

Update on the situation in Ukraine



(12 December 2019) Today, trade unions of Ukraine are facing many challenges related to reduction of state support for certain sectors of economy, radical change in approaches to its development, large-scale liberalization of labour legislation, collapse of social sphere, underfunding of entire public sector, including healthcare, education, social payments.

The government programme foresees liquidation of more than thousand state-owned enterprises, some of which will be privatized or given concession, which will directly affect labour collectives and trade union organizations. The FPU has repeatedly emphasized that by transferring state-owned enterprises for privatization to management of the State Property Fund, people whose labour relations are regulated by collective agreements are also transferred with them. Although under pressure from trade unions, the Government agreed to hold a meeting with participation of employers, representatives of the State Property Fund, the Ministry of Economic Development and Trade and the Cabinet of Ministers, as only 5% or 370 enterprises of strategic importance are planned to remain state-

owned, but this is not enough.

After all, the Government is imposing completely new libertarian model of development without public discussion. The Ministries will be deprived of management functions over state-owned enterprises and will determine only directions of their activity. In this case, sectoral agreements and the General Agreement between public authorities, employers and trade unions will be destroyed. "Breaking" of collective bargaining system will lead to deprivation of working people of social protection, open way to lay-offs of employees of enterprises that are being privatized or concessioned.

New government team is seeking to implement reforms solely at the expense of working people. Analysis of government proposals and documents, as well as the Presidential Decree of 8 November 2019, shows that, despite the Constitution, Ukraine is a welfare state, pursuing uberization policy accompanied by waiver of social guarantees when “everyone cares about him(her)self”. Confirmation of this is the draft law of Ukraine “On Labour”, which is designed to deprive trade unions of their rights as much as possible and to destroy trade union movement in Ukraine. Government team, considering that two alternative drafts of the Labour Code were submitted to the Parliament, decided not to push the new draft law through the Verkhovna Rada profile committee, but to go around it and push it through the Government under the name “On Labour”. According to media reports, its text was prepared by the IMF and translation was made by the Ministry of Economy. This draft law was immediately called slavery one in Ukraine. The entire Labour Code consists of 99 articles! And only one article indirectly mentions right to collective protection of labour rights! Transitional provisions generally abolish the Law on Trade Unions. The new Cabinet’s draft law has not been officially published yet, and there are several options on side-lines. Experts gave them to trade unions in confidence. It is most likely that the one with the smallest number of articles – 99 – will be submitted. This will allow it to be held in the Parliament under reduced voting procedure. Under the new draft law, Ukrainians are, in fact, offered to go to work under employment contracts, implementing the American model, when each employees has to negotiate certain conditions and wages for himself. Employer can keep employee on “short” employment contract as long as possible, i.e. permanently at risk of losing his/her workplace. Short contracts – up to two months – can be terminated by employers for any reason (even if unrelated to professional one) by notifying employee three days’ before dismissal.

Know-how from the Ministry of Economy are contracts with unfixed work schedule. There is standard of 8 hours working day in the draft law, but only as a guideline – it is stated that this is a “normal” working day, but may be overtime. It is stated that rest between shifts should be at least 12 hours, that is, it would be legal to consider a 12-hour working day. The only restriction employers should have no more “unregulated” contracts than 10% of the total. Employers will also be able to terminate their employment contracts before their expiry date. For example, a company would be able to fire an employee who is “unable to work on the basis of medical report”. Contract is also invalid (or temporarily invalid), say, for the

duration of employee's training.

The draft law includes a list of reasons that will allow employers to dismiss people quickly and without undue burden. One of the points, for example, is dismissal on the employer's own initiative. It is not necessary to explain reasons for a long time; it is enough to simply inform employee for 15 days (if before he worked at this place for up to six months) or 30-90 days (if length of service is from six months to 10 years). The following is an interesting wording: "notice time can be replaced with monetary compensation". That is, really one can fire employee the same day, just needs to give him/her some money. You may recall that now under the current Labour Code dismissal or redundancy should be warned for at least two months, and when fired for reasons, which are not dependent on employee, he/she is entitled to double salary.

If employee refuses to subscribe under such bonded conditions, employer can terminate contract unilaterally only on this basis.

There are also risks for categories of employees who are now protected from dismissal by the law. For example, women on maternity leave may be left without work "in connection with liquidation or reorganization" of enterprise, and today many enterprises lay-off under this scheme claiming alleged reorganization, changing title of positions and leaving people without job.

Transitional provisions of the new draft law deserve special attention. As soon as it enters into force (six months after its adoption), the laws in force – the Labour Code, the Laws "On Remuneration", "On Leave", "On Trade Unions" and others will have been immediately repealed.

"Mediation" of employers and employees will be done by some National Mediation and Reconciliation Service – state body that will settle labour conflicts. In particular, it will prepare mediators and arbitrators, who will then be sent to "problematic" enterprises. Role played by trade unions in process of collective labour disputes is not stated in the draft law.

Instead of free legal union assistance employees will immediately be offered protection in court for money. Trade unions will also be deprived of public control over implementation of the labour law. Moreover, importantly, trade unions will be deprived of right to participate in development of state policy in sphere of labour relations, pay, social protection.

Dismantling of the labour law is complemented by dismantling of social protection, which is confirmed by the Ministry's of Social Policy draft law, which will unlink living wage from state social guarantees, minimum wage and pensions, remaining 150 social benefits and transferred to the Government's manual, which actually began dismantling of social protection system that had been built during the years of independence.. According to the draft law, living wage will be determined at the same time as adoption of budget, which has never been deficit-free in Ukraine. It is argued that living wage has ceased to be a factor measuring poverty. Trade unions are strongly against deprivation of people of guarantees. After have lost link to living wage the Government will start paying "we give as much as we can".

As of 1 January 2020, the State Statistics Service of Ukraine will abolish occupational injury reports. The existing form of state statistical observation is regulated by the law on OSH and the ILO Convention No 160 ratified by Ukraine. In addition, it must be agreed with the State Labour Service, trade unions and the Social Insurance Fund, as provided by the General Agreement 2019-2021.

Decision of the State Statistics Service was adopted by itself and contrary to mentioned normative legal acts, which is emphasized in the letter of the JRB of trade unions to the Minister of CMU, heads of the State Statistics Service and the State Labour Service. In accordance with the ILO Convention, Ukraine committed itself to collect, process and publish basic labour statistics, including occupational injuries and diseases, on regular basis. Abolition of such reporting, in view of trade unions, in fact hinders analysis of situation with industrial safety at work and deprives of state influence over fight against negative phenomena in this field.

Therefore, trade unions demand to renew information on occupational injuries collection. As well as by the end of the year, together with the State Labour Service, the JRB of trade unions and the Social Insurance Fund, to work out an updated form of state statistical observation and to approve it.

Another challenge for Ukrainian trade unions is social insurance system change,

which is in line with the ILO principles and is in fact a European model. However, for some reason, authorities have encroached on this system, namely the Social Insurance Fund and the Compulsory State Unemployment Social Insurance Fund. The chairperson of the parliamentary Committee on Social Policy submitted a draft law that proposes to remove unions and employers from managing the above Funds and give preference to the Government officials. It is clear that we are strongly opposed as we represent insured people for whom and at whose expense the Funds were created. In addition, they are self-governing, non-state structures. Therefore, trade union members and employers have to manage them, and the state only has to supervise that no one violates regulations and everyone obeys the laws. On 10 December, committee hearings will be held at the Verkhovna Rada. It is not difficult to imagine what is waiting for the Funds under monopoly government in Ukraine.

New government also takes charge of dismantling current solidarity system and proposes to move to cumulative pension system, which is a very risky business in Ukraine. Moving to exclusively cumulative system can leave people without pensions. Cumulative system should be voluntary and complementary to solidarity system, which should remain basic.

Trade unions have already held a pre-emptive protest. But the demands of its participants were ignored. So far, balance of budget is reduced through sale of domestic bonds, not through economic development. It is about over 200 billion UAH this year alone. Speculative capital is coming to Ukraine, which expects when sale of large state-owned enterprises and land will begin. All this will have unintended consequences. Trade unions will simply have to go out and block roads and call for strike. And this will only be beginning of national strikes in Ukraine. If trade unions not lead people, people will do it themselves. After all, to defeat oligarchy, one can only go beyond the laws they established.

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