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## THE NATURE AND POSITION OF CREATIVE WORKERS' RIGHT TO PROTECTION OF LABOUR RIGHTS WITHIN SYSTEM OF LABOUR RIGHTS

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## ПРАВОВА ПРИРОДА ТА МІСЦЕ ПРАВА НА ЗАХИСТ ТРУДОВИХ ПРАВ ТВОРЧИХ ПРАЦІВНИКІВ У СИСТЕМІ ТРУДОВИХ ПРАВ

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*This article seeks to clarify the content of creative workers' right to the protection of their labour rights in Ukraine and to determine the position of that right within the wider system of such workers' labour rights. Creative workers possess a corpus of rights as an integral element of their labour status: general (baseline) rights that form the foundation of the guarantee system and accrue equally to all persons employed under a contract of employment; special rights flowing from the distinctive legal status of creative workers as a professional category performing creative functions; and specific rights attaching to creative workers who also fall within protected categories, such as persons with disabilities or those with particular family responsibilities.*

*Yet the nominal entrenchment of rights in legislation and contract is not synonymous with their effectiveness in practice, a disparity that is particularly acute in the creative sector. In the absence of adequate guarantees, the catalogue of rights risks degenerating into progressive but declaratory provisions; moreover, creative workers require legally defined and institutionally supported avenues (both human-rights based and law-enforcement oriented) to confirm the reality of their labour rights whenever these are disputed, unrecognised, or otherwise called into question.*

*In these circumstances, the proper guarantee of a creative worker's right to the protection of labour rights becomes pivotal: it is an autonomous subjective right belonging to the class of basic employee rights and it functions as a systemic guarantee that renders all other labour rights effective in fact. In formal terms, the purpose of this right is to secure the exercise and restoration of violated labour rights and to prevent further infringements.*

*Conceptually, its purpose is to sustain a condition of socially safe existence that flows from participation in an employment relationship. It also serves a background aim: the re-establishment of an appropriate level of social security through the operation of Ukraine's labour-law regime in the particular employee's case.*

*Taken together, these aims underscore the right's socio-legal significance and confirm that, for creative workers, the acquisition and exercise of the right to the protection of labour rights is, first, a basic guarantee of the existence of employment as a socially safe form of legal interaction and, secondly, a specific guarantee of the proper implementation of the principle of decent work. They also reflect the evolution of modern labour law on humanistic foundations that unconditionally prioritise the person over production and industrial processes.*

*Accordingly, the right of creative workers to the protection of labour rights occupies a central position within the system of labour rights: it is part of the basic (general) corpus of employee rights; it operates both as an autonomous entitlement and as a guarantee right that renders all other labour rights effective in practice. In functional terms, it performs instrumental, restorative, safeguarding, and deterrent roles.*

**Keywords:** *creative worker, employee, equality, human-centrism, labour law, labour rights, reality of labour rights, right to protection, social security.*

**Introduction.** Ukraine, like any modern legal, social, and democratic state, is marked by a foundational commitment to creating conditions in which the effective enjoyment of human and civil rights and freedoms is secured, including in the sphere of labour and employment. As Ukrainian scholars rightly note, this commitment serves as a criterion of institutional stability and maturity, signalling a civilisational, human-centred orientation in practice [1, p. 118]. Acting on that basis, the welfare state discharges its human-rights and social functions with the aim of ensuring an adequate level of social security for its citizens; the State thus operates as the primary guarantor of the practical reality of rights and of each person's ability to live in socially safe conditions [2, p. 62]. In this sense, the "reality" of rights denotes a systemic condition in which rights are not only proclaimed in legislation but implemented and observed in practice; where infringements occur, the breach is halted, the right restored, harm compensated, and the violator held to account. It follows that the effective reality of human and civil rights in general (and of employees' labour rights in particular) is underpinned above all by the proclamation and enforcement of the right to the protection of violated rights, a right that applies equally to creative workers.

Although creative workers in Ukraine are recognised as holding full employee status, the practical enjoyment of their labour rights is, in some instances, illusory (much as in several other European welfare states). This reality, viewed through the principles of equality and non-discrimination, casts doubt on the State's capacity to secure socially just conditions for all working citizens and, by extension, to perform its role as the principal guarantor of human rights. At the same time, given the diversity of employment forms in the cultural and creative sectors and the prevalence of unfair practices (most notably the misclassification of

employment as civil-law contracting) the State cannot, as a matter of practicality, detect and remedy every infringement of creative workers' labour rights.

In light of the contemporary understanding of social security as a condition achieved through the concerted efforts of the State, society, and the individual, creative workers themselves must therefore act with social awareness and agency. In this context, their right to the protection of labour rights assumes particular importance: its exercise enables the State to exert more systematic legal influence over the sphere of labour and employment, shaping that sphere on the foundations of justice, solidarity, and social responsibility.

**Literature review.** Existing scholarship has examined in considerable depth employees' right to the protection of their rights and legitimate interests in the sphere of labour and employment. As A.O. Hretskykh notes, this is among the most frequently studied themes [3, p. 239]. Indeed, it is difficult to find a labour-law scientific work that does not grapple with the protection of workers' rights. The prominence of this topic reflects its status as a foundational principle, embedded in the Charter of Fundamental Rights of the European Union (2000) – an instrument of particular relevance to Ukraine as it pursues European integration amid the current full-scale war. Yet, despite this breadth of analysis, the literature has not directly engaged with the specific nature, content, and objective determinants of creative workers' right to protection at work. Addressing that lacuna is both theoretically and practically necessary for developing a modern account of the protection of creative workers' labour rights

The **purpose** of this article is to elucidate the essential content of creative workers' right to the protection of their labour rights and, in parallel, to determine the position of that right within the broader system of creative workers' labour rights. To that end, the article delineates

the system of labour rights specific to creative workers; articulates a working definition of the “right to the protection of labour rights” and explains its social and legal significance; clarifies the purpose served by this right within the employment relationship; and locates it within the overall architecture of employees’ labour rights in Ukraine.

**Results and discussion.** A comprehensive analysis of the literature on the content and structure of workers’ labour rights [4–8] supports the view that, when considering the corpus of contemporary rights held by creative workers as an integral element of their special labour-law status, those rights are heterogeneous and should be organised into groups in accordance with the principle of unity and differentiation of employees’ rights. In this framework, it is appropriate to distinguish general, special, and specific rights of creative workers.

The general rights of creative workers are the subjective labour rights guaranteed by the Constitution of Ukraine (Basic Law), the Labour Code of Ukraine, and other instruments of labour legislation, read together with universal and ratified international standards. These entitlements accrue equally to all persons working under a contract of employment and form the foundation of the system of labour guarantees. They encompass, *inter alia*, the ability to conclude, vary, and terminate an employment contract in accordance with statutory procedures; the right to accurate information about working conditions, the nature of job duties, the modalities for their performance, and occupational-safety requirements; timely, fair, and full remuneration, including pay for downtime not attributable to the employee; rest rights (weekly rest and public holidays, annual paid leave and other statutory leave, normal limits on working time and reduced hours for designated categories); the right to self-defence of labour rights; the right to seek protection of labour rights and freedoms through

representative bodies and competent authorities; and freedom of association.

Special rights flow directly from the distinctive labour-law status of creative workers as a professional category performing creative functions. Because the performance of those functions necessitates protection of the creative process, its results, and the employee’s legitimate interests in the course of fulfilling contractual duties, these rights include freedom of creativity; the possibility of tailoring working conditions by collective agreement beyond the standard form of employment contract; access to additional social guarantees calibrated to the realities of creative work; participation in organisational governance in the forms provided by labour legislation and collective agreements; and authorship and the protection of the results of intellectual activity.

A further tier comprises specific rights attaching to creative workers who also belong to particular categories – such as persons with disabilities, those with special family responsibilities, women workers, younger workers, or those of pre-retirement age. These rights are addressed to groups that require enhanced state protection in light of health, age, family status, or other social factors, and they operate to secure the right to equality in contexts where discriminatory conduct by employers or colleagues may otherwise undermine the effective enjoyment of labour rights in the creative sphere.

Thus, for people in creative professions, labour rights constitute a complex of general, special, and specific entitlements (tangible and intangible) that guarantee the ability to enter, remain in, suspend, and terminate employment relationships safely, while fully realising creative potential, accumulating social capital, and leading a life consistent with contemporary understandings of human dignity. The formal identification and internal structuring of this ensemble of subjective rights as a coherent system of employee entitlements accords with the

principles of equality and non-discrimination and is grounded in a human-centred model of Ukraine's systematic development and the maintenance of legal order, including in the labour market, thereby affirming the equal dignity of all working citizens.

These rights are to be secured irrespective of professional affiliation, membership of particular worker categories (such as young workers, women, persons with special family responsibilities, those of pre-retirement age, or persons with disabilities) – though membership of such groups may warrant additional protections through positive action – and irrespective of the form of work organisation, whether standard or atypical, and whether undertaken as employment or self-employment.

Notwithstanding the foregoing, the formal existence of labour rights is not synonymous with their practical reality (an asymmetry that is especially pronounced in the case of creative workers). In Ukraine, as in several European welfare states, protection often proves illusory: although progressive standards of socially secure labour conditions nominally apply, they are frequently not implemented in practice, in part because the specificities of cultural employment are overlooked. Creative work is commonly performed in the informal economy, within small enterprises or under contracts with individual entrepreneurs, and through atypical arrangements that fall between or outside standard regulatory frameworks. In the absence of adequate guarantees that render rights effective, the resulting catalogue of entitlements risks collapsing into little more than a set of laudable declarations.

Accordingly, creative workers require a normatively grounded and institutionally supported avenue of human-rights and enforcement intervention capable of converting formal guarantees into operative protections whenever their reality is questioned or denied in a concrete case. In this context, one baseline

entitlement assumes particular significance for giving real content to the labour rights of creative workers: the right to seek protection of labour rights (whether exercised through self-help within the limits of the law or by recourse to competent human-rights bodies, labour-inspection authorities, and judicial remedies).

The right to the protection of labour rights occupies a distinctive position within the corpus of basic (general) rights that accrue to all employees and, for creative workers in particular, functions as the primary guarantee of the practical effectiveness of every other labour right. Unsurprisingly, Ukrainian scholarship has devoted sustained attention to this theme, elucidating multiple facets of its substantive content; as A.O. Hretskykh observes, “it is a fairly common topic for scientific research. It is difficult to name any scientific work on labour law that does not address issues related to the protection of labour rights and legitimate interests” [3, p. 239]. Yet, to date, the literature has not separately examined the specific contours of this right as it applies to creative workers, a gap that the present article seeks to address.

The importance of examining the essential content of creative workers' right to the protection of their labour rights follows from both the weight of the underlying rights and the social-legal significance of their vindication. First, the very acquisition and exercise of this right functions as the baseline guarantee that renders the employment relationship real rather than merely nominal, securing a socially safe exchange of labour for remuneration. As A.O. Hretskykh notes, the value of a subjective right lies not simply in its abstract existence but in whether the right-holder can actually realise it; hence law must furnish “an effective mechanism for the realisation of subjective rights”, within which state-created guarantees of protection occupy a special place [3, p. 238].

Secondly, the right to protection is integral to the contemporary idea of decent work and thus

operates as a specific guarantee of that principle in practice. M.V. Panchenko rightly observes that the centrality of work to human relations underpins the concept of decent work, of which the protection of employees' labour rights is a constitutive element; work cannot be deemed decent if violations of labour rights do not trigger a fair exercise of the employee's protective claims [9, p. 146].

Thirdly, the rise and exercise of this right reflects the evolution of modern labour law on humanistic foundations that accord unconditional priority to the person over production. As V.H. Kostenko argues, the worker is no longer an object but a subject endowed with human dignity, the respect and protection of which are secured through the regulation, safeguarding, and defence of labour and social rights – a point with both conceptual and practical implications, since realisation of labour rights depends on more than the mere existence of legislation, and their assurance on more than simple compliance [10, p. 38].

These considerations carry particular force for creative workers, whose employment is often organised in atypical forms: for them, the right to protection is the keystone that converts formal guarantees into effective rights.

A comprehensive treatment of the essential content of creative workers' right to the protection of their labour rights (and, in turn, of the position of that right within the overall system of labour rights) presupposes the formulation of a clear definition. The theoretical and methodological need for such a definition arises, first, from the requirement of terminological and categorical precision in scholarly inquiry; and, secondly, from the fact that this problem has not yet been addressed as a discrete subject within Ukrainian labour-law doctrine, even though the subjective right to protection in general, and the right to the protection of labour rights in particular, has been analysed extensively in the literature [11–13].

With respect to definitional work more broadly, it may be noted that labour lawyers tend to construe the “right to protection of labour rights” contextually, while converging on its core meaning as a species of the general right to protection. Thus, S.Ya. Vavzhenchuk characterise it, in substance, as a state-guaranteed legal capacity to employ labour-law enforcement methods and measures in various forms [14, p. 125]. Similarly, M.V. Panchenko, examining the position of civil servants, treats it as a material subjective right comprising the ability to invoke defined modes of protection in order to restore a violated or contested entitlement [9, p. 148].

The right of a creative worker to the protection of labour rights is the legally established, institutionally and organisationally guaranteed capacity of a creative worker to invoke judicial and/or non-judicial mechanisms to vindicate a subjective labour right that has been violated, disputed, or not recognised, or where there is a credible risk of violation. The exercise of this right secures the restoration or recognition of the right, removes obstacles to its full realisation, and prevents further infringement.

Drawing on the foregoing definition, the purpose of a creative worker's right to the protection of labour rights may be identified as a concrete manifestation of the purpose of protecting human rights generally, and labour rights in particular. Scholars commonly associate rights-protection with the restoration of violated individual rights [15, p. 8] and the resolution of disputes between parties [16, p. 94]. V.Ya. Burak frames the aim as ensuring the real, guaranteed safeguarding of subjective rights and interests through systematically organised legal means [17, p. 42].

M.Yu. Zadnipriana-Korinna and S.O. Korinnyi emphasise justice, equality before the law, and the dignified standing of every person in society as the overarching goals of protection [18, p. 610]. A.O. Zamchenko, for his

part, stresses the attainment of a high level of protection for all rights, freedoms, and duties within the State's territory, consistent with international legal standards [19, p. 404]. In the specific context of creative workers, these convergent understandings underscore that the right's purpose is to secure effective restoration or recognition of labour rights, to remove impediments to their full realisation, and to align protective outcomes with both domestic guarantees and international benchmarks.

The aim of human-rights protection is a multidimensional end directed to the realisation and satisfaction of the right to protection itself. In this light, the purpose of a creative worker's right to the protection of labour rights has, in formal terms, a compliance- and remedies-oriented character: it secures the implementation and restoration of violated labour rights and prevents future infringements by means of a system of guarantees that enables the employee to resist unfair employer conduct.

Conceptually, its purpose is to preserve the conditions of a socially safe existence inherent in being in an employment relationship. Put differently, the right also serves a background function: it restores the proper state of socially protected existence through the operation of Ukraine's labour-law regime upon the employee's situation. In this respect it is apposite to endorse V.M. Sokolov's view that 'social security', as a status and condition, has both individual and collective dimensions embracing the person, and is achieved through the introduction and functioning of social-protection mechanisms at the relevant levels of social-policy implementation [20, p. 83].

On this basis, the right of creative workers to the protection of labour rights occupies a central place within the system of labour rights. It forms part of the basic (general) entitlements enjoyed by all employees and operates both as an autonomous right and as a guarantee right that renders the remainder of the employee's rights

effective in practice. In functional terms, it has an instrumental dimension, ensuring that other labour rights do not remain merely declaratory but carry real force, thereby imposing correlative duties on employers, the State, and society to uphold legal order in the sphere of labour and employment. It also has a restorative dimension, enabling the reinstatement of the employee's position and, with it, the re-establishment of a socially secure condition. A safeguarding dimension further underwrites the practical enforceability of the full corpus of labour rights.

Finally, its very recognition in legislation exerts a deterrent effect: the normative acknowledgement that creative workers hold a right to protection operates preventively upon employers and co-workers alike, reducing the likelihood of infringements of creative workers' labour rights.

**Conclusions.** The right of creative workers to the protection of their labour rights is best understood as a legally established and institutionally secured capacity (expressed as a type and measure of lawful conduct) to invoke judicial and/or non-judicial mechanisms whenever a subjective labour right is violated, disputed, unrecognised, or credibly at risk. The exercise of this right is directed to restoring or recognising the entitlement in question, removing obstacles to its full realisation, and preventing further infringements. Formally, it belongs to the corpus of fundamental employee rights that accrue to creative workers on the same basis as to other workers.

In practical terms, by virtue of its purpose, it occupies a central position within the system of labour rights: it renders all other rights effective in fact and underwrites basic legal order in individual employment relations and, more broadly, in the sphere of labour and employment. Accordingly, the acquisition and exercise of this right by a creative worker constitutes a foundational guarantee of the very existence of the employment relationship and a guarantee of

the rule of law in Ukrainian labour law generally and for creative workers in particular. It also concretises the principle of decent work, given that protection of labour rights forms a constituent element of that modern concept. More broadly, its prominence reflects the humanistic orientation of contemporary labour law, which accords priority to the person over production and thereby resists tendencies towards the desocialisation of the field.

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***Циганенко С.В. Правова природа та місце права на захист трудових прав творчих працівників у системі трудових прав. – Стаття.***

*Стаття спрямована на з'ясування змісту права творчого працівника на захист його трудових прав в Україні та на визначення місця цього права у системі трудових прав такого працівника. Творчі працівники володіють комплексом трудових прав, як невід'ємною складовою їхнього трудово-правового статусу, а саме: загальними правами, що формують фундамент всієї системи гарантій і належать у рівному обсязі всім особам, які працюють за трудовим договором (мають статус працівника);*



спеціальними правами, обумовленими правовим становищем творчих працівників як окремої професійної категорії, що виконує творчі трудові функції; особливими правами, які належать тим творчим працівникам, які законодавчо віднесені до окремих категорій працівників (працівників з інвалідністю, осіб з особливими сімейними обов'язками та ін.).

При цьому номінальне закріплення прав в законодавстві та договорі не тотожне їх реальній дієвості, що особливо відчутно саме для творчих працівників. У цьому контексті слід мати на увазі: по-перше, за відсутності належних гарантій окреслений обсяг прав перетворюється на сукупність прогресивних, але декларативних положень; по-друге, творчим працівникам потрібна нормативно визначена та інституційно забезпечена можливість правозахисного (також правоохоронного) впливу, спрямованого на підтвердження реальності трудових прав у випадках, коли їх оспорюють, не визнають або ставлять під сумнів.

За цих обставин набуває особливої актуальності потреба належного забезпечення права творчого працівника на захист його трудових прав, як права, що є самостійним суб'єктивним правом, яке відноситься до основних (загальних) трудових прав творчих працівників, виконуючи функцію системної гарантії реальності всіх інших трудових прав працівника. У формальному вимірі мета цього права полягає в забезпеченні здійснення й відновлення порушених трудових прав творчих працівників та у недопущенні нових порушень.

У концептуальному вимірі його призначення може зводитись до підтримування стану соціально безпечного буття, зумовленого самим фактом перебування особи у трудових правовідносинах. Водночас право на захист має і фонову мету, а саме: відновлення належного рівня соціальної захищеності у зв'язку з дією режиму трудового права України щодо конкретного працівника.

Сукупність цих цілей підкреслює соціально-правову значимість права на захист і при цьому засвідчує, що набуття та реалізація творчим працівником зазначеного права: по-перше, становить базову гарантію існування трудових

правовідносин як соціально безпечної форми правового зв'язку в сфері праці, а також спеціальну гарантію належного втілення принципу гідної праці; по-друге, є наслідком розвитку сучасного трудового права на засадах гуманістичного правового світогляду, який беззастережно визнає пріоритет людини над виробництвом і виробничими відносинами (процесами).

Зазначені обставини додатково підтверджують, що права творчого працівника на захист його трудових прав займає центральне місце в системі трудових прав, будучи невід'ємною частиною основних (базових) трудових прав працівників, а також, постаючи в якості самостійного права кожного працівника, та своєрідного права-гарантії, що служить для забезпечення і реалізації всіх інших трудових прав, а саме – дозволяючи зробити їх реальними.

Зважаючи на це, слід констатувати, що право творчих працівників на захист трудових прав є основою належної реалізації всіх інших прав працівника, виконуючи такі функції, які конкретизують місце такого права в системі трудових прав творчих працівників, а саме інструментальну, відновлювальну, забезпечувальну та стримуючу (від порушення трудових прав) функції.

**Ключові слова:** людиноцентризм, право на захист, працівник, реальність трудових прав, рівність, соціальна безпека, творчий працівник, трудове право, трудові права.

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