁹ At the same time, there are no such provisions in the law, which was implemented in 2015.

A considerable number of complaints from labor migrants go towards the deduction of the insurance experience and provision of pensions. However, an important part of ensuring labor freedom in the context of labor migration is the counter-policy of recipient countries of Ukrainian labor migrants. For example, a large number of Polish scholars⁴⁰ states that Ukraine is the most important source of labor migration in Poland, which should be accepted considering the fact that in 2014, Ukrainians received the highest number of work permits in Poland, (for comparison, 2,369 Vietnamese, 2,133 Chinese were granted permits in the same

³⁸ "Mihratsiya v Ukrayini: fakty i tsyfry" (Migration in Ukraine: Facts and Figures), *supra* note 29: 11.

³⁹ Lyubomyra Koval', "Trudovym mihrantam potriben zakon" (Migrant workers need a law), *Uryadovyy kur"yer. Hazeta Kabinetu Ministriv Ukrayiny* (16 kvitnya 2013) // <https://ukurier.gov.ua/uk/articles/trudovim-migrantam-potriben-zakon/>.

⁴⁰ Zuzanna Brunarska, "Ukraińscy migranci zarobkowi w Polsce – dlaczego tak trudno ich policzyć?" (Ukrainian Labour Migrants in Poland. Why is it so Difficult to Count Them?) *Studia BAS* Nr. 4(40) (2014): 155; Andrzej Szabaciuk, "Wpływ kryzysu ukraińskiego na procesy migracyjne na obszarze posowieckim" (The Impact of the Ukrainian Crisis on the Migration Processes in the Post-Soviet Area), *Rocznik Instytutu Europy Środkowo-Wschodniej* Nr. 5(14) (2016): 219-220.

year).⁴¹ At the same time, we should keep in mind that every year not only does the number of applications submitted by Ukrainians to obtain a work permit in Poland increase, but also the level of satisfaction of these applications by the Department of Labor Market (LM) moves up. In particular, if in 2014 citizens of Ukraine received more than 60% of work permits (from the total number of applications filed), in 2015 – almost 73%, in 2016 – more than 81% (that is, 103.2 thousand were issued permits, which is 115% more than in 2015)⁴² in 2017 citizens of Ukraine were issued about 125 thousand permits, which is 30% more than in 2016.⁴³ The number of Ukrainians living in Poland, as noted by Zuzanna Brunarska, is systematically increasing, although, it is difficult to calculate the actual number of migrant workers from Ukraine in Poland as a significant number of Ukrainians (especially as seasonal workers) work in Poland on an illegal basis.⁴⁴

Ukrainians frequently choose the Czech Republic as a country of employment because of the similarity of languages, traditions (as of 31.3.2018, 120 431 Ukrainian citizens officially live in the Czech Republic⁴⁵). The authorities of the Czech Republic are trying to create favorable conditions for the integration of foreigners who arrived in the territory of the Czech Republic for the purpose of employment, but on the other hand, it contributes to the maintenance of the “Czech national question”: a law has been drafted according to which a foreign worker will have to pass a test of knowledge of the Czech language at a certain level, knowledge of national traditions and history of the country after a stay in the territory of the Czech Republic for more than a year. Such a “national question” can be traced back to the migratory policy of this recipient country of Ukrainian workers. In particular, the Czech Republic, despite being one of the least favored countries for issuing entry permits for Ukrainians (specifically, the official statistics on visa applications and their satisfaction shows that: for example, 66,184 applications were filed for receiving short-term visas in 2015 and 63,306 out of

⁴¹ Maciej Duszczyk, “‘Kryzys ukraiński’ – czy konieczność redefinicji polskiej polityki imigracyjnej?” (‘Ukrainian Crisis’ – is a Redefinition of Polish Migration Policy Necessary?), *Politeja* Nr. 41(13) (2016): 43 // DOI: 10.12797/Politeja.13.2016.41.03.

⁴² “Pracownicy z Ukrainy – najważniejsze informacje” (Workers from Ukraine – The Most Important Information), *Pracowici* (2018) // <http://www.pracowici.pl/pracownicy-z-ukrainy-najwazniejsze-informacje/>.

⁴³ Iza Chmielewska, Grzegorz Dobroczek, and Adam Panuciak, *Obywatele Ukrainy pracujący w Polsce – raport z badania. Badanie zrealizowane w 2017 r.* (Citizens of Ukraine working in Poland – study report. The study carried out in 2017) (Warszawa: Departament Statystyki NBP, 2018), 7; “Ukraińcy na dobre rozgościli się na polskim rynku pracy” (Ukrainians Have Made Themselves Well on the Polish Labor Market), *Forbes.pl* // <https://www.forbes.pl/gospodarka/pracownicy-z-ukrainy-w-polsce-ilu-ich-jest-jak-zatrudnic-ukrainca/nk09xvw>.

⁴⁴ Zuzanna Brunarska, *supra* note 40: 171–172.

⁴⁵ Markéta Seidlová, *Mezinárodní migrace a Česko: ze země emigrantů země imigrantů* (International migration and the Czech Republic: from the land of emigration to the land of immigration) (Brno: Konference ČDS, 2018), 17.

them were satisfied; in 2016 out of 89267 applications submitted, 82653⁴⁶ were satisfied). However, each year due to a shortage of workers on their own labor market, the number of quotas for Ukrainians is increasing (starting from the year 2015, a special regime was created for highly skilled workers, in the amount of 500 persons per year, with the possibility of relocating members of the employee's family, and starting from the year 2016 also an additional 5,000 skilled workers per year; in total the quota for Ukrainians for today is equal to 19600 people per year). At the same time, despite numerous forms of relief from the Czech Republic, getting a Czech work visa is a very complicated and lengthy process; therefore, most Ukrainian workers are working on Polish work visas that are easier to get than the Czech work visa. Although, according to the legislation of the Czech Republic, working in the country can only be obtained on condition of getting a permit, yet employers and intermediary companies illegally use the possibility provided for by the Czech legislation of a temporary (up to 3 months in total for 6 months⁴⁷) provision of services for a work visa of the EU country in the Czech Republic. Such actions create a negative picture of Ukrainian labor migration in the Czech Republic, in particular: in 2017, out of 2,918 detected illegal workers, 1917 were from third countries, including 1563 from Ukraine. In 2016, 105 Ukrainians were deported from the Czech Republic.

Studies⁴⁸ reveal that the armed conflict in the East of Ukraine did not significantly affect the migration flows from Ukraine to the Czech Republic, in particular, in terms of labor migration. As far as sheltering is concerned, the CR considers that there are generally insufficient grounds for it among the applications filed. Although, such sheltering has been provided to several individuals (in 2015, 694 applications for international protection 7 were accepted); and out of 1208 applications submitted in 2014-2015, 293 received additional protection status. Consequently, characterizing the migration policy of the recipient countries of Ukrainian labor migrants on the example of the Czech Republic and the Republic of

⁴⁶ "Migrační a azylová politika České republiky. Tabulková část zprávy 2016" (Migration Policy and Asylum Policy in the Czech Republic: Official Data Table for 2016) // <http://www.mvcr.cz/clanek/migracni-a-azylova-politika-ceske-republiky-470144.aspx?q=Y2hudW09NA%3d%3d>.

⁴⁷ Jan Šimeček, "Jsou polská víza branou na český trh práce?" (Is the Polish visa a gateway to the Czech labor market?) // <https://www.epravo.cz/top/clanky/jsou-polska-viza-branou-na-cesky-trh-prace-105935.html>.

⁴⁸ Zdeněk Uherek, "Migration from Ukraine to the Czech Republic with Respect to the War Conflict in Eastern Ukraine," Warsaw, Centre of Migration Research, *CMR Working Papers* Nr. 93(151) (2016) // <http://www.migracje.uw.edu.pl/wp-content/uploads/2016/12/WP93151.pdf>; Dušan Drbohlav and Marta Jaroszewicz, *Ukrainian migration in times of crisis: forced and labour mobility* (Prague: Charles University, Faculty of Science, 2016) // <https://drive.google.com/file/d/0B5qHs2ZnDU65SXNVSnA0X0FFWEk/view>; Yana Leontiyeva, "Ukrainians in the Czech Republic: On the Pathway from Temporary Foreign Workers to One of the Largest Minority Groups," *Ukrainian Migration to the European Union* (2016) // DOI 10.1007/978-3-319-41776-9_14.

Poland, it should be pointed out that it may vary greatly and, accordingly, either contribute to the safeguarding of the freedom of labor, or in a certain (mainly indirect) way limit it.

Accounting for what is mentioned above, we may conclude that the existing problems of Ukrainian labor emigration in the context of ensuring freedom of work can be systematized at the stages of their emergence in such ways: 1) before the emergence of labor relations with a foreign employer, that is, as long as a Ukrainian citizen is still in Ukraine and acts for the purpose of employment abroad; 2) the emergence of labor relations with a foreign employer, that is, the legal registration of such relationships; 3) the actual beginning of labor relations outside Ukraine, the course of labor relations and the presence of a Ukrainian labor emigrant in them; 4) termination of labor relations of the Ukrainian labor emigrant and their return to the territory of Ukraine. The optional stage is the emergence of labor disputes. It will be useful to determine how, at each of these stages, the means of labor law (and, accordingly, the legislation) can protect the rights of Ukrainian citizens in the best way. A significant role for the realization of labor freedom is played by the on-going migration policy of the recipient countries of Ukrainian labor migrants, due to which labor freedom can either be secured or indirectly limited.

3. TASKS AND PROPOSALS FOR SOLVING THE PROBLEMS OF UKRAINIAN LABOR EMIGRATION IN THE CONTEXT OF PROVISION OF FREEDOM OF LABOR

What can be done by means of labor law in this context? S.F. Hutsu in 2011 pointed out that "migration in most cases is connected with the desire of man to earn money for living, to find more highly paid or promising work. That is why, first of all, it is necessary to review the state policy regarding the existing labor legislation in our country."⁴⁹ Hutsu emphasized that "in the country it is necessary to revive the practice of production training, to introduce widespread contracts on training and education, training and retraining of specialists between the employer and employee"; for this he proposed to introduce "government programs and benefits for employers who will organize production training at their enterprises."⁵⁰ Besides, he also emphasized the expediency of ratifying the International Labor Organization Convention No. 97 on Migrant Workers (1949) and Convention No. 143 on Abuse of Migration and Equal Opportunities for Migrant Workers (1975)⁵¹,

⁴⁹ Svitlana Hutsu, "Mihratsiya: sutnist' ta naslidky" (Migration: the essence and consequences), *Pravo i Bezpeka* No. 4 (2011): 167 // http://nbuv.gov.ua/UJRN/Pib_2011_4_38.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

which is still unfinished. However, Ukraine's ratification of the European Convention on the Legal Status of Migrant Workers we should point out positively.

Also worthy of attention is the proposal by S.F. Hutsu to create a Foreign Employment Service, which will have responsibilities for the organization of employment and social protection of Ukrainian citizens abroad, carrying out control over private employment organizations, conducting expert assessments of the consequences of labor emigration and immigration for Ukraine.⁵² Today there is no such service, and IOM (representation in Ukraine) with EU funds is involved in conducting these expert assessments.

In other research we find the following proposals: "the activation of the policy of creating an attractive domestic labor market that will allow to protect the state from massive brain drain" and, as a result, an intellectual disaster, it will reduce the unemployment rate among the economically active population, and etc. Besides, in the conditions of a developed domestic labor market, Ukraine will be able to become a "recipient state for labor migrants not only from poor countries, but also from more developed, economically prosperous countries."⁵³ Other scholars point out that "the suspension of migration losses" is required, which "lies in the area of creating favorable conditions for business, state support in solving the housing problem, especially for youth, in creating new jobs and increasing the living standard of the population", etc.⁵⁴ We all understand that there is the need to improve living conditions in the country, the formation of the internal labor market, but it is clear and obvious that in a moment it will not be solved (it is impossible to create 2 million jobs in the absence of new productions, as it is proposed at the trade union forum) and therefore it is necessary to solve the issues that are under the influence of science and legislation today. Therefore, today's proposals can be divided into short-term and strategic ones. Therefore, the quotes mentioned above we can consider as the strategic goals of our country. At the same time, short-term goals are to develop appropriate changes to the legislation that would allow solving at least partially existing problems that accompany Ukrainian labor emigrants. So, we should determine the current tasks for solving problems of Ukrainian labor emigration from the legal point of view in the short term, taking into account the systematized problems in accordance with the stages of their occurrence.

⁵² *Ibid.*

⁵³ Pavlo Kravchuk, "Suchasnyy stan trudovoyi mihratsiyi ta perspektyvy rehlementuvannya trudovykh vidnosyn" (Current status future migration and regulation of labor relations), *Naukovyy visnyk Uzhhorods'koho natsional'noho universytetu: Seriya 'Pravo'* Vyp. 36, T.1 (2016): 107 // http://www.visnyk-juris.uzhnu.uz.ua/file/No.36/part_1/25.pdf.

⁵⁴ Olga Petrovye and Volodymyr Vasyl'yev, "Mizhnarodna trudova mihratsiya: analiz sytuatsiyi ta naslidkiv dlya Ukrainy" (International labour migration analysis of the situation and consequences for Ukraine), *Visnyk NADU* No. 4 (2015): 98 // http://visnyk.academy.gov.ua/wp-content/uploads/2016/01/2015_4_14_ukr.pdf.

The first stage "before the emergence of labor relations" requires a clear and precise definition of the concept of a migrant worker; determining the extent of his rights and responsibilities; establishing the basic principles of finding a job abroad, the establishment of guarantees for Ukrainian citizens to provide legal work with an adequate level of working conditions; defining responsible subjects for the observance of the rights and interests of Ukrainian citizens who are trying to find job abroad. For example, the definition of a migrant worker given in the Law of Ukraine "On Foreign Labor Migration" requires some improvement, because among the main comments made to it, in our opinion, we should consider the incorrect application of the concept of "carrying out paid activity in the state of stay" without specifying the condition that a person is considered in this way in case of obtaining a residence permit and activity: in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁵⁵ by using the concept "will be engaged in paid activities in a state, in which he is not a citizen", then there is an explanation, that this mean that people, who have already received entry, stay, and paid activity in another country. At the same time, the national law uses the same concept "will be engaged in paid activities", but it does not contain such clarification, what causes a legal conflict regarding the status of a migrant worker. Secondly, the complicated definition of the country of residence is given without the application, such as the concept "State of Origin" or "State of Normal Residence", as in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The second stage of "the emergence of labor relations with a foreign employer, that is, the legal formalization of such relations" requires: determining the form and content of the employment contract between a Ukrainian migrant worker and a foreign employer; determination of obligatory and additional conditions of an employment contract; determination of the procedure for concluding such an agreement; providing an interpreter to a Ukrainian citizen for the proper translation of a labor contract; provision of proper authentication of copies of a foreign language to the Ukrainian original of the employment contract; providing the possibility of legal support for the conclusion of an employment contract for employment abroad, as well as making amendments to the concluded agreement. For example, the Law of Ukraine "On Foreign Labor Migration"⁵⁶ does not specify the obligation of a citizen of Ukraine, who is employed independently, to have a copy of an employment contract in the Ukrainian language, although such

⁵⁵ *Mizhnarodna konventsiya pro zakhyst prav vsikh trudyashchykh-mihrantiv ta chleniv yikh simey (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families)*, Konventsiya OON vid 18.12.1990 // http://zakon2.rada.gov.ua/laws/show/995_203.

⁵⁶ *Pro zovnishnyu trudovu mihratsiyu (On Foreign Labor Migration)*, *supra* note 4, Art. 16.

an obligation is assigned to a Ukrainian citizen who seeks employment assistance in state agencies. Another important drawback of the Law of Ukraine "On Foreign Labor Migration"⁵⁷ is the use of the term "draft labor contract" in Part 2 of Article 16, because it should be especially noted that the current national legislation, including the labor, does not contain such legal category as the "draft labor contract". Therefore, this "project" cannot be used in the Law of Ukraine "On Foreign Labor Migration" without giving it a certain legal status, in particular, by defining this concept, or defining concepts, connected with it or those rights and responsibilities, that emerge from it. Moreover, it is legally incorrect to speak of the "draft" of the employment contract because it is not the basis for going abroad. Thus, a copy of the original contract, instead of a "draft", is submitted to the embassies for a visa. Moreover, due to the fact that the "draft" of the labor contract is not at all a legal category, in case of its change it will be difficult to prove its legal force. Therefore, it is expedient to foresee the obligation to receive not a draft, but a copy of the original employment contract. It is also necessary to establish a legislative ban on the inclusion in the content of the employment contract with a foreign employer as the labor immigrant to include the phrase "other types of work", "other work by arrangement" and so on, that is to foresee the obligation of direct definition of labor function without the possibility of its extended interpretation. It is so because today, in practice, Ukrainians often face the facts that after arriving in the territory of the country where they will do some work, they must perform work they did not agreed upon with the employer.

In accordance with Art. 52 of the Law of Ukraine "On Private International Law,"⁵⁸ the stage of the actual start of labor relations and their course outside Ukraine is regulated by the law of the state, in which the work is performed, unless otherwise is provided by the law or the international treaty of Ukraine. Art. 53 establishes that the labor relations of Ukrainian citizens who work abroad are regulated by the law of Ukraine in case if: 1) citizens of Ukraine work in foreign diplomatic institutions of Ukraine; 2) Ukrainian citizens have signed labor contracts with employers – individuals or legal entities of Ukraine on the performance of work abroad, including in their separate subdivisions, if this does not contradict the legislation of the state in which territory the work is performed; 3) it is provided by law or an international treaty of Ukraine.⁵⁹ Thus, the legal regulation of labor relations is carried out by international norms, norms of the country of residence of the Ukrainian labor emigrant, and in accordance with the bilateral agreements

⁵⁷ *Ibid.*, Art.16, par. 2.

⁵⁸ *Pro mizhnarodne pryvatne parvo (On Private International Law)*, Zakon Ukrayiny vid 23.06.2005 No. 2709-IV, VVR (2005, No. 32, Ст. 422), Art. 52.

⁵⁹ *Ibid.*, Art. 53.

signed by Ukraine for the purpose of social protection of Ukrainian labor migrants. Today, Ukraine has signed bilateral employment agreements (or on the working activities of their citizens in the territory of another corresponding country) with the following countries: Libya, Vietnam, Portugal, Lithuania, Poland, Azerbaijan, Belarus, Armenia, Russia, Moldova, Switzerland (regarding trainees), Spain, and besides in 2016, an agreement was signed with Israel. Partially the issue concerning labor activity was raised in the relevant bilateral social security treaties, the number of which is 23. With the Czech Republic and Slovakia today, bilateral agreements have already expired, particularly, Slovakia has denounced the agreement, which was signed for 3 years with automatic continuation, in 2008; and the agreement with the Czech Republic⁶⁰ was signed in 1997 for 5 years, but it was not prolonged. We should mention that on the website of the Verhovna Rada of Ukraine, the agreement between the Czech Republic and Ukraine is indicated as valid, but in fact it is clear from the text of the Agreement that its term of validity has already expired. This fact is also confirmed by the list of agreements between Ukraine and the CR, which is outlined on the website of the Embassy of Ukraine in the Czech Republic, where among 52 agreements⁶¹ (since the USSR, which are in force in accordance with the law of succession) the Employment Agreements are not indicated. This shows the necessity for more high-quality work of state bodies in relation to the publication of information on the validity of legal acts.

In the analytical note "The problem of social protection of Ukrainian migrant workers", carried out by the National Institute for Strategic Studies of Ukraine, it is indicated that the main problem of the labor agreements is the complexity of their practical implementation, and:

The content of labor agreements signed with Portugal and Libya (2003), is more specific. They provide mechanisms of employment, selection of candidates and basic requirements to them, conditions of labor contracts, etc. The agreement with Spain (2009) can be applied to 3 categories of workers: permanent, seasonal and trainees. At the same time, no one is still [as of October 2012 – comment of the author] was not employed in accordance with the provisions of these agreements. It is so mainly due to the complexity of the procedure with the participation of state authorities of both countries, which either employers or migrants are trying to avoid. Mostly, they either use the services of private

⁶⁰ *Uhoda mizh Uryadom Ukrayiny ta Uryadom Ches'koyi Respubliki pro vzayemne pratsevlashuvannya hromadyan Ukrayiny ta hromadyan Ches'koyi Respubliki (Agreement between the Government of Ukraine and the Government of the Czech Republic on the Mutual Recruitment of Ukrainian Citizens and Citizens of the Czech Republic)*, vid 21.03.1996 // http://zakon3.rada.gov.ua/laws/show/203_684?test=dCCMfOm7xBWMjaoEZigSaBOQH14YEs80msh8Ie6.

⁶¹ "Dohovirno-pravova baza mizh Ukrayinoyu ta Chekhiyeyu" (The contractual framework between Ukraine and the Czech Republic), Sayt Posol'stva Ukrayiny v Ches'kiy Respublitsi // <http://czechia.mfa.gov.ua/ua/ukraine-czechia/legal-acts>.

intermediaries or contact directly, in particular, using the electronic database of vacancies.⁶²

Further work should go towards the conclusion of bilateral labor agreements (although the signing of the Association Agreement with the EU has already resolved a number of these issues). But at the same time it is important to focus on the content of such agreements, so that they do not represent only a formal visibility of activity.

The stage of termination of labor relations of the Ukrainian labor emigrant and their return to the territory of Ukraine: at this stage, the possibilities of domestic labor law should be used within the framework of the reintegration program, particularly, a more detailed study of the problems of reintegration may indicate, for example, the need to establish additional rights for such persons for further employment in Ukraine. At the same time, at this stage pension provision is important because usually people return home from labor emigration at retirement age. Ukraine has a number of bilateral pension treaties; however, the number of them is still small (these are the countries of the former USSR, the Baltic States, the Czech Republic, Spain, Portugal and some others). Thus, at this stage, both the conclusion of the mentioned bilateral agreements and the development of own pension legislation in the appropriate direction is prospective.

The optional stage –the emergence of labor disputes - requires further study to determine whether or not domestic law or national procedures are possible to support a Ukrainian migrant worker abroad.

CONCLUSIONS

Freedom of labor in the context of labor migration is a complex and multifaceted phenomenon. The essence of it is the necessity for the state to ensure labor rights for its citizens by providing an equal opportunity to choose between its realization in the territory of the country and abroad, in the territory of another country, and with the preservation of all guarantees and opportunities, which are provided to its employees in their own country (i.e., provision of conditions and guarantees, not lower than the level established in the state of citizenship), on the one hand. On the other hand, the domestic state should ensure the implementation of a ban on coercion in the territory of another country. The issue of the legal regulation of the provision of labor freedom in the context of labor migration

⁶² "Problema sotsial'noho zakhystu ukrayins'kykh pratsivnykiv-mihrantiv" (Problem of Social Protection of Ukrainian Migrant Workers), Analitychna zapyska Natsional'noho instytutu stratehichnykh doslidzhen' // <http://www.niss.gov.ua/articles/949/>.

demands further research in the field of labor law science, because it is relevant and not yet studied well. This research should expand its modern boundaries by posing new challenges to the science of labor law, particularly, in the form of ensuring freedom of work at various levels and concerning various categories of workers. At the same time, as it was rightly pointed out by N.P. Pavlov-Samoyl:

The traditional approach, which is often implemented in practice, as a desire or an attempt to solve problems in certain areas of public life, and neglecting the systematic and integrative approaches, cannot be effective. Therefore, in order to develop an effective strategy and tactics in Ukraine of state intervention in the process of international labor migration, which is still developing very fast, there is a great need for a combination of scientific developments, researches and practical steps.⁶³

It is now time for science and labor law to deal with labor migration, without violating the traditional boundaries of international labor law, migration law, which is formed in our country, but at the same time not neglecting, but effectively using the opportunities available to it in terms of ensuring freedom of work.

Thus, this article applies an integrated approach from the legal point of view to solving these problems: on the one hand, a significant improvement of the national legal regulation of certain stages of Ukrainian labor emigration; on the other hand it is important to make intensive work towards the conclusion of bilateral agreements between Ukraine and other countries, where Ukrainians go for employment. In addition, from the study it seems expedient for Ukraine to join the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, because obviously, scholars were in disagreement on the norms of the mentioned Convention during developing the Law of Ukraine "On Foreign Labor Migration".

It is also possible to state the sufficient level of ensuring the freedom of labor of this category of workers only if the citizens of Ukraine will be able to make a free choice among all types of employment, including having an affordable alternative to find a job abroad, being confident that at all stages of the emergence of labor relations with a foreign employer they are securely protected, and their rights and interests are guaranteed and protected by Ukraine.

⁶³ Nadiya Pavliv-Samoyil, *Filosofs'ko-pravovyy vymir fenomena trudovoyi mihratsiyi* (Philosophical and legal measurement of the phenomenon of labor migration) (Lviv: L'vivskyi derzhavnyi universytet vnutrishnikh sprav, 2010), 1.

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