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## **LEGAL REGULATION OF VOCATIONAL TRAINING IN MODERN UKRAINE**

The article is devoted to contemporary problems of legal regulation of professional training in Ukraine. The article discusses in detail the concept of continuous professional training. The author concludes that the practical implementation of the theory of continuous professional training is an appropriate response to the challenges of social and economic situation, which is characterized by high technology development and rapid pace of change, increasing competition not only between workers and employers but between states. In these circumstances, given the increasing role of education in the modern world, the transition to a continuous learning may form the basis for further improvement and development of every person decent standard of living for themselves and their families and, consequently, to ensure progress in the development of society as a whole .

The article deals with the contractual regulation of vocational training. First of all, this concerns the possibility of making the legislative consolidation of student contracts between employer and employee.

Also, the author of the article draws attention to the problem of verification informal learning. In particular, it concerns the lack of regulation of informal learning results confirmation of modern professions. Instead, the legislator establishes the possibility to confirm learning outcomes only for working professions.

**Key words:** lifelong learning, vocational training, promotion employment, non-formal learning, formal learning.

For today economically developed countries steadily walk away from an orientation on industrial development and take a course on creation of the economy founded, first of all, on knowledge. Special value is ability of man to search and master information, apply it in the process of publicly useful activity and product new knowledge.

New knowledge and information are one of factors of successful development of the state and society on the whole. In this regard, significantly increases the role of vocational training, as it is entrusted with the task of providing all citizens the opportunity to learn the necessary knowledge, skills and competencies that provide both economic development and personal and professional development and self-realization of the individual.

The Universal Declaration of Human Rights guarantees everyone the right to work and education. The state is the guarantor of this right, which is enshrined in the Constitution of Ukraine on June 28, 1996 In accordance with Art. 43 a state creates conditions for the full realization of citizens' right to work, guarantees equal opportunities in the choice of profession and of types of labor activity, implements programs of vocational education, training and retraining according to the needs of society.<sup>1</sup> Labor Code of Ukraine stipulates the obligation of the state to create conditions for effective employment, promote employment, training and improvement of labor skills, and if necessary provide retraining people vacated as a result of the transition to a market economy.<sup>2</sup>

In the researches such Ukrainian and foreign scientists paid attention the legal problems of professional studies as K. Abzhanov, B. Andreiev, B. Begichev, N. Bolotin, K. Husov, N. Lushnikova, Y. Orlovskiy, A. Pasherstnyk, A. Pashkov, V. Rotan, A. Smirnov, A. Stavtseva, K. Urzhynskiy, G. Chanysheva, E. Faure and other.

However, complex scientific research of professional studies, as a legal form of assistance to employment was not conducted. In international instruments used different names that right. Thus, the European Social Charter of 18 October 1961. (Revised 1996) was the first to social rights included the right

<sup>1</sup> Загальна декларація прав людини (прийнята 10.12.1948) (ООН). *Офіційний сайт Верховної Ради України*. <[http://zakon4.rada.gov.ua/laws/show/995\\_015](http://zakon4.rada.gov.ua/laws/show/995_015)>.

<sup>2</sup> Кодекс законів про працю 1971. *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/322-08>> (2015, May, 15).

to training.<sup>1</sup>

Subsequently, the right of the same name received its consolidation in the ILO Convention №142 on June 23, 1975 "On vocational guidance and training in human resources development" and the Convention "On technical and vocational education" adopted on 25 session of the General Conference of UNESCO on November 10 1989.

However, we must pay attention to the fact that the ILO Conventions №142 and the UNESCO Convention of 10 November 1989 called right not to have direct consolidation, but given the nature of these Conventions as acts that are obligatory for the value of the signatories, and that they assumed the duties of States to assist in the development of training, technical and vocational education, we can assume that these acts it is the recognition of the human right to vocational training.

Today in many foreign countries the right to vocational training is increasingly based on the idea of lifelong learning, development of which is carried out both by scientists and several international organizations, including ILO and UNESCO. Thus, a universal terms, which is widely used in European Union law and in scientific research is "learning for life» (lifelong learning). As the Edgar Faure wrote The concept of lifelong learning is the argument that in a rapidly changing society studies necessary for life<sup>2</sup>.

ILO Recommendation №117 "Vocational Training" states that education is not an end in itself but a means to develop the professional skills of persons undergoing training, with due regard to existing employment opportunities and to enable them to use their abilities to the greatest advantage for themselves and for society. Training should be aimed at personal development, especially when it comes to young people. Training is a single whole characterized by the interdependence of its various elements. Learning is a process that continues throughout the working life according to his needs as an individual and member of society.

In our view, the implementation of this theory is the appropriate response to the challenges of social and economic situation, which is characterized by high technology development and rapid pace of change, increasing competition not only between workers and employers, but between states. In these circumstances, given the increasing role of education in the modern world, the transition to a continuous learning can form the basis for further improvement and development of every person decent standard of living for themselves and their families and, consequently, to ensure progress in the development of society as a whole .

With this in mind, the development of lifelong learning was in the focus of a number of international and regional organizations and is seen in particular in the context of the problems related to human rights to vocational training.

First of all, the provisions of international instruments of lifelong learning has found its consolidation in the form of instructions as a principle of organization of professional training and by defining such concepts as "training", "training", "technical and vocational education".

We must emphasize the important role of the ILO in implementing the idea of continuing professional education. According to Art. 4 of ILO Convention № 142 "On vocational guidance and training in the field of human resource development" in any Member incumbent on gradual expansion, adaptation and harmonization of training in order to meet the needs of young people and adults in getting professional training throughout their lives, in all sectors, in all areas of economic activity and at all levels of skill and responsibility.<sup>3</sup> ILO Recommendation №195 is the definition of continuing professional education, which refers to all the learning activities used throughout life for the development of competence and qualifications<sup>4</sup>.

Throughout the history of the ILO in its acts used terms such as "training", "training", "Education, training and continuous professional training." Thus they fit quite wide meaning.

Thus, in Recommendation №57 from June 27, 1939 "On vocational training" under professional training understood all kinds of learning, allowing acquire and develop technical and professional knowledge, regardless of whether it is produced learning in school or on the job<sup>5</sup>.

<sup>1</sup> *Європейська соціальна хартія* (переглянута 03.05.1996) (Рада Європи). *Офіційний сайт Верховної Ради України*. <[http://zakon.rada.gov.ua/laws/show/994\\_062](http://zakon.rada.gov.ua/laws/show/994_062)>.

<sup>2</sup> Recurrent Education: A Strategy for Lifelong Learning, 1973 (OECD).

<sup>3</sup> Конвенція МОП №142 (про професійну орієнтацію та професійну підготовку в галузі розвитку людських ресурсів) 1975. *Офіційний сайт Верховної Ради України*. <[http://zakon.rada.gov.ua/laws/show/993\\_057](http://zakon.rada.gov.ua/laws/show/993_057)>.

<sup>4</sup> Рекомендація МОП № 195 (Про розвиток людських ресурсів: освіта, підготовка кадрів і безперервне навчання) (2004) *Офіційний сайт Верховної Ради України*. <[http://zakon.rada.gov.ua/laws/show/993\\_532](http://zakon.rada.gov.ua/laws/show/993_532)>.

<sup>5</sup> Рекомендація МОП №57 (Щодо професійного навчання) (1939). *Офіційний сайт Верховної Ради України*. <[http://zakon.rada.gov.ua/laws/show/993\\_045](http://zakon.rada.gov.ua/laws/show/993_045)>.

In the ILO Convention number 142 the notion of "training", without revealing its essence. However, based on the content of Art. 4 of the said Convention, which contains provisions on training throughout life, it can be argued that this concept is identical to the concept of "training", the content of which is revealed in ILO Recommendation № 57. As noted above us, similarly determined and the concept of "continuous training" Recommendation number 195.

In the UNESCO Convention of 10 November 1989 the notion of "technical and vocational education" is also given. However, the content of this concept coincides with the concepts of "vocational training" and "continuing professional education" used in ILO instruments. Thus, in accordance with Art. 1 of the Convention concept called "technical and vocational education" covers all forms and levels of education process, carried out both in schools and in joint programs undertaken as educational institutions, on the one hand, and industrial, agricultural, trade, or any which other companies related to the world of work, on the other<sup>1</sup>.

Significant contribution to the study of the problems of continuing education was made by European regional associations. First of all, I would like to draw attention to two acts that were programmatic in the first decade of the XXI century. It adopted in March 2000 at the session of the European Council of the EU Lisbon Strategy and adopted on October 30, 2000, Memorandum of lifelong learning.

The essence of the Lisbon strategy was to convert to the EU in 2010 the most competitive and dynamic economic area in the world based on knowledge. Thus a key element in this task announced lifelong learning. Following this decision, the European Commission in autumn 2000 initiated the creation of a pan-European system of continuous education and October 30, 2000 produced a Memorandum of lifelong learning<sup>2</sup>.

The Memorandum was formulated six basic ideas that give structured basis for discussion on the practical application of the concept of lifelong learning, including:

- ensure universal and sustainable access to education;
- increase investment in human resources;
- development of effective methods of teaching and learning;
- improving methods for assessing participation in education and its results;
- provide easy access to information on offers training in Europe;
- information and communication technologies to the widest possible access to information on the vocational training.<sup>3</sup>

In Art. 10 of the European Social Charter, which enshrines the human right to training, training concept is not defined. However, it should be considered that this term covers both named subsystem of vocational education and training, as it directly assumed the duty of States to take measures necessary to ensure that training is not only young people but also adults of working people, as well as long-term unemployed.

Thus, international and regional acts as one of the basic principles of the system of vocational training establish the principle of lifelong learning. In this regard, despite the use of these instruments in different terms - training, training, technical and vocational education - the notion that indicated they have a broad meaning and cover all the educational activities the main purpose of which is to acquire skills.

By carrying out an analysis of existing international instruments in the field of vocational training, we may determine the main directions of development of international legal standards in this area:

- spread of social partnership in system of vocational training of workers;
- formation of continuous vocational training;
- expanding the scope of non-formal learning as an important form of professional training in the rapid development of technology and the need to adapt workers to the socio-economic changes.

In order to implement the modern concept of vocational training is enshrined in international instruments main activities of the Member States to ensure access for all to the continuing professional education. Thus, in paragraph 14 ILO Recommendation №122 «Regarding employment policies" States should develop programs to provide or promote training opportunities and retraining that would allow

<sup>1</sup> Конвенція про технічну та професійну освіту (1989) (ЮНЕСКО) *Офіційний сайт Верховної Ради України*. <[http://zakon.rada.gov.ua/laws/show/995\\_271](http://zakon.rada.gov.ua/laws/show/995_271)>.

<sup>2</sup> The Lisbon Strategy 2000 – 2010. *EP official site*:

<<http://www.europarl.europa.eu/document/activities/cont/201107/20110718ATT24270/20110718ATT24270EN.pdf>>.

<sup>3</sup> Memorandum of lifelong learning 2000 (Commission of the European Communities). *EC official site*. <<http://arhiv.acs.si/>>.

workers to acquire the skills necessary for long-term employment in the professions development.

Moreover, Ukraine Association Agreement, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand contains provisions to enhance the parties to the agreement to exchange information, experiences and practices, to promote closer cooperation the field of vocational education and training, in particular for the development of vocational education and training, further training for work / life that corresponds to the realities in the context of changes in the labor market. Article 433 of the Agreement provides for the parties to explore the possibility of cooperation, particularly in the field of distance education and lifelong learning.

It should be noted that in the science of labor law concept of "vocational training" has not found wide reflection.

Thus, A.V. Ivashkivska understood professional training as gaining professional knowledge and skills of a profession for the first time by learning directly to the organization or development of the basic educational program of a level in the educational institution<sup>1</sup>. In turn, the E.R. Briuhina identifies training as the transfer of a person who is trained, skills and experience as well as their enhancement and improvement and use of the purchased stock of knowledge and skills to continue to achieve the set state educational qualifications<sup>2</sup>.

In our opinion, there is reasonable legal definition of vocational training, which includes components such as training, retraining and advanced training

Thus, in the Law of Ukraine "On the professional development of workers" vocational training of workers is seen as a purposeful process of formation of specialized knowledge workers, the development of the necessary skills and abilities that allow you to improve productivity, most efficiently perform functional responsibilities, to develop new professional activities that includes the initial training, retraining and advanced training of employees according to needs<sup>3</sup>.

The Law of Ukraine "On Employment" determines training as acquiring and improving professional knowledge and skills of individuals in accordance with its capabilities, ensuring an appropriate level of professional qualification for professional activities and competitiveness in the labor market.

It must be emphasized that the system of professional training includes:

- 1) personal undergoing of initial training in schools and other institutions engaged in or providing training skilled workers and professionals;
- 2) workers undergoing of initial training, retraining and advanced training for employment;
- 3) unemployed seeking work and require initial training, retraining or training.

Most large-scale and mobile form of vocational training is training employees in the workplace. To do this, it uses the following types: initial training, retraining and advanced training of workers directly in production, retraining, specialization, training, training managers, professionals and specialists.

Improving the competitiveness of workers in the labor market according to the requirements of modern production and service is important to ensure effective operation and development of professional training of staff, assistance in the conduct of their professional training, retraining and advanced training in enterprises, institutions and organizations regardless of ownership, type business and management. In the future, this form has favorable conditions for further development, driven by short-term studies, the ability to respond quickly to changing production conditions and low tuition.

Laws of Ukraine "On Education"<sup>4</sup> and "On Vocational Education"<sup>5</sup> provides citizens the possibility of obtaining a profession, training, passing directly in production. In ch. 1, 2 art. 6 of the Law of Ukraine "On the professional development of employees" noted that the organization of professional training of employers carried out taking into account their own economic needs or other activities in accordance with

<sup>1</sup> Ивашковская, А.В. (2007). *Правовое регулирование трудовых отношений в условиях реформы профессионального образования*: автореф. дисс. ... канд. юрид. наук: 12.00.05 «Трудовое право: Право социального обеспечения». Санкт-Петербург, 26.

<sup>2</sup> Брюхина, Е.Р. (2007). *Право на труд и право на образование: регулирование отношений по профессиональной переподготовке работников в России*: автореф. дисс. ... канд. юрид. наук. Пермь, 20.

<sup>3</sup> Закон про зайнятiсть населення 2012 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon.rada.gov.ua/laws/show/5067-17>>.

<sup>4</sup> Закон про освіту 2012 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon.rada.gov.ua/laws/show/5067-17>>.

<sup>5</sup> Закон про професійно-технічну освіту (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon.rada.gov.ua/laws/show/5067-17>>.

legal requirements.

It should be noted that the Ukrainian legislation continues to operate with terms typical Soviet period, such as "training in manufacturing," "industrial training". Both terms significantly narrow list of occupations, which studies can be carried out in the workplace, learning only trades in the industrial sector. In our opinion, more modern in terms of the practice of law in foreign countries, is the term "workplace learning".

Order №127 / 151 Ministry of Labour and Social Policy of Ukraine, Ministry of Education and Science of Ukraine from 26.03.2001 "On Approval of the training of workers in manufacturing" stipulate the procedure for such training. Thus, according to clause 2.2 of said Order for professional training of employees in manufacturing, the following types of it as the primary training of workers; retraining workers; training employees; retraining, specialization, training, training managers, professionals and specialists<sup>1</sup>

According to the Labor Code of Ukraine obligation for Professional Training relies on the employer. Article 201 of the Labor Code of Ukraine stipulates that the training and retraining of employees, especially young people, the owner or authorized body organizes individual, Brigade, course and other production training by enterprises, organizations and institutions<sup>2</sup>. Although under international legal acts the primary responsibility for training rests with the state. Employers, in turn, can be involved in issues of vocational training only on the basis of social dialogue.

Interesting is the concept of vocational training in France. According to Art. L6111-1 French Labour Code training throughout life is a national duty and is designed to help every person, regardless of social status, to acquire and update knowledge and skills to contribute to their professional development and training throughout their professional life<sup>3</sup>.

However, in some foreign countries legislation provides for the obligation of the employer to conduct training. For example, the Romanian Labor Code provides for the employer's duty to ensure that each employee participating in the training at least once every two years, when it has more than 21 employees and at least once every three years when he has less than 21 employees. Thus, an employer has the costs of vocational training. Also, employers with more than 20 employees must develop and implement annual professional training plans, in consultation with the union or authorized employee representatives. Plan vocational training should be added to the collective or employment contract<sup>4</sup>.

It should be noted that the draft Labour Code of Ukraine of 12.27.2014 №1658 reflected provisions enshrining the obligation of the employer to provide the employee the opportunity to undergo training. Yes, Part 2 st.303 project provided that the employer provide at least 5 years of training, retraining and qualification without termination or suspension of the conditions determined by collective or employment agreement or a separate agreement between the employer and employee<sup>5</sup>.

It partly agrees with this approach, because employers using hired workers for their own purposes should bear some responsibility for their preparation and training. However, in our opinion, establish the duty of all employers to conduct employee training can not. Because not all employers have adequate financial and material resources to organize training without compromising their own property interests.

Obviously, you need to specify the categories of employers legally obliged to periodically training employees.

The positive is that national legislation imposes a duty on employers current and future development plans for vocational training of workers; determine the types, forms and methods of professional training of employees; development and implementation of curricula and programs of vocational training of workers. In curricula and job training programs displayed changes in technology, technology, production, etc. in the respective industries or services, the specific requirements of the employer and the workplace. The development of such a plan serves as a guarantee of the realization of the right to employee training,

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<sup>1</sup> *Наказ про затвердження положення про професійне навчання працівників на виробництві 2001* (Міністерство праці та соціальної політики України, Міністерство освіти і науки України). *Офіційний сайт Верховної Ради України*. <<http://zakon.rada.gov.ua/laws/show/z0315-01>>.

<sup>2</sup> *Кодекс законів про працю 1971*. *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/322-08>>.

<sup>3</sup> *Code du travail. France Official site*. <<http://www.legifrance.gouv.fr/affichCode.do?cidLEGITEXT000006072050>>.

<sup>4</sup> *Romanian Labour Code. Official site*. <<http://www.codulmuncii.ro/en>>.

<sup>5</sup> *Проект Трудового кодексу України 2014* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=53221](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53221)>.

retraining and advanced training<sup>1</sup>.

Adopted in 2012, the Law of Ukraine "On Employment" recognized the right of an employer to conclude with employees or other persons who are not with him in labor relations, with their consent agreements on sending them to schools for training, retraining and advanced training. In that agreement the employer may provide for the duty officer or other person sent for training to work in the position according to qualifications obtained it after graduation for a period agreed by the parties, but no more than three years.

In case of refusal of an employee or another person to work in an employer agreed with him during the period of dismissal before the end of such period an employee or other person required to reimburse an employer costs associated with tuition, or a period of proportion to the conditions defined by the contract. An employee or other person is not required to reimburse an employer costs associated with training, if they were not to work or were dismissed on the following grounds:

- 1) establishment of disability;
- 2) dismissal by the employer, not the employee is connected to commit unlawful acts;
- 3) conscription or referral to alternative (non-military) service;
- 4) on its own initiative in breach of the employer of labor legislation, collective agreements or collective employment contract;
- 5) care for a disabled child and (or) disability I group (regardless of disability)<sup>2</sup>.

A significant drawback of the current legislation on vocational training is the lack of proper regulation of contractual relations arising between the employer and the employee, a person who is not with him in labor relations on passing vocational training directly in the workplace.

At present, the law does not provide a written employment contract, which provided for appropriate compensation provisions for employee costs the employer on employee training in case of dismissal. Under the provisions of Art. 201 of the Labor Code of Ukraine all the costs of training and retraining of employees, especially young people, is the employer. According to ch. 2, Art. 69 Commercial Code of Ukraine company provides training skilled workers and specialists, their economic and vocational training. Similarly, existing labor legislation of Ukraine does not provide for employee obligation to reimburse the employer for his training<sup>3</sup>. The provisions of Chapter IX of the Labor Code of Ukraine does not allow you to include the costs of training staff to the concept of "harm caused by employee" and accordingly to protect the rights of the employer in court and out of court. Hence, according to Art. 9 Labor Code of Ukraine the above conditions of the employment contract is invalid, because worsen the situation of workers compared with labor laws of Ukraine.

Gaps in labor legislation of Ukraine on training in practice led to an actual transfer relationship with professional training in the civil sphere.

Currently, the practice of managing several methods known settlement of relations between the employer and its employees on training, including:

- the conclusion of civil bilateral agreement on vocational training employee by the employer. Formally, the contract will provide information technology services or counseling profession. It is important that this person acting on the side of the employee and the employer enter into a relationship not as a party to the employment contract, as well as independent subjects of civil circulation;

- the conclusion of civil comprehensive multilateral agreement on training an employee who is not directly provided for by law, but meets the general principles of civil law, in particular Art. 6 of the Civil Code of Ukraine. Under this contract the employer undertakes to organize, provide and pay for training the employee and the employee agrees to indemnify the employer of the costs of education in proportion to the time not worked in the case of early termination of employment on their own initiative<sup>4</sup>.

Despite the possibility of concluding these agreements should be noted that there is a risk of apparent recognition.

<sup>1</sup> *Наказ про затвердження положення про професійне навчання працівників на виробництві 2001* (Міністерство праці та соціальної політики України, Міністерство освіти і науки України). *Офіційний сайт Верховної Ради України*. <<http://zakon.rada.gov.ua/laws/show/z0315-01>>.

<sup>2</sup> *Закон про зайнятість населення 2012* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon.rada.gov.ua/laws/show/5067-17>>.

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<sup>4</sup> Как вернуть деньги за обучение работников? *Частный предприниматель*. 2007.10 (174). 25.

Deficiencies labor law can be effectively resolved through legal strengthening pupils' conclusion of the contract.

It is necessary to accept the students' views on the nature of the contract scholars such as N. Bolotin<sup>1</sup>, M. Lushnikova<sup>2</sup>, Y. Orlovsky<sup>3</sup>. They see a treaty as a variety of student employment contract. Scientists note that the work function of an employee, which runs vocational training, labor included additional duty during certain period while working to learn the specialty studied, to get practical skills in the specialty according to the curriculum approved by an employer and under the supervision of the latter.

Given the expressed advisable to make corresponding adjustments to national legislation in the field of vocational training.

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