

Research Article

Social Innovation for the promotion of decent work for people with disabilities

Innovación Social para el fomento del trabajo digno de las personas con discapacidad

Tetyana A. Zanfirova^{1*}, Valeriy O. Zhuravel², Olena V. Karpushova³, Ivan Yu. Kaylo⁴ and Serhiy V. Kozachenko⁵

¹Department of Labor Law and Social Security Law, Taras Shevchenko National University of Kyiv, 01033, 60 Volodymyrska Str., Kyiv, Ukraine.

²Kyiv District Administrative Court, 01051, 8 Petra Bolbochana Str., Building 1, Kyiv, Ukraine.

³Sixth Administrative Court of Appeal, 01010, 8 Moskovska Str., Building 30, Kyiv, Ukraine.

⁴Kononenko, Kaylo & Partners JSC, 01021, Klovsyy Uzviz Str., Building 7, Kyiv, Ukraine.

⁵Department of Labor Law and Social Security Law, Taras Shevchenko National University of Kyiv, 01033, 60 Volodymyrska Str., Kyiv, Ukraine.

*Correspondence: zanfirova8260-5@neu.com.de

Abstract: In modern conditions, disability is a social phenomenon that no society can avoid. There are more than 2.7 million people with disabilities in Ukraine. The realities of today allow us to state the fact that people with disabilities belong to the most vulnerable segments of the population, who are deprived of some basic life benefits. The problems of employment and labor, which need sufficient attention from the state, are also often overlooked. Unfortunately, in recent years there has been a significant increase in the number of people with disabilities in the country. Therefore, the question of the urgent need to study the protection of labor rights of persons with disabilities is relevant. Research methods are chosen to take into account the purpose and objectives of the study, its object, and its subject. In the course of the research philosophical, general scientific, as well as special legal methods of scientific knowledge were used. The purpose and task of the research are to determine the legislative and theoretical legal provisions regarding national instruments for the protection of the labor rights of persons with disabilities, to outline the existing guarantees for persons with disabilities in the field of work, to identify problematic aspects in the field of employment, to develop recommendations and proposals for the optimal ways of reforming labor legislation to effectively protect employees with disabilities.

Keywords: labor market; right to work; employers; disabilities; social protection.

Resumen: En las condiciones actuales, la discapacidad es un fenómeno social que ninguna sociedad puede evitar. En Ucrania hay más de 2.7 millones de personas con discapacidad. Las realidades de hoy nos permiten afirmar que las personas con discapacidad pertenecen a uno de los segmentos más vulnerables de la población que se ven privados de algunas prestaciones vitales básicas. Los problemas de empleo y trabajo, que necesitan una atención suficiente por parte del Estado, también suelen pasarse por alto. Desgraciadamente, en los últimos años ha aumentado considerablemente el número de personas con discapacidad en el país. Por lo tanto, existe una necesidad urgente de estudiar la protección de los derechos laborales de las personas con discapacidad. Los métodos de investigación en este análisis son elegidos teniendo en cuenta la finalidad y los objetivos del estudio, su objeto y su sujeto. En el curso de la investigación se han utilizado métodos filosóficos, científicos generales y jurídicos.

El propósito y la tarea de la investigación son determinar las disposiciones jurídicas legislativas y teóricas relativas a los instrumentos nacionales de protección de los derechos laborales de las personas con discapacidad, esbozar las garantías existentes para las personas con discapacidad en el ámbito del trabajo, identificar los aspectos problemáticos en el ámbito del empleo, elaborar recomendaciones y propuestas sobre las formas óptimas de reformar la legislación laboral para proteger eficazmente a los empleados con discapacidad.

Palabras clave: mercado laboral; derecho al trabajo; empleadores; discapacidades; protección social.

1. Introduction

Since the beginning of the 2000s, the state has had a policy of employment of persons with disabilities, the components of which are: “quotas” - a normative definition of the number of jobs (4%) for the employment of persons with disabilities; assisting enterprises of sheltered employment (enterprises of public organizations of the disabled); providing subsidies for job creation. However, people with disabilities remain a category that suffers from discrimination, including in the labor market. Increasing opportunities for their competitive participation in employment requires government intervention.

The Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996) proclaims that all human beings are free and equal in dignity and rights (Article 21). Also important is the norm of the Constitution of Ukraine, which stipulates that citizen have equal constitutional rights and freedoms and are equal before the law. There may be no privileges or restrictions based on race, color, political, religious, or other beliefs, sex, ethnic or social origin, property, place of residence, language, or other characteristics (Article 24, Constitution of Ukraine). In modern conditions, disability is a social phenomenon that no society can avoid. Unfortunately, in recent years the country has seen a significant increase in the number of people with disabilities. There are more than 2.7 million people with disabilities in Ukraine, which is 5.2% of the total population. According to UNESCO, in 1977 there were 450 million people with disabilities on the globe, by 1983 this figure had risen to 514 million, and the number of people with disabilities in the world today has reached 1 billion, or 15% of the population. The realities of today allow us to state that persons with disabilities belong to the most vulnerable segments of the population, who are deprived of some basic benefits of life; quite often the problems of employment and employment that need sufficient attention from the state are ignored. Therefore, the question of the urgent need to study the legal mechanism for the protection of labor rights of persons with disabilities is relevant.

The protection of labor rights of persons with disabilities, as well as the implementation of these rights, is an urgent problem for both foreign countries and Ukraine. It should be noted that the state has not only committed itself to support such citizens but also creates all the conditions for people with disabilities to feel on an equal footing with other citizens. According to statistics, about 30% of people with disabilities of working age are officially employed in Ukraine. Please note that the peculiarity of the above-mentioned persons exercising the right to work is that for them this possibility is limited by the contraindications of certain types of work due to health conditions. Employment of persons with disabilities is carried out by the state employment service, social protection bodies, local executive bodies, local self-government bodies, public organizations of persons with disabilities, enterprises, institutions, and organizations. It should be noted that over the last decade in Ukraine there has been a declining trend in the number of people with disabilities who apply to the bodies of labor and social protection for employment.

The idea of social innovation occupies one of the leading places in the politics of developed countries today, while in Ukraine it is just beginning to spread. Social innovations are understood as new solutions (products, services, models, processes, etc.) that meet social needs (more fully and effectively than existing solutions) and lead to new, improved opportunities, values, and/or relationships. In other words, social innovation is good for society and drives that society to action. Social innovations are the process of the emergence of new methods and technologies, and forms of social relations that contribute to the improvement of the effectiveness of the public social policy, aimed at improving working conditions, and solving problems of health care, education, and culture. In our opinion, social innovations are capable of bringing about positive changes and contributing to decent employment and proper working conditions for persons with disabilities, ensuring their rights and freedoms. This can be achieved through the introduction of the legislation of decent social security and protection conditions, the creation of comfortable working conditions at workplaces, increasing the possibility of homework for the disabled, and the promotion of professional training for the disabled.

Despite the availability of some scientific work on the protection of the labor rights of persons with disabilities, this problem has not been fully studied and researched, and some problems in this area, including employment and dismissal of persons with disabilities, remain unresolved. Many scientific works, including such scholars as S.Ya. Vavzhenchuk (2016), R.Ya. Butynska (2019), V. Kondratenko (2018), G. Kazarian (2017), and V.P. Miller (2018) are devoted to the issues of protection of rights and promotion of employment of persons with disabilities. Given the scientific work and recommendations of scientists, it is advisable to continue research on this issue. Given the above, the goal and task of the research are to determine the legislative and theoretical legal provisions regarding national instruments for the protection of the labor rights of persons with disabilities, outline the existing guarantees for persons with disabilities in the field of work, identify problematic aspects in the field of employment, develop recommendations and proposals for optimal ways of reforming labor legislation to effectively protect workers with disabilities.

2. Materials and Methods

Several general scientific and special methods of cognition were used for comprehensive research, achievement of an objective scientific result, and formulation of conclusions and recommendations. The study is based on the dialectical method, which contributed to a comprehensive study of the state-legal mechanism for the protection of the rights of workers with disabilities in its relationship and interdependence with the globalization and European integration processes of society, which revealed the current state of the research topic (used in the first point of the Results section). The application of system-structural and system-functional methods, as well as methods of classification and grouping, helped to systematize the actual problems of implementing legislation on the protection of labor rights of persons with disabilities in Ukraine (used in the Discussion section).

The modeling method is reflected in the development of the concept of improving the legal protection of the rights and employment of disabled people and the formation of specific proposals for improving the legislation of Ukraine in the field of the protection of the rights of workers with disabilities to solve the current problems of protecting domestic workers by the standards of the European Union (used in the Discussion section). The theoretical and prognostic method provided an opportunity to substantiate proposals and recommendations for improving the current labor legislation of Ukraine in the issue, which became the subject of research. In particular, the dialectical method helped to determine the foundations of Ukraine's state policy on employment and employment of persons with disabilities making it possible to establish causal links in the process of analyzing the problems of state policy in the field of employment of persons with disabilities.

With the help of the formal-legal method, a comprehensive scientific analysis of modern national legislation on state policy in regulating relations in the field of labor of persons with disabilities. Methods of analysis and synthesis were leading throughout the work, from the analysis of factual material for research, the study of the works of scientists, and normative and empirical bases to substantiate the conclusions. The method of induction was used to theoretically generalize the complex mechanism of state policy in the field of employment of persons with disabilities and to draw conclusions. The use of these methods made it possible to analyze the scientific-theoretical and applied legal aspects related to the administrative and legal regulation of state policy in the field of protection of labor rights and promotion of employment of persons with disabilities.

A number of articles related to the research topic were also analysed (Table 1).

Table 1. Articles analysed.

Article	Author
"Unity and differentiation of measures of preventive protection, protection of labor rights and measures of labor liability"	Vavzhenchuk, S. (2015)
"Protection and protection of labor rights of workers: a textbook"	Vavzhenchuk, S.Ya. (2016)
"Problems of legal guarantees of labor rights of employees when concluding, changing and terminating an employment contract"	Melnik, K.Yu., & Babenko, A.O. (2016)
"Organizational and legal forms of employment promotion"	Shoemaker, D.Yu. (2017)
"Precarization as a factor in the transformation of the institution of labor law "employment and employment" in a shortage of decent work"	Amelicheva, L.P., & Nefedov, O.V. (2017)
"Between equality and discrimination: disabled persons in Romania"	Baciu, E.L. & Lazar, T.A. (2017)
"Administrative and legal means of ensuring the right to work of persons with disabilities: the system and ways of development"	Kondratenko, V. (2018)
"International legal regulation of social protection of persons with disabilities in the field of rehabilitation and labor: theoretical and legal approach"	Miller, V. P. (2018)
"Features of employment of persons with disabilities in the socio-economic development of Ukraine"	Safonik, N. P. (2018)
"Workers with Disabilities Between Legal Changes and Persisting Exclusion: How Contradictory Rights Shape Legal Mobilization"	Lejeune, A. & Ringelheim, J. (2019)
"Labor protection as a function of labor law"	Butynska, R.Ya. (2019)
"Scientific and methodological mechanisms of socio-economic support of persons with disabilities"	Kazarian, G. (2019)

“World experience in implementing the state policy of support for persons with disabilities and its implementation in Ukraine”	Halytsky, O.M. (2019)
“Factors influencing and employment indicators of persons with disabilities with the assistance of the state employment service”	Overchuk, V.A. (2019)
“Issues with interpreting the social and legal value of a person in the context of the integrative type of legal-awareness”	Shevchenko, A., Kydin, S., Kamarali, S., & Dei, M. (2020)
“Application of technologies of formal and non-formal education for continuous professional development of the modern specialist”	Sydorenko, V., Shorobura, I., Ponomarenko, A., Dei, M., & Dzhus, O. (2020)
“Regarding the range of persons who have additional guarantees in promoting employment”	Zabeyda, T.O., & Chepys, I.V. (2020)
“Public policy of state institutions on socio-economic security of persons with disabilities”	Oliynyk, V.V., Ghazaryan, G.G., & Shcherbata, M.Yu. (2021)

Source: Developed by author.

3. Results

3.1. Legislative regulation of employment of people with disabilities in Ukraine

The formation of the labor market, especially in the context of the development of Ukraine as a democratic, social and legal state, requires the formation of clear, barrier-free access mechanisms to it, as well as the introduction of additional employment guarantees for persons who are not fully competitive. Such persons include the disabled. There is no universally accepted definition of the concept of "disability", although there have been many different attempts to derive a single meaning of the word. The World Health Organization (WHO) in its International Classification of Functioning, Disability, and Health (ICF) takes into account the social aspects of disability and does not consider disability only as a phenomenon of "medical" or "biological" dysfunction. WHO defines two key concepts as follows. Impairment: Any loss or abnormality of a psychological, physiological, or bodily structure or function, such as paralysis or loss of vision.

Disability: “any limitation or lack (due to impairment) of the ability to perform activities in the manner or within the limits considered normal for a person” (United Nations, 2020). The United Nations Convention on the Rights of Persons with Disabilities (United Nations, 2006) states that "the concept of disability is evolving and that disability is the result of the interaction between people with health impairments and attitudinal and environmental barriers that prevent their full and effective participation in society on an equal footing with others." According to Article 1, "persons with disabilities include those with long-term physical, mental, intellectual or sensory impairments..." (United Nations, 2006). The extent to which these impairments disable someone depends on the level of barriers they face in society.

A recent position taken by international organizations is that the presence of a disability is the result of dynamic interaction, on the one hand, between a person's health and other personal factors (such as age, gender, personality, or level of education) and, on the other hand, social and the physical environment in which they are found. This approach is called the "social model of disability". It is important to note that it is quite important for the state to create conditions for the realization of the rights of persons with disabilities on an equal basis with other citizens. Even though there are no unambiguous approaches in society and the state among employers

regarding the involvement of people with disabilities in the labor market, and their employment, however, these issues have recently become more and more relevant given this.

Issues of labor of persons with disabilities are regulated by general labor legislation, such as the Labor Code of Ukraine (Verkhovna Rada of Ukraine, 1971), the Law of Ukraine "On Employment" (Verkhovna Rada of Ukraine, 2013), "On Vacations" (Verkhovna Rada of Ukraine, 1997), "On Labor Protection" (Verkhovna Rada of Ukraine, 1992), etc., and special legislation - the Law of Ukraine "On the Fundamentals of Social Security of the Disabled in Ukraine" (Verkhovna Rada of Ukraine, 1991), "On Rehabilitation of the Disabled in Ukraine" (Verkhovna Rada of Ukraine, 2006), as well as normative legal acts adopted for implementation, in particular disability legislation. In particular, anti-discrimination provisions are defined in Article 2.1 in the field of labor, for example, violation of the principle of equality of rights and opportunities, direct or indirect restriction of workers' rights, and this provision also applies to people with disabilities.

It should be noted that according to the Constitution of Ukraine, the Convention on the Rights of Persons with Disabilities (hereinafter - the Convention) (General Assembly, 2006), the Law of Ukraine "On the Fundamentals of Social Security of the Disabled in Ukraine" (Verkhovna Rada of Ukraine, 1991), with disabilities in Ukraine have all the full socio-economic, political, personal rights and freedoms enshrined in the Constitution of Ukraine, laws of Ukraine and international treaties, the binding nature of which was approved by the Verkhovna Rada of Ukraine. The Convention (Article 27) provides that States Parties recognize the right of persons with disabilities to work on an equal basis with others; it includes the right to be able to earn a living by work freely chosen or freely agreed upon by a person with a disability, in an environment where the labor market and working environment are open, inclusive and accessible to persons with disabilities. Taking into account the provisions of the Constitution of Ukraine, and the Convention on the Rights of Persons with Disabilities, the legal aspects of employment of persons with disabilities are determined based on Section IV "Employment, Education, and Training of Persons with Disabilities" of Law No. 875-XII. They provide such features:

First, to realize the creative and productive abilities of persons with disabilities and consider individual rehabilitation programs, they are guaranteed the right to work, as well as engage in entrepreneurial and other employment activities that are not prohibited by law. Secondly, an important guarantee of employment of persons with disabilities is that the refusal to conclude an employment contract or promotion, dismissal, or transfer to another job without his consent on the grounds of disability is not allowed, except when the conclusion medical and social examination, the state of health interferes with the performance of professional duties, threatens the health and safety of others or the continuation of work or changes in its nature and scope threatens the deterioration of health. In the legal sense, this guarantee is designed to promote sustainability and stability of relations between the employer and the employee with a disability by prohibiting unjustified (on the grounds of disability) refusal of such a person to conclude an employment contract, promotion, transfer, or dismissal.

Third, the legislator sets certain requirements for the organization of the workplace. Fourth, employers have set a quota (norm) for the employment of persons with disabilities. Fifth, administrative and economic sanctions are introduced for employers who violate the established standards for the employment of persons with disabilities. The further process of development of the labor market in Ukraine will set trends to increase the motivation of employers to employ people with disabilities, ensuring appropriate, healthy, and safe working conditions, to the needs and interests of such workers.

Among the normative legal acts devoted to the legal regulation of work of persons with disabilities, the Law of Ukraine "On the Fundamentals of Social Security of the Disabled in Ukraine" occupies a decisive place, although the subject of its legal regulation is not directly labor relations with this category of persons. Thus, by this Law, to realize the creative and productive abilities of persons with disabilities and taking into account individual rehabilitation programs,

they have the right to work in enterprises, institutions, and organizations, and engage in entrepreneurial and other activities not prohibited by law. Ensuring the rights of persons with disabilities to employment and paid work, including the condition of work at home, is carried out by their direct application to enterprises, institutions, organizations, or the state employment service. The selection of a job is carried out mainly at the enterprise where the disability occurred, taking into account the wishes of the person with a disability, his/her professional skills, and knowledge, as well as the recommendations of medical and social expertise.

It should be noted that the legislation of Ukraine, as well as the legislation of foreign countries, enshrines rules that determine the responsibility of persons for violations of the rights and freedoms of persons with disabilities. It should be noted that in Ukraine the amount of fines provided by law is so insignificant (Article 20 of the Law of Ukraine "On the Fundamentals of Social Security of the Disabled in Ukraine", Article 53 of the Law of Ukraine "On Employment") that they lose their meaning as sanctions for violating the law. Sometimes it is more profitable for some companies to pay a fine than to employ this category of people. Thus, today there is an urgent need to strengthen state supervision and compliance with employers' quotas for the employment of persons with disabilities and to ensure proper working conditions for this category of persons.

3.2. Legal guarantees for persons with disabilities in the field of work

On the one hand, persons with disabilities have all the same employment rights as persons with disabilities, and on the other hand, the state provides several guarantees for people with disabilities aimed at their inclusion in the labor market. For example, people with disabilities are recognized as one of the categories of citizens who have additional guarantees for employment. The Law of Ukraine "On Employment" stipulates that: "Selection of suitable work for people with disabilities (including by reasonable adaptation of existing or new jobs) is carried out by their professional skills, knowledge, individual rehabilitation program and taking into account wishes regarding working conditions". People with disabilities have the right to work in enterprises, institutions, and organizations, as well as engage in entrepreneurial and other work activities that are not prohibited by law to realize their creative and productive abilities and take into account individual rehabilitation programs.

Note that the draft of the new Labor Code (LC) of Ukraine in terms of the rights of persons with disabilities is characterized by: a reflection of the general rights and guarantees contained in the Labor Code of Ukraine and certain special laws; endowment of persons with disabilities with a general set of rights, without taking into account the peculiarities of their work; failure to take full account of the provisions of the UN Convention on the Rights of Persons with Disabilities; lack of requirements and norms on public control over the work of public organizations of people with disabilities. In such circumstances, there is a high probability that the labor issues of people with disabilities will be formal if the LC approves them, and thus their participation in the labor market will be declarative.

Given the above, we will find out how the protection of labor rights of persons with disabilities, who enter into employment, stay in them, or terminate them, is manifested. In the Labor Code of Ukraine, the section "Labor protection" contains Article 172, devoted to the use of the labor of persons with disabilities. This article states that in cases provided by law, the owner or his authorized body is obliged to organize training, retraining, and employment of persons with disabilities by medical recommendations, to establish at their request part-time or part-time work week and create benefits working conditions. The involvement of persons with disabilities in overtime work and night work without their consent is not allowed. It is not necessary to confuse the labor protection of persons with disabilities and the protection of labor rights of the specified category of persons in labor legal relations. Labor protection itself by Article 1 of the Law of Ukraine "On Labor Protection" is defined as a system of legal, socio-economic, organizational and technical, sanitary and hygienic, and therapeutic and preventive measures

and means aimed at preserving life, health, and ability to work in the process of work. Thus, by the legal norms, labor protection will avoid damage to the health, loss, or loss of life of the employee. The term “protection” refers to the implementation of certain preventive measures and means to achieve the ultimate goal - the preservation of the life and health of persons with disabilities.

3.3. Guarantees and rights provided by law to persons with disabilities in the process of termination or change of employment conditions

According to Article 14 of the Law of Ukraine “On Employment” (Verkhovna Rada of Ukraine, 2013) persons with disabilities who have not reached retirement age, belong to the category of persons who are provided with additional guarantees of assistance in employment. The essence of these guarantees is to establish the standard of their employment by determining the quota and reservation of jobs. Legal guarantees provided to persons with disabilities at employment are a system of legal guarantees determined by the norms of labor law, which follow from the exercise of the right to full employment and the established procedure for concluding an employment contract. This group of guarantees should be classified into two groups:

- 1) general guarantees of the right to work in employment, provided for all citizens, which persons with disabilities have an equal footing with others;
- 2) additional guarantees for the exercise of the right to work of persons with disabilities provided to them during employment.

Guarantees of the right to work of persons with disabilities provided to them in the performance of their job functions are:

- 1) the obligation of the employer to provide the employee with reduced working capacity with a job that meets the requirements of legislation and MSEC recommendations;
- 2) the legally established longer duration of annual basic leave and additional leave without pay compared to other employees. Annual basic leave is granted regardless of the availability of six months of continuous work experience at the relevant enterprise, institution, organization, or individual who uses hired labor by the law;
- 3) prohibition to involving persons with reduced working capacity in night work and overtime work without their consent. Involvement of this category of workers in the specified works occurs on the condition that it does not contradict medical recommendations;
- 4) the statutory obligation of the owner or his authorized body to transfer employees who need to provide easier work due to their health condition, with their consent, to work by a medical opinion;
- 5) prohibition of temporary transfer by the owner or his authorized body of the employee to another job not stipulated by the employment contract if it is contraindicated due to his health condition.

Legal guarantees provided to persons with disabilities in the process of termination of an employment contract are a system of legal guarantees determined by the norms of labor law, which arise in the process of termination of an employment contract. The general guarantees of the right to work of persons with disabilities provided to them upon the termination of the employment contract are a) the existence of legal grounds for termination of the employment contract; b) compliance with the established procedure for dismissal.

Additional guarantees of the right to work of persons with disabilities provided to them upon the termination of the employment contract are:

- 1) the obligation of the owner or his authorized body to terminate the fixed-term employment contract at the request of the employee in case of illness or disability;
- 2) the preemptive right to leave the job when dismissing employees in connection with changes in the organization of production and work on equal terms of productivity and qualifications for employees who received at this company, institution, organization,

occupational injury or disease, as well as participants in hostilities, persons with disabilities due to war and persons covered by the Law of Ukraine "On the Status of War Veterans, Guarantees of Their Social Protection" (Verkhovna Rada of Ukraine, 1993), as well as persons with disabilities among participants in the aftermath accidents at the Chernobyl NPP and victims of the Chernobyl catastrophe, about which a causal link between the decline in working capacity and the Chernobyl disaster have been established, patients suffering from radiation sickness as a result of the Chernobyl catastrophe. It is appropriate to emphasize that in Ukraine the dismissal of employees due to disability is prohibited by law. After all, the fact of disability cannot be grounds for the dismissal of an employee under paragraph 2 of Art. 40 of the Labor Code of Ukraine.

The employer, unlike the employee, is deprived of the right to terminate an employment contract concluded for an indefinite period. His right to terminate an employment contract is more limited than the same right of an employee. The employer has the right to dismiss an employee on his initiative only if there are grounds on which the law connects the emergence of his right to terminate the employment contract. One of these is the ground provided for in paragraph 1 of Article 40 of the Labor Code of Ukraine, which allows the employer to terminate the employment contract with changes in the organization of production and labor. Under changes in the organization of production and labor in paragraph 1 of Article 40 of the Labor Code of Ukraine means liquidation, reorganization, bankruptcy, or reorganization of the enterprise, institution, organization, or reduction of the number of staff. In the process of dismissal under paragraph 1 of Article 40 of the Labor Code of Ukraine are the rules of Article 42 of the Labor Code of Ukraine, which establishes the preemptive right to stay at work. The advantage of staying at work is given to workers with higher qualifications and productivity. Thus, Part 2 of Article 42 of the Labor Code of Ukraine establishes a list of persons who, under equal conditions of productivity and qualifications, have an advantage in leaving work.

This category includes persons with disabilities as a result of war and employees who received an occupational injury or occupational disease at this enterprise, institution, or organization. It is worth noting that the law stipulates that in the event of illegal dismissal, the employer is liable - first of all, it is the imposition of a fine for violating labor laws. In addition, the law stipulates that violations of citizens' labor rights, including discrimination on the grounds of disability, may be grounds for instituting criminal proceedings. The protection of the rights and freedoms and legitimate interests of persons with disabilities takes place in court.

The legal literature has repeatedly raised the question: is an employer entitled to transfer a person with a disability who, according to MSEC recommendations, should be transferred to another permanent job if the person with a disability is not satisfied with the employer's proposal? It can be argued that regardless of the wishes of the disabled person, he cannot be left at a previous job if it is contraindicated. We believe that in this case, the employer cannot leave the employee for a previous job, which according to the MSEC is contraindicated due to his health condition, and in the absence of the employee's consent to transfer he is obliged to dismiss such employee under paragraph 2 of Article 40 of the Labor Code of Ukraine. Thus, by Part 3 of Article 9 of the Law of Ukraine "On Labor Protection" of October 14, 1992, employees who lost their ability to work due to an accident at work or occupational disease, retain their job (position) and the average salary for the entire period until recovery or the establishment of permanent loss of professional capacity for work.

If the victim is unable to perform previous work, he/she is trained and retrained, as well as employed by medical recommendations. It should be noted that dismissal of a person with a disability is allowed if, according to the MSEC, the state of health interferes with the performance of professional duties or the continuation of work may lead to the deterioration of the health of such an employee. If the employee has a disability, the employer needs to take certain actions, in particular, to analyze the recommendations of the MSEC with the conclusions on the conditions

and nature of work in the certificate to the MSEC inspection report or in the notification of the MSEC inspection results. In addition to these conclusions, Part 1 of Article 17 of the Law of Ukraine "On the Fundamentals of Social Security of the Disabled in Ukraine" of March 21, 1991, must also take into account individual rehabilitation programs.

Refusal to enter into an employment contract or promotion, dismissal at the initiative of the administration, transfer of a disabled person to another job without his consent on the grounds of disability is not allowed, except when MSEC concludes his health interferes with professional duties, threatens the health and safety of others, or the continuation of employment or a change in its nature and scope threatens the deterioration of health. Ensuring the rights of persons with disabilities to employment and paid work, including the condition of work at home, is carried out by their direct application to enterprises, institutions, organizations, or the state employment service. At the same time, employers are required to allocate and create jobs for people with disabilities, including special ones: "create working conditions for them, taking into account individual rehabilitation programs."

4. Discussion

The analysis of national legislation and the practice of its application show serious obstacles to the exercise of the right to work for persons with disabilities. The main symptoms that indicate the nature of the employment problem are discrimination against people with disabilities in the labor market. Despite the formal prohibition of discrimination in national law, in practice, persons with disabilities are not always perceived as professionals or professionals. Their jobs are mostly low-skilled. Promotion is accompanied by certain obstacles. There are also manifestations of discrimination based on the state of health, in particular, the employment policy does not take into account the degree of loss of health, which leads to a worse position for disabled people of the first group compared to disabled people of the second and third groups of disabilities. The group of disabilities is the degree of permanent disorder of the body's functions caused by disease, trauma (its consequences), congenital defects, and possible limitation of life activities when interacting with the external environment due to loss of health. A person recognized as a person with a disability is assigned the first, second, or third group of disabilities, depending on the degree of dysfunction of the body's organs and systems and the limitation of his/her vital activities.

In addition, there is no protection for people whose health is worse than other people with disabilities. These are people with psychosocial and intellectual disabilities. The offered services in the field of vocational guidance and vocational rehabilitation for people with disabilities do not meet the requirements of the labor market. In addition, despite the formal declaration of the right to education, persons with disabilities continue to face numerous barriers due to a lack of unimpeded access to educational institutions and a lack of reasonable accommodation.

First of all, to find out the best ways to reform the labor legislation on the protection of workers who are discriminated against on the grounds of disability by employers, it is necessary to consider the reasons for its occurrence. The field of protection of persons with disabilities should highlight the causes and conditions of violations of the rights of this category of citizens: 1) lack of awareness of persons with disabilities with their rights and responsibilities; 2) reluctance of employers to have people with disabilities in their staff, which is associated with emotional and psychological barriers in society; 3) low level of legal culture of persons with disabilities of non-legal specialties as subjects of social protection, which does not allow them to correctly understand the regulations governing the relevant relations; 4) shortcomings of legislative technique: the imperfection of the language of presentation of legal norms, which leads to confusion of concepts; sometimes contradictions can be not only in different acts but also in the norms of the same normative act, etc.

It is worth noting that one of the main measures to address the employment of people with disabilities in Ukraine is to establish quotas for the employment of people with disabilities. In

Ukraine, the quota for jobs for people with disabilities has existed since 1991 with the adoption of the Law of Ukraine "On the Fundamentals of Social Security of the Disabled in Ukraine" on March 21, 1991. The quota is an additional measure to promote employment for citizens competing in the labor market.

It should be emphasized that the current mechanism of employment for persons with disabilities is imperfect. In our opinion, for the quota system to work, the state must share with the employer the economic risks of such employment (finance additional measures to organize the work of a person based on his disabilities), provide basic and additional equipment, technical equipment on lease, etc.). In addition, one of the promising areas of employment of this category of the population in modern conditions, we believe, is the development of self-employment. Now the state should create a more favorable socio-economic climate for people with disabilities - entrepreneurs (provide a soft loan for self-employment; provide preferential taxation; organize free training for future entrepreneurs; provide information and free counseling for people with disabilities who have identified disabilities. own business).

Specialized enterprises of public organizations of persons with disabilities, in particular training and production enterprises (hereinafter - UTOS and UTOG) are of special importance for the implementation of the ability to work with persons with disabilities. This is because these companies have the opportunity to provide people with disabilities not only a specialized and adapted workplace but also professional skills, and the necessary social conditions at work. These enterprises have certain (albeit insufficient) benefits, support, and control from the state, which helps them to function in today's difficult economic conditions. It is also important that UTOS and UTOG have accumulated a lot of positive experience in employment, employment, vocational training and support, and labor and social relations with people with disabilities.

By the provisions of Article 18 of the Law of Ukraine "On the Fundamentals of Social Security of the Disabled in Ukraine" for people with disabilities who are unable to work in enterprises, institutions, and organizations, the state employment service assists in employment at home. At the same time, the analysis of the norms of the Labor Code of Ukraine shows that the issue of the possibility of home-based work is provided only for persons on childcare leave (Article 179). Issues of home employment are regulated by the resolution of the USSR State Committee for Labor and the Secretariat of the All-Ukrainian Central Executive Committee of September 29, 1981 No. 275 / 11-9921 (State Committee for Labor of the USSR and the Secretariat of the All-Ukrainian Central Executive Committee, 1981), which needs modernization. The first step should be the ratification of the ILO Convention 177 on Home Work (International Labor Organization, 1981), as well as the provision in labor law of conditions and requirements for the organization of homework and providing homeworkers with all labor rights.

The issue of job availability and smart accommodation remains open, and no progress has been made in recent years. The legislator, having introduced the term "reasonable accommodation" to the Law of Ukraine "On the Fundamentals of Social Security of the Disabled in Ukraine" and noted in the Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine" that this Law employer of the principle of reasonable accommodation, has not defined the principles of its implementation and responsibility for the refusal of reasonable accommodation.

It should also be noted that the legislation of Ukraine does not contain a definition of "discrimination on the grounds of disability", as well as a detailed definition of disability, which complicates the resolution of the subject of administrative relations to protect the rights and freedoms of persons with disabilities and prosecution subjects liable for the violation of the rights and freedoms of persons with disabilities. We propose to amend the Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine" (Verkhovna Rada of Ukraine, 2013) of October 14, 2014, in particular, to establish the definition of "discrimination on the grounds of disability" as defined in the Convention on the Rights of Persons with Disabilities. This scientific position, in our opinion, deserves support.

In our opinion, to ensure a higher level of social protection for workers with disabilities, it is necessary to amend the legislation to provide “adaptation” in the workplace for people with disabilities, as well as support the necessary support for people with disabilities in the workplace. We believe that Article 42 of the Labor Code of Ukraine “Preferential right to stay at work when dismissing employees in connection with changes in the organization of production and labor needs to be improved, in particular, to expand the preemptive right to stay at work in these circumstances not only with disabilities due to war, and for all persons with disabilities without exception.” We believe that a separate chapter should be developed in the draft of the new Labor Code, which would be devoted to the legal regulation of the work of persons with disabilities. In addition, the definition of a person with a disability should be consolidated; guarantees after the employment contract, the specifics of their employment; transfer to another job, dismissal at the initiative of the employer, etc. There should also be a clear ban on the reduction of this category of persons and provide for the responsibility of the employer for non-compliance or violation of the labor rights of persons with disabilities.

5. Conclusions

Persons with disabilities in Ukraine have all the full socio-economic, political, and personal rights and freedoms enshrined in the Constitution of Ukraine and other legislative acts. According to the Law of Ukraine “On the Fundamentals of Social Security of the Disabled in Ukraine”, to realize the creative and productive abilities of people with disabilities and individual rehabilitation programs, they have the right to work in enterprises, institutions, organizations, and entrepreneurial and other labor activity that is not prohibited by law. According to Article 18 of the same Law, enterprises, institutions, organizations, and individuals who use hired labor are obliged to allocate and create jobs for the employment of persons with disabilities, including special jobs, create working conditions for them, taking into account individual rehabilitation programs and provide other socio-economic guarantees provided by current legislation. In addition, by Article 19 of the Law, the standard for enterprises is set at 4% of the average number of full-time employees per year, and if they work from 8 to 25 people - one job.

Summarizing the above, we can conclude that anyone with any disability group has the right to work, and the establishment of a disability cannot be grounds for dismissal. Undoubtedly, the disability group assigned to an employee indicates a limitation or loss of ability to work, but not every limitation or loss of ability to work may lead to the employee's incompatibility with the position or work performed. After all, many positions can be held, or types of work that can be successfully performed by employees who have a disability group. In addition, such workers may perform preliminary work in special conditions. We believe that to ensure a higher level of social and legal protection for persons with disabilities, it is necessary to amend the labor legislation of Ukraine.

It should be noted that the recent reforms in Ukraine, as well as the realities of the modern labor market, necessitate continuous improvement of labor legislation and mechanisms for its implementation. We consider it necessary to develop a separate chapter in the draft of the new Labor Code of Ukraine, which would be devoted to the legal regulation of the work of persons with disabilities. In addition, it is necessary to consolidate the definition of “person with a disability”, guarantees when concluding an employment contract, the specifics of their employment, transfer to another job, dismissal at the initiative of the employer, etc. It also seems expedient in the prospective labor legislation to envisage not only legislative measures to preserve jobs, but also a clear ban on reducing this category of persons and strengthening the protection of persons with disabilities from dismissal. In addition, it is necessary to provide for the responsibility of the employer for non-compliance or violation of the labor rights of persons with disabilities.

The results obtained in the research process can be used in further scientific studies of individual provisions that make up the content of labor relations with the disabled, as well as in

rule-making activities in the improvement of acts of the current legislation, which will be important for ensuring legal guarantees for the exercise of the right to work by the disabled. Future directions of research in this field may be the issue of establishing quotas for the employment of disabled people; employment mechanisms for persons with disabilities; self-employment of people with disabilities; provision of "adaptation" at the workplace for people with disabilities, etc.

References

Amelicheva, L.P., & Nefedov, O.V. (2017). Precarization is a factor in the transformation of the institution of labor law employment in a shortage of decent work. *Law Journal of Donetsk University*, 1(2), 13-24.

Baciu, E.L., & Lazar, T.A. (2017). Between equality and discrimination: disabled persons in Romania. *Transylvanian Review of Administrative Sciences*, 13(51), 5-19.

Butynska, R.Ya. (2019). Labor protection as a function of labor law. *Socio-Legal Studies*, 2(4), 82-87.

General Assembly. (2006). *Convention on the Rights of Persons with Disabilities*.
https://zakon.rada.gov.ua/laws/show/995_g71#Text

Halytsky, O.M. (2019). World experience in implementing the state policy of support for persons with disabilities and its implementation in Ukraine. *Investments: Practice and Experience*, 6, 122-127.

International Labor Organization. (1981). *Convention No.177 "On Homework."*
https://zakon.rada.gov.ua/laws/show/993_327#Text

Kazarian, G. (2017). Structural and functional model of institutional regulation of the system of socio-economic support of persons with disabilities. *Economic Analysis*, 27(3), 248-253.

Kazarian, G. (2019). Scientific and methodological mechanisms of socio-economic support of persons with disabilities. *Economic Analysis*, 29(1), 21-28.

Kondratenko, V. (2018). Administrative and legal means of ensuring the right to work of persons with disabilities: the system and ways of development. *National Legal Journal: Theory and Practice*, 30(2-2), 59-63.

Lejeune, A., & Ringelheim, J. (2019). Workers with disabilities between legal changes and persisting exclusion: how contradictory rights shape legal mobilization. *Law & Society Review*, 53(4), 983-1015.

Melnik, K.Yu., & Babenko, A.O. (2016). *Problems of legal guarantees of labor rights of employees when concluding, changing, and terminating an employment contract*. Kharkiv National University of Internal Affairs.

Miller, V.P. (2018). International legal regulation of social protection of persons with disabilities in the field of rehabilitation and labor: theoretical and legal approach. *Prykarpattya Legal Bulletin*, 1, 63-67.

Oliynyk, V.V., Ghazaryan, G.G., & Shcherbata, M.Yu. (2021). Public policy of state institutions on socio-economic security of persons with disabilities. *Investments: Practice and Experience*, 2, 91-97.

Overchuk, V.A. (2019). Factors influencing and employment indicators of persons with disabilities with the assistance of the state employment service. *Scientific View: Economics and Management*, 1(63), 166-172.

Safonik, N.P. (2018). Features of employment of persons with disabilities in the socio-economic development of Ukraine. *Scientific Bulletin of Kherson State University. Economic Sciences*, 28(2), 136-140.

Shevchenko, A., Kydin, S., Kamarali, S., & Dei, M. (2020). 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*, 38(2), 54-61. <https://doi.org/10.33531/farplss.2020.2.10>

Shoemaker, D.Yu. (2017). *Organizational and legal forms of employment promotion*. Kharkiv National University of Internal Affairs.

State Committee for Labor of the USSR and the Secretariat of the All-Ukrainian Central Executive Committee. (1981). Decree. *On Approval of the Regulations on Working Conditions of Homeworkers*. Verkhovna Rada of Ukraine <https://zakon.rada.gov.ua/laws/show/v0275400-81#Text>

Sydorenko, V., Shorobura, I., Ponomarenko, A., Dei, M., & Dzhus, O. (2020). Application of technologies of formal and non-formal education for continuous professional development of the modern specialist. *Revista Tempos E Espacos Em Educacao*, 13(32), 1-24. <https://doi.org/10.20952/revtee.v13i32.14729>

United Nations. (2006). *Convention on the Rights of Persons with Disabilities*. Verkhovna Rada of Ukraine. https://zakon.rada.gov.ua/laws/show/995_g71#Text

United Nations. (2020). *The United Nations and Disabled Persons - The First Fifty Years*. <https://www.un.org/esa/socdev/enable/dis50y10.htm>

Vavzhenchuk, S. (2015). Unity and differentiation of measures of preventive protection, protection of labor rights and measures of labor liability. *Public Law*, 3(19), 278-283.

Vavzhenchuk, S.Ya. (2016). *Protection and protection of labor rights of workers: a textbook*. Law.

Verkhovna Rada of Ukraine. (1971). *Labor Code of Ukraine*. Parliament of Ukraine. <https://zakon.rada.gov.ua/laws/show/322-08#Text>

Verkhovna Rada of Ukraine. (1991). *Law of Ukraine. On the Fundamentals of Social Security of the Disabled in Ukraine*. Parliament of Ukraine. <https://zakon.rada.gov.ua/laws/show/875-12#Text>

Verkhovna Rada of Ukraine. (1992). *Law of Ukraine. On Labor Protection*. Parliament of Ukraine. <https://zakon.rada.gov.ua/laws/show/2694-12#Text>

Verkhovna Rada of Ukraine. (1993). *Law of Ukraine. On the Status of War Veterans, Guarantees of Their Social Protection*. Verkhovna Rada of Ukraine. <https://zakon.rada.gov.ua/laws/show/3551-12#Text>

Verkhovna Rada of Ukraine. (1996). *Constitution of Ukraine*. Parliament of Ukraine. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

Verkhovna Rada of Ukraine. (1997). *Law of Ukraine. On Vacations*. Parliament of Ukraine. <https://zakon.rada.gov.ua/laws/show/504/96-%D0%B2%D1%80#Text>

Verkhovna Rada of Ukraine. (2006). *Law of Ukraine. On Rehabilitation of the Disabled in Ukraine*. Parliament of Ukraine. <https://zakon.rada.gov.ua/laws/show/2961-15#Text>

Verkhovna Rada of Ukraine. (2013). *Law of Ukraine. On Employment*. Parliament of Ukraine. <https://zakon.rada.gov.ua/laws/show/5067-17#Text>

Verkhovna Rada of Ukraine. (2013). *Law of Ukraine. On the Principles of Preventing and Combating Discrimination in Ukraine*. Parliament of Ukraine. <https://zakon.rada.gov.ua/laws/show/5207-17#Text>

Zabeyda, T.O., & Chepys, I.V. (2020). Regarding the range of persons who have additional guarantees in promoting employment. *Bulletin of the Vasyl Stus DonNU Student Scientific Society*, 1(12), 60-63.



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