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# The Effects of COVID-19 on Ukraine's Regulation of Employment Relations

Yana Simutina, Sergii Venediktov <sup>1</sup>

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## Abstract

This article aims to study the changes in the legal regulation of employment relations in Ukraine following the outbreak of COVID-19. The pandemic has increased law-making activity. However, the obsolescence of Ukraine's Labour Code has produced questionable outcomes. For this reason, the disadvantages caused by the rules governing employment relations in Ukraine should be dealt with, while seeking higher involvement of the social partners, scholars and relevant international organizations.

**Keywords** – *COVID-19; Quarantine; Remote work; Flexible working hours; Downtime; Unpaid leave; Non-standard work.*

## 1. Introductory Remarks

Labour law is one of the most consolidated branches of law. This is mainly due to its legal character and its commitment to ensuring the highest socioeconomic safety of those involved in the labour process. While positive, this aspect can sometimes backfire on the parties to the employment relationship, and the lack of flexibility of labour law does not always allow responding to unexpected situations affecting employment.

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The COVID-19 outbreak is illustrative of this state of affairs. National governments have resorted to different measures to contain virus spread and the collapse of the healthcare system. The economic and social impact of these measures is already being felt, and the situation might worsen in the months to come, particularly for workers and employers.

In some cases, workers lost their jobs; in others, reduced working time was implemented; in some others, remote work was adopted. Some employees have been granted sickness or unemployment benefits, while others have been left without any protection. Yet most of them are still facing uncertainty, particularly those operating in the informal economy, migrant and platform workers<sup>2</sup>. Starting from the latter half of March 2020, Ukraine's Cabinet of Ministers implemented a nationwide quarantine due to the increase in the number of people affected by COVID-19. This decision has had a serious impact on all the spheres of life. In Ukraine, only employees working in essential businesses – i.e. food stores, pharmacies, state institutions, hospitals – were allowed to use public transport while the underground service was temporarily discontinued, together with intercity carriage performed by bus, railway and air transport. Entertainment events were also suspended, and shopping centers were closed. Education provision underwent significant changes, i.e. online teaching was implemented where possible, with kindergartens that were shut down temporarily.

Undoubtedly, this situation has a negative impact on the employment relationship, too. Because of the quarantine, a significant number of enterprises had to reconsider, close or reduce their business activities. According to a survey conducted by the Union of Ukrainian Entrepreneurs, almost 60% of the business owners surveyed continue to operate under restrictions, i.e. mainly large and medium-sized businesses; 29 % of them stopped working (mostly micro-businesses; 51% of them can only last a further month<sup>3</sup>. Furthermore, many Ukrainian nationals previously working abroad are flooding into the country's labour market. In considering March alone, more than 270,000 seasonal workers returned

<sup>2</sup> The importance of the effective respect and implementation of ILO's International Labour Standards in the context of the outbreak of COVID, 2 May 2020. [https://www.ilo.org/actrav/info/pubs/WCMS\\_743402/lang-en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_743402/lang-en/index.htm) (Accessed 31 May 2020).

<sup>3</sup> 51% підприємств, які перебувають у карантині, можуть протриматися місяць – інтерв'ю, ЗН,UA, 3 квітня 2020. [51% of enterprises under quarantine can last a month – interview, ZN,UA, 3 April 2020]. <https://dt.ua/ECONOMICS/51-pidpriyemstv-v-umovah-karantynu-zmozhut-protrimatisya-misyac-opituvannya-343491.html> (Accessed 20 April 2020).



to the country. In order to prevent mass unemployment, the Cabinet of Ministers of Ukraine planned to create 500,000 jobs in May<sup>4</sup>. The Parliament of Ukraine adopted Law No. 530-IX, of 17.03.2020 and Law No. 540-IX, of 30.03.2020, which amended labour legislation, primarily the Labour Code (hereinafter: the LC). These amendments are aimed at extending unpaid leave, detailing the use of flexible working hours and remote work, clarifying the procedures for remuneration during downtime. Besides the changes put in place by the government, further measures exist to support both workers and employers during the quarantine period. One of those is simplifying the procedures for obtaining unemployment status, creating new employment and ensuring financial support to employers who are facing economic hardship because of COVID-19. While it is true that the pandemic has produced negative effects worldwide, it has also true that in some countries – e.g. Ukraine – it has highlighted some major shortcomings in relation to the regulation of flexible forms of employment. Against this backdrop, this paper intends to examine the recent changes in Ukrainian labour legislation, in order to assess its effectiveness and how labour relations must adapt to meet the new needs originating from information society and the gig economy.

## 2. Discussion

### 2.1. *Changes in the Regulation of Employment Relationships*

The amendments made to the LC in March 2020 aimed to update some old provisions of the Code, which failed to keep up with current times. The LC was adopted in 1971 and has undergone a number of changes for nearly 50 years now, yet retaining its socialist foundations. In this respect, the LC does not regulate non-standard employment, remote work and the use of modern electronic communications, and refers to outdated time management mechanisms, providing ineffective grounds for dismissal, to name a few. This is so because the LC is a reflection of the last 50 years of the twentieth century. Due to increased information access, many changes have taken place in relation to professional qualifications, the educational structure and the nature of work. These transformations also involve an employee's roles and functions, as intellectual and creative work displaces

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<sup>4</sup> Datskevych, N. *Amid pandemic, Ukraine's unemployed grow by 36,000 people in one week*, 13 April, 2020: <https://www.kyivpost.com/business/amid-pandemic-ukraines-unemployed-grow-by-36000-people-in-one-week.html> (Accessed 20 April 2020).



[illegible]

lack of a modern codified act in the field of labour, the adoption of the March amendments has been hailed positively. However, these amendments, which were designed to modernize employment relations, have given rise to some controversy. First of all, the changes to the LC were aimed at governing employment relationships during periods of possible economic instability, due to some quarantine measures affecting regular business operations. For this reason, the legislator repealed the provisions regulating unpaid leave, limiting its duration to 15 calendar days per year. Now, in accordance with the amendments made to Article 84 of the LC, unpaid leave may be taken until the end of the quarantine period. As early as in 1979, scholars considered this time off from work to be an innovation in labour legislation and a starting point to expanding workers' rights<sup>8</sup>. Therefore, the leave restrictions laid down in the previous version of Article 84 were regarded as a sort of guarantee for the employee. Despite the fact that unpaid leave can only be granted with the employee's consent, the employer can pressure the employee into taking time off from work. And because the quarantine was extended, there are many workers who risk being encouraged to take unpaid leave for much longer periods than 15 days

The paradox is that the norm that regulated this type of issues already existed in the LC. The statutory wording of the Article 84 (3) of the Code – which was in place between 1998 and 2003 – provided that, pursuant to the procedure established by the collective agreement, unpaid leave (or leave with minimum pay) can be granted in the event of downtime for reasons beyond employee control. This norm, which regulated unpaid leave provision in the event of downtime, was repealed, yet consultation with trade unions is now necessary in order to provide unpaid time off from work. The only drawback now is the lack of clarity in leave procedures. Currently, no indication is provided as to whether leave is granted discretionarily by the employer, or agreement must be sought with the employee. Furthermore, judicial practice favoured the employer. The Supreme Court has ruled that in the case of downtime for reasons beyond employee control, the employer may, in the manner prescribed by the collective agreement, provide unpaid leave. Under these conditions,

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of labour law: theoretical principles and practice of their implementation. Law and Innovation, No.1 (13), P. 11-12 (2016)]. <http://ndipzir.org.ua/wp-content/uploads/2016/05/Zhernakov13.pdf>. (Accessed 31 May 2020).

<sup>8</sup> Зернаков В. В. Право на отпуск, не оплачиваемый работодателем. Советское законодательство о труде. № 10, 1979. С. 60 [Venediktov, V. Right to unpaid leave. Soviet Law, No. 10, 1979. P. 60].

granting leave is not made conditional on the employee's request<sup>9</sup>. Thus, this decision legalized the possibility of placing the employee on unpaid leave without his consent. Also, Article 60 of the LC was amended in March in connection with the regulation of remote working. It should be noted that, before the March amendments, remote work in Ukraine was not legally regulated and the following provisions governing this form of employment cannot be regarded as successful. This is due to the fact that new version of Article 60 of the LC combines two different types of work arrangements – 'remote work' and 'homework', without establishing any differences between them. Furthermore, the Article does not lay down clear provisions regarding employees' rights and obligations in relation to remote work and homework.

According to Article 60 of the LC, through remote and home work, an employee works at his place of residence or in another place of his choice, with the help of information and communication technologies, but outside the employer's premises. However, pursuant to the old Regulations on the Working Conditions of Homeworkers No. 275/17-99 of 29.09.1981, homeworkers are "individuals who have an employment contract to perform work at home using tools and resources allocated by the employer, or purchased at the employer's expense. The employer may allow homeworkers to manufacture products using their own materials, machinery and tools". Therefore, these Regulations provide that homeworkers perform mainly physical labour only in their private premises, without using ICTs. This is precisely what distinguishes homework from remote work in Ukraine. The last one is characterized by an intellectual component, ICT use and the lack of any reference to one's home. Besides, the expression "remote work" can be used for two different ways of working, namely: 1) a special working scheme, which may be temporarily entered into with the employee's consent as a necessary measure should certain circumstances arise (e.g. quarantine or lockdown) 2) a special working scheme whereby remote workers – because of the nature of their work – can operate away from the employer's premises. Unfortunately, when introducing the latest amendments to the LC, the legislator did not take this difference into account. Moreover, the particulars of the contracts entered into to perform remote work and homework should be displayed in a special

<sup>9</sup> [www.reyestr.court.gov.ua/Review/79615943](http://www.reyestr.court.gov.ua/Review/79615943), 210/5853/16-[www.reyestr.court.gov.ua/Review/79615943](http://www.reyestr.court.gov.ua/Review/79615943) [The Supreme Court Judgement of 30 January 2019, No. 210/5853/16-[www.reyestr.court.gov.ua/Review/79615943](http://www.reyestr.court.gov.ua/Review/79615943)]. <http://www.reyestr.court.gov.ua/Review/79615943>. (Accessed 31 May 2020).

chapter of the LC. This move would be important to govern a number of issues, namely 1) the procedures for concluding a contract with employees working remotely, including the exchange of electronic documents 2) the procedures concerning information exchange and confidentiality, employee monitoring and task assignment 3) aspects such as working and rest time, including employees' rights to privacy and disconnect 4) trade union right protection, e.g. participation in collective bargaining, dispute settlement 5) equality of treatment between on-site and remote employees.

The last issue has been neglected by the Code. Therefore, on the one hand, Article 60 (12) of the LC states that the engaging in remote work does not entail any restrictions of labour rights. On the other hand, further on the Article specifies that, unless agreed otherwise in writing, remote work involves full payment within the time laid down in the employment contract. Accordingly, this provision favours discrimination of remote workers in relation to the amount and the terms of remuneration. Furthermore, while apparently attempting to legalise remote work, Ukrainian lawmakers made minor changes to the definition of the employment contract laid down in Article 21 of the LC.

Specifically, the employer's obligation to provide safe working conditions and the need for the employee to be subject to international labour regulations are no longer part of the definition of an employment contract provided for in this article.

This change has obviously brought about negative consequences, especially because the Code does not contain a definition of the 'employment relationship' and their specific aspects. Therefore, in the event of litigation, the legal definition of the employment contract is referred to.

It should be noted that the Ukrainian legislator has incorporated the legal definition of the employment contract into the original version of Article 21 of the LC, thus highlighting the relevance of internal labour regulations when entering into and terminating employment.

These labour regulations can be conceived as a number of obligations addressing the employee, which are formulated by the employer, within the limits established by law and formalized thanks to local legal acts<sup>10</sup>.

<sup>10</sup> Пилипенко, П. Внутрішні трудові регуляції як об'єкт правового регулювання. Наукові праці Пилипа Пилипенка. Ексерптим. Дрогобич: Коло, 2013. С. 362, 368. [Pylypenko, P. Internal labour regulations as an object of legal regulation. Scientific works of Pylyp Pylypenko. Excerptum. Drohobych: Colo, 2013. P. 362, 368.]

The same applies to the obligation of the employer to provide safe working conditions for workers, which illustrates the protective function of labour law.

The Ukrainian labour market is characterized by segmentation between salaried employment and self-employment. However, Ukrainian legislation does not prohibit one from engaging in dependent work by entering into a civil contract (e.g. through task-specific contracts or contracts of services). These contracts can be concluded by individuals whose business activity is not registered and by the self-employed. There are no particular safeguards related to the use of civil contracts when making use of labour or services. The Supreme Court has established the existence of an employment relationship, based on criteria like the personal and continuous nature of work, the fact that workers are available for work at certain times, the existence of a place of work and the employer's supervision. It has also emphasized that a contractor working under a civil contract – as opposed to an employee performing work under an employment contract – is not subject to internal work regulations, thus operating at his own risk<sup>11</sup>.

Amendments to Article 21 of the LC affect the mechanisms for identifying employment relations in the event of disputes over bogus self-employment. As a result, thousands of workers without a registered business activity are employed solely on civil contracts. Therefore, besides being granted low remuneration and insufficient social security, a large share of the Ukrainian workforce is not hired through legal employment relationships. According to official statistics, in 2019 the share of illegal or undeclared work in Ukraine stood at 20.9 %, involving approximately one in four Ukrainians. Tellingly, these statistics do not take into account temporarily occupied territories in eastern Ukraine as well as Crimea<sup>12</sup>.

It should be noted that the changes made to the LC in March 2020 also had a positive effect on the regulation of employment relationships, as a number of new provisions govern flexible working hours. Many scholars in Ukraine consider this work arrangement to be beneficial. Prokopenko

<sup>11</sup> Верховний Суд України, рішення від 8 травня 2018 року, № 127/21595/16. [The Supreme Court Judgement of 8 May 2018, No. 127/21595/16]. <http://reyestr.court.gov.ua/Review/73902480>. (Accessed 31 May 2020).

<sup>12</sup> Інформація про населення України за 2019 рік [Informally employed population by age, sex, residence and employment status in 2019.] [http://www.ukrstat.gov.ua/operativ/operativ2017/rp/eans/eans\\_u/arch\\_nzn\\_smps\\_z\\_u.html](http://www.ukrstat.gov.ua/operativ/operativ2017/rp/eans/eans_u/arch_nzn_smps_z_u.html). (Accessed 31 May 2020).

(1998) has pointed out that the introduction of this working scheme helped to reduce stress and thus errors and defects, work-related accidents, the request for short leave and absenteeism. The ability to change one's working time increases a person's comfort<sup>13</sup>, though a flexible way of working should be accompanied by an adequate level of protection. The purpose of introducing such a work regime is to rationalise production organisation, increase its efficiency, ensure labour discipline and the best combination of economic, social and personal interests for both parties<sup>14</sup>.

Thus far, scholars' optimistic views towards flexible working hours and its widespread use have not resulted in proper legislation governing this way of working (exceptions include Regulations on the Procedure and Conditions for the Use of a Flexible Work Schedule for Women with Children No. 170/10-101, of 06.06.1984 and Methodological Recommendations for Establishing a Flexible Working Time Regime No. 359, of 04.10.2006).

It should be noted that these legislative acts do not fully regulate the application of flexible working hours and are rather obsolete (e.g. Regulations No. 170/10-101 have a narrow focus on employment relationships and apply to specific categories of workers, while Methodological Recommendations No. 359 are mostly declarative in nature). Thus, the amendments to Article 60 (1) – (9) of the LC – supplying the definition of flexible working hours and the procedure for its application – have been welcomed positively.

One of the main novelties introduced through the March amendments to the LC is the clarification of the procedures for remunerating workers during companies' downtime because of quarantine. Under Article 34 (1) of LC, 'downtime' is the suspension of work caused by the lack of the organizational or technical conditions needed for work performance, due to force majeure or other circumstances. Prior to amending LC, Article 113 provided that downtime had to be remunerated, so workers were

<sup>13</sup> Проградування робочого часу, О. Проградування робочого часу. Київ: Консум, 1998, с. 298. [Prokopenko, V. Labour Law of Ukraine. Kharkiv: Konsum, 1998, p. 298].

<sup>14</sup> Проградування робочого часу, І. Проградування робочого часу в умовах карантину. Київ: Консум, 2020, с. 121. [Vetuhova, I. Legal regulation of non-typical employment in modern conditions. Problems of Legality: Collection of Scientific Works. Issue 126. P. 81-92 (2013)] [http://dspace.nlu.edu.ua/bitstream/123456789/6015/1/Vetuhova\\_rus\\_93.pdf](http://dspace.nlu.edu.ua/bitstream/123456789/6015/1/Vetuhova_rus_93.pdf). (Accessed 31 May 2020).

granted 2/3 of their wages. In addition, the previous version of Article 113 determined that during downtime, when a life-threatening situation arises in the workplace, employees are entitled to average earnings. This provision raised the question as to whether workers should be paid full or partial remuneration in quarantine. The amendments made to Article 113 clarified this issue, unfortunately penalizing the employee. Specifically, the employee is paid at most 2/3 of his salary when downtime is caused by reasons beyond employee control and results in a quarantine period.

## *2.2. State Support for Employees and Employers during Quarantine*

The introduction of quarantine in Ukraine has clearly affected employment levels, with statistics reporting a significant rise in unemployment. As of 20 May 2020, 501,000 unemployed people registered with the State Employment Service (SES), i.e. 64 % more than the same period in 2019<sup>15</sup>. To deal with this situation, on 13 May 2020 the government introduced a job-creation program, so 500,000 jobs were offered in a number of sectors (e.g. road construction and transport infrastructure, landscaping, agricultural development, digitization of documents and archives, postal services, forestry, micro and small business enterprises<sup>16</sup>).

Furthermore, Ukraine's Cabinet of Ministers adopted Resolution No. 244, of 29.03.2020, which improved employment services during the quarantine period. Obtaining unemployment status and benefits now take place soon after filing the relevant application, while before a seven-day period of active job search was required. In addition, in quarantine, a person was allowed to submit an application by e-mail and – after obtaining unemployment status – communicate remotely with SES.

<sup>15</sup> [Not an easy search. Who manages to find a job in quarantine? State Employment Center. Official website. 22 May 2020] <https://www.dcz.gov.ua/novyna/nelegky-poshuk-komu-vdayetsya-znayty-robotu-na-karantyni>. (Accessed 31 May 2020).

<sup>16</sup> [Action plan to create conditions for increasing employment. Government portal. Official website. Published 13 May 2020.] <https://www.kmu.gov.ua/news/plan-zahodiv-po-stvorennnyu-umov-dlya-pidvishchennya-zajnyatosti-naselennya>. (Accessed 31 May 2020).



Finally, the minimum unemployment benefit was increased by approximately 40%.

One of the measures addressing employers facing economic hardship due to COVID-19 is the partial unemployment benefit allocated to employees in small and medium-sized enterprises which shut down to prevent the spread of COVID-19. This financial support is provided to employers from the Compulsory State Social Insurance Fund during the quarantine period, in order to ensure continuation of the employment relationship. This benefit is equal to 2/3 of the employee's basic salary and is paid proportionally to the hours of work that have been reduced. The amount of the benefit is to be determined by the financial possibilities of the Fund and may not exceed the minimum wage established by law. Unless they are pensioners who are still in employment, it is up to employers to pay the partial unemployment benefit during quarantine, starting from the first day when working time was reduced due to work suspension, within 30 calendar days from the end of the quarantine period. If the employer receives this state allowance, it cannot dismiss employees on such grounds as: work reduction (unless the company's total liquidation takes place), the parties' consent, the employer's failure to comply with labour legislation within 6 months from the day the benefit ends (i.e. if the benefit was paid in a period shorter than 180 calendar days – which correspond to the period of payment). If the employer violates this obligation, it must return the entire amount of money received from the State Fund<sup>17</sup>.

The measures taken by the Government have had a positive effect, though they will be in place only during the quarantine period. Yet the simplified procedures to register as unemployed should be implemented also in the future. One might also note that the issue of adopting new legislation on employment and mandatory state social insurance in case of unemployment was raised as early as 2018, but no progress has been made so far.

### *2.3. Future Challenges for Ukrainian Labour Law caused by COVID-19*

The 2000s saw a surge in technological developments, e.g. the Internet, which favoured the growth of remote and platform work. Online platforms are used to perform crowdwork. They decide how information

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<sup>17</sup> Simutina, Y., Venediktov S. *COVID-19 and Labour Law: Ukraine*. Italian Labour Law e-Journal. Special Issue 1, Vol. 13 (2020). <https://doi.org/10.6092/issn.1561-8048/10946>.

is collected and displayed, who can work on the platform and the status they will have, as well as whether or not to intervene and mediate disputes. It is not an unregulated market – it is a “platform-regulated” market<sup>18</sup>. According to various sources, in the 2013-to-2017 period, Ukraine ranked first in Europe and fourth in the world in terms of work performed on digital platforms, considering the amount of financial flows and the number of tasks executed. Ukraine also ranks first in the world in relation to “IT freelance work”. It is estimated that at least 3% of the Ukrainian workforce is involved in online work. Eighteen per cent of Ukrainian white-collar workers already experienced digital work and would like to switch to it fully; one in two view it as an additional source of income. As of today, Ukrainians are accessing digital labour market through a variety of platforms, both international, regional, and local ones. As of March 2018, there were at least 500,000 registered workers from Ukraine on 6 platforms alone. This makes up roughly 3% of the employed population (estimated at 16.2 million people in January 2016)<sup>19</sup>. It should be noted that such a huge amount of labour force requires proper legal regulation. But the problem is that the LC does not make any provision for platform work, given its outdated character. Thus far, the Code has been amended 140 times, but still needs adapting to the XXI century and platform work. The legal regulation of this non-standard form of employment is also lacking in other legislative acts. Undoubtedly, this situation negatively affects people working on digital platforms, pushing them to independently claim their rights. In 2019, after a series of protests for their employment status, insurance, fuel and communication benefits, Glovo couriers organised to protect their interests. This was caused by recent events, namely the death of a courier in an accident on July 25, 2019 while carrying out an order, as well as changes in the payroll system<sup>20</sup>. The quarantine period worsened the situation of platform

<sup>18</sup> Berg, J. *Income security in the on-demand economy: findings and policy lessons from a survey of crowdworkers*/International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch. Geneva, ILO, 2016, p. 25.

<sup>19</sup> Aleksynska, M., Bastrakova, A. & Kharchenko, N. *Work on Digital Labour Platforms in Ukraine: Issues and Policy Perspectives*. ILO. Geneva, 2018. [https://www.ilo.org/travail/WCMS\\_635370/lang--en/index.htm](https://www.ilo.org/travail/WCMS_635370/lang--en/index.htm). (Accessed 31 May 2020).

<sup>20</sup> [Trade union protection of the informally employed in the gig economy. Trade Union News, 31 October 2019]. [http://www.psv.org.ua/arts/Ludina\\_i\\_pracia/view-4335.html](http://www.psv.org.ua/arts/Ludina_i_pracia/view-4335.html). (Accessed 31 May 2020).

workers (i.e. an increase in orders and the number of staff). The founder of Glovo stated that if someone had gotten Covid-19, the company would have paid for treatment. Among the platforms providing work, only Uber Eats has promised to allocate up to 200 UAH for masks and antiseptics. On April 6, 2020, a strike took place at Glovo in Ukraine due to wage cuts, with many workers refusing to access the platform. Due to the limited number of couriers, only 50% of the orders received were carried out. Most couriers were not aware of the strike and, apparently, the platform hired a lot of new workers to deal with this state of affairs. Furthermore, payment was increased on the days of the industrial action<sup>21</sup>. Some experts believe that in light of the COVID-19 crisis, now it is a good time to review the current systems. All workers – irrespective of their employment status – must access healthcare, stay at home when feeling unwell, and benefit from income support in case of a crisis-related reduction of working time or job loss<sup>22</sup>. We undoubtedly agree with this position. The quarantine period is unique in that it exacerbated problems that exist in the world of work, including those related to the lack of proper protection of people involved in platform work. Yet in Ukraine, legal regulation of platform work is not likely to take place soon. The creation of trade unions of platform workers and their participation in strikes, as was recently the case in Ukraine, are factors that should be considered as the willingness to include platform work within the scope of labour law.

Furthermore, the number of rulings awarding employee status to platform workers is growing everywhere. To give an example, at the end of July 2019, a Court in Madrid ruled that the 537 Deliveroo riders working in the Spanish capital between October 2015 and June 2017 were ‘disguised employees’. A month before, a Court of Valencia had also awarded employee status to 97 Deliveroo riders. The food delivery company was condemned to pay social security fees to each rider during the

<sup>21</sup> Губа, Р. Як карантин змінив роботу доставщиків їжі. Кіровоградська обласна рада, 14 квітня 2020 [Guba, R. How quarantine changed the work of food suppliers. The courier answers. Commons, 14 April 2020] [https://commons.com.ua/ru/kak-karantin-izmenil-rabotu-dostavshikov-edy/?fbclid=IwAR1SWqrkF31AmKIM4FF1U\\_0f4mKmTiwpw2P89gVnXKa70W43IuuWTLptQf8](https://commons.com.ua/ru/kak-karantin-izmenil-rabotu-dostavshikov-edy/?fbclid=IwAR1SWqrkF31AmKIM4FF1U_0f4mKmTiwpw2P89gVnXKa70W43IuuWTLptQf8). (Accessed 31 May 2020).

<sup>22</sup> Berg, J. *Precarious workers pushed to the edge by COVID-19*. <https://iloblog.org/2020/03/20/precarious-workers-pushed-to-the-edge-by-covid-19>. (Accessed 22 May 2020).

corresponding period<sup>23</sup>. Also, in 2020 the California Public Utilities Commission said in an order that drivers for Transportation Network Companies, which include services like Uber and Lyft, were to be considered as employees<sup>24</sup>.

### 3. Conclusions

Undoubtedly, COVID-19 prompted development in all sectors. On the one hand, this impulse for labour law can be assessed positively, because it stimulated the review of outdated legislation. On the other hand, quarantine posed many challenges for Ukraine related to increasing unemployment, the need to change conditions of work, the provision of labour protections for platform workers.

As for the many amendments made to the LC in March, they failed to meet the expectations. For instance, changes aimed at legitimizing remote work and improving the regulation of unpaid leave are not systemic. Thus, they did not lead to the proper resolution of issues related to remote work and unpaid leave, but generated new problems associated with outsourcing and ambiguity of new legal norms. A number of factors contributed to this situation: (a) tight deadlines for the adoption of legislation, which make it impossible to analyze the consequences of its implementation; (b) obsolescence of the LC, which requires a thorough review; (c) the inadequate involvement of labour market participants in the legislative process.

The implementation process of up-to-date labour laws is far from complete and discussions about drawing up a new LC have been going on for a long time. Nevertheless, the legislative process cannot be successful without the involvement of the social partners, scholars and relevant international organizations. Also in this situation, the conclusion by the

<sup>23</sup> Valdivia, A.G. Spanish Court rules Deliveroo drivers are employees not self-employed. Forbes, 26 August 2019 <https://www.business-humanrights.org/en/spanish-court-rules-deliveroo-drivers-are-employees-not-self-employed>. (Accessed 10 June 2020).

<sup>24</sup> Sonnemaker, T. *Uber and Lyft drivers are now employees under California law, according to a new ruling from regulators*. Business Insider, June 11 2020. [https://www.businessinsider.com/uber-lyft-drivers-declared-employees-by-california-regulators-2020?fbclid=IwAR0gRtlyUnj0gyhkAJMtBuyCN2h4r8jljYoZs10jh\\_dq3OVC19HAMZMDUSo](https://www.businessinsider.com/uber-lyft-drivers-declared-employees-by-california-regulators-2020?fbclid=IwAR0gRtlyUnj0gyhkAJMtBuyCN2h4r8jljYoZs10jh_dq3OVC19HAMZMDUSo). (Accessed 12 June 2020).

Ukraine government of an Association agreement<sup>25</sup> with the European Union in 2014 constitutes an excellent starting point. This Agreement provides for the implementation of a significant number of EU directives in the field of labour law, consequently encouraging the overhaul of national legislation.

## References

Aleksynska, M., Bastrakova, A. & Kharchenko, N. Work on Digital Labour Platforms in Ukraine: Issues and Policy Perspectives. ILO. Geneva, 2018. [https://www.ilo.org/travail/WCMS\\_635370/lang-en/index.htm](https://www.ilo.org/travail/WCMS_635370/lang-en/index.htm). (Accessed 31 May 2020).

Association Agreement between the European Union and Its Member States, of the One Part, and Ukraine, of the Other Part. (2014, May 29). Official Journal of the European Union, 161, 3–2137.

Berg, J. Income security in the on-demand economy: findings and policy lessons from a survey of crowdworkers / International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch. Geneva, ILO, 2016, p. 25.

Berg, J. Precarious workers pushed to the edge by COVID-19. <https://iloblog.org/2020/03/20/precarious-workers-pushed-to-the-edge-by-covid-19>. (Accessed 22 May 2020).

Datskevych, N. Amid pandemic, Ukraine's unemployed grow by 36,000 people in one week. KyivPost, 13 April, 2020: <https://www.kyivpost.com/business/amid-pandemic-ukraines-unemployed-grow-by-36000-people-in-one-week.html>. (Accessed 20 April 2020).

Importance of the effective respect and implementation of ILO's International Labour Standards in the context of the outbreak of COVID. (2020, 02 May). [https://www.ilo.org/actrav/info/pubs/WCMS\\_743402/lang-en/index.html](https://www.ilo.org/actrav/info/pubs/WCMS_743402/lang-en/index.html). (Accessed 31.05.2020).

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<sup>25</sup> Association Agreement between the European Union and Its Member States, of the One Part, and Ukraine, of the Other Part. (2014, May 29). Official Journal of the European Union, 161, 3–2137.

Simutina, Y. Current Challenges of the Labour Law of Ukraine: On the Way to European Integration. *Juridica International*, 27, 2018. P. 88–93. <https://doi.org/10.12697/ji.2018.27.09>.

Simutina, Y., Venediktov S. COVID-19 and Labour Law: Ukraine. *Italian Labour Law e-Journal. Special Issue 1, Vol. 13* (2020). <https://doi.org/10.6092/issn.1561-8048/10946>.

Sonnemaker, T. Uber and Lyft drivers are now employees under California law, according to a new ruling from regulators. *Business Insider*, June 11 2020. [https://www.businessinsider.com/uber-lyft-drivers-declared-employees-by-california-regulators-2020-6?fbclid=IwAR0gRtIyUnj0gyhkAJMtBuyCN2h4r8jljYoZs10jh\\_dq3OVC19HAMZMDUSo](https://www.businessinsider.com/uber-lyft-drivers-declared-employees-by-california-regulators-2020-6?fbclid=IwAR0gRtIyUnj0gyhkAJMtBuyCN2h4r8jljYoZs10jh_dq3OVC19HAMZMDUSo). (Accessed 12 June 2020).

Valdivia, A.G. Spanish Court rules Deliveroo drivers are employees not self-employed. *Forbes*, 26 August 2019 <https://www.business-humanrights.org/en/spanish-court-rules-deliveroo-drivers-are-employees-not-self-employed>. (Accessed 10 June 2020).

Vyshnovetska, S., Vyshnovetskyi, V. Labour law under the conditions of the information society development. *Jurisprudence in the modern information space. Collective monograph. Edited by prof. Irina Sopilko. Hamilton: Accent Graphics Communications and Publishing, 2019. □. 87. <https://er.nau.edu.ua/bitstream/NAU/41335/1/collective%20monographLitvinova.pdf>*. (Accessed 31 May 2020).

51% □□□□□□□□□□ □ □□□□□ □□□□□□□□ □□□□□□ □□□□□□□□□□ □□□□□□ – □□□□□□□□□□, ZN,UA, 3 □□□□□□ 2020 [51% of enterprises under quarantine conditions can last a month – interview, ZN,UA, 3 April 2020] <https://dt.ua/ECONOMICS/51-pidpriyemstv-v-umovah-karantinu-zmozhut-protrimatisya-misyac-opituvannya-343491.html>. (Accessed 20 April 2020).

□□□□□□□□□□ □. □□□□□ □□ □□□□□□□□□□ □□□□□□□□□□. □□□□□□□□□□ □□□□□. □ 10, □. 60 (1979). [Venediktov, V. Right to unpaid leave. *Soviet Law*, No. 10, 1979. P. 60.].

Ветухова І. Правове регулювання нетипової зайнятості в сучасних умовах. Проблеми легальності : Збірник наукових праць. Випуск 126. С. 81–92 (2013) [Vetuhova, I. Legal regulation of non-typical employment in modern conditions. Problems of Legality : Collection of Scientific Works. Issue 126. P. 81-92 (2013)] [http://dspace.nlu.edu.ua/bitstream/123456789/6015/1/Vetuhova\\_rus\\_93.pdf](http://dspace.nlu.edu.ua/bitstream/123456789/6015/1/Vetuhova_rus_93.pdf). (Accessed 31 May 2020).

Губа Р. Як карантин змінив роботу доставщиків. The courier answers. Commons, 14 April 2020] [https://commons.com.ua/ru/kak-karantin-izmenil-rabotu-dostavshikov-edu/?fbclid=IwAR1SWqrkF31AmKIM4FF1U\\_0f4mKmTiwpw2P89gVnXKa70W43IuuWTLptQf8](https://commons.com.ua/ru/kak-karantin-izmenil-rabotu-dostavshikov-edu/?fbclid=IwAR1SWqrkF31AmKIM4FF1U_0f4mKmTiwpw2P89gVnXKa70W43IuuWTLptQf8). (Accessed 31 May 2020).

Жернаков В. Кодифікація трудового права: теоретичні принципи та практика їх впровадження. Право та Інновації, №1 (13), С. 11-12. (2016). [Zhernakov, V. Codification of labour law: theoretical principles and practice of their implementation. Law and Innovation, No.1 (13), P. 11-12 (2016)]. <http://ndipzir.org.ua/wp-content/uploads/2016/05/Zhernakov13.pdf>. (Accessed 31 May 2020).

Не легке пошуки роботи. Хто зможе знайти роботу в карантин? Державний центр зайнятості. Офіційний сайт. 22 травня 2020] <https://www.dcz.gov.ua/novyna/nelegkyy-poshuk-komu-vdayetsya-znayty-robotu-na-karantyni>. (Accessed 31 May 2020).

Інформально зайнята населення за віком, статтю, місцем проживання та статусом зайнятості в 2019 році [Informally employed population by age, sex, residence and employment status in 2019.] [http://www.ukrstat.gov.ua/operativ/operativ2017/rp/eans/eans\\_u/arch\\_nzn\\_smpsz\\_u.htm](http://www.ukrstat.gov.ua/operativ/operativ2017/rp/eans/eans_u/arch_nzn_smpsz_u.htm). (Accessed 31 May 2020).



Pylypenko, P. Internal labour regulations as an object of legal regulation. Scientific works of Pylyp Pylypenko. Excerptum. Drohobych: Colo, 2013. P. 362, 368. [Pylypenko, P. Internal labour regulations as an object of legal regulation. Scientific works of Pylyp Pylypenko. Excerptum. Drohobych: Colo, 2013. P. 362, 368].

Government portal. Official website. Published 13 May 2020.] <https://www.kmu.gov.ua/news/plan-zahodiv-po-stvorenniyumov-dlya-pidvishchennya-zajnyatosti-naselennya>. (Accessed 31 May 2020).

Supreme Court Judgement of 30 January 2019, No. 210/5853/16-0 [The Supreme Court Judgement of 30 January 2019, No. 210/5853/16-0]. <http://www.reyestr.court.gov.ua/Review/79615943>. (Accessed 31 May 2020).

Supreme Court Judgement of 8 May 2018, No. 127/21595/16. [The Supreme Court Judgement of 8 May 2018, No. 127/21595/16]. <http://reyestr.court.gov.ua/Review/73902480>. (Accessed 31 May 2020).

Prokopenko, V. Labour Law of Ukraine. Kharkiv: Konsum, 1998, p. 298. [Prokopenko, V. Labour Law of Ukraine. Kharkiv: Konsum, 1998, p. 298].

Trade Union News, 31 October 2019]. [http://www.psv.org.ua/arts/Ludina\\_i\\_pracia/view-4335.html](http://www.psv.org.ua/arts/Ludina_i_pracia/view-4335.html). (Accessed 31 May 2020).

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