

UKRAINE

Trade Union Monitor

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POLITICAL, ECONOMIC AND SOCIAL ENVIRONMENT

After Volodymyr Zelenskyi came to power in 2019 along with his newcomer party Servant of the People, voters' greatest expectations included a peaceful solution in the Donbass, economic growth, enhanced social security and a more determined fight against corruption. Almost from the start of Zelenskyi's presidency, however, frequent personnel changes (so-called "permanent rotation") in the Office of the President and the Cabinet of Ministers, as well as at governor level made it hard to implement effective structural reforms.

The Donbass war caused a 16 per cent contraction of GDP and internal displacement of 2.3 million persons in 2014.¹ Between 2016 and the outbreak of the Covid-19 pandemic in 2020, the Ukrainian economy showed solid growth rates of around 3.5 per cent, although it was still suffering from the impact of the 2014–2015 crisis. The Covid-19 pandemic made matters worse, while turning the economy around from a relative recovery into the worst downturn since the beginning of 2014.

The local elections in autumn 2020 taught a serious lesson: the triumphant march of the "Servants of the People" was stopped: not a single mayoral position was won in a larger city, and the party often only came third or fourth in local councils.

Ukrainian politics remained highly volatile. Although democracy has continued to strengthen since the Revolution of Dignity, there has been little talk of de-oligarchisation as part of a ground-up fight against corruption, despite partial successes, such as the creation of an independent anti-corruption court and passing some anti-corruption legislation.

Before 2022, ending the war in Donbass was the main theme of Zelenskyi's election campaign. Although there was another Normandy Format meeting in Paris at the end of 2019 and

the Minsk contact group had been supplemented by civil society representatives, which ensured more acceptance on the Ukrainian side, these short-term improvements did not bring about a political solution.

Then on 24 February 2022 Russia began its full-scale invasion of Ukraine with missile attacks on peaceful cities, thus breaking all existing bilateral and international agreements and infringing the very essence of international law. The ongoing Russian war on Ukraine has caused a refugee crisis not seen since the Second World War. As of May 2023, more than 8.1 million Ukrainian refugees were recorded across Europe, and around 3.6 million are internally displaced,² most of them women and children. Hostilities in the country have resulted in civilian casualties, destruction of cities' infrastructure and public spaces. The war has also directly impacted the labour market with a rapid increase in the scale of the informal economy and exacerbating existing inequalities.

The Ukrainian labour market faced significant challenges even before the Russian invasion in 2022: high labour migration, low employment rates, gender pay gap, elevated youth unemployment and the informal economy.

According to the latest data³ from the State Statistics Service of Ukraine, the informally employed population amounts to 3,462,400 people and made up 19.5 per cent of the total employed population in the first half of 2021. In fact, during 2015–2020 the total number of informally employed workers decreased (26.2 per cent in 2015; 20.9 per cent in 2019; 20.3 per cent in 2020).⁴

¹ ILO; available at: https://www.ilo.org/budapest/countries-covered/ukraine/WCMS_470662/lang--en/index.htm

² ILO; available at: <https://www.ilo.org/budapest/what-we-do/projects/ukraine-crisis/lang--en/index.htm>

³ The most recent data is not available due to the ongoing war.

⁴ State Statistics Service of Ukraine; available at: http://www.ukrstat.gov.ua/operativ/operativ2017/rp/eans/eans_u/arch_nzn_smpsz_u.htm

In 2021 the unemployment rate in Ukraine was 9.8 per cent (compared with 11.0 per cent in 2020). Ukraine's poverty rate was 7.1 per cent in 2020⁵ (a 2.3 percentage point decline from 2018). The ongoing war will increase this figure dramatically.

According to the ILO, 15 per cent of employment (or 2.4 million jobs) was lost in 2022 compared with 2021.⁶ There are fears that the ongoing war will cause even higher informal economy rates and deprive the previously officially employed population from legislative protection.

In fact, in 2022 the unemployment rate jumped to around 25 per cent, various sources estimate. There are no accurate data on unemployment, partially because of difficulties in collecting data during the war, but also because many persons who left Ukraine or are displaced internally have not registered as unemployed and de jure are still employed.

The most significant challenge for labour market and trade unions in Ukraine is posed by the massive destruction of cities and infrastructure by the Russian army. As of April 2023, Ukrainian authorities estimate that more than 350,000 facilities have been destroyed, along with millions of square meters of residential, health, education, sports and other infrastructure. Thousands of kilometres of railways, roads, ports and airports have been destroyed or severely damaged. The towns and cities of Mariupol, Severodonetsk, Maryinka and Bachmut have been destroyed completely and other small towns and villages in the east and south of Ukraine continue to face massive destruction under the Russian occupation and ongoing fighting.

The recent disaster at Kahivska hydro power plant on 6 June 2023, caused a flood never seen in Ukraine before, with thousands of houses being inundated, civilian casualties, killing animals and plants, contaminating water and washing away landmines. The flood affected more than 80 towns and villages and more than 20,000 hectares of agricultural land, which will be unusable for many years to come. Moreover, the destruction of the dam poses a serious threat to the Zaporizhia nuclear power plant. The Ukrainian authorities blamed Russian occupation forces, which seized, mined and controlled the hydroelectric power plant for undermining the dam and causing ecocide. The destruction of the dam will have far-reaching consequences for livelihoods and the economy in the area and beyond. The trade unions will face severe challenges in trying to cope.

TRADE UNIONS IN UKRAINE: FACTS AND FIGURES

HISTORICAL ASPECTS

After Ukraine's independence and at the beginning of the transformation process, "Ukrprofrada" the Ukrainian branch of the Soviet trade union federation was a monolithic trade union

centre with 26.6 million members. In addition to almost all employees and students, the umbrella organisation also included the management personnel of ministries, government bodies and state-owned companies. Thus, trade unions in Ukraine, as in every other post-Soviet country, were part of state structures, an extended arm of the executive and social and cultural departments of organisations (companies).

A year after independence, Ukrprofrada declared itself independent not only from its Soviet predecessor but also from the state and founded the Federation of Trade Unions of Ukraine (FPU). The latter also took over the real estate and possessions of the predecessor organisation and thus became one of the richest collective property owners in Ukraine. Despite efforts to reform these structures since independence, no real transformation has succeeded to date.

In addition to the FPU, independent trade unions emerged after the collapse of the Soviet Union that have their roots in the strike movement of miners and transport workers, but now also include other sectors. After extensive strikes in 1994–1998, the Independent Union of Miners and some other new unions merged to form the Confederation of Free Trade Unions of Ukraine (KVPU). They are much smaller than the FPU, but see themselves as true representatives of workers' interests and are characterised by a strong ability to deal with labour conflicts.

It should be noted that none of the unions in Ukraine publicly admits to being affiliated with any political party. However, since Ukraine's independence, some politicians have attempted to bring the unions into their own sphere of influence and to use them for their own short-term interests. A good example is that of the first President of Ukraine, Leonid Kravchuk, who succeeded in installing one of his advisers, Oleksandr Stoyan, as head of the FPU in 2002–2006. On the other hand, the head of the KVPU, Mykhailo Volynets, was a national deputy of Yulia Tymoshenko's party from 2002 to 2012 and again since 2019. Through such personal involvement in politics, trade unions lose credibility and are often perceived by ordinary people as part of the corrupt political elite.

Although the degree of political influence on trade unions changes over time, it cannot be stated for certain that Ukrainian unions are completely free from politics, as they usually claim.

COMPOSITION OF THE UNIONS IN UKRAINE

At the beginning of 2020, there were 21 officially registered national trade union alliances in Ukraine and 143 all-Ukrainian branch trade unions. However, the formally relatively high number of registered trade unions does not correspond to trade union activity.

The largest trade union umbrella organisation is the Federation of Trade Unions of Ukraine (FPU), the legal successor to the Soviet Council of Trade Unions. The FPU includes 70 member organisations, of which 45 are all-Ukrainian trade

⁵ Percentage under US \$5.50 per day.

⁶ See ILO; available at: https://www.ilo.org/budapest/countries-covered/ukraine/WCMS_470662/lang--en/index.htm

Table 1

Main trade unions confederations in Ukraine

Trade Union Confederation	Chair and Vice Chair	Members	International memberships
Федерація профспілок України, ФПУ (Federation of Trade Unions of Ukraine, FPU)	Chair: Hryhori Osovy Deputy: Oleksandr Schubyn, Volodymyr Saenko, Jevhen Drapjaty, Vasyl Andreyev	3.5 million (1.1.2022)	ITUC ETUC
Конфедерація вільних профспілок України, КВПУ (Confederation of Free Trade Unions of Ukraine, KVPU)	Chair: Myhailo Volynetz Deputy: Volodymyr Kozelskiy, Natalia Lewyzka	165 804 (1.1.2022)	ITUC ETUC (since December 2022)

Table 2

Main sector federations and individual trade unions in Ukraine

Sector federation / trade union	Confederation	Chair and Vice Chair	Members	International memberships
Профспілка металургів і гірників України, (Trade Union of Metallurgists and Miners of Ukraine)	FPU	Chair: Oleksandr Rjabko Deputy: Valeryi Gavrylenko	178 608 (1.1.2022)	IndustriAll
Профспілка працівників вугільної промисловості України (Trade Union of Workers of the Coal Industry of Ukraine, PRUPU)	FPU	Chair: Andriy Zymyn	51 191 (1.1.2022)	IndustriAll
Незалежна профспілка гірників України, НПГУ (Independent Trade Union of Mining Workers of Ukraine, NPGU)	KVPU	Chair: Myhailo Volynetz Deputy: Natalia Lewyzka	45 332 (1.1.2019, no latest data available)	IndustriAll
Профспілка працівників агропромислового комплексу України (Trade Union of Agricultural Industry Workers of Ukraine)	FPU	Chair: Switlana Samosud Deputy: Olga Lopata	122 012 (1.1.2022)	IUF, EFFAT
Профспілка працівників житлово- комунального господарства України (Trade Union of Housing and Communal State Employees of Ukraine)	FPU	Chair: Oleksiy Romanyuk Deputy: Anatoliy Kulesha	158 087 (1.1.2022)	PSI, EPSU
Профспілка залізничників і транспортних будівельників України (Trade Union of Railway and Transport Building Workers of Ukraine)	FPTU	Chair: Oleksiy Semeryn, Deputy: Oleg Grygoruyk	341 400 (1.1.2019, no latest data available)	ITF, ETF
Профспілка працівників освіти і науки України (Trade Union of Education and Science Workers of Ukraine)	FPU	Chair: Heorhi Trukhanov Deputy: Ljubov Garbarenko, Serhi Romanjuk	656 149 (1.1.2022)	EI, ETUCE
Профспілка працівників охорони здоров'я України (Trade Union of Health Workers of Ukraine)	FPU	Chair: Viktoriya Koval Deputy: Iryna Schwetz	431 107 (1.1.2022)	PSI, EPSU
Професійна спілка працівників державних установ України (Trade Union of State Employees of Ukraine)	FPU	Chair: Vitaliy Pochtovyi	101 064 (1.1.2022)	PSI, EPSU
Об'єднання всеукраїнських автономних профспілок, ОВАП (Association of Autonomous Trade Unions of Ukraine, OVAP)	None	Chair: Anatoli Shyrokov	152 653 (1.1.2019)	PSI, EPSU
Об'єднання всеукраїнських профспілок і профоб'єднань "Єдність" (All-Ukrainian Trade Unions and Ukrainian Trade Union Associations »Unity«)	None	Chair: Anatoli Onischuk	151 544 (1.1.2019)	PSI, EPSU

unions and 25 are territorial trade unions. Total trade union membership as of 1 January 2022 was 3,461,783, of which 2,347,279 are active working members of trade unions. Among the total membership, young people make up 1.18 million (34 per cent), women 1.04 million (58.9 per cent), and pensioners 260,636 (7.5 per cent).

The FPU's organisational structure consists of 38,431 primary organisations, 1,128 united organisations, 432 city organisations (except Kyiv), and 1,088 district, 30 territorial and 501 regional organisations.

By the end of 2021, under the influence of external and internal trade union factors, the number of FPU members had decreased by 573,000 or 14 per cent compared with 2020. External factors had a significant impact. Contributing to this development were, among other things, administrative territorial reform, the liquidation of districts and a large part of local councils, deterioration of workers' rights, and quarantine restrictions caused by the Covid-19 pandemic, which increased informal employment.

In fact, the pandemic caused the transition of a significant number of workers to remote working, performing certain tasks under short-term contracts without having traditional labour relations with employers. On the other hand, according to the FPU, one internal reason for the decline in trade union membership is the voluntary withdrawal of 100,000 people from trade unions. Another 2,000 people were excluded for non-compliance with statutory regulations.

The FPU notes, however, that statistical data on individual indicators are incomplete, as a number of all-Ukrainian trade unions and territorial trade unions did not submit or were not able to provide separate reporting data due to the ongoing war.

The most influential branch unions within the FPU, which also have the highest membership are: the Trade Union of Metallurgists and Miners of Ukraine, with around 178,608 members (compared with 187,370 members in 2020, and 208,200 in 2019); the Trade Union of Workers of the Coal Industry with around 51,191 (compared with 57,180 members in 2021 and 78,640 in 2020); the Trade Union of Agricultural Industry Workers with 122,012 members; the Trade Union of Housing and Communal State Employees with 158,087 members; the Trade Union of Education and Science Workers with 656,149 (compared with 895,280 in 2020), and the Trade Union of Health Workers with around 431,107 (478,869 members in 2020).

The second biggest trade union umbrella organisation is the Confederation of Free Trade Unions of Ukraine (KVPU) with 165,804 members (in 2020 it had 169,600). The KVPU has its roots in the miners' strikes of the 1990s. The vital core of the KVPU is still the influential Independent Miners' Union (NPGU), but the education and health sectors are also relatively well represented in this small umbrella organisation. Smaller unions not related to any industry or region are also members of the KVPU.

At present, the KVPU brings together eight branch unions: the Independent Trade Union of Miners of Ukraine (NPGU); the All-Ukrainian Trade Union "Protection of Justice"; the Free Trade Union of Railway Workers (VPZU); the Free Trade Union of Education and Science (VPONU); the Free Trade Union of Medical Workers (VPMPU); the Free Trade Union of Entrepreneurs (VPPU); the Association of Motor Carriers of Ukraine; and the Free Trade Union of Able-Bodied and Disabled People.

In addition, the KVPU has within its structure the Committee on Women's Rights and Gender Equality and the Youth Committee.

In the process of EU accession and granting of candidate status for EU membership to Ukraine, the KVPU as well as the FPU also became members of the European Trade Union Confederation (ETUC) at the end of 2022.

The KVPU is financed by fees from member organisations and donations from citizens, companies, institutions and organisations at home and abroad.

In Ukraine, there are also around 30 trade unions that are not affiliated to any umbrella organisation, such as the Trade Union of Railway and Transport Building Workers, which also has Soviet roots. Because of its important role and internal organisational strength it has so far decided against membership of an umbrella organisation. However, the union is a member of the International Transport Federation (ITF).

There are also a large number of "pocket" or other pseudo-unions, which spread rapidly in 2000/2001 and were often founded with the motive of money laundering or the diversion of finances from the social security funds, at that time still controlled by the unions. Another reason is that according to the law of the time, professional organisations of, for example, lawyers or insurance brokers could register as trade unions only in order to officially represent their interests.

There is also a large number of local "unions", some of which have joined umbrella organisations. These include the Association of Motor Carriers of Ukraine (KVPU) or the union of workers at the Orzhica sugar factory. While some are unquestionably union organisations, others have political structures and many represent only business or commercial interests.

Such fragmentation definitely poses a problem for the unions and their power. There is great competition and disagreement between old "Soviet" unions and the new and more progressive ones. A concrete example can be found in the very tense relations between the KVPU and the FPU.

With the beginning of the Russian war on Ukraine, however, these two umbrella organisations seem to have found some common ground and both are actively engaged in providing voluntary aid for their members and for citizens of Ukraine in general, by delivering food and non-food products to people in need, providing shelter to war refugees (in particular in FPU properties), crowdfunding and other immediate aid. KVPU and FPU also have a similar negative position

as regards changes in labour legislation that would lead to a deterioration in workers' and unions' rights and have called on the government to drop draft anti-union laws.

Since independence, the FPU has lost over 70 per cent of its members, who have not joined any other unions. While almost all workers were still organised at the beginning of independence, today only around 40 per cent are organised in the formal sector. Leaving aside the significant informal sector, the degree of organisation in Ukraine is still higher than in many other countries, however. The unions are still the largest civil society organisation in the country and theoretically have the potential to mobilise their members and thereby influence social and industrial policy.

TRADE UNION ACTIVITIES: LEGISLATIVE FRAMEWORK

The fundamental rights of trade unions are laid down in Article 46 of the Constitution of Ukraine, as well as in the Law on Public Associations,⁷ the Law on Trade Unions, Their Rights and Guarantees of Their Activities⁸ and the Labour Code of 1971. Ukraine has ratified the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) as well as the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

Theoretically, trade unions are independent and can organise their activities freely. In principle, there is also a right to strike with the exception of certain categories, such as employees in the judiciary, the army, the government, the police, the energy sector and medical workers.

In 2010, with the adoption of the Law on Social Dialogue,⁹ for trade unions to fully exercise their rights, trade union status must first be confirmed by the state or territorial registration authority.

The General Agreement, which has been concluded by the social partners at national level since 1991, is the basis for negotiations and the conclusion of collective agreements in organisations, regions and sectors. The General Agreement lays down the basic principles and norms of social and economic policy and industrial relations, including minimum wages, working hours, labour and environmental protection regulations and social security. They also form the basis for sectoral and territorial agreements and collective agreements.

Collective bargaining at a higher level – national, regional or sectoral – has never played a major role in Ukraine since independence. At the national level, agreements have often been vague and contained recommendations rather than binding regulations. According to the legislation, sectoral collective agreements apply to the members of the signatory parties,

but in practice they have also been more like declarations of intent. In addition, there are hardly any employers' organisations at sectoral level. The situation is similar at the regional level, so that the central point for collective bargaining is the company level. Here there is comparatively high coverage. In the majority of cases, however, collective agreements at company level do not go beyond what is laid down in legislation.

According to the 1971 Labour Code and the Law on Trade Unions, unions also have the right to lodge complaints with the relevant body in the event of violations of existing collective agreements by employers, their associations or executive bodies. If the faults are not remedied or if the complaint is not addressed within one week, they have the right to file a complaint with the competent court.

If an employer plans mass redundancies for operational reasons, the union must be informed at least three months in advance. The employees themselves have to be informed only two months in advance. The information must contain the reasons, periods of dismissal, as well as the number of employees and occupational groups affected. There should also be consultations with the trade union on measures to prevent or, as far as possible, reduce redundancies and on catch-up measures. Unions must agree to dismissals of union members.¹⁰

In 1993 the first National Tripartite Council was founded, which includes equal numbers of representatives from employers, trade unions and the state. However, the work of the Council did not lead to substantial results. In 2012, the body was renamed the National Tripartite Socio-Economic Council (NTSER) and became a separate organisation. NTSER provides recommendations to the President, Parliament and Cabinet of Ministers on the formation and implementation of state economic and social policies and on the regulation of labour relations. However, NTSER proposals are only advisory and it remains open how much they influence subsequent decisions. In addition, the government and employers' side are often of the same opinion in NTSER.

The trade union representatives on the Council are also represented on the boards of the pension, social and unemployment insurance funds. The selection of trade union representatives for the Tripartite Council is subject to the principle of representativeness. The legislator has thus granted the traditional, more consensus-oriented trade unions exclusive opportunities for participation. The activities of smaller trade unions are thus virtually negated.

Trade union property: disputed terrain

For the past two decades trade union property and its legal regime have been among the most contested issues pertaining to trade union rights in Ukraine. After Ukraine became independent in 1991 the ownership of Soviet proper-

⁷ Law of Ukraine on Public Associations, No. 4572-VI, 22.03.2012.

⁸ Law on Trade Unions, Their Rights and Guarantees of Their Activities, No. 1045-XIV, 15.09.1999.

⁹ Law on Social Dialogue, No. 2862-VI, 23.12.2010.

¹⁰ Some of these provisions were amended or changed by newly adopted draft labour laws under martial law (see part V of this paper).

ty was transferred to various organisations, enterprises and individuals.¹¹

Thus, in October–November 1990, a year before the collapse of the Soviet Union, the property previously owned by the Soviet Central Trade Union Council was transferred to the Federation of Independent Trade Unions of Ukraine (the predecessor of the Federation of Trade Unions of Ukraine, FPU). This property includes sanatoriums, cultural and sports complexes, some office buildings, as well as the House of Trade Unions and the famous October Palace building in Kyiv city centre. Although neither a complete list of the property owned by the FPU nor its total value is publicly available, over the years the Ukrainian media has reported between 300 and 1,000 Soviet-era sites inherited by the FPU.¹²

Over the past 20 years, there have been numerous attempts by different Ukrainian governments to seize trade union property. The issue has repeatedly been brought to the state's regulatory and law enforcement authorities.

In 1992¹³ and 1994¹⁴ the parliament, the Verkhovna Rada, adopted the decision to temporarily transfer any property under dispute to the State Property Fund of Ukraine¹⁵ “until ownership of this property has been legally determined”. These decisions have not been implemented, however, and the property remained under FPU management.

After the Orange Revolution, independent unions also raised the issue of union property and claimed that the former leadership of the FPU had embezzled property worth 3.5 billion US dollars. It was argued, for example, that in 1991 the FPU and independent trade unions signed a declaration on sharing the property of the former Soviet trade unions. However, this declaration was not enshrined in concrete agreements and therefore it can be argued that the FPU has monopolised property that should be available to all unions, not only to those affiliated to the FPU.¹⁶

Another wave of serious confrontation between the government and the unions happened in 2020–2021, when the Ministry of the Economy, with Timofii Milovanov as its head, attempted to pass the new Labour Code. The ostensible reason for this was to modernise and liberalise outdated Soviet

legalisation and create favourable conditions for the development and operation of businesses (currently the 1971 Labour Code is in force in Ukraine, albeit with numerous changes and amendments).

However, this attempt was strenuously opposed by the unions as the draft of the new Labour Code severely undermined workers' as well as trade union rights and violated a number of international labour standards and human rights treaties. When trade unions actively protested against the adoption of the draft labour law, the government seized a series of trade union properties at the end of 2020.¹⁷

With the full-scale Russian invasion of Ukraine on 24 February 2022 and the ongoing war, attempts to pass other draft laws that violate workers' rights, as well as attempts to seize the property managed by the FPU did not disappear. Quite the contrary, already in July 2022 the Ukraine's State Bureau of Investigation (SBI) claimed to have uncovered a “large-scale, multi-million-dollar scheme to plunder the property of trade union organisations”. The SBI claims that around 80 property complexes in different regions of Ukraine were sold illegally, that is without mandatory approval of the State Property Fund.¹⁸ It has also claimed that officers of the Security Service of Ukraine (SSU) together with the SBI documented expropriations of state health resorts, sports and other complexes by means of preliminary agreements between the FPU and private companies.

While the investigation is ongoing, the respective properties have been handed over to the National Agency of Ukraine tasked with finding, tracing and managing assets obtained from corruption and other crimes (ARMA), including the Tourist and Druzhba hotels in Kyiv; the sanatoriums Zhovten in Koncha-Zaspa, Kuyalnik in Odesa, Morshynsky in Lviv region, and Polyana in Zakarpattia. The revenues from the exploitation of the property will be directed to the state budget of Ukraine.

According to Dmytro Natalukha, head of the Committee on Economic Development of the Verkhovna Rada, the decision to grant powers to confiscate trade union property is based on the fact that it “was used by private individuals, self-proclaimed leaders of trade unions, who privatised it, sold it, rented it out or simply destroyed it, as if it were their own. Palaces of culture became trading centres. Sanatoriums and recreation centres became prestigious private towns, beach clubs or spas.”¹⁹

Pre-trial investigations are currently ongoing under Part 5 of Art. 191 of the Criminal Code (appropriation, waste of property or taking possession of it by abuse of official position),

¹¹ <https://www.opendemocracy.net/en/odr/ukraine-trade-unions-property-soviet-confiscation/>

¹² See Open Democracy, <https://www.opendemocracy.net/en/odr/ukraine-trade-unions-property-soviet-confiscation/>

¹³ Decree of Verkhovna Rada of Ukraine on property complexes and financial resources of public organizations of the former Union of the SSR located on the territory of Ukraine, No. 2268-XII, 10.04.1992.

¹⁴ Decree of Verkhovna Rada of Ukraine on the property of republican public organizations of the former Union of the SSR, No. 3943-XII, 04.02.1994.

¹⁵ The State Property Fund of Ukraine was established in 1991 to manage state-owned buildings.

¹⁶ FPU, <http://www.federation.org.ua/en/tochkazory/independent-trade-unions-necessarily-will-join-struggle-sanatoria.htm>

¹⁷ See Open Democracy, <https://www.opendemocracy.net/en/odr/ukraine-trade-unions-property-soviet-confiscation/>

¹⁸ State Bureau of Investigation, <https://dbr.gov.ua/en/news/dbr-vikrilo-masshtabnu-shemu-vidchuzhennya-derzhmajna-profspilkovimi-organizacijami-80-obektiv-peredano-arma-video>

¹⁹ <https://www.opendemocracy.net/en/odr/ukraine-trade-unions-property-soviet-confiscation/>

Part 2 of Article 364 of the Criminal Code (abuse of power or official position), and Part 2 of Art. 367 (official negligence). Sanctions include imprisonment for up to 12 years.

In December 2022, the Security Service of Ukraine announced the discovery of an illegal privatisation scheme related to state property worth UAH 25 billion. According to the investigation, officials from the Kyiv City State Administration (KM-DA) issued documents that transferred ownership of state facilities to the Federation of Trade Unions. The respective properties were then sold at market value through controlled companies.

The deputy head of the Federation of Trade Unions, Volodymyr Sayenko, was informed of suspicions of embezzlement of state property worth UAH 138 million. The Office of the Prosecutor General suspects that Sayenko, as the chairman of the supervisory board, made the decision to sell the Kyiv Balneo Clinic in August 2019. In total, the trade union leader, together with four regional officials, allegedly expropriated 230 sanatoriums and recreation centres.²⁰ Hence, Sayenko has been notified of possible charges under Part 5 of Article 191 ("Expropriation, embezzlement of property or possession of it by abuse of official position, committed on a particularly large scale or by an organised group") of the Criminal Code. Another four officials from the KMDA were charged with abuse of power or official position (Part 2 of Article 364 of the Criminal Code).

Currently Sayenko is in custody with the right to post bail in the amount of UAH 124 million. Sayenko himself has called his criminal prosecution "an attempt to destroy inconvenient trade unions".²¹

This is not the first attempt to deal with trade union property. Similar measures have been proposed during the past 20 years. Previous governments did not take radical steps in this regard, however.

Thus, in December 2019, the head of the Social Policy Committee, Halyna Tretyakova, jointly with 41 other members of "Servants of the People" introduced Draft Law No. 2681 on Amendments to Certain Legislative Acts of Ukraine (On Certain Issues of the Activity of Trade Unions). Apart from a number of anti-union provisions, the draft also dealt with the issue of trade union properties and received heavy criticism. Strong disagreement on draft law No. 6420 was expressed by trade unions (the Joint Representative Body of representative all-Ukrainian associations of trade unions at the national level), as well as by employers (the Joint Representative Body of the employers' side at the national level). Employers' concerns mostly pertain to the increased cost of workers' recreation if trade union sanatoriums are seized.

It was then decided to deal with trade union property under separate legislation and draft laws No. 6420 and 6421 were introduced.

It is noteworthy that in 2020 the ILO undertook an investigation of trade union property in Ukraine and encouraged the Ukrainian authorities to "engage in consultations" with trade unions.²² Moreover, the ILO also emphasises that "the right to adequate protection of trade union property is one of those civil liberties which are essential for the normal exercise of trade union rights".²³ Besides, Human Rights Watch has noted²⁴ that such measures are also in violation of the protection of property rights pursuant to Art. 1 of Protocol 1 of the European Convention on Human Rights, 1950 (ECHR). The FPU also stressed that such measures are not consistent with Ukraine's status as an EU candidate country as the EU itself emphasised the importance of consultations with trade unions concerning any decision on union property.²⁵ Moreover, the seizure of its property, the FPU claims, undermines its financial stability and may be used by the Ukrainian government to put pressure on the unions, while diminishing the unions' role in defending workers' rights in Ukraine.

Nevertheless, draft law No. 6420 on the Legal Regime pertaining to the Property of All-Union Public Associations (Organisations) of the former USSR, dated 10 December 2021 was adopted by parliament on 4 November 2022 at the first reading. Complementarily, another draft law was introduced (No. 6421 on the moratorium on the alienation of property of all-Union public associations (organisations) of the former Union of the SSR) that prohibits trade unions from selling their property until its legal regime is defined.

Hence, draft law No. 6420 stipulates automatic transfer of all trade union property that was in trade unions' possession as of 24 August 1991 to the ownership of the state. The list of properties is subject to approval by the Cabinet of Ukraine at the request of the State Property Fund.

However, the FPU claims that no profound judicial overview of the process is envisaged in the legislation. Furthermore, given the current war and martial law, parliament is allowed to bypass standard parliamentary procedures when adopting legislation and unions are forbidden to strike in response.

²⁰ See Open Democracy, <https://www.stopcor.org/ukr/dossier-person/person-saenko-volodimir-volodimirovich.html>

²¹ <https://www.depo.ua/ukr/politics/zmi-chomu-zatrimannya-profspilkovogo-diyacha-saenka-mozhe-stati-pereponoyu-dlya-vstupu-ukraini-do-es-202212281444978>

²² Report in which the Committee asks to be kept informed of developments, Report No. 392, October 2020, *Case No 3341 (Ukraine)* – Complaint date: 06-NOV-18 - Follow-up.

²³ See Para. 275, Trade union and employers' organizations rights and civil liberties, Compilation of decisions of the Committee on Freedom of Association, ILO, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO::P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3943709,2

²⁴ See Human Rights Watch, <https://www.hrw.org/news/2020/07/28/letter-ukraines-parliament-regarding-trade-union-law>

²⁵ See Open Democracy, <https://www.opendemocracy.net/en/odr/ukraine-trade-unions-property-soviet-confiscation/>

New labour legislation: a threat to trade unions and workers' rights

Apart from trade union property, a number of other controversial draft labour laws were developed at the start of Volodymyr Zelenskyi's presidency.

- Draft Law on Amendments to Certain Legislative Acts of Ukraine (On Certain Issues of the Activity of Trade Unions), **No. 2681**, 27.12.2019.

In May 2020, the Verkhovna Rada Committee on Social Policy and Protection of Veterans submitted to the Rada Draft Law No. 2681, prepared already at the end of 2019. The unions, as well as international stakeholders, claimed that certain provisions in the draft impose serious restrictions on workers' rights to freedom of association²⁶ and are in violation of Art. 36 of the Constitution of Ukraine, which guarantees the right to freedom of association, ILO Conventions Nos. 87, 135, and 158, as well as other human rights treaties to which Ukraine is party, in particular, the European Convention on Human Rights (ECHR), the European Social Charter (revised) (Art. 5, ESC), the International Covenant on Economic, Social and Cultural Rights (Art. 8, ICESCR), and the International Covenant on Civil and Political Rights (Art 22, ICCPR), and contradicts Ukraine's commitments under the EU-Ukraine Association Agreement (EUAA).

Draft law No. 2681 restricts the number of trade unions in an enterprise to two, thus violating workers' right to establish and join organisations "of their own choosing" pursuant to ILO Convention No. 87.

Besides, draft law No. 2681 contains a requirement to establish a supervisory committee in all trade unions. Although members of the supervisory committee are to be elected from among the members of a trade union, non-members or union members outside of the association may be involved in the work of the supervisory committee as community representatives. The committees are empowered with broad supervisory authority over trade union activities, including compliance with the trade union law and collective agreements. Hence, such provisions infringe the right of the unions to freely determine their structures and therefore undermine their independence; this is also in violation to Art. 3 of the ILO Convention No. 87, which guarantees trade unions the right to independently draw up their own statutes and rules and organise their administration and activities without any interference from public authorities that would restrict or impede this right.²⁷

Furthermore, any trade union whose members include enterprise management are excluded from collective bargaining pursuant to draft law No. 2681. However, there is no definition of the "management personnel" in the draft, which allows for broad interpretation and might include employees with any kind of supervisory authority. The provision is also in violation of ILO standards. According to the ILO, managerial or supervisory employees can be denied the right to belong to the same trade unions as other workers, upon two conditions: first, managerial employees have the right to establish their own associations to defend their interests; and second, staff categories are not defined so broadly as to weaken the organisation of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership.²⁸

Finally, according to draft law No. 2681 all trade union property that was in trade unions' possession as of 24 August 1991 will be automatically transferred to state ownership. However, as stated by the ILO, the right to adequate protection of trade union property is a civil liberty essential for the normal exercise of trade union rights.²⁹ In addition, this measure is in violation of the protection of property rights provided for in Art. 1 of Protocol 1 of the ECHR.

Hence, draft law No. 2681 has been severely criticised by national and global unions, international organisations and stakeholders.

The European Trade Union Confederation (ETUC) opposed the draft, while the Committee of the Verkhovna Rada on Ukraine's Integration with the European Union stated that the draft does not comply with Ukraine's obligations under the Association Agreement, the European Social Charter (revised) and ILO Conventions Nos. 87, 135, 158.

In 2020, the UN Committee on Economic, Social and Cultural Rights in its concluding observations on Ukraine stated: "the Committee urges the State party to review the draft law with a view to ensuring the effectiveness of collective bargaining and of the right to union representation, in compliance with article 8 of the Covenant and the provisions of the International Labour Organisation Freedom of Association and Pro-

²⁶ See Human Rights Watch, Letter to Ukrainian Parliament regarding trade union law, <https://www.hrw.org/news/2020/07/28/letter-ukraines-parliament-regarding-trade-union-law>

²⁷ ILO, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO

²⁸ ILO, Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition (2006), para. 247; available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf

²⁹ ILO, Compilation of decisions of the Committee on Freedom of Association, Trade union and employers organizations rights and civil liberties, para. 275 (last accessed on 29 June 2020); available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO:70002:P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3943709,2

tection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)".³⁰

It should also be noted that, pursuant to Ukraine's commitments under the Association Agreement with the European Union, it undertook to promote and implement internationally recognised core labour standards, including freedom of association and effective recognition of the right to collective bargaining.³¹ Ukraine should not weaken or reduce the labour protection afforded by its laws with a view to encouraging trade or investment.³² Draft law No. 2681 is thus not in compliance with the EU–Ukraine Agreement.

Similarly, the NGO Labour Initiatives pointed out other provisions of the draft that worsen workers' rights and undermine effective trade union functioning. Such provisions include the following requirements: no more than two primary trade union organisations can be formed at one enterprise, institution or organisation; the minimum number of trade union members should be raised to 10; trade unions have no right to submit proposals to draft laws before their submission and consideration by the executive authorities; employers are not obliged to provide collective bargaining information to trade unions; automatic collection of trade union fees should end.³³

In addition, the International Lawyers Assisting Workers Network (ILAW Network) urged the Ukrainian parliament to withdraw the anti-union draft law No. 2681. Also, the IndustriALL Global Union called on the government to withdraw the draft because it violated international standards and stated: "Our global union expects you to put people's rights and expectations first, before business and economic interests."³⁴

To date, draft law No. 2681 has not been adopted, having been submitted to the relevant Committee for consideration and pending review.

- Draft Law on Amendments to Certain Legislative Acts Concerning Simplification of Labour Relations in the Sphere of Small and Medium-sized Businesses and Reduc-

tion of Administrative Burdens on Entrepreneurial Activity. Registered at the Parliament of Ukraine on 13.04.2021 under **No. 5371**.

Draft law No. 5371 introduces individual contracts as the main means of regulating employment relations and considerably reduces the role of trade unions. According to the draft, management does not need to obtain trade union approval to dismiss a worker.

The provisions of the draft basically exclude workers at small and medium-sized enterprises (nearly 70 per cent of workers in Ukraine) from the scope of the Labour Code, depriving them in particular of collective bargaining rights.

Draft law No. 5371 has been heavily criticised by the ILO, as well as by Ukrainian and European trade unions because it departs from the principles of social dialogue and threatens to infringe international labour standards.

The ILO in its technical note within the framework of the technical cooperation project "Rights at Work: Improving Ukraine's Compliance with Key International Labour Standards" notes that draft No. 5371 contradicts "the general principles of European law and practice". Among other things it introduces US-style "at-will employment" and a "parallel and less protective regime" for workers at small and medium-sized enterprises, while also enabling employers to make unilateral changes to the "essential terms and conditions" of individual employment contracts. The draft thus contravenes EU Directives on workplace law, labour protection provisions in the EU–Ukraine Association Agreement, as well as ILO fundamental conventions on the right to organise.³⁵

Despite all the criticism, Ukraine's president Volodymyr Zelenskyi signed draft law No. 5371 on 19 July 2022. The Law entered into force on 19 August under No. 2434-IX (former draft law 5371). Law No. 2434-IX will remain in effect as long as the country is under martial law (this came as a last-minute requirement from the unions).

According to Law No. 2434-IX, workers engaged at enterprises with up to 250 employees will be covered by individual contracts and not the current Labour Code. In this way, the Labour Code will no longer apply to employees of small and medium-sized enterprises. The Law also introduces an easy procedure for employers to fire workers without any union consent. The unions will thus be reduced merely to a public monitoring role.

³⁰ UN, Committee on Economic, Social and Cultural Rights, Concluding observations on the seventh periodic report of Ukraine, E/C.12/UKR/CO/7, #28, (2 April 2020); available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/UKR/CO/7&Lang=En

³¹ Art. 291, Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (29 May 2014); available at: https://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf

³² Art. 296 (2), EU-Ukraine Association Agreement.

³³ Labour Initiatives, Draft Law 2681 (Known as the Anti-Union Law) to be Voted on at First Reading (27 May 2020); available at: <http://trudovi.org/en/show-news/labor-rights/2681-anti-union-draft-law>

³⁴ See IndustriAll, <https://www.industriall-union.org/proposed-anti-union-law-threatens-ukrainian-union-movement>

³⁵ ILO, Technical Note concerning Draft Law on Amendments to Certain Legislative Acts Concerning Simplification of Labour Relations in the Sphere of Small and Medium Business and Reduction of Administrative Burdens on Entrepreneurial Activity. Registered in the Parliament of Ukraine on 13.04.2021 under No. 5371; available at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms_802222.pdf

While strikes and protests remain forbidden under martial law, the Ukrainian Federation of Trade Unions is launching a campaign to challenge Law No. 2434-IX in the Constitutional Court and will appeal to the International Labour Organization and other European and international bodies.

- Law **No. 2421-IX** of Ukraine on Amendments to Certain Laws of Ukraine on the Regulation of Certain Non-standard Forms of Employment, 18 July 2022.

Another important piece of legislation that was passed during the same period is Law No. 2421-IX, which came into effect in August 2022 and introduced the concept of on-call work (employment with unfixed working hours or so-called zero-hours employment). The Law provides for other relevant changes to Ukrainian labour legislation. The number of employees hired on these conditions may not exceed 10 per cent of total staff, and if the total number of employees is fewer than 10, only one such employee may be hired. Salaries for on-call employees are to be paid for the time actually worked, although minimum paid time should be 32 hours per month. Employers have the right to include additional grounds for terminating on-call employees in their employment agreements. After 12 months of work, on-call employees may ask to switch to fixed-term or regular full-time employment, however, it is not clear whether this can be implemented in practice.

- On 15 March 2022, the Parliament of Ukraine passed the Law on the Organisation of Labour Relations under Martial Law, **No. 2136-IX**, dated 1 July 2022.

While the provisions of Law No. 2136-IX are characterised by a number of issues and legal gaps, on 1 July 2022 the Ukrainian Parliament adopted the Law on Amendments to Certain Laws of Ukraine Regarding Optimisation of Labour Relations, No. 2352-IX, which came into force on 19 July 2022.

Law No. 2352-IX provides for amendments to the Labour Code, the Law on the Organisation of Labour Relations under Martial Law, the Law on Vacations and some others. Law No. 2352-IX contains substantial changes to labour relations regulations under martial law concerning vacations, termination of employment, labour inspection, overtime, and other matters.³⁶ However, the most important amendment was the cancellation of the payment of the average wage to military personnel (Part 3 of Article 119 of the Labour Code, 1971). From 19 July 2022, military personnel will retain their workplaces and positions, but the employer will not pay the average wage. The same changes apply to personnel receiving medical treatment after being wounded, captured or missing. It is

also worth noting there will be no payments to the social insurance fund during this period, which may have consequences later on.

With the war ongoing and labour law reform still in process, there are fears on the side of workers and unions that the legislation adopted under martial law might remain also after the war ends. It would thus be very difficult or even impossible to return to previous standards and comply with both ILO and EU instruments.

Amid numerous government attempts to pursue changes to current labour legislation and severe criticism by the ILO and other international stakeholders, Halyna Tretiakova, head of the parliamentary committee on social policy, in an interview on 28 July 2022,³⁷ called the ILO an obstacle to Ukrainians striking individual employment agreements and protecting their employment rights through more flexible means. According to Tretiakova, “people don’t want to negotiate their employment through collective agreements, but through civil law, royalties, author rights”.

Finally, in December 2022, the Council of Europe in its report on needs assessments as regards social rights in Ukraine during the war, stated that the reforms have so far “mostly resulted in the deterioration of employment conditions”.³⁸

CONCLUSION

The Ukrainian trade union movement has trodden a difficult path during the almost 30 years since independence.

Changes in the structure of employment, an increase in atypical forms of employment and a falling number of enterprises, globalisation of the economy as well as trade union shortcomings have led to a steady decline in membership across the biggest union umbrella organisations and branch unions. A lack of public awareness of trade union activities along with a low level of public confidence in their work have contributed to the decline of trade union popularity.

With the beginning of the war in Donbass in 2014 and the annexation of Crimea by the Russian Federation, the FPU not only lost a considerable part of its membership, but also numerous properties situated in currently occupied territories.

With the full-scale Russian invasion and ongoing war in Ukraine membership is declining further, while the (neo)liberal labour agenda and new labour legislation pursued by

³⁶ See detailed analysis of Law No. 2352-IX by “Labour Initiatives” at <https://trudovi.org.ua/analytics/optimizatsiia-trudovykh-vidnosyn-v-umovakh-voiennoho-stanu-novely-zakonu-2352-ikh/>

³⁷ Interview published on the Ukrainian parliament’s website on 28 July 2022, https://www.rada.gov.ua/news/razom/226103.html?fbclid=IwAR0YwL54TO7rpDkOlj5dWjLqa76UmjN1PGu1JF_NRPo7QU159mVMRwQmb1g

³⁸ Council of Europe, Social Rights in Ukraine in Times of War: Report on the needs assessment, December 2022; available at: <https://rm.coe.int/needs-assessment-eng-2/1680a9b407>

the government (despite heavy criticism from the ILO, the Council of Europe, global union federations and other international stakeholders) severely violate workers' rights and diminish the role of the unions.

In fact, long before the war started in 2022, the government had attempted labour law reform with an emphasis on economic liberalisation and flexibilisation of the world of work.

Proposed changes to labour legislation included limitations on the number of company-level unions and union organisation, limitation of collective agreements at national and company level, exclusion of company-level union guarantees and elimination of the state's obligations to take trade union positions into account when developing social, economic and labour laws.

The relevant draft laws were not developed by the government in consultation with the social partners, nor did the government ask the International Labour Organization for assistance. Instead, it merely claimed that the laws would comply with ILO conventions. However, the proposed draft laws violate Ukraine's international obligations, including the fundamental ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize, ILO Convention No. 98 on Collective Bargaining, the European Social Charter (revised) and two international covenants.

Despite all the criticism, some of the previously proposed drafts were adopted. While the newly adopted labour legislation has come into effect during the martial law, the unions strongly fear that such regulations might remain when the war is over. Moreover, a long-term dispute over trade union property and current legislative initiatives concerning its status may seriously undermine the financial stability of the FPU and in some cases its reputation.

In addition, fragmentation and conflict among the trade unions and major differences in understanding of the role and function of trade unions mean that they are not perceived as a unified voice in the political process.

While the EU Association Agreement marked the starting point for far-reaching reforms of the economy and the labour sphere, the recent granting of EU candidate status to Ukraine from June 2022 requires an ambitious reform of labour and social policies, including alignment with International Labour Standards and the EU's *Acquis Communautaire*.

It is therefore essential that the trade unions in Ukraine come to a consolidated position in order to influence political decision-making and be a strong partner in social dialogue. The government and employers, however, must also take a big step towards a more social approach based on ensuring the interests and well-being of people rather than businesses.

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