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POROZUMIENIA ZBIOROWE I UMOWY ZBIOROWE JAKO RODZAJE UMÓW O PRACĘ

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Adnotacja. W artykule naukowym przeprowadzono teoretyczno-prawne badanie umowy zbiorowej i porozumień jako rodzajów umów o pracę, biorąc pod uwagę zmiany w regulacjach prawnych zbiorowego regulowania stosunków pracy i stosunków społeczno-gospodarczych w ukraińskim prawie pracy. Zbadano innowacje w regulacjach prawnych umowy zbiorowej jako rodzaju umów o pracę, które zostały wprowadzone Ustawą Ukrainy „O umowach i porozumieniach zbiorowych” z dnia 23.02.2023 r.nr 2937-IX i innymi aktami prawnymi.

Ustalono, że umowy o pracę jako kategoria prawa pracy łączą różne rodzaje umów: umowę zbiorową, porozumienia zbiorowe, inne rodzaje umów między stronami dialogu społecznego w zbiorowych stosunkach pracy, umowę o pracę i inne rodzaje umów (porozumień) między pracownikiem a pracodawcą w indywidualnych stosunkach pracy. Wskazuje się, że umowa zbiorowa jest lokalnym aktem prawnym regulującym stosunki pracy, społeczne, gospodarcze między pracodawcą a pracownikami przedsiębiorstwa, instytucji, organizacji, a jej treścią są uzgodnione przez strony warunki (postanowienia) mające na celu uregulowanie stosunków pracy, społecznych, ekonomicznych między pracodawcą a pracownikami w tej organizacji.

Artykuł podkreśla szczególne znaczenie umowy zbiorowej w regulacjach zbiorowych stosunków pracowniczych i społeczno-gospodarczych, które otwierają nowe możliwości ochrony praw i uzasadnionych interesów pracowników i pracodawców.

Słowa kluczowe: umowy o pracę, porozumienia zbiorowe, umowy zbiorowe, stosunki pracy, prawo Ukrainy.

COLLECTIVE AGREEMENTS AND COLLECTIVE CONTRACTS AS TYPES OF EMPLOYMENT CONTRACTS

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Abstract. The scientific article presents a theoretical and legal study of collective agreements and contracts as types of employment contracts, taking into account changes in the legal regulation of collective bargaining in labor and socio-economic relations in the legislation of Ukraine on labor.

The changes in the legal regulation of the content of the collective agreement as a type of labor contract, which were introduced by the Law of Ukraine “On Collective Contracts and Agreements” dated February 23, 2023, were studied. No. 2937-IX and other legislative acts.

The article defines that labor contracts as a category of labor law combine various types of contracts: collective agreement, collective contracts, other types of agreements between parties to social dialogue in collective labor relations, labor contract and other types of contracts (agreements) between an employee and an employer in individual labor relations. A collective contract is a local legal act that regulates labor, social, and economic relations between an employer and employees of an enterprise, institution, organization, and its content is the conditions (provisions) agreed by the parties, designed to regulate labor, social, and economic relations between the employer and employees in this organization.

The article emphasizes the special importance of the collective agreement in the collective contractual regulation of labor and socio-economic relations, which opens up new opportunities for the protection of rights and legitimate interests of employees and employers.

Key words: employment contracts, collective agreements, collective contracts, labor legal relations, legislation of Ukraine.

КОЛЕКТИВНІ УГОДИ І КОЛЕКТИВНІ ДОГОВОРИ ЯК ВИДИ ДОГОВОРІВ ПРО ПРАЦЮ

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Анотація. У науковій статті здійснене теоретико-правове дослідження колективного договору та угод як видів договорів про працю з урахуванням змін у правовій регламентації колективно-договірному регулюванню трудових та соціально-економічних відносин у законодавстві України про працю. Досліджено нововведення у правовій регламентації колективного договору як виду договорів про працю, які запроваджені Законом України «Про колективні договори та угоди» від 23.02.2023 р. № 2937-ІХ та іншими законодавчими актами.

Визначено, що договори про працю як категорія трудового права об'єднують різні види договорів: колективний договір, колективні угоди, інші види угод між сторонами соціального діалогу в колективних трудових правовідносинах, трудовий договір та інші види договорів (угод) між працівником і роботодавцем в індивідуальних трудових правовідносинах. Вказується, що колективний договір – це локальний нормативно-правовий акт, який регулює трудові, соціальні, економічні відносини між роботодавцем і працівниками підприємства, установи, організації, а його змістом є узгоджені сторонами умови (положення), покликані врегулювати трудові, соціальні, економічні відносини між роботодавцем і працівниками в даній організації.

У статті підкреслюється особливе значення колективного договору у колективно-договірному регулюванні трудових і соціально-економічних відносин, який відкриває нові можливості для захисту прав та законних інтересів працівниками та роботодавцями.

Ключові слова: договори про працю, колективні угоди, колективні договори, трудові правовідносини, законодавство України.

Introduction. In native labor law science, theoretical and practical significance is attributed to the branch legal category of “employment contracts” which encompasses all types of contracts and agreements within the framework of individual and collective labor legal relations, and is proposed to be regarded not as a generic concept but as a collective term. As noted by H.I. Chanysheva and B.A. Rymar, employment contracts are numerous two- or three-party agreements regulated by its norms (Chanysheva, Rymar, 2011: 152). Employment contracts as a category of labor law encompass various types of contracts, including collective contracts, collective agreements, other types of agreements between the parties of social dialogue in collective labor legal relations, employment contracts, and other types of contracts or agreements between employees and employers in individual labor legal relations.

Collective agreements and collective contracts, as acts of social dialogue, acquire particular significance in conditions of a state of war, as they are one of the forms of collective protection of labor, social, and economic rights and interests of workers. They serve as a means of safeguarding their rights and interests, documenting the achieved common understandings and mutually agreed decisions between the parties of social dialogue (Chanysheva, 2022: 504–508).

In the field of labor law science, numerous scientific works have been devoted to the study of collective agreements and contracts, authored by N.B. Bolotina, M.I. Inshyna, N.M. Klymenchuk, V.L. Kostyuk, P.D. Pylypenko, S.M. Prylypko, H.I. Chanysheva, O.M. Yaroshenko, and others.

The purpose of the scientific article is a theoretical and legal study of the legal nature of collective contracts and agreements as types of labor contracts, determination of the content of the collective contract and its

significance in the collective agreement regulation of labor and socio-economic relations according to the current labor legislation of Ukraine.

Basic content. According to the Recommendation No. 91 of the International Labour Organization (ILO) concerning Collective Agreements, 1951, a collective agreement is any written agreement on the terms of employment and work that is concluded, on one side, between the employer, a group of employers, or one or several employers' organizations, and on the other side, one or several representative organizations of workers or, in the absence of such organizations, representatives of the workers themselves, who are duly elected and authorized in accordance with the legislation of the country (Regarding collective contracts: ILO Recommendation № 91 (1951)).

Article 10 of the Labor Code of Ukraine (hereinafter referred to as the LC) (Code of Labor Laws of Ukraine: Law No. 322-VIII dated 10.12.71) provides that a collective agreement is concluded on the basis of the current legislation, with the parties assuming obligations aimed at regulating production, labor, and socio-economic relations and reconciling the interests of workers and employers. Article 97 of the LC determines the establishment of terms of remuneration, excluding minimum guarantees of remuneration; Article 105 of the LC establishes the amount of allowances for combining professions (positions) or performing the duties of temporarily absent employees, the increased rate of payment for work during night hours is defined in Article 108 of the LC, and the procedure for payment for work during overtime is established in Article 106 of the LC, and so on. In other cases, at the legislative level, the parties to social partnership are given the opportunity to establish local norms, for example, regarding the reduction of normal working hours (Article 50 of the LC), other types of leaves, except those provided for in Article 4 of the Law of Ukraine "On Leaves" ("On Leaves": Law of Ukraine dated 15th November 1996 № 504/96-VR), etc.

These and other local norms establish the terms of work at an enterprise, institution, or organization. Based on the above, it can be concluded that the Labor Code of Ukraine considers the collective agreement as a legal act of a mixed nature, incorporating both normative and binding conditions. In our opinion, the collective agreement has a mixed legal nature and combines binding and normative conditions. The presence of normative conditions in the content of the collective agreement allows it to be classified as a source of labor law. The Labor Code of Ukraine defines the legal foundations for the development, conclusion, and implementation of collective agreements and agreements with the aim of promoting the regulation of labor, social, and economic relations between workers and employers. The conclusion of collective agreements and agreements signifies the decentralization of legal regulation of labor relations. The state establishes the general procedure for concluding collective agreements at the centralized level, while the content is determined by the parties. Many provisions of laws regarding remuneration and leave can only be realized through the conclusion of a collective agreement. The principle of non-diminution of workers' rights compared to legislation is in effect, as well as the principle of preserving the level of social and labor rights and guarantees established by higher-level agreements.

Finally, when enshrined in a collective agreement, the collective interests of the parties take the form of mutual obligations, the fulfillment of which is ensured not only by mutual responsibility but also, if necessary, by the coercive force of the state. When considering lawsuits arising from the improper fulfillment of obligations stipulated in collective agreements, courts should regard the specific enterprise's collective agreement as a local source of law. In the field of labor law science, the collective agreement has traditionally been considered a legal institution of the General Part of labor law. At present, it is influenced by new social relations, which inevitably affect its legal form. The collective agreement is not the only legal act through which contractual establishment of employment conditions takes place; it is part of the system of collective labor agreements at the national, sectoral, and territorial levels. The collective agreement occupies a lower level in this system, which in no way diminishes its normative and regulatory properties, but requires internal consistency within the system of these acts. Additionally, the collective agreement serves as one of the means (methods) of implementing social partnership relations and thus becomes part of this system of relations. One cannot fail to notice the formation of a new legal institution of social partnership, which will acquire clearer contours with the adoption of relevant legislative acts.

A collective agreement is a local regulatory and legal act that governs labor, social, and economic relations between employers and employees of an enterprise, institution, or organization. Collective agreements are concluded in enterprises, institutions, and organizations regardless of their ownership and economic forms, as long as they employ hired labor and possess legal entity rights. The law does not specify a minimum threshold of employees on an enterprise for which a collective agreement must be concluded. However, it is advisable to establish such a requirement. In the case of an individual employer with only one hired employee, the employment conditions can be determined by an employment contract, which is considered sufficient. In practice, collective agreements are often not concluded in small enterprises, particularly in the private sector. Consequently, this non-compliance with the legal norm occurs, although the law itself does not adequately meet market needs.

According to Article 2 of the Law of Ukraine "On Collective Contracts and Agreements" dated December 11, 2022, No. 3356-XII, and Article 11 of the Labour Code, a collective agreement may be concluded in structural units of enterprises. Such structural units must have economic and financial autonomy, as well as organizational and material capabilities to establish and implement additional or higher-level benefits and other conditions for regulating socio-economic and labor relations, taking into account the specifics of the unit.

A collective agreement is concluded not only in industrial enterprises but also in budgetary institutions, educational establishments, healthcare facilities, executive authorities, and local self-government bodies. The collective agreement combines features of both a contract and a regulatory legal act. Today, it is the most important local

regulatory legal act that determines the terms of work, remuneration conditions, and social guarantees for employees at an enterprise, institution, or organization. At the same time, it is not just a legal act but also an act of social partnership at the enterprise level between employees and employers, resulting from the reconciliation of their interests. In legal literature, it is defined that a collective agreement has two characteristic features: firstly, it regulates social relations, meaning it contains legal norms, and secondly, it is adopted by a contractual procedure, which is why collective agreements belong to a special category of legal sources – normative agreements. Thus, G.I. Chanyshva defines that “a collective agreement has the characteristics of an agreement and a regulatory legal act. The proportion of normative provisions in the content of a collective agreement has significantly increased in recent years.

Moreover, the origin of certain local norms is determined by legislative requirements regarding the inclusion of certain provisions in the collective agreement” (Chanyshva, 2021: 19–20).

As mentioned above, in our opinion, a collective agreement has a mixed legal nature. It combines elements of both a contract and a regulatory legal act. As a contract, it is concluded after negotiations, contains binding conditions, and remains in effect for a specified period. The presence of an obligatory part in a collective agreement is recognized by many scholars. We cannot agree with authors who do not consider the dual legal nature of the collective agreement and only view it as a contract (Potopakhina, 2012: 19–20).

Renowned scholars in the field of labor law, such as S.M. Prylypko and O.M. Yaroshenko, also define acts of social partnership as normative-legal agreements, independent sources of labor law (Prylypko, Yaroshenko, 2011: 19–20). Collective agreements and contracts belong to the acts of labor legislation. The presence of acts of social dialogue within the system of labor legislation is one of its sectoral characteristics.

According to the first part of Article 3 of the Law of Ukraine No. 3356-XII, a collective agreement is concluded between the employer, on one side, whose subjects are the employer and/or authorized representatives of the employer, including representatives of separate units of the legal entity, and the workers’ side, whose subjects are primary trade union organizations operating at the enterprise, institution, organization, separate units of the legal entity, uniting the employees of the natural person using hired labor and representing the interests of the employees working under labor contracts with this employer, and in the absence of such organizations, freely elected representatives chosen by the employees to conduct collective negotiations (representative). According to the results of collective negotiations, collective contracts and agreements are concluded: at the national level – a general agreement; at the branch level – branch (inter-branch) agreements; at the territorial level – territorial agreements; at the local level – collective agreements. The procedure for conducting collective negotiations is determined by law.

The parties to collective agreements are the parties of social dialogue, the composition of which is determined in accordance with the legislation on social dialogue (the second part of Article 3 of the Law of Ukraine No. 3356-XII). The content of the collective agreement consists of the agreed conditions (provisions) between the parties, aimed at regulating labor, social, and economic relations between the employer and the employees in a particular organization. These conditions can be divided into four types: informational, normative, binding, and organizational.

Informative conditions of a collective agreement include provisions of centralized legislation, as well as higher-level collective agreements, such as the General Agreement, industry-level (inter-industry) agreements, and territorial agreements. These conditions, when incorporated into the collective agreement of a specific enterprise, do not acquire additional legal force. However, their role should not be diminished because the same issues are regulated by a significant number of sources, and the level of social guarantees cannot be reduced in the collective agreement. Therefore, by logically integrating into the normative framework of the collective agreement, informative conditions ensure the integrity of the content on a specific issue.

Normative conditions of a collective agreement are local legal norms established by the parties within their competence, which apply to the employees of the respective organization. With the transition to a market economy, the number of normative provisions in collective agreements has significantly increased.

This can be explained by the expansion of contractual principles in regulating labor relations and the increasing role of local regulation. Normative conditions remain in effect throughout the entire term for which the collective agreement is concluded. Obligatory conditions of the collective agreement consist of specific commitments of the parties, indicating the terms of their fulfillment and the responsible executing entities. These conditions remain in effect until they are fulfilled and are concluded upon their fulfillment.

Article 7 of Law of Ukraine No. 3356-XII provides an exemplary list of issues that may be included as mutual obligations in the agreement. This list has a recommendatory character. The collective agreement establishes obligations regarding: changes in the organization of production and labor (reduction in workforce or staff, transition of the enterprise to a shift work or part-time work mode); ensuring productive employment (such as creating new jobs for people with disabilities, dividing one position between two part-time employees); labor standardization and remuneration, establishment of the form, system, and amount of wages, allowances, bonuses, and other incentive payments; establishment of guarantees, compensations, and privileges (for example, establishing partially paid leaves for women with children for longer periods than provided by legislation, establishment of company pensions, assistance); participation of the labor collective in the formation and distribution of profits (if provided for in the company’s bylaws); work regime, duration of working time and rest (for instance, specifying vacations for non-standard work schedules); conditions and occupational safety (implementation of modern means of occupational health protection, establishing increased compensation for employees injured in the workplace); provision of housing, household, cultural, and medical services, organization of employee recreation (allocation of funds for housing construction, payment of medical insurance for employees of the enterprise); guarantees for the activities

of elected members of trade unions or other representative organizations of employees (for example, members of the labor collective council, enterprise council); regulation of wage funds, establishment of interqualification ratios in wage payment.

The collective agreement may provide additional guarantees and benefits compared to current legislation and agreements. Obligations in the collective agreement are divided based on the criterion of financing into those that require additional expenditures from the employer and those that do not require funding but relate to work organization and improvement. As practice shows, the first group of employer obligations is largely not fulfilled today. The reason for this is the economic crisis resulting from various political, social, and economic circumstances, as well as the state of war in our country. In such conditions, not only the additional socio-economic incentives but also the basic obligations of the employer arising from individual employment contracts with specific employees are not fulfilled. It can be stated that the interest of social partners in concluding collective agreements diminishes under the complex conditions of the present day, thus losing the connection between employees and employers in solving urgent problems of collective agreement regulation of labor relations in Ukraine.

The content and structure of a collective agreement are determined by the parties, while the law provides a sample list of issues that may be subject to discussion during collective bargaining. In practice, this means that the parties have the freedom to choose the terms of the collective agreement and collective bargaining, but there are certain limitations specified in Article 9 of the Labor Code of Ukraine and Article 5 of the Law of Ukraine No. 3356-XII. Firstly, the provisions of collective agreements and agreements must comply with current legislation. Secondly, provisions of collective agreements or agreements that worsen the position of workers compared to current legislation are invalid, and it is prohibited to include them in contracts and agreements.

To bring national legislation closer to European standards and address internal issues regarding the legal regulation of collective bargaining relations, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Collective Contracts and Agreements” on February 23, 2023, No. 2937-IX (hereinafter referred to as Law of Ukraine No. 2937-IX) (“On Collective Contracts and Agreements”: Law of Ukraine dated 23.02.2023 № 2937-IX). This law will come into effect six months after the termination or cancellation of the state of war, except for Section VI, Clause 5, which will come into effect on the day following its publication.

During the development process, this legislative act was harmonized with the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union. It also took into account Council Directive 2001/23/EC of March 12, 2001, on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses, or parts of undertakings or businesses. Additionally, it considered European Parliament and Council Directive 2019/1152 of June 20, 2019, on transparent and predictable working conditions in the European Union. Furthermore, it took into consideration the national legislation of EU member states. International legal acts governing the issues addressed in the legislative proposal include conventions of the International Labour Organization and the revised European Social Charter.

In accordance with Part 1 of Article 21 of Law of Ukraine No. 2937-IX, a collective contract establishes the terms and conditions of work and employment, rights and guarantees, obligations, and agreements of the parties on matters that are determined by the parties, particularly those not regulated by labor legislation. The collective contract must include the issues regulated by the collective agreement in accordance with the law and collective bargaining agreement, the terms of which must be taken into account by the parties to the contract (if applicable). Moreover, an updated list of matters is defined, according to which mutual obligations of the parties can be included in the collective contract.

The collective contract may provide for additional social, labor, and other guarantees and benefits for employees, pensioners, and other categories of individuals determined by the parties, in comparison with legislation and collective contracts, the provisions of which are mandatory within their scope, including the conclusion of non-state pension provision agreements. Based on the financing criteria, all obligations in the collective agreement are divided into those requiring additional expenditures from the employer and those that do not require funding but relate to work organization and improvement. The collective contract establishes the duration of the contract, the procedure for employees to join the party to the contract, the monitoring of compliance with its provisions, protection of information in accordance with the law (if necessary), conditions and procedures for temporarily suspending the operation of specific provisions of the contract, and a list of force majeure circumstances, the occurrence of which suspends the operation of specific provisions of the contract. The collective contract indicates the collective bargaining agreement, within the scope of which the parties operate, and the conditions of which are taken into account in this contract (if applicable) (Article 21 of Law of Ukraine No. 2937-IX).

The Law of Ukraine No. 2937-IX has significant advantages. It establishes a system of legislation on collective bargaining for labor and socio-economic relations and clearly defines the conceptual framework. Article 2 defines the concepts of “employee”, “employer”, “collective contract”, “collective agreement” and “limited-scope sectoral agreement”. The scope of collective agreements and contracts is specified for the first time. The law introduces an exhaustive list of principles for collective bargaining in labor and socio-economic relations, including: a) legality and supremacy of the law; b) independence, equality, and representativeness of the parties in collective negotiations; c) freedom and voluntariness of negotiations and the acceptance of real obligations; d) mandatory consideration of proposals from the parties in collective negotiations; e) mutual respect and search for compromise solutions, constructiveness and interaction; f) priority of conciliation procedures; g) mandatory compliance with reached agreements; h) responsibility for fulfilling commitments; and i) prevention of discrimination.

Another positive feature of the Law of Ukraine No. 2937-IX is the expansion of the subjects participating in collective negotiations, allowing the involvement of newly established trade unions in social dialogue. Specifically, at the sectoral level, non-representative representatives who conclude limited-scope sectoral agreements will be able to participate in collective negotiations (Article 9). Additionally, at the local level, the right to conclude a collective agreement will be granted to all employees and employers, including individual persons. The law also defines the procedure for employers to apply the provisions of collective agreements in cases where they are obliged to consider agreements of different levels (territorial, sectoral, local, etc.) and establishes the interrelationship between the norms of sectoral and territorial level collective agreements.

Articles 18 and 26 of Law of Ukraine No. 2937-IX provide for the possibility of suspension and termination of individual provisions of collective agreements and contracts – with the consent of the parties and in case of force majeure circumstances (circumstances of irresistible force, the list of which is specified in the contract). It also allows for the accession of new subjects to agreements and contracts.

Conclusions. Based on the above, it can be concluded that a collective agreement, like a collective contract, is a type of employment contract and is a normative legal act of social partnership that contains legal norms for regulating labor and socio-economic relations. The content and structure of a collective contract are determined by its parties within the scope of their powers, taking into account certain limitations provided by the current legislation of Ukraine on labor. Firstly, the provisions of collective contracts must comply with the current legislation. Secondly, provisions of collective contracts that worsen the position of workers compared to the current legislation are invalid, and it is prohibited to include them in the contract. Thus, the collective contract serves as a stabilizer of rights for both employers and employees during its validity. It is particularly important to emphasize the role of collective regulation of working conditions as a factor of social protection for individual employees against employer abuse.

Certainly, the adoption of Law of Ukraine No. 2937-IX enhances the role of collective bargaining in regulating labor and socio-economic relations, and opens up new opportunities for protecting the rights and legitimate interests of workers and employers. Ukraine has committed itself to gradually align its legislation with the law, standards, and practices of the European Union in the field of employment, social policy, and equal opportunities. The purpose of adopting Law of Ukraine No. 2937-IX is to harmonize Ukrainian legislation with European legislation in the mentioned sphere, and this goal has been achieved.

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