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LEGAL REGULATION OF TEMPORARY LABOUR MIGRATION IN LABOUR AND PRIVATE INTERNATIONAL LAW OF UKRAINE

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Abstract. This scientific article focuses on the study of the problems of temporary labour migration that exist at the theoretical and legislative levels. The connection of temporary labour migration with private international law and labour law is reflected since the legal relations arising in the field of temporary labour migration are cross-border in nature and go beyond the national legal regulation. The purpose of this study is to focus on the study of the state of legal regulation of temporary labour migration in private international law and labour law of Ukraine and identify problems of regulating temporary labour migration. The analysis of scientific sources and legislation made it possible to establish that the legal response to temporary labour migration in the legislation of Ukraine has significant shortcomings. In particular, the content of the concept of "temporary labour migration" is not defined; the list of labour relations falling under the category of temporary labour migration is not defined; the scope of persons acquiring the status of temporary labour migrant is not defined; there are no norms reflecting the specifics of legal regulation of temporary labour migration as well as there are no norms reflecting guarantees and protection of temporary labour migrants.

Keywords: labour migration, labour migrants, migration policy, national legislation of Ukraine, Private International Law, protection of migrant workers' rights, temporary labour migration temporary protection.

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The author prepared the article independently. The author independently selected the literature, analyzed it and formulated conclusions

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INTRODUCTION

The development of any social relations depends on the quality of their legal regulation. Relations in the field of labour migration aren't any different. In the context of current political and economic processes in the world, the migration of the population for employment in a foreign country (labour migration) has increased, and this can be both permanent and temporary phenomenon. Temporary

labour migration is a fairly common situation for Ukraine – Ukrainian citizens migrate to other countries, mainly to EU countries, for employment purposes and foreigners migrate to Ukraine for employment purposes also.

Temporary labour migration is a topical issue in modern labour and private international law (PIL), as more than 6 million Ukrainians were forced to migrate since the beginning of the full-scale war in Ukraine (as of July 15, 2024, according to UNHCR, 6579700 Refugees from Ukraine recorded globally; UNHCR, 2024) and achieved an employment in a foreign country. In addition, approximately 3 million Ukrainians worked temporarily abroad before the war began (Institute of Demography and Social Studies of NAS of Ukraine, 2018; Libanova & Pozniak, 2020, p.25). Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Directive 2001/55/EC), provided an opportunity for persons benefiting from the temporary protection mechanism to work in the EU without obtaining a prior work permit. Therefore, it is extremely important that the legal regulation of relations in the field of temporary labour migration meets the current problems and needs of labour migrants and responds promptly to the problems arising in the process of temporary labour migration. In addition, it is of the highest importance to respect the rights of such workers, as moving to a foreign country, language barriers, difficulty in finding a job within a speciality and differences in the legal regulation of labour relations make certain difficulties for labour adaptation and proper performance of employment duties. Migrant workers often face various forms of discrimination in employment and occupation. In such circumstances, they do not understand which country's law applies to the regulation of their labour relations or other paid activities in a foreign country, or which country's court temporary labour migrants can apply to protect their rights.

The legal relations arising in the field of temporary labour migration are of a cross-border format and go beyond the scope of national legal regulation. Otherwise speaking, temporary labour migration is a borderline format and at the same time is the subject of PIL and labour law. The combination of all these circumstances indicates the need to study the status of legal regulation of temporary labour migration in PIL and the labour law of Ukraine.

This article **aims** on the study of the status of legal regulation of temporary labour migration in PIL and the labour law of Ukraine, which will allow identifying problematic aspects of legislation on temporary labour migration regulation. To achieve this goal, the author stated the following objectives: to study the current state of legal regulation of temporary labour migration in the national legislation of Ukraine and the experience of legal regulation of temporary labour migration by the national legislation of some EU countries; to characterise the state of international legal regulation of temporary labour migration.

LITERATURE REVIEW

The issues of temporary labour migration have not been the subject of research at the theoretical and legal level in PIL and labour law of Ukraine. The analysis of recent publications shows that scientists have studied certain issues of legal regulation of labour relations on the border of labour law and PIL. In particular, in PIL of Ukraine, the problems of regulating labour relations complicated by a foreign element have been studied in the following aspects: V. Khimich studied the peculiarities of regulation of employment relations in international private law and labour law of Ukraine (Khimich, 2022), K. Buriak provided a comprehensive legal study of features of conflict-of-laws regulation of international work relations (Buriak, 2021). Thus, we see that in PIL of Ukraine, the legal scholars have focused on the problems and peculiarities of regulation of labour relations with a foreign element. In the labour law of Ukraine, the legal scholar's attention was focused on the following migration issues: V. Andriyiv studied the trends of modern international migration (Andriiv, 2017), L. Amelicheva focused on the right to decent work of labour migrants in the context of globalisation (Amelicheva,

2020), V. Venediktov and I. Kravchenko studied mediation in the implementation of labour rights of migrants (Venediktov & Kravchenko, 2022), S. Kozin substantiated the features of the legal status of migrants as subjects of labour law (Kozin, 2020). However, the features and problems of legal regulation of temporary labour migration in Ukrainian legal science remain unexplored and this is an issue of topical interest.

With regard to the study of legal regulation and theoretical and legal aspects of temporary labour migration in foreign countries, it should be noting the limited number of publications that would study the problems of temporary labour migration. In most of the existing publications, scholars focused on specific issues of labour migration. For example, L.F. Vosko studied the temporary labour migration by any other name: differential inclusion under Canada's "new" international mobility regime (Vosko, 2020), Wright, C., D. Groutsis and D. van den Broek studied the employer-sponsored temporary labour migration schemes in Australia, Canada and Sweden (Wright, Groutsis and D. van den Broek, 2017), L. Bartolini explored an international organization's approach to labour migration for human development» (Bartolini, 2023), U. Liukkunen analysed the problems of decent work and private international law (Liukkunen, 2022). However, among these scientific publications, there are no studies of the legal regulation of temporary labor migration on the border of labour legislation and PIL.

METHODOLOGY

To achieve this goal, the study used general and special scientific methods. The application of the comparative legal method made it possible to study the legal regulation of temporary labour migration in the national legislation of Ukraine and international legislation, as well as in foreign national legislation of some European countries. Using the legal analysis method, the author identifies the shortfalls of legal regulation of temporary labour migration. A comprehensive review of the literature provides the opportunity to find out the state of research on the issue in PIL and labour law in Ukraine and other countries.

RESULTS AND DISCUSSION

1. The state of temporary labour migration in Ukraine

The problem of temporary labour migration of Ukrainians was relevant in the pre-war period and became even more urgent with the full-scale invasion. And there is a reason for that because there are many factors that lead to an increase in temporary labour migration. In author opinion, the factors that have a serious impact on temporary labour migration in Ukraine are the following: a decline in living standards, which leads to migration for employment; internationalisation of economic activity – employees are moved within countries where there are separate divisions of the main employer; the war in Ukraine (Ukrainians who to enjoyed temporary protection in the EU have the right to work in the host country without obtaining a prior work permit); simplification of the employment procedure.

The effects of temporary labour migration can be both positive and negative for countries. For Ukraine, it is mostly negative, as there is a human capital flight and a shortage of workers in some areas, which threatens Ukraine with demographic and economic consequences. In the pre-war period, Ukraine has confidently maintained its status as a global labour donor over the past decades. By various estimates, the annual number of external labour migrants ranged from 2 to 5 million people (Institute of Demography and Social Studies, 2018; Libanova & Pozniak, 2020). Since the outbreak of military activities in Ukraine, the situation has become even worse.

The migration policy of independent Ukraine before the full-scale invasion was formal and not interested in the return of citizens. Ukraine had no migration attractiveness compared to other countries. Only in 2017 did the Cabinet of Ministers of Ukraine approve the Strategy of State

Migration Policy of Ukraine until 2025 (hereinafter referred to as the Strategy). The Strategy states that labour migration, which is the most massive migration influx, has a multifaceted impact on Ukrainian society. On the one hand, it reduces tension in the labour market, contributes to the welfare of many families, is a source of foreign exchange earnings and intangible transfers of new knowledge and experience that can contribute to the development of the country, but on the other hand, it causes a shortage of workers in some industries and fields, negatively affects family relationships, child-rearing, and birth rates; migrants' earnings used for consumption provoke price increases, inflation, and import growth (Regulations of the Cabinet of Ministers of Ukraine, 2017). In fact, the Strategy is the one and only official document in Ukrainian legislation that refers to "temporary labour migration".

For foreign countries that provide employment opportunities for labour migrants, there is a largely positive outcome, as the shortage of highly skilled workers is covered and the pension system is not burdened. However, there is a consensus in the academic literature that temporary Labour Migration Programs – even if carefully managed by governments – have left too many migrant workers vulnerable to exploitation and abuse and too many employers reliant on temporary, low-wage migrant labour and therefore without the incentive to develop a sustainable local workforce and improve salaries and working conditions (Costa and Martin, 2018).

Ukrainian legislation has developed a mechanism for the legal regulation of cross-border labour relations, otherwise speaking an employment of Ukrainian citizens abroad and employment of foreigners in Ukraine, but the issue of temporary labour migration and the features of its legal regulation remain outside the scope of legal regulation.

Ukrainian legislation not properly regulate temporary labour migration, and there is a problem with the terminology, so we should name some of them: the meaning of the term "temporary labour migration" is not defined; the list of labour relations coming within the category of temporary labour migration is not defined; the scope of persons who acquire the status of temporary labour migrants is not defined; there are no regulatory provisions reflecting the specifics of legal regulation of temporary labour migration; there are no legislation reflecting guarantees and protection of temporary labour migrants.

Under the above-mentioned gaps in legislation, the question arises as to how to regulate the legal relations existing in society if they actually exist but are not defined in legislation. Which subjects can be classified as "temporary labour migrants" and how can their rights be protected at the national and international levels if basic terminological definitions are not available? It bears emphasis that the International Labour Organization (ILO) and other international institutions use the term "temporary labour migration", but there is no clear definition of its content either at the national legal level or at the international one. The report prepared by the ILO "Temporary Labour Migration: Unpacking Complexities – Synthesis Report" states that there is no clear definition of temporary migration, either in the academic literature or at the policy level (ILO, 2022).

Therefore, migration processes in the field of cross-border employment are dynamically increasing every year, which raises new challenges for the existing national and international legal mechanisms for the legal regulation of labour migration. We are convinced that the primary task in improving the observance of the rights and legitimate interests of temporary labour migrants, as well as establishing appropriate guarantees for them, is to develop legislation at the national and international levels, taking into account the current problems that exist in the regulation of temporary labour migration.

2. Legal regulation of temporary labour migration

2.1. Legal regulation of temporary labour migration in Ukrainian legislation

The legal regulation of labour migration falls within the scope of labour law, migration law and PIL. Labour law determines the procedure for realizing the right to work, labour protection, remuneration, working hours and rest. Migration law defines the grounds and procedure for staying in a foreign country for employment. The rules of PIL define the procedure for resolving disputes involving a foreign element in labour relations. As noted in the academic literature, migration law is

known for establishing its own regulatory categorization and approaches that have not only reshaped the protective framework of labour law but also influenced PIL (Liukkunen, 2022, p. 881). These three vectors of legal regulation are inextricably linked in terms of protecting the rights and legitimate interests of migrant workers.

The legal regulation of labour migration in Ukrainian is governed by the Constitution of Ukraine (1996), the Labour Code of Ukraine, the Law of Ukraine "On Employment" (2012), the Law of Ukraine "On External Labour Migration" (2015), the Law of Ukraine "On Private International Law" (2005). To identify the gaps in the legal regulation of temporary labour migration and to formulate proposals for improving the current legislation, it is necessary to analyse these statutory instruments.

Article 43 of the Constitution of Ukraine, the Fundamental Law of Ukraine, states that everyone has the right to labour, including the possibility to earn one's living by labour that he or she freely chooses or to which he or she freely agrees (1996). To implement this principle, Ukrainian citizens have the right, inter alia, to enter into labour contracts with foreign employers both in Ukraine and abroad.

The Law of Ukraine "On Employment" (2012) enshrined the right of Ukrainian citizens to engage in labour activity abroad, if it does not contradict the legislation of Ukraine and the host country. The rights of Ukrainian citizens working abroad are protected by the laws of Ukraine and the host country unless otherwise provided by international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine (Article 10). The peculiarity of regulating relations in the field of temporary labour migration is that the regulation of such relations is significantly influenced by the national legislation of the country in which the work is performed and the national legislation of the country of origin of the employee. That is, Ukrainian legislation directly states that the rights of Ukrainian citizens working abroad are protected by the laws of Ukraine and the host country. Surely, as a general rule, the labour relations of Ukrainian citizens working abroad will be regulated by the laws of the country in which the work is performed, but Ukrainian legislation should contain the conceptual framework of temporary labour migration, for example the meaning of the term "temporary labour migration"; the list of labour relations falling within the category of temporary labour migration; the scope of persons who acquire the status of temporary labour migrants; the specifics of taxation of temporary labour migration; guarantees and protection of temporary labour migrants, recording of labour and insurance experience.

With respect to the employment of foreigners in Ukraine, Article 3 of the Law of Ukraine "On Employment" provides that foreigners and stateless persons permanently residing in Ukraine, who are recognised as refugees in Ukraine, who have been granted asylum in Ukraine, who are recognised as persons in need of additional protection, who have been granted temporary protection, and who have obtained a permit to immigrate to Ukraine, have the right to employment on the grounds and in accordance with the procedure established for citizens of Ukraine. Foreigners and stateless persons who have arrived in Ukraine for employment for a fixed period of time are hired by employers on the basis of a work permit for foreigners and stateless persons issued under the procedure established by this Law, unless otherwise provided by laws and/or international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine (2012). As we can see from the above provisions, the Law of Ukraine "On Employment" does not mention the term of employment of Ukrainian citizens abroad, however, it clearly establishes the term of employment of foreigners and stateless persons in Ukraine.

The Labour Code of Ukraine stipulates that the labour relations of Ukrainian citizens working abroad, as well as labour relations of foreign citizens working at enterprises, institutions and organisations of Ukraine, are regulated by the Law of Ukraine "On Private International Law" (Article 8). In other words, the Labour Code of Ukraine shall not regulate cross-border labour relations but only refer to the Law of Ukraine "On Private International Law", although it would be more logical to refer to the Law of Ukraine "On Employment", since the Law of Ukraine "On Private International Law" contains only the conflict-of-laws rules that do not give elucidations on issues how to regulate

this type of legal relationship. All the provisions of the Law of Ukraine "On Private International Law" are conflict-of-laws and determine only the law that should be applied to the regulation of labour relations complicated by a foreign element.

The Law of Ukraine "On Private International Law" (2005) governs the procedure for determining the law applicable to work abroad, regulating labour relations of foreigners and stateless persons working in Ukraine and relations of Ukrainian citizens working abroad. Pursuant to Article 52 of the Law of Ukraine "On Private International Law", the law of the state where the work is performed applies to labour relations, unless otherwise provided by law or an international treaty of Ukraine. However, it should be noted that not all cross-border labour relations are governed by the law of the state where the work is performed. The Law of Ukraine "On Private International Law" (2005) defines exceptional circumstances when the competence to regulate labour relations abroad is vested in a state other than the state where the work is performed. Such exceptions relate to the regulation of the labour of foreigners in Ukraine and Ukrainian citizens abroad.

The circumstances under which the labour relations of Ukrainian citizens working abroad are regulated by the law of Ukraine are defined in Article 53 of the Law of Ukraine "On Private International Law". Cross-border labour relations may be governed by Ukrainian law on the occurrence of any of the following: 1) if Ukrainian citizens work in foreign diplomatic missions of Ukraine; and 2) if Ukrainian citizens have entered into employment agreements with employers (individuals or legal entities of Ukraine) to perform work abroad, including in their separate subdivisions, if this does not contradict the legislation of the state where the work is performed (2005). Thus, it can be stated that the national legislation of the employee's country of origin may also be applied in the regulation of such labour relations.

As for the regulation of labour relations of foreigners and stateless persons working in Ukraine, this issue is regulated by Article 54 of the Law of Ukraine "On Private International Law". The law defines cases when labour relations of foreigners and stateless persons working in Ukraine are not regulated by Ukrainian law. These are the following: 1) foreigners and stateless persons are employed by diplomatic missions of foreign states or representative offices of international organisations in Ukraine, unless otherwise provided by an international treaty of Ukraine; 2) foreigners and stateless persons outside Ukraine have entered into employment agreements with foreign employers (individuals or legal entities) to perform work in Ukraine unless otherwise provided by agreements or an international treaty of Ukraine (2005). It is worth noting that the Law of Ukraine "On Private International Law" does not contain a conflict-of-laws rule that would regulate temporary employment. In other words, the labour relations of foreigners working in Ukraine may also in some cases be governed by the law of the employee's country of origin, rather than the law of the country in which the work is performed.

The issue of legal and organisational principles of state regulation of external labour migration and social protection of Ukrainian citizens abroad (labour migrants) and members of their families is regulated by a special regulatory act – the Law of Ukraine "On External Labour Migration" (2015). According to Article 1 of the Law of Ukraine "On External Labour Migration", external labour migration is the movement of Ukrainian citizens related to crossing the state border for employment purpose in the host country.

An analysis of the content of the concept of "external labour migration" suggests two characterising features: 1) crossing the border and 2) a special purpose – performing the gainful activity in the host state. As we can see, the legislator shall not apply the criterion of time limit when defining the concept of external labour migration. Thus, any movement across the state border for employment is external labour migration. Such a special purpose as gainful activity in the host country should be of primary importance. The scope of the Law of Ukraine "On External Labour Migration" applies to labour migrants who: 1) work under a contract; 2) work independently; 3) provide paid services (perform work); 4) perform other gainful activities not prohibited by the legislation of the host country. In addition, the provisions of this law also apply to family members of labour migrants. The fact that

labour migrants work under the contract indicates that the contract may be fixed-term or open-end. The fixed-term employment contract is a sign that indicates the temporary nature of the employment relationship that arises between a foreign employer and an employee who is a citizen of Ukraine. Therefore, we believe that the absence of provisions regulating temporary labour migration in this law is a significant gap in Ukrainian legislation.

It is also worth noting that the Law of Ukraine "On External Labour Migration" shall not cover all relations related to labour migration. The exception is specified in paragraph 3 of Article 2 of the Law of Ukraine "On External Labour Migration". This Law shall not apply to: 1) citizens of Ukraine who are seeking asylum or have been granted asylum in the host country; 2) persons receiving education, professional training and advanced training abroad, in particular within the framework of educational programmes; 3) employees of the diplomatic service and employees of other state authorities working in foreign diplomatic institutions of Ukraine; 4) employees posted by enterprises, institutions and organisations to perform work in the host country. Having analysed this provision, we can assume that the list of persons referred to in Article 2(3) of the Law of Ukraine "On External Labour Migration" includes persons falling under the category of temporary labour migrants. In particular, in our opinion, these are employees posted by enterprises, institutions and organisations to perform work in the host country, persons who improve their qualifications abroad, and guest workers. In proof of this statement we found a similar opinion in the literature: "Temporary immigrants are seasonal workers, international students, service providers; persons on international exchange, etc"(ILO, 2022, p. 6). Also, the Law of Ukraine "On External Labour Migration" shall not mention seasonal workers. Therefore, we can assume that temporary labour migration is a type of external labour migration. At the same time, a significant gap in the Law of Ukraine "On External Labour Migration" is that its provisions shall not apply to seasonal workers and posted workers. In fact, the issue of legal regulation of temporary labour migration of seasonal workers and posted workers remains outside the scope of legal regulation.

2.2. Experience of legal regulation of temporary labour migration by national legislation of some EU countries

Compared to the Ukrainian experience of legal regulation of temporary labour migration, it is interesting to study the legal regulation of this issue in the national legislation of other countries. The author believes that the comparison should be based on the following main criteria: legal regulation of temporary labour migration in the national legislation of foreign countries; fixed-term restrictions on temporary employment of migrant workers in a foreign country; the need to obtain a work permit; the procedure for resolving conflicts in fixed-term labour relations with a foreign element. Our study is limited in scope and objectives, so let us consider the experience of legal regulation of several countries as an example.

By way of illustration, we consider the example of Finland. The legal regulation of temporary labour migration in Finnish national legislation is carried out by the Employment Contracts Act (Työsopimuslaki 55/2001), and the Act on Posting Workers (Laki työntekijöiden lähettämisestä 17.6.2016/447). The right to work of labour migrants is also provided for in the Aliens Act (Ulkomaalaislaki 30.04.2004/301). In particular, the right to work by virtue of a residence permit is defined in Section 81a (216/2023), the right to work and the right to pursue a trade without a residence permit — in Section 81b (216/2023). Section 81 (216/2023) on the right to work also states that "Aliens other than those referred to in Sections 81a and 81b do not have the right to work, unless otherwise provided in another act". Almost all work related migration to Finland from third countries can be considered temporary as the residence permits based on employment are time limited and need to be renewed regularly in order to stay in the country (Helander, Holley & Uuttana, 2016, p. 2). The duration of temporary employment in Finland ranges from three months to two years. The procedure for resolving labour disputes with a foreign element in Finnish national law is regulated by Chapter 11 "International Employment Contracts and Applicable Law" (17.06.2016/448) of the

Employment Contracts Act (Työsopimuslaki 55/2001). This Chapter states that "Work performed in Finland is governed by Finnish employment legislation if the employment contract does not specify connections with other states. If the employment contract specifies a connection with two or more states, the law applicable to the employment contract is determined in accordance with Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I). This law also defines the procedure for regulating the labour of workers working on the basis of free movement (Section 2), posted workers (Section 3) and workers referred to in the Act on the conditions of entry and residence of third-country nationals in connection with relocation within a company (Section 4). Unlike Ukrainian legislation, the conflict of laws rules governing cross-border labour relations in Finland are regulated by a special Employment Contracts Act (Työsopimuslaki 55/2001).

German legislation regulates temporary labour migration by applying the provisions of the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet) and the Employment Ordinance (Verordnung über die Beschäftigung von Ausländerinnen und Ausländern, 2004) and Employment Ordinance (Verordnung über die Beschäftigung von Ausländerinnen und Ausländern, 2013). The requirements for residence and employment permits for foreigners in Germany are set out in the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet). In particular: foreigners who have a residence permit can engage in paid work, unless the law provides for a prohibition. Employment that goes beyond the prohibition or restriction requires permission from the Federal Employment Agency; each residence permit must indicate whether employment is permitted and subject to restrictions; a foreigner who does not have a residence permit can only perform conditional short-term work or seasonal work in accordance with the Employment Ordinance if he has a work permit from the Federal Employment Agency and can only perform other paid work if it is based on an intergovernmental agreement, law or legal act, he has the right to do so without a residence permit or the use of which has been authorized to him by the responsible authority (§ 4a of the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, 2004). That is, a prerequisite for the employment of temporary labor migrants is to obtain a work permit from the Federal Employment Agency.

According to German immigration policy, unskilled or low-skilled workers may stay in the country only temporarily. They cannot be granted permanent residence. The largest area is the employment of seasonal workers in the agricultural sector and the food-service industry (for no more than six months a year). This area also includes au pairs and domestic workers in households with persons in need of care (Labour migrations in Germany. Official site of Federal Ministry of the Interior and Community). Part 3 of the Employment Ordinance regulates temporary employment and defines the terms for temporary employment for the different categories of employees. Depending on the specifics of the job, the maximum period of temporary employment can be from 90 days (§14, 15a, 16) to 5 years (§ 11, 13) (Verordnung über die Beschäftigung von Ausländerinnen und Ausländern, 2013). In other words, German law provides for different periods of temporary employment depending on the type of temporary employment.

Conflict-of-laws rules governing labor relations with a foreign element in German law were contained in the Introductory Act of 1896 to the German Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche* –EGBGB). The 2024 version of the Law does not contain such conflict-of-laws rules. According to Article 3 of the EGBGB, the conflict-of-laws rules set out in EU law and in international conventions take precedence over the provisions of the Law in the areas of their application, so the provisions of Articles 3 and 8 of Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) will apply to the regulation of conflicts of employment relations with a foreign element.

In France, the issue of temporary labour migration is also regulated by the Code on the Entry and Stay of Foreigners and the Right to Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile, 2005) та Labour Code (Code du travail, 2008).

With regard to temporary labour restrictions in France, temporary labour migration is limited to a period of one month (L. 1242-2 of the Labour Code) to 18 months (L. 1242-8-1 of the Labour Code). A foreigner who is employed under an indefinite employment contract is issued a temporary residence permit, bearing the word "employee" with a maximum duration of one year. This residence permit is issued subject to the prior work permit under the conditions stipulated in Articles L. 5221-2 of the Labour Code (Code du travail). According to the provisions of article L. 1242-3, a fixed-term employment contract may only be concluded for the performance of a specific and temporary task and only in the following cases: replacement of an employee; temporary increase in the company's activities; seasonal work; replacement of the head of a craft, industrial or commercial enterprise; replacement of the head of the farm or enterprise; hiring engineers and supervisors (L. 1242-2 of the Labour Code).

The exercise of the right to work of foreign citizens on the territory of France is possible on the basis of obtaining a work permit.

The Labour Code stipulates that any jurisdictional clause included in an employment contract is null and void (Article L1221-5), which means the application of French law to labor relations.

Thus, based on the analysis of the legislation of Finland, France and Germany on the temporary employment of foreigners, it can be concluded that the work of foreigners in the territory of separate EU countries is limited by the terms that are set by each country individually in accordance with the internal migration policy and the level of qualification of the employee. Employment of a temporary labour migrant is possible with a special work permit. As a general rule, the procedure for resolving conflicts in fixed-term employment relations with a foreign element is carried out in accordance with lex loci laboris. If the employment contract specifies a connection with two or more states, the law applicable to the employment contract is determined in accordance with Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I).

2.3. The state of international legal regulation of temporary labour migration

Although this article focuses on studying the temporary labour migration in PIL and labour law of Ukraine, when analysing the state of legal regulation, we cannot be limited only to the level of national legislation of Ukraine. This is due to three factors. Firstly, in addition to national legislation, international instruments are important in regulating cross-border relations arising from temporary labour migration. Secondly, Ukraine was granted EU candidate status on June 23, 2022, which implies updating Ukrainian legislation and bringing it into line with EU law. Third, in general, the national law of the foreign country where the work is performed applies to the regulation of labour relations. Therefore, studying international mechanisms for regulating temporary labour migration is of significant importance also.

Among the ILO international instruments regulating temporary labour migration are the ILO Migration for Employment Convention No. 97 (Revised, 1949) and the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 (1975). Ukraine is not a party to them. These conventions also do not define the concept of temporary labour migration as well as the list of persons who are temporary labour migrants.

The EU has introduced the freedom of movement for workers within the EU, as stipulated in Article 45 of the Treaty on the Functioning of the European Union (2012) and Article 45 of the EU Charter of Fundamental Rights (2012). There are several acts in European legislation that have a serious impact on increasing labour migration. In particular, these acts include: Directive 2004/38 of April 29, 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Directive 2004/38/EC, 2004), Regulation 492/2011

of April 05, 2011 on freedom of movement for workers within the Union (Regulation No 492/2011/EU), Directive 2014/54/EU of April 16, 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (Directive 2014/54/EU), Regulation 2016/589 of April 13, 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets (Regulation 2016/589/EU), Directive 2021/1883 of October 20, 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC (Directive 2021/1883/EU), regulation of intra-corporate transfers and business trips is carried out by Directive 2014/66/EU of May 15, 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (Directive 2014/66/EU), seasonal work is regulated by Directive 2014/36/EU of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (Directive 2014/36/EU). The scope of these documents is to protect the rights of migrant workers and their families, to ensure the right of citizens of the Union and members of their families to move freely and reside in the territory of the Member States for the purpose of employment. In addition, these documents regulate the work of certain categories of workers who are temporary labour migrants. But unfortunately, Ukraine has not yet acceded to these acts. In the near future, Ukraine should adapt its legislation to the EU legislation, which is provided for by the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (hereinafter referred to as the Association Agreement). According to Article 114 of the Association Agreement, "The Parties recognize the importance of approximation of the current legislation of Ukraine to that of the European Union. Ukraine shall ensure that its existing laws and future legislation will be gradually made compatible with the EU acquis (Article 114(1). Such approximation will start on the date of signing of this Agreement, and will gradually extend to all the elements of the EU acquis referred to in Annex XVII to this Agreement (Article 114 (2)». The result of the harmonization of the national legislation of Ukraine on labour migration with the EU legislation will be the proper regulation of the labour of Ukrainian temporary labour migrants.

The European Convention on the Status of Migrant Workers adopted in 1977 (Council of Europe, 1977), and entered into force for Ukraine in 2007, is an important document in the sphere of international legal regulation of labour migration. Article 1 of this Convention defines the meaning of the term "migrant worker" and specifies the range of persons to whom the provisions of the Convention do not apply. The concept of a migrant worker for the purposes of this Convention is limited to a national of one Contracting Party who has been authorised by another Contracting Party to reside on its territory in order to take up paid employment (Council of Europe, 1977). In our opinion, the disadvantage of this Convention is the absence of an indication of what types of remunerated work a migrant worker can perform.

It is important to note that the above Convention contains a list of persons to whom the Convention shall not apply (Article 1). In particular, it shall not apply to: a) frontier workers; b) artists, other entertainers and sportsmen engaged for a short period and members of a liberal profession; c) seamen; d) persons undergoing training; e) seasonal workers; seasonal migrant workers are those who, being nationals of a Contracting Party, are employed on the territory of another Contracting Party in an activity dependent on the rhythm of the seasons, based on a contract for a specified period or specified employment; f) workers who are nationals of a Contracting Party, carrying out specific work in the territory of another Contracting Party on behalf of an undertaking having its registered office outside the territory of that Contracting Party. In addition, the content of the Convention shall not imply a classification of labour migrants into permanent and temporary workers. That is, there is only one definition of the concept of "migrant worker".

The next international document in this sphere is the Convention on the Legal Status of Migrant Workers and their Families, adopted by the member States of the Commonwealth of Independent

States in 2008[1]. This Convention governs the relations developing during all cycle of migration of migrant workers and members of their families. According to Article 3, this Convention shall not apply to: persons sent or employed by international organizations and agencies or persons sent or employed by a Party outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions; persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers; persons engaged in entrepreneurial activity, unless otherwise provided by the legislation adopted by the Parties and international treaties to which it is a party; persons seeking refugee status or asylum in the territory of a receiving Party; persons who have been granted refugee status or asylum in the territory of a receiving Party; clergymen engaged in religious activities in officially registered religious organisations in the territory of a receiving Party; seamen; persons arriving for the purpose of study; persons accredited in the territory of a receiving Party as employees of representative offices of foreign companies or mass media.

As can be seen from the analysis of the European Convention on the Status of Migrant Workers (1977) and the Convention on the Legal Status of Migrant Workers and Members of Their Families of the Commonwealth of Independent States of 2008, international treaties contain a wider list of workers who shall not fall under the definition of migrant workers than the Law of Ukraine "On External Labour Migration". Also, the Conventions shall not provide for a definition of the concept of "temporary labour migration". The list of persons not covered by the Conventions includes persons who, in our opinion, are temporary labour migrants. Thus, this issue is unregulated not only at the national level of Ukrainian legislation but also at the international legal level.

CONCLUSION

In accordance with the purpose and objectives of the study, the author makes the following conclusions. Temporary labour migration is a dynamically developing phenomenon which has an impact on both PIL and labour law of Ukraine. The cross-border nature of labour relations leads to the simultaneous regulation of relations related to temporary labour migration by the rules of PIL, labour law and migration law. Labour law determines the procedure for exercising the right to work, labour protection, remuneration, working hours and rest. Migration law defines the grounds and procedure for staying in a foreign country while performing paid work. The rules PIL define the procedure for resolving disputes involving a foreign element in labour relations.

The state of research on the problems of legal regulation of temporary labour migration at the theoretical level in Ukraine remains unsatisfactory. Scientists have studied certain issues of legal regulation of labour relations with a foreign element on the borderline of labour law and PIL. In the EU countries, there is a limited number of publications that explore the problems of legal aspects of temporary labour migration.

The legal regulation to temporary labour migration in Ukrainian legislation has significant shortcomings. In particular, the content of the concept of "temporary labour migration" is not defined; the list of labour relations falling under the category of temporary labour migration is not defined; the scope of persons acquiring the status of temporary labour migrant is not defined; there are no norms reflecting the specifics of legal regulation of temporary labour migration as well as there are no norms reflecting guarantees and protection of temporary labour migrants.

In the European Union, there are a significant number of acts to protect the rights of migrant workers and their families, to ensure the right of citizens of the Union and members of their families

[1] Ukraine has ceased to be a member of the Commonwealth of Independent States and is gradually withdrawing from the international agreements of this organization, in which it participated. Convention on the Legal Status of Migrant Workers and Members of Their Families in the Member States of the Commonwealth of Independent States of 14 November 2008. https://zakon.rada.gov.ua/laws/show/997_j82?lang=en

to move freely and reside in the territory of the Member States for the purpose of employment. In addition, these documents regulate the work of certain categories of workers who are temporary labour migrants. But unfortunately, Ukraine has not yet acceded to these acts. In the near future, Ukraine should adapt its legislation to the EU legislation, which is provided for by the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. The result of the harmonization of the national legislation of Ukraine on labour migration with the EU legislation will be the proper regulation of the labour of Ukrainian temporary labour migrants.

The migration processes in the sphere of cross-border employment are dynamically increasing every year, which poses new challenges for the existing national and international legal mechanisms of legal regulation of labour migration. The primary task of improving the observance of the rights and legitimate interests of temporary labour migrants, as well as establishing appropriate guarantees for them, is to develop legislation at the national and international level, taking into account the current problems that exist in the regulation of temporary labour migration, as well as to conclude bilateral agreements with countries interested in labour migrants.

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ПРАВОВЕ РЕГУЛЮВАННЯ ТИМЧАСОВОЇ ТРУДОВОЇ МІГРАЦІЇ У ТРУДОВОМУ ТА МІЖНАРОДНОМУ ПРИВАТНОМУ ПРАВІ УКРАЇНИ

Анотація. Стаття присвячена дослідженню тимчасової трудової міграції на межі трудового права та міжнародного приватного права України, оскільки це соціальне явище є досить поширеним в Україні. Визначено чинники, які мають суттєвий вплив на тимчасову трудову міграцію в Україні та охарактеризовано позитивні та негативні наслідки тимчасової трудової міграції.

Метою даного дослідження є зосередження уваги на вивченні стану правового регулювання тимчасової трудової міграції в трудовому праві та міжнародному приватному праві України та виявленні сучасних проблем регулювання тимчасової трудової міграції.

Методологічну основу статті склали загальні та спеціальні наукові методи. Застосування порівняльно-правового методу дало змогу дослідити правове регулювання тимчасової трудової міграції в національному законодавстві України, міжнародному законодавстві, а також у зарубіжному національному законодавстві деяких європейських країн. За допомогою методу правового аналізу автор виявляє недоліки правового регулювання тимчасової трудової міграції у законодавстві України. Комплексний огляд літератури дає змогу з›ясувати стан наукових досліджень з цього питання в міжнародному приватному та трудовому законодавстві України і інших країн.

Встановлено, що в українському законодавстві розроблений механізм правового регулювання транскордонних трудових відносин, проте питання тимчасової трудової міграції та специфіка її правового регулювання залишаються поза сферою правового регулювання. Аналіз наукових джерел та законодавства дозволив встановити, що правове регулювання тимчасової трудової міграції в законодавстві України має суттєві недоліки. Зокрема, не визначено зміст поняття «тимчасова трудова міграція»; не визначено перелік трудових відносин, які підпадають під категорію тимчасової трудової міграції; не визначено коло осіб, які набувають статус тимчасового трудового мігранта; Відсутні норми, що відображають специфіку правового регулювання тимчасової трудової міграції, а також норми, що відображають гарантії та захист тимчасових трудових мігрантів.

Акцентовано увагу на тому, що міграційні процеси у сфері транскордонного працевлаштування з кожним роком динамічно посилюються, що ставить нові виклики для існуючих національних та міжнародно-правових механізмів правового регулювання трудової міграції. Першочерговим завданням удосконалення додержання прав і законних інтересів тимчасових трудових мігрантів, а також встановлення відповідних гарантій для них є розробка законодавства на національному та міжнародному рівні з урахуванням сучасних проблем, що існують у регулюванні тимчасової трудової міграції, а також укладення двосторонніх угод з країнами, зацікавленими у трудових мігрантах.

Ключові слова: трудова міграція, тимчасова трудова міграція, міграційна політика, трудові мігранти, захист прав трудових мігрантів, міжнародне приватне право, тимчасовий захист, національне законодавство України.

LEGAL REGULATION OF TEMPORARY LABOUR MIGRATION IN LABOUR AND PRIVATE INTERNATIONAL LAW OF UKRAINE

Abstract. This article is devoted to studying temporary labour migration on the border of Labour Law and Private International Law of Ukraine since this social phenomenon is common in Ukraine. The author identifies the factors that have a significant impact on temporary labour migration in Ukraine and characterizes the positive and negative consequences of temporary labour migration.

The purpose of this study is to focus on the study of the state of legal regulation of temporary labour migration in Labour Law and Private International Law of Ukraine and to identify modern problems of regulation of temporary labour migration.

The methodological basis of the article was made up of general and special scientific methods. The application of the comparative legal method made it possible to study the legal regulation of temporary labour migration in the national legislation of Ukraine and international legislation, as well as in the foreign national legislation of some European countries. The method of legal analysis, the author identifies the shortcomings of the legal regulation of temporary labor migration. A comprehensive review of the literature makes it possible to find out the state of scientific research on this issue in private international and labour legislation in Ukraine and other countries.

Ukrainian legislation has developed a mechanism for the legal regulation of cross-border labour relations, but the issues of temporary labour migration and the specifics of its legal regulation remain outside the scope of legal regulation. The analysis of scientific sources and legislation has made it possible to establish that the legal regulation of temporary labour migration in the legislation of Ukraine has significant shortcomings. In particular, the content of the concept of "temporary labour migration" is not defined; the list of labour relations that fall under the category of temporary labour migration is not defined; the circle of persons who acquire the status of a temporary labour migrant is not defined; there are no norms reflecting the specifics of the legal regulation of temporary labour migration, as well as norms reflecting the guarantees and protection of temporary labour migrants.

The migration processes in the sphere of cross-border employment are dynamically increasing every year, which poses new challenges for the existing national and international legal mechanisms of legal regulation of labour migration. The primary task of improving the observance of the rights and legitimate interests of temporary labour migrants, as well as establishing appropriate guarantees for them, is to develop legislation at the national and international level, considering the current problems that exist in the regulation of temporary labour migration, as well as to conclude bilateral agreements with countries interested in labour migrants.

Keywords: labour migration, temporary labour migration, migration policy, labour migrants, protection of migrant workers' rights, Private International Law, temporary protection, national legislation of Ukraine.

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