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Labor relations in the field of professional (vocational) education: theoretical and applied aspect

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The article examines theoretical and applied aspects of labor relations in the field of professional (vocational) education. The authors highlight the problems, indicators and mechanism of regulation of labor relations in the field of professional (vocational) education. There is the analysis of the state of normative-legal regulation of conditions and grounds for hiring scientific and pedagogical workers, as well as the grounds, procedure and guarantees for dismissal of employees of this category. The authors focus in the article on the description of the conditions for concluding, performing and terminating an employment contract and substantiate the differences between the employment treaty, employment agreement and contract, employment treaty and civil law employment treaty. The article identifies the procedure for competitive selection during the filling of vacant positions of scientific and pedagogical workers and concluding contracts with them as a special form of employment treaty.

The materials of the article can be used to improve the system of professional (vocational) education in Ukraine by ensuring the need for quality training of qualified specialists.

Keywords: *labor relations; agreement; contract; scientific and pedagogical activity; competition; labor function.*

Introduction

Legalization of labor relations with the employee that is social relations that arise during the application of human abilities and the performance of certain labor functions, their proper design is one of the current issues in the field of vocational education. Legal regulation of pedagogical and scientific-pedagogical workers activity (in the science of labor law, professional activity is usually called "labor function", that is a set of certain elements that unite the profession, specialty, position, qualification characteristics) is based on the general principles of regulation of labor relations, although it has significant features.

Analyzing the current legal norms that control the labor relations of scientific and pedagogical workers, it is necessary to focus first of all on the peculiarities of the legal regulation of labor of this category, which explains the specifics of their work. These features are due to the variety and diversity of types of work of scientific and pedagogical workers of professional education (educational, methodical, scientific, organizational), requirements for such an employee by the Laws of Ukraine "On Education" (Law of Ukraine "On Education", 2017), "On Higher Education", list of competencies for quality performance of professional tasks. This takes into account the profile of the department and its features (specialization, the estimated number of academic disciplines for teaching, the total amount of educational workload of the scientific and pedagogical staff of the department, taking into account the need to perform all types of work); modes of work (full-time, part-time or distance learning); territorial location of the institution; types of educational, scientific, methodical and organizational work, the nature and direction of scientific research in the institution of higher education in general and at the department in particular, etc. Labor relations with scientific and pedagogical workers arise on certain grounds, in particular, labor legal personality, that is rights and legal capacity, the ability to have labor rights and perform labor duties; presence of high moral qualities, physical and mental state of health; availability of a scientific degree, academic title or master's degree; successful passing by the scientific and pedagogical worker of competitive selection for filling of vacant positions. Moreover, a feature of regulatory and legal regulation of labor relations with scientific and pedagogical workers is a combination of centralized regulation (both general and special regulations) with local, carried out by each institution of higher education, taking into account the principle of autonomy (Kononenko, 2019).

Quite often we do not pay due attention to what document we are offered to sign when registering an employment relationship. As time goes on, it may turn out that some important points are not taken into account. So, we become hostages of a situation or rather, we pay for our inattention and negligence. Therefore, an important place for managers and scientific and pedagogical workers is occupied by various forms of registration of labor relations, the most common of which are employment treaties, so-called employment agreements and contracts.

Reforming the higher education system, implementation of European standards in the field of professional (vocational) education is necessary to rethink approaches to a thorough generalization of theoretical and methodical

principles of studying labor relations with scientific and pedagogical workers.

The goal of the article is to study the theoretical and applied aspects of labor relations in the field of professional (vocational) education.

The main tasks of the study are defined as follows: 1) to highlight the problems, indicators and mechanism for regulating labor relations in the field of professional (vocational) education; 2) to analyze the conditions for concluding, executing and terminating (cancellation) an employment contract; 3) to determine the differences between the employment treaty, employment agreement and contract, employment treaty and civil law employment contract; 4) to substantiate the procedure for competitive selection during the filling of vacant positions of scientific and pedagogical workers and concluding contracts with them as a special form of employment treaty.

Materials and methods

The methodological bases of the study are modern general and special methods of scientific knowledge, which provided an opportunity to study the problems in their unity and interdependence. The use of these methods made it possible to ensure the comprehensive implementation of the tasks of the study, to make substantiated and reliable conclusions and to formulate proposals for the improvement of labor relations with scientific and pedagogical workers in the field of professional (vocational) education.

The following methods were used in the research: theoretical (analysis, synthesis, generalization); empirical (study of normative and educational-methodical documentation); comparative legal (study of legislation to determine the labor function of scientific and pedagogical workers); logical and semantic (formulation of the author's definitions of the research); system-functional (characteristics of scientific and pedagogical activity, its components, analysis of the grounds and procedure for dismissal of scientific and pedagogical workers); system-structural (regulatory and legal order of the emergence and termination of labor relations with scientific and pedagogical workers).

Operation by methods of analysis, synthesis and generalization makes it possible to substantiate proposals for improving existing legislation, which regulates the procedure for hiring and firing scientific and pedagogical workers, as well as their guarantees upon dismissal.

Results

According to Article 21 of the Labor Code of Ukraine (Kodeks zakoniv, 1971) an **employment treaty** is an agreement between an employee and the owner of an enterprise, institution, organization or his authorized body or individual, under which the employee undertakes to perform the work specified in this agreement, subject to internal labor regulations. The owner of an enterprise, institution, organization or his authorized body or individual undertakes to pay the employee a salary and provide working conditions necessary for the performance of work

provided by labor legislation, collective treaty and agreement of the parties.

The current legislation does not contain the concept of "employment agreement" and the term is, in fact, traditionally used in legal practice to denote such types of civil law treaties as a treaty of suborder and a service treaty.

The definition of the treaty of suborder is given in Article 837 of the Civil Code of Ukraine (Civil Code, 2003), according to which under the treaty of suborder one party (contractor) undertakes at its own risk to perform certain work on the instructions of the other party (customer), and the customer undertakes to accept and pay for the work performed. The treaty of suborder can be concluded for the manufacture, processing, recycling and repair of things or to perform other work with the transfer of its result to the customer.

The definition of a treaty for the provision of services is given in Article 901 of the Civil Code of Ukraine (Civil Code, 2003), according to which under the treaty for the provision of services one party (performer) undertakes on the instructions of the other party (customer) to provide the service, which is consumed in the process of committing a certain action or carrying out a certain activity, and the customer undertakes to pay the performer for this service, unless otherwise provided by contract.

So, the concept and conditions of conclusion, execution and termination (cancellation) of the employment agreement (treaty of suborder and service treaty) are determined and regulated by civil law and the employment treaty by labor legislation.

Therefore, the rules governing another type of treaty cannot be applied to one type of treaty.

The main criterion that helps to distinguish between an employment treaty and a civil treaty of employment (employment agreement) is that in the first case the subject of the agreement is the living labor of man, that is, the employee himself, and in the second case is a materialized result of work or a one-time task. The employment treaty focuses on the labor process, not on the end result. The employer receives a permanent performance of the employee's job function that is work in a certain profession, specialty and qualification. The final result is important for the employment agreement that is the performance of certain work specified in the contract (provision of services) and transfer of its results to the customer.

The presence of an employee's obligation under an employment treaty to comply with the rules of internal labor regulations is the basis for the difference between this treaty and treaties of civil-legal nature. In labor relations, the employee is included in the labor collective of the enterprise, institution, organization, undertakes to comply with the rules of internal labor regulations in force at the enterprise, institution, organization, undertakes to perform a certain job function in the general collective work of employees, a certain job related to the specified profession, specialty or position (Article 21 of the Labor Code). Such requirements do not apply to the performer under the employment agreement. He performs the work at his own discretion and does not obey the internal labor regulations.

Remuneration under the employment treaty is guaranteed, paid within the time limits specified by law and the collective treaty, and a delay in the payment of wages can cause application of sanctions specified by law to the

head of the employer. Besides that, the state guarantees the employee that the amount of wages may not be less than the minimum wage established by the laws of Ukraine.

When concluding an employment agreement, the contractor receives remuneration for the work performed, the amount and procedure for payment of which is determined by the parties to the contract by mutual agreement. Guarantees for the remuneration of persons working under civil law treaties do not apply to the payment of remuneration.

An employment treaty can be concluded both orally and in writing, but Article 24 of the Labor Code specifies the cases in which compliance with the written form is mandatory. The treaty of suborder is concluded in any form. If the parties have agreed on a written form, the treaty would be considered concluded from the moment of its signing by the parties.

An employment treaty is usually indefinite, except in cases where the employment relationship cannot be established for an indefinite period, based on the nature of the work performed, the conditions of its performance or the employee.

The treaty of suborder (service treaty) cannot be concluded for an indefinite period, it is always fixed-term.

The employment contract is terminated only in the manner prescribed by the Labor Code; a record of dismissal is made in the employee's employment record book.

The treaty of suborder (service treaty) is terminated after the work (service) and its transfer to the customer, about what the act is made which is signed by the parties.

So, the distinction between employment and civil treaties based on the labor activity of persons, in practice, it is important because mixing them can lead to incorrect application of the law. The situation is complicated by the similarity of the concepts of "employment treaty" and "employment agreement", which actually denote completely different in nature employment and civil treaties, which are differently concluded, changed, terminated and create different legal consequences. In this case, labor legislation applies only to persons who have concluded an employment treaty, not a civil treaty.

Discussions

In accordance with paragraph four of Article 1 of the Law of Ukraine "On Education" (Law of Ukraine, 2017) pedagogical workers are hired by concluding an employment treaty. This norm does not provide for the mandatory conclusion of contracts with teachers, however, as for the heads of state-owned educational institutions subordinated to the Ministry of Education of Ukraine or other ministries and departments, then the law stipulates that they are elected by competition and appointed to a position by concluding a contract with them.

According to Article 23 of the Labor Code of Ukraine (Civil Code, 2003), an employment treaty may be concluded for an indefinite period (perpetual) or for a specified period, set by agreement of the parties (fixed-term) and concluded within the time of performance of certain work.

A fixed-term employment treaty is concluded in cases when the employment relationship cannot be established for an indefinite period, taking into account the nature of the

certain work, or the conditions of its implementation, or the interests of the employee and in other cases provided by the Laws of Ukraine.

A fixed-term employment treaty with a pedagogical worker may be concluded only with the consent of the employee.

Recruitment of pedagogical and scientific and pedagogical workers in accordance with the Law of Ukraine "On Education" (Law of Ukraine, 2017) may be carried out on a competitive basis.

The competition is a special procedure for selecting scientific and pedagogical workers, which is based on the principles of competition, equality, objectivity and impartiality of the competition commission, collegiality of decision-making by the competition commission, independence and validity of decisions.

The competition for the positions of scientific and pedagogical workers is held for vacant positions, as well as:

- in case of expiration of the employment treaty with scientific and pedagogical workers, when the employment relationship cannot be extended in accordance with the law;
- for positions held by persons appointed for a term prior to the competitive selection;
- in the positions of scientific and pedagogical workers work part-time persons (at the suggestion of the management of the Institute).

Competition is a special form of selection of pedagogical workers. It is held to replace the positions of assistant, trainee lecturer, lecturer, senior lecturer, associate professor, professor, head of the department, dean, vice-rector. The competition is held when it is impossible to fill vacancies in any other way.

According to the results of the competition, a contract is concluded with scientific and pedagogical workers for a period of one to five years, the specific term is determined by agreement of the parties.

Each of the parties has the right to make proposals on the term of the contract, except for the positions of heads of departments, for which the Law of Ukraine "On Higher Education" provides for election for a term of five years.

In case of non-election of a scientific and pedagogical worker to the position or his refusal to participate in the competition, employment relationship with him is terminated and he is subject to dismissal on the basis of paragraph 2 of Article 36 of the Labor Code of Ukraine.

A fixed-term employment treaty (contract) may be terminated before the expiration of the term on the grounds provided for in this employment treaty (contract), as well as on the grounds provided by the current legislation of Ukraine. Dismissal in such cases is carried out by order of the director of the Institute in accordance with current labor legislation of Ukraine.

Labor disputes between the parties are considered in the order established by the current legislation.

In accordance with paragraph 5.3.9 of the Sectoral Agreement between the Ministry of Education and Science (Sectoral agreement, 2018), Youth and Sports of Ukraine and the Central Committee of the Trade Union of Education and Science of Ukraine for 2016-2020 states that employment treaties that have been renegotiated one or more times, except as provided in part two of Article 23 of the Labor

Code of Ukraine, are considered to be concluded for an indefinite period.

An employee, having concluded an employment treaty, is obliged to perform work subject to internal regulations. The employee must be familiar with these rules in order to follow them. At the same time he must be acquainted with the collective treaty, which determines the working conditions at the enterprise. The obligation to familiarize with the rules of internal labor regulations and the collective treaty rests with the owner or his authorized body.

Part 3 of Article 21 of the Labor Code of Ukraine (Labor Code, 1971) also stipulates that a special form of employment treaty is a contract, in which the term of its validity, the rights and responsibilities of the parties (including material), the conditions of material support and organization of work of the employee, the conditions for terminating treaty, including early, may be established by agreement of the parties. The scope of the contract is determined by the laws of Ukraine.

They relate to each other as species and generic concepts. The contract acts not only as a legal fact, but also as a legal means of contractual regulation, as at the conclusion of the contract the parties can go beyond the spheres of normative legal regulation. The content of the contract is formed by agreement of the parties. It allows to define rights and responsibilities not only within the limits allowed by law, but also to provide for new ones. Therefore, the contract, in contrast to the employment treaty is an agreement that regulates the complex of social relations: labor, socio-economic and others.

The contract is concluded exclusively in writing form and is signed by the employer and the employee who is hired.

The peculiarity of the contract is that it determines the term of its validity, so it is always fixed-term and concluded for a certain period of time. As a rule, the legislation does not set minimum or maximum terms of the contract, except for certain categories of employees (head of a state-owned enterprise – from one to five years, scientific and pedagogical workers – from one to seven years).

The contract may specify additional, in addition to the established Labor Code, the grounds for its termination. The contract may establish the liability of the parties, including material. Working under a contract, the employee is provided with all the guarantees, benefits and compensations established by labor legislation.

The scope of the contract is determined only by law and is very limited.

The Ministry of Labor and Social Policy of Ukraine in its letter of 6 May 2000 No. 06/2-4/66 (Letter of the Ministry, 2000) provides a list of laws that allow the conclusion of an employment treaty in the form of a contract, and notes that the owner or his authorized body may require the employee, who works under a permanent contract, concluding a contract only if he belongs to the category of employees who, under the laws of Ukraine, works under a contract.

The practice of using the contractual form of employment shows that the concept of "contract" is not identical to the concept of employment treaty. The main specific feature of the contractual form of employment is the predominance of contractual principles. It is an opportunity, compared to an employment treaty, when concluding a

contract of more complete regulation of mutual rights and obligations as for working conditions, determines the popularity of the contract.

However, the contract can be concluded only with certain categories of employees, which are defined by law. Thus, the Resolution of the Cabinet of Ministers of Ukraine of March 19, 1994 No. 170 "On streamlining the application of the contractual form of employment treaty" (About streamlining of application, 1994), provides that the contractual form of the employment treaty is applied to employees when hiring, only in cases expressly provided by law.

In accordance with paragraph 3 of Resolution No. 170 hiring of employees through the conclusion of a contract with them by the owner or his authorized body may occur in cases expressly provided by law.

Also, the Ministry of Social Policy in a letter dated 03.02.2003 No. 06/2-4/13 (Letter of the Ministry, 2003) states that the employer may require the employee to conclude a contract only if he belongs to the category of contract workers. Even with the consent of the employee and the employer, in the absence of grounds for it, the contract cannot be concluded. Identified such violations may be grounds for invalidating the working conditions under the contract as those that worsen the situation of the employee.

Therefore, if the conclusion of the contract is not provided by law, the owner or his authorized body has no right to conclude a contract with the employee, even if there is mutual consent.

However, on the other hand, the contract as a special form of employment treaty should be aimed at providing conditions for the initiative and independence of the employee, taking into account his individual abilities and professional skills, increasing the mutual responsibility of the parties, legal and social protection of the employee.

The decision of the Constitutional Court of Ukraine of July 9, 1998 No. 12-rp/98 in the case on the constitutional appeal of the Kyiv City Council of Trade Unions concerning the official interpretation of the third part of Article 21 of the Labor Code of Ukraine (case on the interpretation of the term "legislation") emphasizes it. Terms of the contract that worsen the condition of the employee (compared to current legislation and the collective treaty) are considered invalid. According to paragraph 5 item 5 of the decision of the Constitutional Court of Ukraine № 12-rp/98 the contractual form of the employment treaty cannot be implemented by normative acts of central and local executive bodies, acts of local governments, as well as collective treaties and agreements and other local regulations.

Such proposals contradict both the provisions of national law and international law (ILO Convention No. 158 on termination of employment at the initiative of the employer (ILO Convention, 1982), ILO Convention No. 117 on the main objectives and norms of social policy (ILO Convention, 2017),

Recommendations of the Ministry of Education and Science No. 166 on termination of employment at the initiative of the employer (Recommendation, 2018).

Conclusion

Pedagogical workers in educational institutions carry out their professional duties on a permanent basis, the conditions of their work are long-term in nature, as they are associated with the implementation of a continuous educational process in educational institutions, and do not contain the preconditions to consider such a process limited in time for their transfer to a contract or fixed-term employment treaty. The article can be useful for modernizing the system of professional (vocational) education of Ukraine, and for organization of professional activity of education managers and teachers of professional (vocational) education.

References

- Sectoral agreement between the Ministry of Education and Science of Ukraine and the Central Committee of the Trade Union of Education and Science of Ukraine for 2016-2020 (as amended on April 19, 2018). Retrieved from: <https://pon.org.ua/engine/download.php?id=1984>.
- Code of Labor Laws of Ukraine of 10.12.1971. *Vidomosti Verkhovnoyi Rady URSR*, 1971, dodatok do N 50, st. 375 [Elektronnyy resurs] Informatsiyno-analitychnyy tsentr «LIHA», 1991-2011 TOV «LIHA:ZAKON», 2007-2011.
- Kononenko, V.A. (2019). Features of acceptance and dismissal of scientific and pedagogical workers. PhD Thesis. Natsional'nyy yurydychnyy universytet imeni Yaroslava Mudroho, Ministerstvo osvity i nauky, Kharkiv.
- ILO Convention No. 158 concerning the Termination of Employment at the Initiative of the Employer, 1982. Retrieved from: https://zakon.rada.gov.ua/rada/show/993_005
- Convention No. 117 On the main objectives and norms of social policy. Retrieved from: https://zakon.rada.gov.ua/laws/show/993_016
- Letter of the Ministry of Labor and Social Policy of Ukraine dated 03.02.2003 No. 06/2-4/13. Retrieved from: https://zakon.rada.gov.ua/rada/show/v4_13203-03
- Letter of the Ministry of Labor of Ukraine dated 06.05.2000 No. 06/2-4/66 "Regarding the contractual form of the employment treaty and the list of laws that allow its application". Informatsiyno-analitychnyy tsentr «LIHA», 1991-2011 TOV «LIHA:ZAKON», 2007-2011.
- Law of Ukraine "On Education": Zakon Ukrainy vid 5 veresnya 2017 roku № 2145-VIII. *Vidomosti Verkhovnoyi Rady (VVR)*, 2017, №38-39, st.380. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2145-19>.
- About streamlining of application of the contractual form of the employment treaty: Postanova KМУ vid 19 bereznya 1994 r. N 170. Retrieved from: <https://zakon.rada.gov.ua/laws/show/170-94-%D0%BF>
- Recommendations of the Ministry of Education and Science on Termination of Employment at the Initiative of the Employer No. 166. Retrieved from: https://zakon.rada.gov.ua/laws/show/993_276
- Decision of the Constitutional Court of Ukraine in the case on the constitutional appeal of the Kyiv City Council of Trade Unions on the official interpretation of part three of Article 21 of the Labor Code of Ukraine (case on the interpretation of the term "legislation") Kyiv, 9 lypnya 1998 roku Sprava N 17/81-97 N 12-rp/98 N 1-1/98 vd980709 vn12-rp/98. Retrieved from: <https://zakon.rada.gov.ua/laws/show/v012p710-98/print>
- Labor relations will be regulated in a new way: the draft of Labor Code has been finalized. 25.06.2020. Retrieved from: https://jurliga.ligazakon.net/ua/news/196341_trudov-vdnosini-vregulyuyut-po-novomu-dopratsovano-proekt-trudovogo-kodeksu
- Civil Code of Ukraine of January 16, 2003 No. 435-IU. *Vidomosti Verkhovnoyi Rady Ukrainy*, 2003, № 40, st. 356. Informatsiyno-analitychnyy tsentr «LIHA», 1991-2011 TOV «LIHA:ZAKON», 2007-2010.
- Association Agreement between Ukraine and the EU: social and labor dimension. *Knyha persha: zbirnyk aktiv zakonodavstva Ukrainy ta acquis communautaire*. L'viv: Resursno-analitychnyy tsentr «Suspil'stvo i dovkillya», 2015.