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THE RIGHT TO CONCLUDE COLLECTIVE AGREEMENTS AND BARGAINING: INTERNATIONAL STANDARDS AND THE LEGISLATION OF UKRAINE

Abstract

The possibility of concluding collective agreements and negotiations is enshrined in international documents and is perhaps the most important principle of labour law. In

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modern times, this principle and law are still the focus of the International Labour Organization, which considers this right, firstly, as the main labour right and an important socio-economic and political aspect. An important labour right of a person is the fixed opportunity to conclude collective agreements and negotiate. The study of the essence and content of this law is of paramount importance for modern legal science and labour law in particular. In the course of the research, such methods as dialectical, formal-logical, comparative-legal, hermeneutics, analysis, and synthesis were used. Before the study, the aim was to analyse the nature, content, and essential characteristics of the right to conclude collective agreements and negotiations, to analyse existing international standards in this area, as well as the legal regulation of collective agreements and negotiations in the labour legislation of Ukraine.

Keywords

labour law – collective agreement – collective bargaining – labour rights – social protection

INTRODUCTION

The process of decentralization in Ukraine is significantly strengthening the role of the contractual regulation of labour, which involves the direct participation of labour relations in the regulation of conditions for employees by collective contracts. The term “contractual regulation” best corresponds to the essence of the relationship that develops in market conditions, as it allows one to note the conciliatory nature of the activities of subjects of legal relations in the field of labour to determine mutual subjective rights and obligations. It is an element of the holistic structure of labour law, as it serves as a means of realizing the interaction of needs and interests of participants in labour relations, which ensures social peace.¹ Thus, the study of the nature and procedure for the adoption of contracts concluded by labour collectives, as the basis of social partnership, becomes particularly relevant for both science and practice of labour law.

¹ A. Shevchenko, S. Kydin, S. Kamarali, M. Dei, “Issues with interpreting the social and legal value of a person in the context of the integrative type of legal-awareness”, *Fundamental and Applied Researches in Practice of Leading Scientific Schools*, 2020, Vol. 2, Issue 38, pp. 54–61.

As a result of economic growth, the regulation of labour relations becomes especially important. The contract best allows one to take into account the interests of both parties to the relationship: the employee and the employer. The collective agreement is an important element of the means of regulating labour relations, on the one hand, showing flexibility in establishing working conditions, and on the other – encouraging the employer to take into account the requirements of employees. A collective agreement can be an agreement between an enterprise, institution, organization, and a trade union or representatives of employees of this organization, which regulates the employment relationship between employee and employer.²

Labour human rights enshrined in the legislation of Ukraine include the right to work, i.e. to receive employment with a salary not lower than the minimum amount set by the state. At the state level, the full realization of this right is ensured for every citizen. To fully regulate production and labour relations between employees and the enterprise, institution, or organization of any form of ownership and management, a collective agreement is concluded. It enshrines the mutual rights and responsibilities of employers and employees.³ The importance of collective agreements lies in their protective function and the consolidation of the legal rights of employees.

A collective agreement between subjects of labour legal relations (workers and employers) for settlement and coordination of mutual rights and obligations is concluded on the basis of the norms established by the national legislation. Contrary to popular belief, collective agreements and contracts are concluded not only in state-owned enterprises. Collective agreements can be concluded in enterprises of all forms of management and ownership, as well as in structural subdivisions of the enterprise, the provisions of which apply to all employees, even if they are not members of a trade union. The main condition for concluding collective agreements is that the company has the rights of a legal enti-

² V.F. Raiko, E.O. Semenov, "The collective agreement is the mainstay of labor protection at the enterprise", *Information Technologies: Science, Technology, Technology, Education, Health*, 2020, Issue 2, pp. 38-44.

³ O. Hrabatin, "The effectiveness of the collective agreement as an indicator of the implementation of collective bargaining", *Entrepreneurship, Economy and Law*, 2021, Issue 3, pp. 151-155.

ty, and employees have a right to take managerial decisions within this legal entity.⁴

It is noted that the formation of an independent law of the institute – “Protection of labour rights.” is based on national and international legislation. According to some experts, over time, this institute may become one of the central institutes in the industry. In the course of the research, works of such jurists as G. Chanisheva,⁵ A. Babich,⁶ R. Shabanov,⁷ G. Klochko,⁸ and D. Prymich were studied.⁹

The conclusions and suggestions found during the study have practical value for three areas of activity. In terms of scientific activity, they can help address doctrinal problems in the field of labour law and study the institution of collective agreements. They are also applicable in law-making to improve the acts of current labour legislation or the draft Labour Code of Ukraine in terms of ensuring the right to enter into collective agreements and conducting collective bargaining or contracts. In law enforcement activities, they can contribute to exercising the right to enter into collective agreements and conducting collective bargaining, agreements with trade unions, their associations, employers’ organizations (their associations), and other subjects of socio-legal discussions in the field of labour relations.

⁴ O. M. Rym, “Collective labour rights as principles of labour law of the European Union”, *Current Issues of Domestic Jurisprudence*, 2019, Issue 1, pp. 43–50, doi: 10.15421/391954.

⁵ G. Chanisheva, “Collective labor rights under the European Charter (revised) and the legislation of Ukraine”, *Entrepreneurship, Economy and Law*, 2021, Issue 5, pp. 69–73.

⁶ A.E. Babich, “Determining the right to product safety”, in *Round Table Dedicated to The 70th Anniversary of The Universal Declaration of Human Rights: Collection of Abstracts*, State Research Institute of the Ministry of Internal Affairs of Ukraine, 2018, pp. 58–64.

⁷ R.I. Shabanov, “International collective agreement as a source of labor law in the field of employment”, *Entrepreneurship, Economy and Law*, 2017, Issue 6, pp. 73–77.

⁸ G.S. Klochko, *Collective agreement as a necessary condition for ensuring constructive social dialogue at the enterprise*, 2018, available at: <http://repository.kpi.kharkov.ua/handle/KhPI-Press/39030> [last accessed 4.2.2022].

⁹ D.V. Prymich, “The legal nature of the right to collective bargaining and the conclusion of collective agreements”, *Prykarpattya Legal Bulletin*, 2017, Issue 1, pp. 41–44.

I. METHODOLOGICAL FRAMEWORK

During the research, general theoretical and special legal methods were used, in terms of the goals and objectives of the study. With the help of the dialectical method, the problems of the legal provision of the right to enter into collective agreements and to conduct collective bargaining in their development and interrelation are considered. The legal content of the right to enter into collective agreements and to conduct collective bargaining, subject composition, and structure was studied using the formal-logical and systematic methods.

The comparative legal method made it possible to compare similar objects of knowledge in the analysis of international acts, acts of national labour legislation, and the legislation of foreign countries. Using the hermeneutic method, the norms of modern national and international legislation governing the conclusion of collective agreements and negotiations have been studied. Legal features, concepts, and procedures for the implementation of collective agreements have been studied using the methods of synthesis and analysis. These methods have been used comprehensively, in their relationship.

Many scholarly works are devoted to the issues of the conclusion of collective agreements and negotiations: international standards and legislation of Ukraine including such topics/titles as “Collective agreement as a regulatory framework for personnel management”,¹⁰ “Collective labour rights under the European Charter (revised) and the legislation of Ukraine”,¹¹ “Determining the right to product safety”,¹² “International collective agreement as a source of labour law in the field of employment”,¹³ “The collective agreement is the mainstay of labour protection at the enterprise”,¹⁴ “The legal nature of the right to collective bargaining and the conclusion of collective agreements”,¹⁵ “The concept

¹⁰ V.V. Shved, N.S. Lysytsya, “Collective agreement as a regulatory framework for personnel management”, *Podilsk Scientific Bulletin*, 2017, Issue 4, pp. 174-178.

¹¹ Chanisheva, *supra* note 5, p. 69.

¹² Babich, *supra* note 6, p. 58.

¹³ Shabanov, *supra* note 7, p. 73.

¹⁴ Raiko, Semenov, *supra* note 2, p. 38.

¹⁵ Prymich, *supra* note 9, p. 41.

and essence of the right to collective bargaining in the case law of the European Court of Human Rights”,¹⁶ “Collective agreement of the enterprise as a tool of strategy of innovative activity of personnel”,¹⁷ “Collective agreements as local acts of labour legislation”,¹⁸ “Reforming legislation on collective agreements and contracts”,¹⁹ “The effectiveness of the collective agreement as an indicator of the implementation of collective bargaining”,²⁰ “Collective labour rights as principles of labour law of the European Union”,²¹ “The extension of collective agreements as a way to promote collective bargaining”,²² “Collective bargaining in Europe: towards an endgame”²³.

II. RESULTS

Fundamental labour rights can be defined as a subsystem of natural, inalienable opportunities necessary to meet the needs and interests in the field of labour, recognized and enshrined as international legal standards by the international community and reflected in national law as independent, not reduced to other rights minimum standards in this area. The right to enter into collective agreements and to conduct collective bargaining, like other labour rights, is characterized by the unity of private and public principles.

¹⁶ M.V. Sorochyshyn, “The concept and essence of the right to collective bargaining in the case law of the European Court of Human Rights”, *Prykarpattya Legal Bulletin*, 2017b, Issue 1, pp. 45–48.

¹⁷ L.O. Volkova, “Collective agreement of the enterprise as a tool of strategy of innovative activity of personnel”, *Black Sea Economic Studies*, 2018, Issue 2, pp. 73–76.

¹⁸ O.F., Caracasidi, P.I. Likhashev, “Collective agreements as local acts of labor legislation”, *Prykarpattya Legal Bulletin*, 2020, Issue 6, pp. 48–50. doi: 10.32837/pyuv.v0i6(35).685.

¹⁹ M.V. Sorochyshyn, (2017a). “Reforming legislation on collective agreements and contracts”, in *Odesa Legal Readings: Materials of All-Ukrainian Scientific Practical Conference*, Helvetica Publishing House, 2017a, pp. 96–99.

²⁰ Hrabatin, *supra* note 3, p. 151.

²¹ Rym, *supra* note 4, p. 43.

²² B. Urdarević, “The extension of collective agreements as a way to promote collective bargaining”, *Strani Pravni Zivot*, 2021, Issue 65, Vol. 2, pp. 281–292. doi: 10.5937/spz65-32376.

²³ T. Muller, K. Vandaele, J. Waddington, (2019). *Collective Bargaining in Europe: Towards an Endgame*, European Trade Union Institute, 2019, p. 668.

On the one hand, this right, which is based by its very nature on freedom and equality, is an inalienable human right. It follows that the right to collective bargaining and negotiation can be considered a natural human right. On the other hand, the content, and scope of this right are determined by the state, and its implementation is ensured by the coercive force of the state, which manifests public principles. All democratic mechanisms of the rule of law must work to ensure the legal rights and freedoms of employees.²⁴

Like other labour rights, the right to the conclusion of collective agreements and negotiations applies to fundamental human rights, which are designed to ensure a decent standard of living for people in civil society. These rights are the second generation of human rights, which were formed in the process of the struggle of people to improve their economic level, and increase their cultural status, the implementation of which requires organizational, planning, and other forms of state activities to ensure these rights. The second generation of human rights, which is commonly called “positive” (since the state naturally interferes in this area), includes cultural, social, and economic human rights.

The task is to create social programmes and conduct comprehensive work that will provide the proclaimed social, financial, and cultural rights. As for that, acts of the International Labour Organization (ILO) and the Council of Europe oblige member states to ensure “effective consolidation of the right to conclude collective agreements and negotiations”, “to promote collective bargaining and the establishment of a negotiating mechanism voluntarily”.²⁵ Also, the separation of human and civil rights in terms of their time of origin and purpose does not deny that all human rights are indivisible and form a single complex. Insufficient protection of the rights of one of these groups will upset the balance of the whole system and negatively affect the protection of other rights.

In modern conditions, the ILO has essentially become the highest arbiter in the regulation of labour relations in the world labour market. To-

²⁴ Shved, Lysytsya, *supra* note 10, p. 174.

²⁵ International Labour Organization, *Covid-19, Collective Bargaining and Social Dialogue. A report on behalf of ILO ACTRAV*, ILO Publishing (Rights and Licensing), 2021, available at: Retrieved from https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_828623.pdf [last accessed 18.6.2022].

day, the important function of the ILO has been rule-making activities in the field of improving labour relations. It provides a detailed legal basis for social partnership and sets out specific rules presented in special legal acts – ILO Conventions and Recommendations, which contain a list of mutual rights and responsibilities of the participants in the dialogue. For almost a century, the ILO has adopted and continues to adopt international regulations in the field of labour law, including the right to work and to receive a decent wage, the right to conclude collective agreements, the right to collective bargaining, the prohibition of forced labour, the right to decent working conditions and safe work, the right to strike, the social cooperation of workers and employers, peaceful means of resolving labour disputes, the right to form trade unions, etc.²⁶

Collective agreements in most countries of the world are the preferred ways to consolidate the proper labour process. Also, quite often the collective agreement depends on the government's policy and receives legislative justification. The success of collective agreements lies in the fact that they enshrine concepts widely used in life, so they have become the main means of achieving social justice and treatment of human labour. By fixing normal working conditions, the collective agreement allows workers to participate in decision-making. It seems to weaken the absolute power of the owner or his authorized person in matters that were previously resolved exclusively in the normative manner.²⁷

The legal basis for the adoption of Ukrainian legislation governing the concept, content, and procedure for concluding collective agreements is, of course, international documents adopted by the ILO. In Ukraine, after the ratification of collective agreements and contracts, their content is enshrined in such regulations as the Labour Code of Ukraine;²⁸ Commercial Code of Ukraine;²⁹ Law of Ukraine “On Collective Bargaining Agreements and Contracts”;³⁰ the Law of Ukraine

²⁶ Chanisheva, *supra* note 5, p. 71.

²⁷ Babich, *supra* note 6, p. 58.

²⁸ Verkhovna Rada of Ukraine, *Labor code of Ukraine*, 1971, available at: <https://zakon.rada.gov.ua/laws/show/322-08#Text> [last accessed 4.2.2022].

²⁹ Verkhovna Rada of Ukraine, *Commercial Code of Ukraine*, 2003, available at: <https://zakon.rada.gov.ua/laws/show/436-15#Text> [last accessed 4.2.2022].

³⁰ Verkhovna Rada of Ukraine, *Law No. 3356-XII “On collective bargaining agreements and contracts”*, 1993, available at: <https://zakon.rada.gov.ua/laws/show/3356-12#Text> [last accessed 4.2.2022].

“On Trade Unions, Their Rights and Guarantees of Activity” and other normative acts.³¹ The world’s leading democracies already have extensive experience in developing, concluding, and, ultimately, implementing collective agreements. This experience would be very useful for Ukraine, where the practice of concluding collective agreements, is, unfortunately, mostly formal.

International legal acts are the basis for the legal regulation of this area of legal relations. The modern legal framework for the conclusion of collective agreements and negotiations in Ukraine consists of two parts: Conventions and Recommendations of the International Labour Organization, and Ukrainian laws. Let us consider the ILO conventions that have become the basis for regulating the scope of collective agreements in Ukraine.

The 29th session of the International Labour Conference, held in 1946, confirmed the need to study trends in the spread of collective agreements and make them universally binding under certain conditions. In 1949, the ILO adopted Convention No. 98 “On the Application of the Principles of the Right to Organize and to Bargain Collectively” in Art. 4 which clearly states that “actions to meet the country’s conditions will take effect for encouraging and promoting the full development and use of the negotiated procedure voluntarily between employers or employers’ organizations, on the one hand, and workers’ organizations, on the other hand”.³²

In 1951, the ILO adopted Recommendation No. 51 “On collective agreements”, which comprehensively explains the concept of collective agreements, and provides a general idea of its meaning and scope, control mechanisms, etc.³³ This was essential because the 98 Convention while stating the right to bargain collectively, did not provide any explanation in this regard. Thus, a collective agreement should be understood as a written agreement between the representative organization

³¹ Verkhovna Rada of Ukraine, Law No. 1045-XIV “On trade unions, their rights and guarantees of activity”, 1999, available at: <https://zakon.rada.gov.ua/laws/show/1045-14#Text> [last accessed 4.2.2022].

³² Muller, Vandaele, Waddington, *supra* note 23, p. 23.

³³ International Labour Organization, *Recommendation No. 91 on collective agreements*, 1951, available at: https://zakon.rada.gov.ua/laws/show/993_231#Text [last accessed 4.2.2022].

of workers (trade union) and the employer (enterprise, institution, an organization with the status of a legal entity and registered workers), which establishes working conditions, salary, etc.³⁴

This definition of a collective agreement was fully used in the preparation of legislative acts in Ukraine. Also important are the provisions of the Recommendation prohibiting employers from including in employment contracts conditions that are contrary to the collective agreement and worsen the situation of employees, and ensuring that those conditions that are most acceptable and favourable to employees are not inconsistent with the collective agreement. These provisions are especially relevant for the protection of workers' rights in modern conditions when employers are actively promoting the contractual form of employment and attempting to reduce the individual level of social and labour guarantees compared to established collective agreements.³⁵

In 1981, the ILO Convention No. 154 "On the Promotion of Collective Bargaining"³⁶ and the ILO Recommendation of the same name No. 163 were adopted.³⁷ They stipulate that the norms enshrined in this Convention are generally binding on economic activity as a whole. About the armed forces, special methods that allow the application of the Convention may be used by public and law enforcement authorities, as well as national legislation. In contrast to the Convention No. 98, the ILO Convention No. 154 provides a broader definition of the purpose of collective bargaining, which may relate to working conditions, the level of wages, and regulates the mutual rights and obligations of employees and employers, etc.³⁸

The practice of collective bargaining is widespread in countries that have adopted Convention No. 154: measures are taken to establish and develop independent associations of workers and employers operating voluntarily; organizations uniting employees and employ-

³⁴ Shabanov, *supra* note 7, p. 73.

³⁵ Shabanov, *supra* note 7, p. 73.

³⁶ International Labour Organization, *Convention No. 154 on the promotion of collective bargaining*, 1981a, available at: https://zakon.rada.gov.ua/laws/show/993_006#Text [last accessed 4.2.2022].

³⁷ International Labour Organization, *Recommendation No. 163 on the promotion of collective bargaining*, 1981b, available at: https://zakon.rada.gov.ua/laws/show/993_274#Text [last accessed 4.2.2022].

³⁸ Urdarević, *supra* note 22, p. 282.

ers are recognized for collective bargaining and other workers' representatives are present at the enterprise, appropriate measures are taken so that their presence cannot weaken the position of interested workers' organizations (trade unions) in collective bargaining; that collective bargaining is possible for all employers and all employees so that it can take place at any level, in particular at the level of the enterprise, institution, organization, industry, region, and state level. It is also necessary to take measures to ensure access of the parties to the information necessary for competent negotiations, and public authorities the necessary information about the state of the country in the financial and social spheres.³⁹

The right of workers' associations to bargain collectively belongs to fundamental rights and freedoms – the so-called triad of trade union rights, and the ILO Convention 98, adopted in 1949, has been ratified by 146 countries, i.e. the most recognized. Ukraine ratified both the core ILO Conventions – No. 98 “On the Application of the Principles of the Right to Organize and Conduct Collective Bargaining” and No. 154 “On the Promotion of Collective Bargaining”, in 1956 and 1994, respectively.⁴⁰ ILO experts believe that the right to strike, although not provided for in a special act, follows from the Convention on Freedom of Association and Protection of the Right to Organize, as the ban on strikes limits workers' ability to defend their legitimate interests.⁴²

Among the international and regional acts, the European Social Charter (ESC), introduced into the current legislation of Ukraine by the Law of Ukraine No. 137-V, occupies a special place.⁴³ The Charter was revised on 3 May 1996 as a result of various initiatives aimed at implementing and ensuring social rights in the framework of the

³⁹ Raiko, Semenov, *supra* note 2, p. 38.

⁴⁰ International Labour Organization, *Convention No. 98 on the application of the principles of the right to organize and to collective bargaining*, 1949, available at: https://zakon.rada.gov.ua/laws/show/993_004#Text [last accessed 4.2.2022].

⁴¹ International Labour Organization, *supra* note 36.

⁴² International Labour Organization, *Convention No. 87 on freedom of association and protection of the right to organize*, 1950, available at: https://zakon.rada.gov.ua/laws/show/993_125#Text [last accessed 4.2.2022].

⁴³ Verkhovna Rada of Ukraine, *Law No. 137-V “On the ratification of European social charter (revised)”*, 2006, available at: <https://zakon.rada.gov.ua/laws/show/137-16#Text> [last accessed 4.2.2022].

Council of Europe. As an act of regional action, it nevertheless has no analogues among international legal acts, as it enshrines the most complete catalogue of social human rights and a fairly high level of their guarantees.

No wonder that the European Social Charter is called the “Code of Fundamental Social and Labour Rights of Workers”. Ukraine’s ratification of the European Social Charter provides for the harmonization of national labour legislation with ECHR standards. Therefore, labour law needs to achieve harmonization with the norms of the European Social Charter of the current labour legislation, in particular the draft of the new Code of Labour Laws.⁴⁴

The European Social Charter (revised) enshrined such collective rights in the field of labour law as the possibility of establishing associations and organizations (Article 5); the right to enter into collective agreements (Article 6); the right to strike; the right to take collective measures in response to conflicts of interest between the subjects of labour relations (Part 4 of Article 6); the right to consult and receive information (Article 21); the right to influence independently the improvement of the working environment and working conditions (Article 22); the right of workers’ representatives to protection in the workplace and working conditions to be created for them (Article 28); the right to receive comprehensive information in the event of dismissal that is contrary to labour law (Article 29).⁴⁵ Under the Law of 14 September 2006 № 137-V, Ukraine has undertaken to make all the above articles and paragraphs of Part II of the European Social Charter mandatory for Ukraine.⁴⁶

The ILO regularly reviews the application of labour law standards in member states. In particular, the Committee on Freedom of Association has made several interpretative conclusions on freedom of association, including collective bargaining. This has a positive impact on supporting international cooperation in the field of labour, implementing the ILO guidelines, and identifying and finding ways to address existing shortcomings in labour law. For example, the Committee on Free-

⁴⁴ Klochko, *supra* note 8.

⁴⁵ Council of Europe, *European social charter*, 1996, available at: https://zakon.rada.gov.ua/laws/show/994_062#Text [last accessed 4.2.2022].

⁴⁶ Shevchenko, Kydin, Kamarali, Dei, *supra* note 1, p. 56.

dom of Association has prepared several conclusions on collective bargaining and agreements in the Freedom of Association.⁴⁷

Today, online platforms have further increased the role of atypical labour in the economy. This encompasses not only visible workers (e.g. the ubiquitous couriers), but also more hidden forms of work like domestic workers.⁴⁸ From the perspective of EU competition law, it remains uncertain if vulnerable atypical workers would be able to engage in collective bargaining with their employers without fearing that competition law would step in. There is a concern that atypical workers are portrayed as self-employed undertakings rather than employees, meaning that collective agreements involving them would fall within the scope of EU competition law.

At a high level, it comes down to the fact that both competition law and labour law work with binary categories: employee/undertakings and worker/independent contractors respectively. Only those classified as employees or workers benefit from the labour law protections and the antitrust labour exemptions. This binary divide is ill-suited to accommodate atypical workers who fall in between these two categories: they are not fully integrated into the business of the firm hiring them, but they are not wholly independent from it either.

Therefore, attention should be paid to developing a policy that will allow economically weak atypical workers to be involved in collective bargaining to ensure decent wages and working conditions without fear of applying EU competition law. In addressing this issue, it is important to ensure that the answer is to avoid agreements between economically strong self-employed professionals if such agreements are a clear violation of EU competition law.⁴⁹

As noted, the right to enter into collective agreements and to conduct collective bargaining belongs to labour rights, the implementation

⁴⁷ International Labour Office, *Compilation of decisions of the Committee on Freedom of Association*, 2018, available at: http://www.ilo.int/moscow/information-resources/publications/WCMS_632659/lang--en/index.htm [last accessed 18.6.2022].

⁴⁸ M. Inshyn, T. Vakhonieva, A. Korotkikh, A. Denysenko, K. Dzhura, (2021). "Transformation of labor legislation in the digital economy", *InterEULawEast*, 2021, Issue 8, Vol. 1, pp. 39-56, doi:10.22598/iele.2021.8.1.3

⁴⁹ G. Monti, "Collective labour agreements and EU competition law: five reconfigurations", *European Competition Journal*, 2021, Issue 17, Vol. 3, pp. 714-744.

of which is ensured through labour law. On a subjective basis, the right to enter into collective agreements and to conduct collective bargaining is the right of all employees and employers, workers' and employers' organizations. According to international and national legislation, this right is recognized equally by trade unions, and by employers' associations. The right to enter into collective agreements and to conduct collective bargaining based on subjective criteria and methods of implementation is collective labour law. The peculiarity of collective labour rights is that they are exercised not by an individual, but by a team, community, or association.⁵⁰

These rights are collective, not only because they are exercised by collective entities (labour collectives, trade union organizations, employers' organizations, their associations, conciliation bodies to resolve collective labour disputes, etc.). The collective nature of these rights is also determined by the form (procedure) of their implementation both directly by the staff and through authorized representatives. At the same time, such labour rights as the right to work in safe conditions, the right to labour protection, the right to provision of rest for workers, etc., depending on the subject and the order of implementation, are by their nature individual labour rights.⁵¹

As provided in Art. 4 of the Law of Ukraine "On Collective Bargaining Agreements and Contracts" (Verkhovna Rada of Ukraine, 1993), the right to enter into collective agreements and to conduct collective bargaining are exercised by the parties to the social dialogue, who belong to the collective subjects of labour law. In addition, this right does not provide for its exercise by an individual employee. Thus, for employees, the right to enter into collective agreements and to conduct collective bargaining cannot be anything other than collective labour law.⁵²

By its structure, the right to enter into collective agreements and to conduct collective bargaining is a complex subjective right, as can be

⁵⁰ Prymich, *supra* note 9, p. 42.

⁵¹ V. Sydorenko, I. Shorobura, A. Ponomarenko, M. Dei, O. Dzhus, "Application of technologies of formal and non-formal education for continuous professional development of the modern specialist", *Revista Tempos E Espacos Em Educacao*, 2020, Issue 13, Vol. 32, pp. 1-24.

⁵² Sorochyshyn, *supra* note 16, p. 96.

seen from the structure which distinguishes the following powers of the parties:

- to take the initiative to start collective bargaining and require the other party to enter into negotiations;
- to determine the terms, place, and procedure for collective bargaining;
- to form a working committee of representatives of the parties to enter into collective agreements and to conduct collective bargaining;
- to carry out consultations, examinations;
- to obtain the necessary information for collective bargaining;
- to use conciliation procedures to resolve differences during collective bargaining;
- to create conditions in the form of guarantees for, and compensations to, the persons participating in collective bargaining;
- to sign and approve the collective contract;
- to submit sectoral (intersectoral) and territorial agreements, and collective agreements for notification registration.

By its legal nature, the right to enter into collective agreements and to conduct collective bargaining is a subjective labour law, which should be considered as a measure of possible behaviour of the entitled party, secured by the legal obligations of the other party. This right belongs to the basic labour rights, collective labour rights, regulatory labour rights, and labour rights that provide material interest.⁵³

In many studies concerning labour rights, the method of formulation distinguishes between labour rights, which are formulated as recommendatory and evaluative, and rights related to certain tangible (or intangible) benefits. According to the method of formulation, the right to enter into collective agreements and to conduct collective bargaining is such that provides a material interest. According to the target orientation, this right establishes and regulates social dialogue in the sense of this concept, defined in Art. 1 of the Law of Ukraine No. 2862-VI "On Social Dialogue in Ukraine".⁵⁴ According to the subjects of legal relations, the right to enter into collective agreements and to conduct collective

⁵³ Volkova, *supra* note 17, p. 73.

⁵⁴ Verkhovna Rada of Ukraine, *Law No. 2862-VI "On social dialogue in Ukraine"*, 2011, available at: <https://zakon.rada.gov.ua/laws/show/2862-17#Text> [last accessed 4.2.2022].

bargaining is an employment right granted to the subjects of collective labour relations for negotiating and concluding collective agreements.

Convention No. 98 on the Application of the Principles of the Right to Organize and to Collective Bargaining obliges States that have ratified it to establish processes that will be able to develop and increase the use of collective bargaining between the subjects of labour relations in this area, to regulate working conditions by concluding collective agreements.⁵⁵

These and other international labour standards provide for the existence in the national legislation of an effective sectoral mechanism to ensure the right to enter into collective agreements and to conduct collective bargaining (in Art. 4 of the Law of Ukraine “On Collective Bargaining Agreements and Contracts”).⁵⁶ However, in the current labour legislation of Ukraine, the legal provision of this right remains imperfect. In the modern field of labour law, there are such shortcomings in ensuring the right to enter into collective agreements and to conduct collective bargaining have not yet been the subject of separate dissertation research.

In many Western countries, collective agreements are as important as the legislative sources of labour law, and often their importance in the legal regulation of labour exceeds the role of statutory norms. Collective labour agreements are concluded to consolidate the mutual rights and obligations of employees and employers, as well as to regulate the legal relations that arise between them. Not only the relations between the parties to the collective labour agreement, but also between the enterprise and the bodies representing the labour collectives of the employees of the institution are regulated by the norms of this agreement. The agreement enshrines the interests of employees and employers and regulates industrial, economic, and social relations between the parties to the agreement.⁵⁷

The interests of the parties to the agreement spelled out in this agreement take the form of mutual obligations, the fulfilment of which is ensured, not only by the mutual responsibility of the parties, but, if necessary, by the coercive force of the state. When considering claims

⁵⁵ International Labour Organization, *supra* note 40.

⁵⁶ Verkhovna Rada of Ukraine, *supra* note 30.

⁵⁷ Caracasidi, Likhachev, *supra* note 18, p. 48.

arising from the improper performance of obligations under collective agreements, courts should consider the collective agreement of a particular enterprise as a local source of law.⁵⁸

In addition, the collective agreement is one of the means of implementing social partnership relations and, thus, is part of the system of these relations. One cannot fail to notice the formation of a new legal institution of social partnership, which will gain clearer outlines with the adoption of the relevant legislation. The collective agreement is concluded, not only at industrial enterprises, but also at budgetary institutions, educational, healthcare institutions, and at executive and local authorities. The parties to the agreement are directly the head of the enterprise or his representative and authorized by the labour collective, including trade unions. An authorized commission is set up to negotiate and prepare a draft collective agreement, and arbitrators and mediators are invited if necessary.

Current legislation provides for the mandatory procedure for drawing up a collective contract. The initial stage of this procedure is collective bargaining between the parties to the employment contract. In preparation for the negotiations, each party gathers the necessary information for argumentation and determines its course of action and tactics of negotiations to achieve its objectives. Once the agreement is approved by the parties, its draft must be signed within 5 days. The contract comes into force from the date of its signing; at the same time the term of its registration does not matter. The structure of the collective agreement is arbitrary at the discretion of the parties to the agreement.

However, the content of the collective agreement is defined in detail in the current legislation. Mandatory elements of the contract must be conditions for setting tariff rates, salaries, amounts and conditions of surcharges, and allowances to wages, amounts, and conditions of payment of bonuses, etc. In the structure of the collective agreement, as a rule, there is a special section on improving the working and living conditions of women, young people, the disabled, and pensioners. Annexes are an integral part of the collective agreement.⁵⁹

⁵⁸ Sorochyshyn, *supra* note 19, p. 96.

⁵⁹ Hrabatin, *supra* note 3, p. 151.

The parties to the contract or their authorized persons independently control its implementation. Annually, within the time limits provided for in the collective agreement, the parties report on its implementation. The implementation of a collective agreement is the practical implementation of those conditions that constitute its content, in performance. The current state of collective agreements concluded in Ukraine is marked by frequent non-compliance with the terms of the agreement by the parties, as well as improper implementation.

There are quite frequent cases of employers refusing to conclude new collective agreements and consequently delaying the already long process of collective bargaining between employers and labour collectives in the person of their authorized representative bodies. Article 11 of the Labour Code stipulates that the main condition for concluding collective agreements is the use of hired labour and the existence of the rights of a legal entity in institutions of any form of ownership and management (Article 9 of the Law of Ukraine “On Collective Bargaining Agreements and Contracts” and Article 65 of the Commercial Code of Ukraine). Naturally, the larger the workforce, the higher the likelihood of conflicts due to differences in interests and views of participants in labour relations.⁶⁰

Therefore, the conclusion of a collective agreement is necessary, above all, to prevent such disputes as arise or may arise in the labour collective. The collective agreement promotes stable and productive work, creating a solid foundation for the social protection of employees, which significantly reduces the risk of labour conflicts and social tensions in the team, provided that it is concluded taking into account the real capabilities of the enterprise. In some cases, the law stipulates that certain rules must be enshrined in a collective agreement.

For example, according to Article 15 of the Law of Ukraine No. 108/95-VR “On Remuneration of Labour” forms and systems of wages, production standards, rates, tariff grids, salary schemes, conditions of introduction and amounts of allowances, surcharges, bonuses, rewards and another incentive, compensation and guarantee payments are established by the enterprises in the collective agreement with observance of the norms and guarantees provided by the legislation, gen-

⁶⁰ Rym, *supra* note 4, p. 43.

eral, branch (interbranch) and territorial contracts.⁶¹ In the absence of a valid collective agreement at the enterprise, the employer or his representative will coordinate these issues with the trade union of employees of the enterprise or other competent body acting on behalf of the labour collective.

The collective agreement is a fundamental regulator of the rights, obligations, and interests of the subjects of labour relations. Lack of a collective agreement entails many negative consequences, which in turn interfere with the normal operation of the enterprise and, consequently, slow down its development. The most important thing is to spell out all the subtleties in the agreement so that it raises no questions from authorities or be the reason for conflicts with the staff.

Currently, there are a large number of gaps in the Ukrainian legislation and uncertainty over a sufficient number of issues that serve as obstacles to the establishment of effective collective bargaining. Given the analysis of case law, there is a problem that domestic courts often use Art. 213 of the Civil Code of Ukraine that carries out interpretation of normative agreements of the social and labour sphere by the same means and receptions, as an interpretation of transactions and civil law agreements.⁶² The function performed by transactions and civil law agreements is significantly different from that performed by collective agreements and contracts.

The Code of Labour Laws of Ukraine contains a separate chapter on collective bargaining (Chapter II “Collective Bargaining Agreement”), which has 11 articles.⁶³ The articles of this chapter fully disclose and regulate the parties, and the scope of the collective agreement, thus duplicating the relevant provisions of the Law of Ukraine “On collective bargaining agreements and contracts”, but if we talk about the procedure for concluding or amending a collective agreement, the Labour Code of Ukraine does not, but refers to the Law of Ukraine “On collec-

⁶¹ Verkhovna Rada of Ukraine, *Law No. 108/95-VR “On remuneration of labour”*, 1995, available at: <https://zakon.rada.gov.ua/laws/show/108/95-%D0%B2%D1%80#Text> [last accessed 4.2.2022].

⁶² Verkhovna Rada of Ukraine, *Civil Code of Ukraine*, 2003, available at: <https://zakon.rada.gov.ua/laws/show/435-15#Text> [last accessed 18.6.2022].

⁶³ Verkhovna Rada of Ukraine, *supra* note 28.

tive bargaining agreements and contracts “.⁶⁴ But this link can be considered not the best solution, as it gives rise to the problem of dual legislation, which complicates the search and use of normative material, and puts the Labour Code of Ukraine in second place, weakening its importance in the labour law system.

Ambiguities in labour law lead to an ambiguous understanding of the need for collective agreements. Take, for example, Article 2 of the Law of Ukraine “On collective bargaining agreements and contracts”, which states: “as dispositive”.⁶⁵ That is, the parties have the right to enter into such an agreement at their discretion or, conversely, not to enter into it. It can be concluded that such a position will not only be passive in concluding collective agreements, but also give rise to the practice of refusing to conclude them. Therefore, in this context, a new problem arises as to how to interpret the liability established by current legislation for non-compliance with the requirements of the labour law. Such uncertainty further deepens the social insecurity of workers.⁶⁶

Many contradictions arise in determining the parties to a collective agreement. According to Part 1 of Article 12 of the Labour Code of Ukraine, a collective agreement is concluded between the owner or his authorized body (person), on the one hand, and the primary trade union organization, acting in accordance with their status, and, in their absence – representatives, freely elected at the general meeting of employees or their authorized bodies – on the other hand.⁶⁷ When studying the content of this norm, it is observed that trade unions have a greater advantage in representing the interests of the labour collective and in concluding a collective agreement. This norm cannot be considered to be in line with current trends. Trade union activity is losing its importance if we compare it with previous years. It can be assumed that it is possible to initiate the creation of other authorized bodies to represent employees in labour collectives which will not have the status of a trade union. Given this, Art. 3 of the Law of Ukraine “On collective bargaining

⁶⁴ Verkhovna Rada of Ukraine, *supra* note 30.

⁶⁵ *Ibid.*

⁶⁶ L. Ostapenko, “Administrative and jurisdictional powers of the state for violating the conclusion of collective agreements in the field of labour”, *Scientific Notes of Lviv University of Business and Law*, 2020, Issue 27, pp. 179–183.

⁶⁷ Verkhovna Rada of Ukraine, *supra* note 28.

agreements and contracts”, which states that the collective agreement is concluded between the owner or his authorized body on the one hand and one or more unions or other bodies authorized to represent the labour collective, and in their absence – representatives of workers, elected and authorized by the labour collective.⁶⁸

At the same time, the issue of enshrining an employment contract in the Commercial Code of Ukraine needs to be improved. After all, by Part 7 of Art. 65 of the Commercial Code of Ukraine, at all enterprises that use hired labour, the owner or his authorized body and the labour collective or its authorized body must enter into a collective agreement governing the production, labour, and social relations of labour collectives with the administration. However, Art. 4 of the CCU, does not regulate labour relations.⁶⁹ The Commercial Code defines the basic principles of management in Ukraine and regulates economic relations arising in the process of organizing and carrying out economic activities between economic entities, as well as between these entities and other participants in economic relations (Article 1 of the CCU). Thus, we should pay attention to the existing conflict in the Commercial Code of Ukraine and resolve this issue.⁷⁰

Thus, on the basis of the study, it can be concluded that more attention in the process of reforming labour legislation in Ukraine should be paid to the problem of improving the legislation on collective agreements and contracts. Also, having studied some issues of the essence of the collective agreement, we should focus on improving the substantive conditions for the technique of creating a collective agreement as a local normative act, which will not worsen the situation of employees.

⁶⁸ Verkhovna Rada of Ukraine, *supra* note 30.

⁶⁹ Verkhovna Rada of Ukraine, *supra* note 29.

⁷⁰ O.S. Nasibzade, *The Legal Nature of the Collective Agreement*, I.I. Mechnikov ONU, 2018, p. 149.

III. DISCUSSION

The development of contractual regulation of collective labour relations is one of the priority areas of social policy in the field of labour, the importance of the role of which is due to the national practice of legislative regulation of basic components of labour relations – employment, pay, and working conditions. Public policy in this area is based on the regulation of minimum social standards, and the definition of framework obligations, and specific quantitative parameters should be set through the use of social dialogue mechanisms – in the conclusion of collective agreements and agreements at various levels. In this case, the system of contractual regulation is built in such a way that the obligations and guarantees of each level are mandatory for entities that are within the scope of the agreement (collective agreement), and lower-level guarantees cannot be less than those set at higher levels. Such a “pyramid” of social and labour guarantees for workers in the system of contractual regulation of collective labour relations determines the important role of sectoral agreements that consolidate the results of social dialogue at the level of certain economic activities.

The need for sectoral agreements is due to the characteristics of different industries, the conditions of employment and labour of employees, as well as the specifics of economic and other activities in different industries. At the end of the first stage of the development of collective bargaining in Ukraine, 79 sectoral agreements were concluded, and a year later their number decreased to 61. In general, legal scholars note the formal approach of the state and employers to the conclusion and content of these agreements and their compliance. The practical contribution of all-Ukrainian trade unions in ensuring decent work is realized through the mechanisms of social dialogue, in particular – collective bargaining on sectoral agreements.

Let us consider the features of collective bargaining regulation of social and labour relations in the agricultural sector. In the dynamics of the last two decades, the positive phenomenon of concluding Sectoral Agreements at the level of the agro-industrial complex is the detailing and concretization of legal norms and practical measures to improve the state of social and labour relations in the agro-industrial complex. For

example, this is an increase in the minimum wage rate of the first category worker as a basic indicator of the formation of the tariff grid and salary scheme, not less than 105% of the minimum wage (previously this figure was 102%). However, according to the established guarantees of the Sectoral Agreement, the guaranteed level of wages for agricultural labour remains low compared with the approved corresponding levels of wages in other sectors of the national economy. The subjects of social and labour relations at the level of the agro-industrial complex agreed to promote the expansion of the scope of labour in rural areas, including through the development of farming, family business, green tourism, and small and medium-sized businesses.⁷¹

That is, now the parties to the agrarian social and labour relations at the sectoral level go beyond the development of agriculture and should promote the development of non-agricultural small and medium businesses, as this will reduce social tensions in rural areas with high job shortages. They intend to increase the average wage in agriculture to the average in the economy, and increase the share of labour costs in the cost of production to 30%, and provide housing for citizens working in the agricultural sector of the economy. Agricultural enterprises should introduce a mechanism to protect the interests of workers during mass layoffs (paid one working day a week to find a new job two months before dismissal, and severance pay in case of a certain length of service, etc.).⁷²

In countries with market economies, new trends in enterprise management are becoming more widespread, which are manifested in the participation of employees in the affairs of the enterprise, and this area is considered one of the most important levers of economic growth and social stability. The practice of "participation", which has become widespread in the West, is seen as the activity of trade unions and other staff representatives, aimed at addressing issues of social and economic development of the workforce.

⁷¹ E.O. Lanchenko, "Collective agreement as an instrument of corporate culture in agricultural enterprises", *Accounting and analytical procedures and audit of enterprise development*, 2021, Issue 2, p. 214.

⁷² E.O. Lanchenko, "Collective and contractual regulation of social and labor relations in the agricultural sector of the economy: the state and areas for improvement", *Demography and Social Economy*, 2018, Issue 3, Vol. 34, pp. 148-160.

The French Labour Code contains a separate section “Collective Agreements”.⁷³ It sets out the rules by which workers’ rights to collective bargaining on employment and working conditions are exercised. Trade unions which are recognized as representatives, on the one hand, and employers’ organizations or individual employers, on the other, have the right to conclude a collective agreement. A collective agreement may contain better provisions than those provided by current legislation. For all companies with more than 50 employees, the law introduces mandatory annual collective bargaining on three issues: wages, employment, and working hours.

In Sweden, the main function of the collective agreement is to preserve labour peace. In its absence, strikes and lockouts are allowed. Another important function is to regulate wages and working conditions. Due to the indirect influence of the state on labour relations through the tax system and socio-economic measures, in practice, trade unions and employers’ organizations often consult with the government on the regulation of labour relations. The key Swedish laws protecting workers’ rights are the Labour Disputes Act 1974 and the Labour Protection Act 1982.^{74 75}

Examining the experience of labour organization in Austria, it should be noted that the Production Council agrees with the entrepreneur, thus defining a wide range of industrial, economic, and social issues. The agreement on employees specifies measures to eliminate or mitigate the harmful effects of changes that have occurred in the course of production activities. The agreement provides for measures to prevent accidents, and occupational diseases, create appropriate working conditions, use annual leave, temporarily reduce or increase working

⁷³ National Assembly, *Labor Code*, 2017, available at: <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006072050/> [last accessed 18.6.2022].

⁷⁴ Riksdag, *Swedish law on labor disputes*, 1974, available at: <https://www.government.se/government-policy/labour-law-and-work-environment/1974371-the-labour-disputes-judicial-procedure-act-lag-om-rattengangen-i-arbetstvister/> [last accessed 18.6.2022].

⁷⁵ Riksdag, *Swedish law on labor protection*, 1982, available at: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-198280-om-anstallningsskydd_sfs-1982-80 [last accessed 18.6.2022].

hours, benefits and, as well as benefits, participation in the distribution of profits, and pensions from the enterprise fund.⁷⁶

It should be noted that decisions taken at the level of the European Union play an important role in resolving issues related to the organization and management of Western European countries. It should be added that European legislation in the field of collective labour law causes significant problems. They arise from the fact that all sorts of organizations and traditions have been formed in the Member States, which can hardly be brought to unity at the European level. The only common denominator is that there are trade unions and employers' associations in all countries. After all, each country has its history, traditions that have been formed over the centuries, mentality, and different levels of socio-economic development.⁷⁷

Thus, EU legislation introduces minimum standards for involving employees in the management of the enterprise. At the same time, this issue is regulated mainly at the national level of the member states. In most EU countries, there are systems of indirect and representative participation of employees in management, which operate based on legislation and collective agreements (Austria, Belgium, Denmark, Italy, the Netherlands, Germany, Finland, France, etc.).^{78 79} In addition to the right to information and consultation, works councils in Germany have the right to make joint decisions on financial, economic, employment, and personnel management issues. In France, the content of the right to information and consultation has been expanded. Works councils have almost equal rights with the company's auditors to access necessary information. Workers' councils in Sweden and Finland have the widest

⁷⁶ A. Kjellberg, "The Shifting role of unions in the social dialogue", *European Journal of Workplace Innovation*, 2021, Issue 6, Vol. 2, pp. 220-244.

⁷⁷ S. Hayter, J. Visser, "Making collective bargaining more inclusive: The role of extension", *International Labour Review*, 2021, Issue 160, Vol. 2, pp. 169-195.

⁷⁸ Collective agreement for the construction & infrastructure sector 2021-2022, 2021, available at: <https://www.fnv.nl/getmedia/a9db497f-ee6f-4cf0-ba8e-a0f3f91e30db/488-collective-agreement-for-the-construction-infrastructure-sector-2020.pdf> [last accessed 18.6.2022].

⁷⁹ Collective agreement for universities of applied sciences 2021-2022, 2021, available at: https://www.verenighogescholen.nl/system/knowledge_base/attachments/files/000/001/270/original/COLLECTIVE_AGREEMENT_FOR_UNIVERSITIES_OF_APPLIED_SCIENCES_2021-2022.pdf?1638777897 [last accessed 18.6.2022].

opportunities to restrict the company's administration from making financial and economic decisions.⁸⁰ Decisions taken without negotiation with trade union representatives may be prohibited.⁸¹

If we talk about collective labour law in America, its basic elements are regulated, which is owing to the historical tradition of workers defending their rights in a country where there are the principle of freedom of contract and the doctrine of "optional employment". Collective agreements occupy one of the key places in the system of sources of American labour law because they can fill gaps in the legal regulation of labour relations and adapt their implementation to the economic, industrial, and social needs of workers and employers. In today's world, the application of collective agreements in the United States has become widespread in almost all areas of employment. Participants can be employees of the production and service sector, as well as employees, police, or firefighters. The Administration-Trade Union Labour Act of 1947, or as it is also called the Taft Hartley Act, was adopted to regulate collective bargaining and introduced significant amendments to the National Labour Relations Act, prohibiting employers and trade unions from influencing each other's legitimate rights and interests.⁸²

The legislation mainly defines only the rules of the struggle for the establishment of working conditions, and the working conditions themselves are regulated in collective agreements. The main function of collective bargaining to conclude a collective agreement is to regulate the production habits of the employer, including working conditions, levels, and rates of compensation. In the United States, collective bargaining agreements define most special employment conditions and, for the most part, establish, in addition, a decision-making procedure for monitoring their implementation. Collective bargaining is also used to deter-

⁸⁰ T. Yli-Koivisto, A. Sajavaara, J. Sainio, p. Tervahartiala, E. Lindroth, V. Müller, L. Lindfors, M. Miettinen, J. Malinen, A. Hakala, A. Heikkilä, M. Mäkelä, J. Kivistö, E.-M. Penttilä, (2020). *The collective agreement for salaried employees in the ICT sector 29.6.2020 – 28.2.2022*, Service Sector Employers PALTA Trade Union Pro, 2020, available at: <https://www.palta.fi/wp-content/uploads/2021/01/The-collective-agreement-for-salaried-employees-in-the-ICT-sector-2020-2022.pdf> [last accessed 18.6.2022].

⁸¹ Hrabatin, *supra* note 3, p. 152.

⁸² United States Congress, *Labor Management Relations Act, 1947*, available at: <https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter7&edition=prelim> [last accessed 18.6.2022].

mine the procedure for resolving individual complaints and resolving disputes over the interpretation and application of the collective agreement. Collective agreements in the United States are legally binding.⁸³

The COVID-19 pandemic has adjusted the content of collective agreements in various countries. Particularly relevant in Ukraine during the COVID-19 pandemic was the introduction of norms in the collective agreement to provide additional compensation, benefits, and guarantees to workers directly involved in the elimination of coronavirus disease among people, and the introduction of additional wages to these workers (medical, social, and other workers).⁸⁴ During the quarantine and suspension of public transport, employers and employees faced a problem with transportation to the workplace. Labour collectives initiated amendments to collective agreements. For example, changes were made to the collective agreement of the staff of the Verkhovna Rada of Ukraine on the organization of the daily transportation of employees of the Verkhovna Rada of Ukraine by official buses to work and back.⁸⁵

During the coronavirus epidemic, there was an urgent need to change the mode of work, working hours, and rest, as the legislation introduced changes to remote work and flexible working hours, and these issues also needed to be defined in collective bargaining rules and internal labour regulations. facilitating the work of employees. The requirements of the Laws of Ukraine “On Labour Protection” and “On Collective Agreements” stipulate that the implementation of comprehensive measures to organize safe and harmless working conditions, determine the responsibilities of the parties, as well as the implementation of employees’ rights and social guarantees for labour protection through a collective agreement.⁸⁶

⁸³ T.P. Golopich, I.M. Golopich, “Legal aspects of the social regulator of contractual relations in labor law of Ukraine”, *Law and Security*, 2021, Issue 1, Vol. 80, pp. 130-138.

⁸⁴ International Labour Organization, *Covid-19, Collective Bargaining and Social Dialogue. A report on behalf of ILO ACTRAV*, ILO Publishing (Rights and Licensing), 2021, available at: Retrieved from https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_828623.pdf [last accessed 18.6.2022].

⁸⁵ S. Lytvynenko, O. Tregubov, Y. Prykhno, N. Yakymova, I. Panchenko, Y. Popova, “Transformation of the paradigm of entrepreneurial activity innovative development in the pandemic conditions”, *International Journal of Agricultural Extension*, 2022, Issue 10, Special issue 1, pp. 147-156.

⁸⁶ Verkhovna Rada of Ukraine, *supra* note 30.

The collective agreement must provide for the protection of the rights and special interests of victims of occupational accidents (occupational diseases), as well as dependents and family members of the victims. Concerning labour protection, in the collective agreement, in addition to monitoring working conditions and keeping records of accidents, it is necessary to provide a clause on the investigation of accidents (occupational diseases) at the enterprise, institution, or organization. The collective agreement must contain detailed information on the investigation of accidents and occupational diseases.⁸⁷

Let us turn to the experience of the United States. As industries quickly adapted to the COVID-19 pandemic, employers made swift decisions that directly impacted collective bargaining agreements (CBAs) across the country in terms of working conditions, compensation, benefits, and workforce reductions. When circumstances arise during times of crisis that allow employers to make these sweeping changes, bargaining units are entitled to begin impact bargaining, also known as effect bargaining or implementation bargaining. The process allows the bargaining team to negotiate the impact of these crisis-time decisions on the terms and conditions of employment as outlined in the CBA. Impact bargaining, when successful, results in the creation of an MOU, which serves as an addendum to the CBA and can create additional protections for employees during the crisis that otherwise would not be covered under the CBA. This process was commonly used by European labour unions in response to the Great Recession of 2008.⁸⁸

CONCLUSIONS

In the conditions of the market transformation of the economy, social relations in the sphere of labour are filled with new content, and their

⁸⁷ M. Inshyn, N. Khutoryan, R. Cherneha, V. Bontlab, D. Tkachenko, "Correlation of labor and civil contracts related to the performance of work: Preventing the substitution of concepts", *Employee Responsibilities and Rights Journal*, 2021, Issue 33, Vol. 4, pp. 265-279, doi:10.1007/s10672-021-09373-3

⁸⁸ D.L. Fay, A. Ghadimi, "Collective Bargaining during Times of Crisis: Recommendations from the COVID-19 Pandemic", *Public Administration Review*, 2020, Issue 5, Vol. 80, pp. 815-819.

character changes owing to the strengthening of collective principles. Democratization of labour relations should involve increasing the participation of the labour collective in the regulation of hiring labour. One of the ways of such regulation is the approval of the collective agreement by the labour collective, which is an important local act because it determines the production, labour, and socio-economic interests of workers and employers at a particular enterprise, institution, or organization.

The collective agreement is a fundamental regulator of the rights, obligations, and interests of the subjects of labour relations. Lack of a collective agreement entails many negative consequences, and in turn interferes with the normal operation of the enterprise and, consequently, slows down its development. The most important thing is to spell out all the subtleties in the agreement so that it raises no questions from authorities or be the reason for conflicts with the staff.

From the above, it can be concluded that based on current legislation the labour collective agreement is concluded to consolidate the mutual rights, obligations, and interests of the subjects of labour relations at the enterprise, as well as to regulate industrial, economic, social, and labour relations between them. The collective agreement is concluded, not only at industrial enterprises, but also at budgetary institutions, educational, health care institutions, executive bodies, and local self-government bodies. A collective agreement combines the features of an agreement and a normative legal act. Today it is the most important local legal act that determines working conditions, wage conditions, and social guarantees for employees at the enterprise, institution, or organization.

However, this is not only a legal act, but also an act of social partnership at the enterprise level between employees and the owner or his authorized body, the result of coordination of their interests. The collective agreement applies to all employees, regardless of their participation in the trade unions of the enterprise, as well as to the owners of the enterprise and their authorized bodies. Control over the implementation of the terms and conditions of the collective agreement is carried out by its parties. Annually, within the time limits provided for in the collective agreement, the parties to it sign a report on its implementation. The main purpose of the collective agreement is to regulate the mutual rights and interests of workers and employers in the social, economic, and industrial spheres.

Ensuring and implementing the level of labour rights and guarantees is a key feature of the collective agreement and an indicator of the effectiveness of collective bargaining. Modern conditions dictate the need to find new approaches to the regulation of social and labour relations and improve labour legislation in general. Contractual regulation based on social dialogue should increase the number of concluded collective agreements, so modern realities require the development of a whole system of measures aimed at encouraging the parties to conclude collective agreements. Labour law is becoming more flexible than ever, so much attention needs to be paid to contractual regulation, which is based on a collective agreement. Today it is necessary to find new ways to protect the rights of workers, which can be adopted at the local level, as well as established in the collective agreement. In a market economy, it is important to improve those social and labour guarantees that are related to the collective bargaining process.