



VISEGRAD JOURNAL ON HUMAN RIGHTS

No 4, 2022

THE CONCEPT, ESSENCE, AND MEANING OF THE PRINCIPLE OF “ADAPTATION (ADJUSTMENT) OF WORKING CONDITIONS”

Prylypko Sergii, Pohorielova Oleksandra

Annotation. *This paper aims to provide a thorough theoretical and legal overview of the feasibility of introducing a new sectoral principle of labor law, “adaptation (adjustment) of working conditions”, to justify an understanding of “adaptation (adjustment) of working conditions”, and to provide the social value of the principle of adaptation (adjustment) of working conditions in labor law. The article substantiates the need to expand the system of sectoral principles of labor law by means of the principle of “adaptation (adjustment) of working conditions”, a legal idea generated by changes in the environment caused by the coronavirus pandemic and other factors. Its aim is to understand the principle of adaptation (adjustment) of working conditions as a process and/or result of the temporary regular adjustment changes in working conditions in accordance with the requirements of the objective circumstances of the external or production environment, resulting in turn in the creation of a new temporary legal regime of organization of employee working conditions. The generality of this principle in labor law enables the revision of any working conditions for all categories of workers when dangerous factors or circumstances threaten their life or health without prejudice to the permanence of labor legal relations. The social value of the principle of adaptation (adjustment) of working conditions is defined by the author through its ability to provide self-adjustment, natural restructuring, change, and transformation of working conditions in relation to the needs caused by external and internal objective factors in the external or production environment by the value orientation of the rights, freedoms, and interests of workers to protect and defend their life and health as one of the highest social values.*

Key words: *adaptation, adjustment, pandemic, life and health of a worker, objective circumstances, labor conditions.*

1. Introduction.

The social and economic upheaval caused by the worldwide outbreak of the COVID-19 pandemic has posed an urgent challenge to the nations of the world to ensure that economies work under quarantine restrictions and that labor markets resume in post-pandemic times. The operation of any nation's economy depends on the ability of its workers to exercise their right to work. Under conditions of social distancing and limitation of social contacts, it is not always possible to realize in full measure or at all a person's right to work, and the traditional organization of the labor process is not applicable. At the same time, socially useful labor remains the main source of ensuring society's existence; thus in order to solve the problem of the organization of the labor process in connection with the changes taking place in society, it is necessary to update the approaches to the legal regulation of non-self-employed labor based on labor contracts. The new turmoil associated with the war in Ukraine has also placed on the agenda the issues of organizing the work of workers under martial law in the state. In European countries, this has raised the question of adapting labor markets, due to the massive influx of refugees from Ukraine, their employment, and the organization of their work, which will also contribute to finding new approaches to the realization of a person's right to work.

The best way to improve labor legislation is to align it with a specific legal idea. In particular, adaptation (adjustment) of working conditions as a legal idea must be defined nowadays within the principle of labor law, as an idea capable of ensuring labor improvement legislation without losing its integrity as a historically conditioned asset of society that protects and preserves the labor rights of workers.

2. Analysis of scientific publications shows that the renewal of legislation within the system of coordinates of legal principles is not a new type of research. A thorough analysis of the legal nature and essence of the principles of law allows one to distinguish their normative properties and the ability to influence social relations by legal means. The justification of the author's legal ideas on adaptation (adaptation) of working conditions as a sectoral principle of labor law implementation is based on the scientific achievements of such scientists as I. Presis, A. Konyali, M. Crul, S. Bernhard, R. Fischl, K. Klare, O.V. Grischuk, O.V. Zaichuk, M.I. Inshin, A.A. Kozlovskiy, A.M. Kolodiy, N.M. Onishchenko, I.A. Sokolova, A.M. Sotsky, V.I. Scherbina, and others.

3. This aims of the work to provide a thorough theoretical and legal overview of the feasibility of introducing a new sectoral principle of labor law, "adaptation (adjustment) of working conditions", to justify an understanding of "adaptation (adjustment) of working conditions", and to provide the social value of the principle of adaptation (adjustment) of working conditions in labor law.

4. Review and discussion.

Modern conditions of the globalization of economy and law, the strengthening of international and humanitarian contacts, increases in labor migration, the emergence of objective challenges epidemics, man-made disasters, military actions, and other phenomena have placed on the agenda issues of research and substantiation of the newest principles of labor law and the future of its development trends. Under modern conditions of economic development, labor law reform should play an important role, taking into account changes in social development. Recent changes in the socio-economic arena have led to new opportunities for citizens in the application of their abilities to work.

Under conditions of cardinal changes to the economic foundations of society, the problem of improving the legal regulation of relations in the use of hired labor acquires a particular urgency, one that can have both a stimulating and hindering effect on the process of socio-economic transformation. The objective and subjective reasons hindering the effective implementation of reforms in the sphere of labor under modern conditions are compelling are obvious. The main ones are the most symptomatic: the disputability of many theoretical issues that form the basis of labor law reform (including the subject and method of labor law); the emergence of a shadow labor market, shadow regulators of labor relations that do not protect workers' labor rights and do not provide legal guarantees; and the lack of a single coordinating center for improving the legal regulation of labor relations, a general plan for legislative work, and a clear understanding of the tasks of reform, which leads to haphazard changes and additions to legislation, unequal development of individual institutions, and duplication.

Labor legislation now faces the difficult task of making the legal regulation of labor socially just, that is, adequately reflecting the realities of social life, while preserving the social purpose of labor law by protecting the interests of the worker as the most vulnerable subject of labor law, the party to the labor contract. The Global Commission on the Future of Work International Labor Office publication "Work for a Brighter Future" once again highlighted the importance of the human being in the process of labor activity and proposed a "human-centered program for the future of the labor market" which considers the human being to be the center of economic and social policy of any state [1, p. 11]. The ILO notes that such an approach will stimulate equity and permanence in social development, both now and in the future.

Achieving the goal of establishing social justice in the regulation of labor relations is possible only through an effective internal organization of the system of labor law, consistency in the regulatory and legal material as its basis, and the most efficient combination of norms of this branch with the

legal prescriptions of other branches of law. This approach makes it possible to preserve and make this protection of relevant subjects adequate and appropriate to specific socio-economic conditions (neither excessive nor insufficient), that is, to provide a certain flexibility to labor management. Ensuring a balance between the rights of employees and employers, between their interests and the interests of the state, is the criterion to which all normative legal acts regulating relations in the field of labor, including the codified act, shall correspond.

Labor law as a specific branch plays a special role in society and is designed, on the one hand, to fully implement the function of social protection, and on the other to ensure the effective development of production or, as a last resort, not to impede it. It should be emphasized that since its inception, labor law has remained the employee's right of social protection, while at one stage or another only the priorities have changed. Depending on the needs of the economy and of the socio-economic policy of the state, either the social or productive function of labor law has been foregrounded. All of this is an extremely complex task, if only because the very idea of the optimality of this or that balance of rights and obligations is formed under the influence of a huge number of factors [2, p.4-5].

The transition to market relations and their development in Ukraine and the development of the digital economy have affected both the entire legal system as a whole and its individual separate branches and institutions. The modern development of economic processes requires radical reform, in the first place, of the most important legal relations of the parties of social relations regulated by law. It is no accident that the legislation of Ukraine, a socialist state, aims to protect the rights and interests of citizens. In the course of reforming labor legislation, the state is forced, on the one hand, to ensure its compliance with market conditions, and on the other hand to actively protect its citizens from possible social risks and economic problems, negative phenomena stemming from globalization processes, and possible epidemiological shocks, among other effects. These tasks are to be undertaken by the state, mainly through the modernization of the system of law and of labor law in particular. At the same time, emerging critical phenomena in society shake the active participation of the state, and hence "non-interference of the state will not have a neutral effect, and will lead to the preservation of existing inequalities in legal and social structures, in particular inequalities in wages and stigmatization" [3, p. 197].

As an independent branch of law, labor law becomes an effective means of updating the entire social sphere in the country and a powerful barrier to the development of negative consequences for citizens caused by the conditions of transition to a market economy, the development of digital technology, global epidemics, man-made disasters, military actions, etc. In this context, the latest principles in the process of legal regulation of labor relations, as well as issues of balance between public and private interests in this area and the process of redistribution of income, specifying the boundaries of public and private interests regulation, become relevant. Consequently, the agenda now includes the issue of the relationship between private and public law and adapting the principles of labor law to the current realities and challenges facing society. The issue of adapting labor law to international standards and the foundations of the European Union is also relevant, since Ukraine has chosen the path of integration into the European Union. In addition, the global processes of transnationalization of labor law prompt the need to change both the paradigm of labor law and our understanding of labor law in its global dimension [4, p.44].

Prof. Dr. Ulrich Presis reasonably argues that labor law, as a fundamental legal science, provides illustrative material for a wide range of theoretical and methodological legal questions. Labor law defines complex legal constructs logically and consistently. In the beginning, it was a private law, but over time, due to a number of norms and the development of the main principles of European law, norms with public law protection against exemption or other socially important provisions were introduced. Under modern conditions, labor law needs to be modernized by selecting the newest methodologies in legal regulation. Labor law norms unite various interests, promote the implementation of the idea of justice and the application of laws, the solution of legal collisions, etc. [5, p. 32-34]. Thus, labor law combines the public and private interests of employer and employee, state and society. The above-mentioned sector is in constant gradual development, depending on the needs of citizens, development of production, organizational and legal methods of economic activity, and other factors. That is, certain adaptation processes in the legal regulation of labor relations are ongoing. Justifying the principle of adaptation in labor law, one must take into account issues of social partnership and collective bargaining, compliance

with the order of mobility, and transparency of peaceful settlement of disputes, resolving all such issues with the help of trade unions. "The activity of trade unions today shows another 'new way' of conflict resolution" [6]. Through social dialogue, societies can move towards sustainable development, as this is the mechanism that can stimulate economic growth, promote reconciliation, and build trust among fractured societies. [7, p.30].

In regulating labor relations, one must take into account trends in the development of the information society, the individual characteristics of a particular employee, the tendency of his or her high and competent skills, the ability to overcome information barriers, among other factors. In implementing social reforms, social grants and workers' rights should not be allowed to decrease, as happened, for example, in France, despite the fact that this country has an advanced level of development of social and labor legislation and an extensive legal system in the field of labor law [8, p. 271].

Adaptation as a multifaceted concept has different forms and definitions. O.M. Mikheev, for example, focuses on the fact that "adaptation (Latin *adaptatio*, from *adapto* – to adapt) is a process of object adaptation (*adaptaciogenesis*); a state of object adaptation (result of *genesis* adaptation); action aimed at the object to adapt it to certain requirements, adaptation of the object to use in specific conditions". In turn, N.G. Nichkalo notes that "professional adaptation is the adaptation of people of different generations to independent productive labor activity; the process or result of the process of adjustment of an employee in the initial period of his/her work at a particular enterprise to the specifics of the workplace and organization of labor at work" [9]. From the above, it can be seen that adaptation is considered and studied as a certain process, as a specific action, as well as the way in which adaptation is present in the life of society or in an individual enterprise. Moreover, the complex and diverse sphere of labor is no exception, and adaptation processes should be present in all spheres of life activity.

Although this approach is more of a socio-psychological phenomenon, it does not exclude the possibility of applying adaptation to the processes of improving employee working conditions in relation to current requirements, improvements in legal regulation in the field of labor, and the protection of employees' rights and interests. Adaptation as the process of adjusting the organization of work under conditions of quarantine restrictions and the growth of biological threats to the life and health of workers as a result of social contacts, etc., in order to give provide labor law norms with properties that will create the necessary and maximum safe working conditions in addition to playing its social role. In our opinion, the properties of adaptation as a phenomenon contain significant potential for implementing changes to the labor organization process, improving the impact of legal regulation on labor relations, etc.

Under modern conditions of the globalization of world development and the implementation of economic activity by transnational companies, the importance of international norms and the practice of applying them to achieve economic and social progress is growing. This is due primarily to the fact that among the highest values of the world community, we recognize human rights and freedoms as well as one's honor and dignity in various spheres of society, predominant among them the sphere of labor, which includes implementing the right to work, freedom of labor, the prohibition of forced labor, etc. [10, p. 9-10] Ukrainian researchers rightly focus on the special essence of freedom of labor as a principle of labor law. The disposition of one's abilities is an exclusive human right and also a manifestation of one's social and legal autonomy, conditioned by the definition of the individual as the highest social value in society and the state, the recognition of his free will in the field of labor, and the freedom of choice of behavior based on the assessment of his interests and motives [11, p. 35]. The principle of freedom occupies a prominent place among other principles, since law itself is nothing but the exercise of freedom. Freedom of labor is a universal principle, one that always occupies one of the leading places in all branches of law regulating social and economic issues related to labor. Freedom of labor is reflected in the worker's rights related to labor: the right to work, the right to freely choose the branch of economy in which to exercise his labor, the right to work in the form of individual enterprise, the right to offend the remote work regime, the right to terminate labor relations, etc. [12, p.110-111, 118-119].

One should keep in mind that the modern system of labor law undergoes significant changes and is constantly filled with new content, one that is based on the new foundations of the legal regulation of labor developed and applied in most countries of the European Union and that depend on those challenges that appear in the present context. In recent times, there has been a tendency towards international legal globalization and filling legal regulation with new content, which is the basis for the introduction of

new legal principles and norms, the establishment of which used to be purview of the internal affairs of sovereign states. This significantly updates the basis of legal regulation in the field of labor of members of the world community in the context of modern, universally recognized universal standards. The development of civilization from its origins to the present is a movement from various local histories to the universal history of mankind, which is accompanied by a change in periods, stages, historically determined processes, and legal norms corresponding to these processes, forms and procedures of their legal expression, ordering, and consolidation. Globalization of the law itself, progressive development of universal properties, norms, forms, and procedures of the legal type of social life is a necessary stage and demonstrates the ability of the law to regulate the processes of social globalization within a common (generally important and generally binding) law and order for both domestic and international relations [13, p. 40]. It is this approach that provides a more thorough understanding of labor and its role in the life of society, lays the foundation for the legal regulation of public labor, taking into account individual characteristics, determines the content and organizational and legal forms of involvement in labor, in the legal plane positively affecting labor relations, etc.

Under modern conditions, there is an expanded understanding that an increasing number of employees under certain circumstances are not protected by the norms of labor law. Under such conditions, there is an even greater individualization of labor relations, which forms the basis for the theoretical analysis and practical application of the rights and obligations of the parties to the labor contract. The aforementioned thesis was substantiated in his time by Professor B. Hepple [14, p. 69]. It is the principle of adaptation that makes it possible to take into account the individual abilities and capabilities of a specific employee, to act to a certain extent as a safety net for the challenges that arise under present conditions. The specified problematics become even more actual under conditions of the expansion of the subject structure of labor law, the development of a question of realization, and the maintenance of guarantees to corresponding subjects [15, 16, 17]. Such a scientific and practical approach objectively proves that individual labor legal relations are considered in the context of an individual labor contract. Thus individual labor relations comprise an objectively existing social relation regulated according to an individual labor contract, as well as labor legislation, which is constantly and dynamically developing depending on economic circumstances, the formation of democratic principles in society, and other factors. At the same time, it should be noted that it is influenced by the provisions of the relevant acts of social partnership, the application of which may be provided not only by the parties, but also directly in the legislative acts. The specified makes it possible to clearly establish the content of labor legal relations, determine the rights and obligations of the relevant subjects, and outline the system of nearby legal guarantees provided by a wide range of labor legislation.

Based on today's conditions, during which quarantine restrictions are fully applied, work regimes are changing, remote work is spreading, the wage system is being revised, etc., adaptation as a phenomenon is vital. At the same time, we cannot say that this will not happen again in the future; accordingly, today's experience, the positive and negative results of overcoming the COVID-19 pandemic, convince us that it is necessary to update approaches to the process of labor organization and improve the legal regulation of the employer–employee relationship in keeping with modern realities. History shows that scientific and technological progress has had a significant impact on the ability of people to work away from the production site, personally plan their mode of working time, work part-time, and possibly create other forms of work organization.

Thus, if we take as a basis the possible future need to contain people's social contacts, the norms of labor law must ensure the predictability of the course of labor legal relations, focus on the social side of the issue, and labor protection. In fact, labor law as a system of norms should provide an opportunity for employees and employers to continue to fulfill their labor rights and obligations under their labor agreements without awaiting the decisions of central or local authorities. It is safe to say that the introduction of the principle of "adaptation (adjustment) of working conditions" is a step towards expanding the scope of local, collective, and contractual labor regulation, and here it is found that the method of labor law fully allows this principle to be implemented. At the same time, Rafael Muñoz de Bustillo Llorente notes that it is through social dialogue and the activity of social partners that the problems associated with contemporary challenges of society will be resolved [18, p. 146].

Why exactly the principle of labor law, and not any other sectoral instrument? The answer, in our view, lies in the properties of legal principles, because they are, as correctly emphasized by A.M. Kolodiy, “closely related to the categories of ‘regularity’ and ‘essence’”. The one-order nature of these concepts allows us to define legal principles through the regularities of the development of society (general social principles) and law (legal principles), as well as through the essence and main content of the latter. It should also be emphasized that the term “principle” comes from the Latin word “principium”, which means basic, general, initial provisions, means, rules that define the nature, and social essence of a phenomenon, its orientation and essential properties [19, p. 42-43]. This approach makes it possible to respond promptly to challenges affecting production processes, the relationship between employer and employee, the introduction and unification of labor law in accordance with universal human values, and the development of common approaches to legal regulation within the European Union.

Consequently, the principles of law as a phenomenon of legal reality are able to cover in the process of their implementation the regularities of development in society depending on the socio-economic conditions of development value orientations in society. It is with the help of principles that one can determine and define legal ideas in which lies the understanding of justice, and target the direction of the process of regulating social relations. Principles allow one to improve the legal regulation of relations between employee and employer. Legal principles ensure the unity of all legal matters and the transformation of the rules of conduct enshrined in legal norms. Following these legal principles, such a transformation does not occur chaotically but rather in accordance with the original provisions in the law based on generally recognized international standards. By accumulating in themselves the basic legal principles, expressed in generally recognized legal ideas, these principles create a kind of environment in which to build the rules of conduct of both employee and employer, as well as the limits of their mutual rights and obligations. At the same time, the role of the state is defined in these relations, the foundations are laid for complex issues of responsibility, etc.

That is, the branch principle of labor law of “adaptation (adjustment) of working conditions” determines possible, acceptable or necessary transformations of the labor process so as not to harm the interests of subjects of labor law but to regulate a wide range of relations between them and to stimulate economic development. This means that the dynamics of labor conditions are not aimed at the simple or formal establishment of rules to organize the labor process, but at adjusting the process of labor in such a way that, without harming the interests of the participants of these relations, one can adjust labor conditions to their immediate needs, form the directions and goals of legal regulation, promote the economic growth of the state and society, and promote the well-being of the specific individual.

Legal studies emphasize that “the genetic characteristic of the principles of law is based on the consideration of the determinacy of their content by objective social regularities. The fundamental ideas of law are not arbitrary constructions of the human mind, but a special form of expression of objective social regularities. By fixing in their content the necessary and essential connections that exist in society and law, they make it possible to establish such an order of social relations that contributes most to their strengthening and development” [20, p. 18]. Agreeing with the above thesis, we note that objective regularities of development of social relations, under the current quarantine restrictions, have shown that for a significant number of workers, the process of labor and its properties can be preserved outside the employer’s location of working (production) premises. This convinces us that natural parameters of socially useful labor and basic processes of interaction of employees in the process of collective labor, for employees of certain categories, are built not by normatively-fixed rules of conduct but by the nature of the labor process according to a predetermined pattern or model.

For example, an accountant performing work and interacting with other employees of an enterprise, institution or organization does so not because his/her job description stipulates interaction with employees in specific positions, but because he/she must obtain a lot of production and economic information, a lot of information and operational data and indicators from an employee that has such information available, in order to perform his/her own work. Thanks to telecommunication technologies, it is now possible to carry out such interaction without physical contact of one worker with another. That is, the process of interaction as a component of a single collective labor process does not always require the physical presence of workers in the same place at the same time. This means that the laws of social relations development have surrendered to provide, strengthen, and develop interaction among participants in

a single collective labor process without jeopardizing the results of labor (both the employee and the entire labor collective) beyond the requirement to remain in one place, the subordination of the work mode of a stable enterprise, etc.

In general, then, it can be argued that a number of work tasks can be performed with social distancing without jeopardizing the production, statutory objectives, and goals of the enterprise itself. These types of work include the following: intellectual work (writing a scientific paper, creating a software product), individual creative work processes (discussing a script for a theater performance or musical accompaniment), managing a production process (issuing a work task, setting goals and related objectives, changing and clarifying planned work, reorienting production, etc.), controlling individual production processes in general or structural divisions (preparing, checking, and evaluating a report, intermediate determinations of priorities, quality of workmanship, etc.), preparing business or financial documentation (preparation of a draft contract or making changes to an existing contract; presentation of financial capability to the tax authorities and other regulatory bodies), training and interacting with other business entities (distance learning, preliminaries, clarification of legal and economic positions), and many other tasks.

The above shows that the norms of labor law, if the need arises, should provide a legal opportunity for the relevant subjects to rearrange and adapt the labor production processes according to current needs, promptly responding to economic and legal changes. However, the rule of law cannot respond to emerging needs every time they arise; it must enshrine a generalized response model to emerging (or possibly emerging) needs and challenges. Such a model must be built based on a legal idea, one that shows how to balance arising needs with the existing socio-economic conditions (including the implementation of economic activity at a specific enterprise). In our case, the idea of adaptation (adjustment) of working conditions, in the case of an objective need changing the process of organization of production and labor to restructure the process of a single collective process of labor under the existing conditions, enables one to take into account the characteristics and capabilities of every specific employee, optimize the work mode, and improve pay conditions without any harm to the enterprise and labor collective working in it.

It is important to pay attention to the fact that adaptation (adjustment) of working conditions as a principle of labor law, by its legal nature, is designed to provide a prompt, rapid response to the emerging needs of changes in the organization of labor, and that such needs are caused not by subjective factors, but by objective ones, factors arising regardless of the will of the participants of relations in the labor sphere. In support of our position regarding the necessity of introducing the new principle into the system of labor law principles, it should be noted that for labor law generally, the adaptation of working conditions is not new; in particular, the unity and differentiation of the legal regulation of labor involves the creation of special working regimes for certain categories of employees, although differentiation in this case is a permanent condition that fundamentally differs from the adaptation of working conditions. For example, miners work under hazardous and dangerous working conditions, and so the norms of labor law for this category of workers provide for certain features of the organization of work: reduced working hours, extended vacations, additional medical examinations, etc. However, these features are constantly in effect and cannot be reduced. Our proposed principle of labor law is not aimed at a permanent dynamism of working conditions, but as a means of temporarily adjusting the needs that objectively arise and impede the process of production or the provision of appropriate services. Its implementation is limited in time by the duration of the objective circumstances that require the adaptation (adjustment) of working conditions, and after the objective circumstances disappear, the working conditions return to the normal regime or, by mutual agreement, may be continued.

N.M. Onishchenko remarks on the originality of law in certain given coordinates of time and space, noting that there are principles of law. Principles of law unequivocally refer to its basic mechanisms. A principle is always a starting point; it is always an idea and, in addition to it, norms and social relations, as principles acquire normative and law-enforcement content. Principles extend to many spheres of human activity. They come true and have a certain ideological and educational value [21; p. 8]. Being coordinates of time and space, the principle of "adaptation (adjustment) of working conditions" gives normative certainty to the behavior of participants of relations in the labor sphere. Certainty in this case consists not in the fact that the adaptation of working conditions will occur to substitute some working conditions for other predetermined ones, but as a predetermined process of the employer's and employees' actions aimed at

the adaptation (adjustment) of working conditions. That is, what exactly will be put into the content of adapted working conditions is unknown in advance, since the objective factors requiring such changes are themselves unknown; however, the normativity of the sectoral principle of “adaptation (adjustment) of working conditions” provides a certainty to the future operational actions of participants of relations in the labor sphere, allowing for a prompt response to challenges that may hinder the production process (e.g., epidemics, natural disasters, military actions, etc.).

The ideological and practical significance of the new principle of “adaptation (adjustment) of working conditions” is revealed in its ability to preserve the value of socially useful labor as the main source of human existence or a certain community, as well as the functioning of a specific subject of economic activity, life, and well-being of a specific employee (and his/her family). In this sense, the proposed principle of adaptation (adjustment) of working conditions is based on the value of human beings and their life and health. However, along with this goal of adaptation, the economic properties of socially useful labor, the results of which economically ensure the life of workers and their family members, take into account the interests of the employer, the state, and the socially vulnerable population (requiring appropriate protection and support), which must also be preserved.

O.V. Zaichuk notes that “principles play a role of reference points in the formation of law. In particular, the evolution of law occurs from ideas to norms, then through the implementation of norms to social practice. Exactly from the emergence of ideas, and the idea quite often is formed using a legal principle, the principle determines, directs the development of law” [22; p. 22]. In essence, the idea of adapting (adjusting) working conditions must be reflected in the norms of labor law, both at the level of centralized regulation and at the local level. Practically speaking, principles of law are formed in generally recognized legal ideas; they guide the development of law in a way that does not violate the integrity of the idea itself; however, for the development of law, including labor law, they are not mandatory (although it is better to have them). For the ability to fix the legal idea in the legal norm, determining the development of law is the suitability of the legal ideas to contain the legal array of legal norms in their integrity, allowing the law to change in order to serve the goals of the legal principle’s basis.

Thus, in labor law, the principles determining the legal regulation of the application of employee labor are aimed at the normative regulation of the organization of the labor process. And here the labor process should be considered as “a set of consecutive actions of employees (group of employees) organized by the employer, which are aimed at achieving a mutually beneficial result: for employees it is to get remuneration for labor – wages, and for employers it is to achieve statutory goals of the organization, for employers who are natural persons to meet the legitimate needs” [23; p. 78]. This approach is extremely important because it aims to align the interests of both employee and employer, taking into account the needs of the state, forming the basis for defining certain social standards in relation to the employee.

Consequently, the purpose of the principles determining the legal regulation of the application of employee labor is revealed through the normative definition of working conditions, the permanence of the agreements reached between the parties to the employment contract. Principles create a certain environment for both employee and employer to meet their needs and interests, unifying certain standards in the field of labor. At the same time, the development of law, including modern sanitary and epidemiological conditions, requires updating approaches to the legal regulation of the application of labor in terms of its organization to comply with specific quarantine restrictions. This means that the organization of the labor process should be subject to adapting to existing objective conditions, and such adaptation should not be a one-time event, but rather a system of coordinates in the emergence of objective external and internal reasons for adapting the labor process to new requirements, a basis for a prompt response to certain challenges.

To fully justify the expediency of introducing the principle of “adaptation (adjustment) of working conditions”, let us focus on the fact that today both international organizations and national governments are already seeking to adapt labor law norms to conditions arising in society, e.g., the challenges of digitalization, the existence of labor relations, sanitary and epidemiological situations, threats of weapons aggression or the elimination of its consequences, and so on.

One of today’s realities is the development of the digital economy and of information and communication technologies, which has enabled the emergence and spread of various forms of employment, including

the development of digital employment. These forms of employment are often in a vulnerable position and are prone to transition to informal employment. A lengthy debate on these forms of employment led to the adoption of Directive EC 2019/1152 of June 20, 2019 on transparent and predictable working conditions in the European Union, which recognized the need for measures to modernize and adapt the current legal framework to these new conditions [24]. This directive included domestic workers, on-call workers, platform workers, etc. By implementing the principle of adaptation of working conditions, the directive established certain guarantees for workers in order to ensure their social security: more information to workers regarding working conditions is mandatory (the list of conditions to be communicated to workers has been extended), minimum standards for the provision of work, conditions for minimum predictability of work, etc.

In connection with the COVID-19 pandemic, the ILO recognized that new biological threats revealed certain regulatory gaps in the regulation of working conditions for the safety and health of workers, which is the need to adapt working conditions not only to existing threats, but also to such future threats. In this regard, the ILO has developed technological guidelines on biological hazards [25]. This document defines certain guiding ideas for occupational safety and health in the context of biological threats, as well as the control of biological threats, which should form the basis for new international standards in the future.

The COVID-19 pandemic has provided the impetus for adapting labor law to new conditions. Thus, the French government has defined some obligations for employers to assess the risks present in the workplace and to implement preventive measures [26, p. 287], while the Portuguese government has granted labor inspections the ability to suspend labor relations to remedy violations of workers' labor rights [27, p.3]. Moreover, aware of the risks associated with leaving children at home and of the need to combine work and family responsibilities, the Italian government has introduced additional parental leave [28, p.4].

The organization of working conditions under pandemic conditions had the consequence of revealing the critical problems associated with implementing work-life balance: the impossibility of combining work with family life. In terms of overcoming post-crisis situations, the question of the significant possibility of spreading distance work and other non-standard forms of employment is on the agenda, which again requires a solution to the principle of adaptation.

In contrast to EU countries, Ukraine's labor legislation did not define any closure of distant labor prior to the beginning of the worsening of the COVID-19 pandemic. Therefore, the Ukrainian labor legislation responded to the spread of the pandemic by introducing a remote form of employment, which had not been previously fixed, into the legislation. In particular, part 2 of article 60 of the Code of Labor Laws of Ukraine stipulates that "at the time of a threat of spread of the epidemic, pandemic and/or in case of a threat of armed aggression, emergency of technogenic, natural or other nature, flexible schedule of working hours may be established by an order (instruction) of the owner or a body authorized by him. The employee shall be acquainted with such order (instruction) within two days of its adoption, but prior to the introduction of flexible working hours" [29].

"Cognition and development of legal relations are inevitably conditioned by peculiarities and regularities of social development of society. And the process of legal cognition and development of law has a favorable impact on the overall progress of economic and social relations. The interaction of epistemological, legal and social historical factors here is bilateral, but not always positive and not always equal. A change in the nature of the prescriptions of legal institutions can entail negative social consequences, and the stagnation of social relations does not contribute to the improvement of legal relations. On the other hand, in the interaction of social, historical and cognitive-legal factors, one of them can be clearly dominant" [30, p.33].

This convinces us that the particularities and regularities of social development cannot be reflected fragmentarily in law. On the contrary, such features and patterns over time get to the very essence of public relations, which with the help of legal norms are obliged to be ready for changes. In other words, if today it is already centrally determined that under objective circumstances, the regime of employee labor can be changed by the employer in the order, and that such changes are subject to the rules of Article 32 of the Labor Code of Ukraine, respectively, the change in the work regime affects the order of its performance, which in turn introduces new features of such work. Under such conditions, work modes and the mode of interaction and reaction to work tasks may be changed, and time for decision-making

and time for task performance, etc., may be increased or decreased. In this context, issues of occupational safety and health and the creation of safe and healthy working conditions arise. In fact, a chain reaction of renewal of all the legal institutions of the industry begins. And it is through the principle of “adaptation (adjustment) of working conditions” that the normative array of labor law institutions can be preserved without prejudice to the main task of labor law: the protection of labor rights of employees.

“Forming the main content of the law, legal principles take on all its properties and functions. And this means that: a) they are normative-regulative, universal, obligatory, objectively conditioned, historical and ideological-political categories; b) their social function is to regulate and protect public relations; c) they are an independent legal category, that is, they have distinctive features from all others. Yes, what separates them from legal norms is their imperative and unconditional nature, their concentrated reflection of the most important laws of a given society. The principles of law bring uniformity to the entire system of legal norms. With the help of principles of law the unity of legal regulation of public relations is ensured; they cement all components of the legal superstructure. Principles of law also have an independent influence on social relations” [19, p. 43]. Let us apply the above approach to characterizing the properties of the principle of “adaptation (adjustment) of working conditions”:

– first, this principle has regulatory properties, revealed in its ability to influence the change in working conditions under certain circumstances, than to create a new temporary legal regime of organization of the labor process. Its regulatory characteristics as a principle of labor law allow one to establish such a temporary legal regime of organization of the labor process both at the centralized and local levels of regulation. Regulatory properties of the principle of “adaptation (adjustment) of working conditions” are disclosed exactly through the creation of a new temporary legal regime of organization of the labor process because “the category of the legal regime has a certain ‘technological load’, terminologically based on one of the meanings of the notion of ‘management’ as an activity concerning regulation of corresponding public relations, objectively requiring such activity” [31, p.128]. In fact, this corresponds to the main purpose of implementing the said principle to promptly respond to objective reasons requiring a review of working conditions during the period of such factors;

– second, as a sectoral principle of labor law, it allows one to cover the working conditions of all categories of workers, regardless of whether it changes the conditions of the organization of the labor process with the application of different work regimes or whether any other working conditions are changed without changing the mode of work, place of execution, etc. The generality of this principle in labor law makes it possible to review any working conditions for all categories of employees at the time of the action of dangerous factors or circumstances that threaten employees, their life or health without prejudice to the permanence of labor legal relations;

– third, requisiteness as a property of this principle will not allow employers abusing their rights, referring to the objective negative factors of the environment or working environment to unilaterally refuse to fulfill the employment contract. For the employer who should organize the process of work, this principle imposes another obligation: to adapt (adjust) the working conditions of employees to the existing conditions to save their life and health or provide compensatory mechanisms for employees to work in hazardous or adverse conditions caused by objective factors. For employees, an obligation creates the requirement to restructure the process of their work function in the way proposed by the employer and to undergo such changes;

– fourth, the introduction of this principle is objectively conditioned, because, as practice has shown, the labor legislation in force at the time the lockdown was introduced did not provide an answer to the question of how to adapt the labor process under quarantine restrictions. A significant number of employers resorted to laying off workers, which certainly did not contribute to social economic development, nor to the preservation of the labor potential of domestic enterprises, institutions, and organizations. This property is also directly related to the historical, ideological, and political formation of leaks in the principle of “adaptation (adjustment) of working conditions”. That is, the imposed lockdowns - reality, the need to adapt working conditions to quarantine restrictions (the introduction of new regulatory prescriptions that will match the processes taking place in society) - legal reality, and, accordingly, the need to create (update) conditions of business and economic work - a requirement of the present. Therefore, we believe that the experience of improving labor legislation, the inactivity of subjects of labor law during peak periods of lockdown, and the inevitability of ensuring the vitality of all

subjects at the expense of socially useful labor have proved that labor law should provide an answer to the questions of legal rules of adaptation (adjustment) of working conditions of employees in the event of the onset of future objective (previously unknown) circumstances requiring a temporary revision of the organization of labor;

– fifth, “adaptation (adjustment) of working conditions” is an independent principle of labor law in the system of sectoral principles, which, each individually and in their totality, acts as an independent legal category with its own signs. The main difference between the principles of labor law and the proposed principle, in particular, is that it concentrates on and expresses the legal idea, which is disclosed and detailed at the normative level, that the absence of this or that legal norm does not level the action of this principle, and its content shows how the legal norms must align with it to achieve the legal goal. Thus, the named principle independently affects labor legal relations.

5. Conclusions.

The foregoing gives grounds to assert that

- the principle of adaptation (adjustment) of working conditions is a sectoral principle of labor law, belonging to the group of principles determining the legal regulation of the application of employee labor;
- the principle of adaptation (adjustment) of working conditions must be understood as a process and/or result of temporary natural restructuring, a change in self-adjustment of working conditions following the requirements of objective circumstances of the environment or production environment, which results in a new, temporary legal regime of organization of the employees’ working process;
- the social value of the principle of adaptation (adjustment) of working conditions refers to the ability to provide self-adjustment, natural readjustment, change, and transformation of working conditions related to the needs caused by external and internal objective factors of the external or production environment in accordance with the value orientation of rights, freedoms, and interests of workers to protect and defend their life and health as one of the highest social values.

References:

1. International Labour Organization, (2019) “Work for a brighter future – Global Commission on Future of Work”). URL: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_662410.pdf [in English].
2. Sergii M. Prylypko, Oleh M. Yaroshenko, (2009) *Trudove pravo Ukrainy: Pidruchnyk*. [Labor Law of Ukraine: Textbook.]. Kharkiv: “FINN”. 450. [in Ukrainian].
3. Lisa Rodgers. (2021) Reimagining state responsibility for workers following COVID-19: A vulnerability approach, *International Journal of Discrimination and the Law* Vol. 21.3. DOI: 10.1177/13582291211031377 [in English].
4. Tarja Halonen, Ulla Liukkunen, (2021). *International Labour Organization and Global Social Governance*. 146. URL: <https://doi.org/10.1007/978-3-030-55400-2> [in English].
5. Ulrich Presis. (2009) *Arbeits-recht: Individualarbeitsrecht Lehrbuch für Studium und Praxis Labor Law* [A textbook on individual labor law to study and practice]. 814. [in German].
6. ILO. (2003) Old and new ways of solving social problems. URL: https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_075626/lang--en/index.htm [in English].
7. ILO-ITUC Issue Paper, (2017). Social dialogue as a driver and governance instrument for sustainable development. URL: https://www.ituc-csi.org/IMG/pdf/tudcn_issue_paper_-_social_dialogue_development_en.pdf [in English].

8. Federico M. Mucciarelli, (2017) "Employee Insolvency Priorities and Employment Protection in France, Germany, and the United Kingdom", *Journal of Law and Society* Vol. 44, Issue 2. <https://doi.org/10.1111/jols.12025> [in English].
9. O. M. Mikheiev, M. O. Shulha, N. H. Nychkalo (2006), *Adaptatsiia. Entsyklopediia Suchasnoi Ukrainy: elektronna versii*. [Adaptation. Encyclopedia of Modern Ukraine: electronic version], ed. I.M. Dubo, A.I. Zhukovsky, M.G. Zheleznyak, et al. NAS of Ukraine, NOSH. Kyiv: Institute of Encyclopedic Studies of the National Academy of Sciences of Ukraine URL: http://esu.com.ua/search_articles.php?id=42642 [in Ukrainian].
10. V.M. Andriiv. (2017) *Mizhnarodne trudove pravo*. [International labor law]. Kyiv: "Dakor". 374 p. [in Ukrainian].
11. D.O. Chesta (2015). *Suttievi oznaky pravovoi katehorii 'masove vyvihnennia pratsivnykiv*. [Essential signs of the legal category 'mass dismissal of workers'], *Scientific Herald of Uzhgorod National University* Vol. 2, Issue 34. P.34-38. [in Ukrainian].
12. Tetiana A. Zafirova (2017) *Poblemi pravovoho zabezpechennia svobody pratsi v Ukraini: monohrafiia*. [Problems of legal provision of freedom of labor in Ukraine: monograph] Kharkiv: Golden Mile, 496p. [in Ukrainian].
13. Ruslan M. Biriukov, (2009) *Hlobalizatsii ta yii vplyv na pravovu sferu* [Globalization and its impact on the legal sphere], *Comparative Legal Studies*. No. 2.. p. 36–40.[in Ukrainian].
14. Bob Hepple. (1986) *Restructuring Employment Rights*. *Industrial Law Journal* Vol. 15, No. 1: 69–83. URL: <https://doi.org/10.1093/ilj/15.1.69> [in English].
15. Joanne Conaghan, Richard Michael Fischl and Karl Klare (2004), *Labor Law in an Era of Globalization: Transformative Practices and Possibilities*. Oxford University Press, 75–92. [in English].
16. Guy Davidov, Brian Langille. (2006) *Boundaries and Frontiers of Labor Law: Goals and Means in the Regulation of Work*. Oxford: Hart. 413. [in English].
17. Judy Fudge (2006) "Fragmenting Work and Fragmenting Organizations: The Contract of Employment and the Scope of Labor Regulation", *Osgoode Hall Law Journal* No. 44. p. 609–641. URL: <https://digitalcommons.osgoode.yorku.ca/ohlj/vol44/iss4/1> [in English].
18. Rafael Muñoz de Bustillo Llorente (2021), "Digitalization and social dialogue: Challenges, opportunities and responses". P. 110–154, in Daniel Vaughan-Whitehead, Youcef Ghellab, and Rafael M. de Bustillo Llorente, *The New World of Work: Challenges and Opportunities for Social Partners and Labor Institutions*. Cheltenham, UK: Edward Elgar. URL: <https://doi.org/10.4337/9781800888050.00009> [in English].
19. Anatolii M. Kolodii, (2012) *Pryntsypy prava: heneza, poniattia, klasyfikatsiia ta realizatsiia* [Principles of law: genesis, concept, classification and implementation], *Almanac of Law* Issue 3. P.: 42–46. [in Ukrainian].
20. O. Hryshchuk. (2015) *Pryntsypy prava: filosofsko-pravovyi vymir*. [Principles of law: the philosophical-legal dimension], *Bulletin of the Lviv University. Series of Law*, Issue 61. P. 16–23. [in Ukrainian].
21. N.M. Onishchenko. (2011) *Problemy poniattia, sutnosti ta pryrody prava* [Difficulties of the Concept, Essence and Nature of Law], *Lawyer of Ukraine* No. 2.15. p. 5–10 [in Ukrainian].
22. O.V. Zaichuk (2012). *Pryntsypy prava v konteksti rozvytku zahalnoi teorii derzhavy i prava* [Principles of law in the context of the development of the general theory of state and law], *Almanac of Law* Issue 3.p. 22–28. [in Ukrainian].
23. M.I. Inshyn, A.M. Sotskyi, V.I. Shcherbyna (2013). *Pravove rehuliuвання pratsi: navch. posib*. [Legal regulation of labor: tutorial] Kharkiv: Disa plus. p. 448. [in Ukrainian].
24. Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. *Official Journal of the European Union*. L186/105. 2019. [in English].

25. Labor Administration, Labor Inspection and Occupational Safety and Health Branch (2022). Governance and Tripartism Department Technical guidelines on biological hazards: Meeting of Experts for the tripartite validation of the technical guidelines on biological hazards". URL: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/meetingdocument/wcms_846253.pdf [in English].
26. Tatiana Sachs (2020). Covid-19 and labor law in France. European Labor law journal Vol. 11.3. URL: <https://doi.org/10.1177/2031952520934565> [in English].
27. David Carvalho Martins (2020). COVID-19 and Labor Law: Portugal. Italian Labor law e-Journal: Special Issue: Covid-19 and Labor Law. A Global Review Vol. 13, No. 1S. URL: DOI: <https://doi.org/10.6092/issn.1561-8048/10801> [in English].
28. Chiara Gaglione, Ilaria Purificato, Olga P. Rymkevich (2020). COVID-19 and Labor Law: Italy", Italian Labor law e-Journal : Special Issue: Covid-19 and Labor Law. A Global Review Vol. 13, No. 1. URL: DOI: <https://doi.org/10.6092/issn.1561-8048/10767> [in English].
29. The Labor Code of Ukraine. The Herald of Supreme Soviet of the RSFSR. 1971. No. 50. Art. 375. [in Ukrainian].
30. A.A. Kozlovskiy. (2005). Hnoseolohichni pryntsypy prava. [Gnoseological principles of law. Problems of philosophy of law], Problems of philosophy of law Vol. 3, No. 1-2. pp. 32–44.
31. I.A. Sokolova (2014) Pravovyi rezhym yak katehoriia pravovoi nauky: monohrafiia. [Legal regime as a category of legal science: monograph]. Kharkiv: Law, 152 p.

Sergii Prylypko

*Doctor of Law, Professor,
Active member (academician) of NAS of Ukraine (Ukraine)*

Oleksandra Pohorielova,

*PhD (Law),
Taras Shevchenko National University of Kiev,
Associate professor of the Department of Labour Law and Social Security Law*

CERTAIN ISSUES OF CONDUCTING COVERT INVESTIGATIVE (DETECTIVE) ACTIONS IN CRIMINAL PROCEEDINGS ON ECONOMY-RELATED CRIMES

Repchonok Andrii

Annotation. *The article examines certain issues related to covert investigative (detective) actions in criminal proceedings on economy-related crimes, with a focus on the specifics of monitoring bank accounts and obtaining information from electronic communication networks. It has been determined that the legal regulation of such covert investigative (detective) action as monitoring of bank accounts is undergoing dynamic development. The addition of Article 269-1 to the CPC of Ukraine and subsequent amendments to it have raised many problematic issues that need to be further addressed. Bank account monitoring, as well as any other procedural action, should be regulated in detail in the CPC of Ukraine in compliance with the principle of legal certainty. In particular, the right of investigators (detectives) of any pre-trial investigation body to monitor bank accounts in criminal proceedings should be provided for at the legislative level. In addition, the procedure of transferring the information on transactions carried out on bank accounts from the bank to the law enforcement agency in the current mode should be regulated in more detail and the issue of joint control over banking transactions in the online mode, through access to the electronic information space of the bank, should be resolved at the regulatory level.*

Given the dynamic development of communication and information technologies, conducting covert investigative (detective) actions in the form of information obtaining from electronic communication networks is one of the most effective means of detecting and investigating economic crimes. Obtaining relevant evidence through this covert action is a fairly effective procedural tool that requires strict compliance with legal requirements and carefully considered tactics.

Key words: *economic crime; covert investigative (detective) actions; obtaining of information from electronic communication networks.*

1. Problem statement.

Crimes in the economic sphere are mostly latent, which necessitates the use of such a means of collecting evidence as covert investigative (detective) actions (hereinafter – CIDA), which, according to Art. 246 of the CPC of Ukraine, is “a type of investigative (detective) actions, information about the fact and methods of which are not subject to disclosure, except as provided by the CPC of Ukraine”. [1].

It should be emphasized that such a tool as the CIDA appeared in national practice in 2012 in connection with the introduction of a separate Chapter 21 “Covert Investigative (Detective) Actions” of the CPC of Ukraine. However, according to a study by M. Pohoretskyi and O. Starenkyi, “according to the results of the analysis of investigative and judicial practice, only up to 5% of the results of covert investigative (detective) actions are used as evidence in criminal proceedings, and in some regions of Ukraine this figure barely reaches 3%. One of the reasons for the low level of use of CIDA results in criminal procedural evidence is the imperfection of the procedural form of certain covert means of obtaining evidence in criminal proceedings and, in particular, such CIDA as seizure of correspondence, removal of information from transport telecommunication networks, monitoring of bank accounts, which are the most difficult to conduct in law enforcement activities.” [2, c. 85]. The above problems determine the choice of our research and the relevance of the topic.