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Peculiarities of Employment of Foreigners on the World Labour Market

Розглянуто проблеми працевлаштування іноземців як в Україні, так і за кордоном. Проведено аналіз співвідношення законодавства України з міжнародними стандартами і законодавством іноземних держав. Наведено пропозиції щодо покращення національного законодавства у сфері працевлаштування іноземців
***Ключові слова**: іноземці, трудові мігранти, міжнародні стандарти, працевлаштування іноземців, право на працю, усунення дискримінації.*

Рассмотрено проблемы трудоустройства иностранцев как в Украине, так и за границей. Проведён анализ соответствия законодательства Украины с международными стандартами и законодательством иностранных государств в сфере трудоустройства иностранцев. Предложены пути улучшения национального законодательства в сфере трудоустройства иностранных граждан.
***Ключевые слова**: иностранцы, трудовые мигранты, международные стандарты, трудоустройство иностранцев, право на работу, устранение дискриминации.*

The article deals with the problems of employment of foreigners both in Ukraine and abroad. The author analyses the correlation of Ukrainian labour law with the international standards and the corresponding laws of the foreign countries, such as the United Kingdom of Great Britain and Northern Ireland, the USA, Germany, Poland, Denmark, Israel, Kazakhstan and some others. The author also pays attention to the peculiarities of the employment of foreigners in different countries and especially to the restrictions in the rights of labour immigrants whose legal status varies from country to country and very often the state of national labour legislation is considered as contradicting to the World Labour Organisation Discrimination (Employment and Occupation) Convention as well as the regulations established by the European Social Charter. Among the disclosed issues are the also the ways of punishment for illegal employment of foreigners used in the international practice of labour legislation.

The article is relevant due to the introduction of the changes to the Law of Ukraine on Employment of the Population, aiming to transform the regulations for foreigners to fulfill their right to work. Beside the comparative analysis of the world practice of employment of foreigners and the state of the given problem currently existing in Ukraine, the author also gives recommendations as to the improvement of the national law in the sphere of employment of foreigners.
***Keywords**: foreigners, labour migrants, world standards, employment of foreigners, the right to work, abolishment of discrimination.*

Problem setting: modern social and economical transformations, held in the background of economy globalization, have led to the formation of the world labour market which resulted in the appearance of a great number of restrictions in the rights of immigrants, whose legal status varies in different countries. The increase in number of labour migrants in society leads not only to the discrimination and restriction of the rights of foreign employees themselves, but also violates the world standards in the sphere of labour relationships. The relevance of the problem lies in the fact that the rights and interests of foreign employees need to be regulated in accordance with the rights and interests of the country's own citizens.

The aim of the article is to define the peculiarities of the employment of foreigners in different countries, to analyze the world experience on this issue and to apply the gained knowledge to further improvement and development of Ukraine's legislation in this sphere, as the right to work is

considered to be the main and indefeasible human right protected worldwide.

State of research: the problems of employment of foreign citizens have been studied by such Ukrainian scientists as N.B.Bolotina, O.P.Horban', O.P.Radchuk, Ye.V.Strilchenko, S.O.Holyns'ka, A.V.Sliusar and others.

Unsolved problems: the novelty of this work lies in the comparative analysis of the world practice of employment of foreigners and the state of the given problem currently existing in Ukraine. It is especially relevant due to the introduction of the changes to the Law of Ukraine on Employment of the Population, which are to transform the regulations for foreigners to realize their right to work.

Presentation of the material: Article 6 of the International Covenant on Economic, Social and Cultural Rights (adopted on December, 19, 1966) recognizes the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right [6, 11]. The similar definition is found in Article 43 of the Constitution of Ukraine claiming that every citizen has the right to work which includes the opportunity to earn for living by work that he freely chooses or accepts [5] .

The state provides proper conditions for its citizens to fulfill their right to work, guarantees equal opportunities to choose an occupation and a sphere of working activity, realizes the vocational curriculum and training programs for employees according to the needs of the society. Thus, these provisions are applied not only to the citizens of the country, but also to foreigners and stateless persons [5].

However, there are some discrepancies of the national legislation norms in the sphere of employment of foreigners and the norms of the international law as, to one degree or another, they are in contradiction with the world standards. One of the problem is that in many countries employers have to pay a fee when hiring a foreigner which results in unfavorable conditions for them to provide employment for this particular category of persons. The amount of the fee varies in every country. Thus, in Ukraine employers are charged 3200 hrn if they hire a foreigner for up to a 6-month term, 6400 hrn for a period from 6 months up to a year and 9600 hrn – from a year up to 3 years [8]. In Poland this sum also depends on the duration of employment permission (up to 3 months – 18$, over 3 months – 36$). In Kazakhstan, if an employer wants to fill up the staff of his organization or establishment with foreign citizens, he has to pay a social tax (26% of wages in case a foreigner lives permanently in the republic; in case a foreign employee is living in the country temporarily, the fee comprises 5 monthly calculation indicators per every specialist and 10 – per every worker).

This financial charge of employers is contradicting to the World Labour Organisation Discrimination (Employment and Occupation) Convention (June, 25, 1958), which states that discrimination is any distinction, exclusion or preference made on the basis of foreign origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. According to Article 2 of the given Convention each member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof [4, 10].

As far as Ukraine is concerned, it should be stated that the norms of the national legislation also do not correspond to the regulations established by the European Social Charter (May, 3, 1996). This Charter states, that with the aim to provide the efficient realization of the right to profitable occupation on the territory of any other treaty part, these treaty parts assume a commitment to simplify existing formalities and reduce or abandon stamp and other taxes for foreign employees or their hirers [3].

Despite this, Article 42-4 of Law of Ukraine on Employment of the Population states that in a term of 10 days since the day of getting a decision on issuing or prolonging a permit, mailed by the local authorities of the central body of executive power implementing state policy in the sphere of population employment and labour migration, an employer pays a fee, the amount of which varies depending on the duration of a labour contract [9]. Therefore, this rule obliges the employer to pay a fee for issuing a permit to hire a foreigner. Thus, it can be concluded that there exists an urgent need to bring the national labour legislation of many countries, including

Ukraine, in consistency with the international standards.

It should be stated that the majority of countries legally regulate the entry of foreigners into their territory, especially in a case of employment. They demand a special employment permit whose duration, as a rule, is up to a year with the right to be prolonged. However, there are some exceptions like long-term permits, such as Green Card in the USA, which is issued for a term of 10 years. In the European Union countries Blue Card has been in force since 2009. It is a certificate that proves the right of the owner to temporary living and employment. The term of validity of such certificate is, for example, four years in Germany and 2-3 years in the Czech Republic. In Argentina such temporary permit is called *residencia temporaria* and is given for a term of 2 years with the right to be prolonged.

As for Ukraine, labour migrants obtain a corresponding permit depending on which of the existing 2 categories of foreign citizens they belong to: the 3-year duration term is established for the special category of foreigners (intracorporate sessions and individuals providing services without a commercial presence), and a year term for other employees. [7]

In addition to that, the procedure for issuing permits and the conditions for implementing the right to work for foreign citizens also vary in different countries. Among the countries with the simplified procedure of employment and favourable working conditions are largely European Union countries, especially Great Britain, Spain, Italy and Sweden. Let us take a look at the legal status of foreigners in some countries starting with the United Kingdom of Great Britain and Northern Ireland.

The rules of employment and working conditions of foreigners in Great Britain are regulated by the Laws on Immigration (1999) and on Labour (1996), as well as other legislative acts. A wide range of possibilities for foreigners to find work in the United Kingdom are conditioned mainly with the absence or lack of the British citizens willing to operate in the particular working place. Therefore, one of the main criteria to employ a foreigner is his high qualification and a long working experience. The recruitment may be realized only after getting an official permit from employment services for foreigners. Those foreigners who have obtained an employment permit enjoy the same rights to defend their interests according to the Law on Labour as the citizens of the United Kingdom or other European Union countries. A foreigner has the right to defend his interests in the court or in the Tribunal on labour disputes. Moreover, according to the Law on Contributions and Social Payments, foreigners are subject to obligatory social insurance. In a case of temporary disability they are paid fixed fees from corresponding funds, contributions to which are made by the employer. Foreigners, who work in the United Kingdom on a legal basis, have appropriate working and living conditions, as well as a wide range of rights to defend their interests [7].

The next country in the research is Denmark which has its own, quite different from the British ones, peculiarities of foreigners' employment. The procedure of employing foreign citizens in Denmark is regulated by the Law on Foreigners. Citizens from Norway and EU countries do not need any special permits to get a job in Denmark whereas it is necessary for citizens from other countries to have an official residence and employment permit issued by Directorate for Foreigners at the Ministry of the Interior of Denmark. It is, however, contradictory to the international standards of avoiding discrimination. Denmark does not officially recognize foreign diplomas of education (including higher education). It is nearly impossible even for specialists from EU countries to get a job in Denmark. The reason for this is the necessity of knowing the Danish language [7].

The USA has also its distinctive peculiarities concerning the restrictions and privileges as to the realization of labour rights. Employment issues in the USA are regulated by the Immigration and Nationality Act (1959). Foreign specialists are permitted to work in the USA either on temporary or permanent basis. Though the right to work for foreign citizens in the US is restricted. In order to get a temporary employment permit in the USA a foreign applicant needs to have an American employer (in this case a foreign employee has the right to work only for this particular hirer) or to get a permission on performance of certain type of work or occupation.

To enter the USA foreign citizens are subject to two kinds of verifications. Before issuing the entry visa the US embassy consular officer decides whether the entry goal corresponds to the aim for the particular category of visa and whether the applicant suits all the criteria of US admission. It is necessary to have a working visa to be employed officially in

the USA. Once nonimmigrants have entered the USA they are verified by an officer of Immigration and Naturalization Service (INS) for confirming their entry qualification, defining the appropriate nonimmigrant classification and sanctioning their length of stay in the USA.

Foreign employees, sponsored by the American employers, have to get a pre-approved INS petition on issuing a working visa. In the majority of cases foreign workers must prove that they have intentions to return to their home country after the duration of visa comes to the end. The recruitment can be realized only after getting an official permit from the Ministry of Labour of the USA with all the guarantees given by the employer.

According to the American laws, a foreigner has to be deported from the USA without the entry right for the next three years if he has stayed in the country for 6 months and is detained on illegal employment. If a foreigner has been working illegally for over a year, he will be forbidden to enter the USA during the next 10 years. As the statistics shows the majority of citizens having entered the USA with the aim to be employed do not come back to their home countries. They prolong their labour contracts and continue to work and live in the USA legally. The system of priorities in the sphere of employment allows some categories of foreigners to obtain Green Card in the USA on the basis of 'employment propositions'.

At present the American immigration legislation issues 140 000 immigration visas yearly for foreigners who have got an official invitation to work in the USA. Paragraph 214 of the Immigration and Nationality Act (1952) regulates the rule about the opportunity to get the professional H-1B visa which makes it possible to be employed in the USA. This category if visa legalizes the right to work for foreigners who have either Bachelor or similar degree, or the sufficient level of theoretical knowledge and practical experience in their occupation. Foreign citizens who work legally in the USA have a high level of social insurance and appropriate working conditions [7].

It should also be stated that some countries use the practice of introducing quotas for import and employment of foreigners. Among these countries are: Slovenia, Hungary, Kazakhstan, Turkmenistan, Israel, Cyprus and others [1]. The special place here is given to Israel and the reason is as follows: each year the government of the country makes the list of occupations according to which foreign employees may enter Israel at the invitation of interested organizations without the Employment Department approval of every particular worker. These lists, as a rule, contain occupations connected with capital construction and, to minor degree, with agriculture.

Organizations which intend to engage foreign workers have to appeal to the Employment Department in order to obtain the maximum limit number of working places for every 6 months, taking into account the total amount of the foreign working force defined by the Israel government. After getting quotas from the Ministry of Labour, construction contracting firms send applications to the Ministry of the Interior which, in its turn, after conducting the needed inspections, gives the information about the permit on issuing working visas to Israel Embassies abroad.

As for the foreigners who intend to get jobs in Israel by specialty which is not included into the preferential list of acute deficits, a strict procedure is introduced as to getting an employment permit in order to defend interests of Israel citizens on the labour market. Interested Israel organizations or firms have to appeal to the Employment Department at the Ministry of Labour to get an official permit for a particular foreign employee. There is also a special commission whose conclusion as to the production necessity is obligatory in case of employing a foreigner for a particular position. Only if the reply is positive the interested organization can appeal to the Ministry of the Interior with a request of issuing a working visa for a foreign applicant.

There are also different kinds of punishment for breaking the law in the sphere of foreign labour legislation in the world practice. Ukraine, as well as such countries as Hungary and Argentina, has sanctions in the form of fines applied to employers for using the labour of foreigners without an official permit, and as for a foreigner himself , he has to leave the territory of the country in case of illegal employment.

On the contrary, in such countries as Poland, Cyprus and the Czech Republic not only the hirers but also foreign employees are made accountable for illegal employment being imposed with significant fines. In Poland, for example, an employer can be charged of 3,000-5,000 PLN, whereas an illegal worker can be at risk of both being fined of 1,000-5,000 PLN and also deported to his home country. Furthermore, the State Labour Inspection in Poland

has the right to appeal to the court and demand punishment for an offending employer. Besides, it also warns the customs service of the country about the illegal use of foreign labour. To make the matter still worse, a Polish employer can be sentenced to 8 years of prison if he has made up a false application in order to get an employment permit for a foreign citizen.

It should not be left out that there are also such countries as Japan where the entry of labour migrants are totally banned. As a result, Japan has no immigration visas and legislation in this sphere. [7]

Conclusions. To sum up, it should be said that:

Firstly, Ukraine like many other abroad countries has the urgent need to bring its national law in the sphere of foreign employment into conformity with the international labour legislation. For this purpose, it is highly recommended to exclude the norms concerning the fees employers are charged to get an official permit for hiring foreign citizens as it is a kind of discrimination in relation to the mentioned individuals.

Secondly, the issue on quotas should be considered taking into account the present-day social and economic state of the country. In some cases, despite restricting the right of foreigners to work, they can be a powerful tool to defend the rights and interests of the country's own citizens. Nowadays one of the most efficient ways to improve the state of labour legislation in the sphere of foreign employment could be the introduction of quotas to employ foreigners by particular specialties, whose demand is vivid at the particular period of time and caused by their quality, level of qualification and working experience rather than the number of workers. We believe that Ukraine could definitely benefit from introducing such quotas. First of all, it would allow to reduce the total number of labour migrants and, as a result, lessen the range of unemployment which, in its turn, would make it possible to engage highly-qualified foreign specialists urgently needed by the country's economics.

The introduction of changes to the Law of Ukraine on Employment of Population has both positive and negative aspects, which are likely to influence the dynamics of the number of foreign employees in the country. As for the positive consequences, it is definitely the reduction of the list of documents submitted by a foreign applicant for being employed, which can simplify its procedure and allow to involve sufficient investments into Ukraine. Another good point is introduction of fee for prolonging an employment permit resulting in new revenues to the state budget. In addition, an extra opportunity for foreign citizens to work part-time should be mentioned, which can result in unlimited number of positions taken by a foreigner.

Among the disadvantages one could name the establishment of the minimum wage for foreign citizens which is much higher if compared to Ukrainian employees' and can prevent employers from hiring foreigners. Another challenge is fixing the maximum number of foreign workers in the same organization as 50% without setting any procedure to control this restriction.

Thus, we can make a conclusion that Ukraine is gradually bringing its legislation into consistency with the laws of the leading countries of European Union in order to provide favourable working conditions for foreign citizens, though there still exist both unsolved and newly-born problems which are necessary to be fixed in order to attract employers' interest to foreign working force and involve foreign investments into the country.

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