



10 December 2020

Mr. Dmytro Razumkov,
Chairman of The Verkhovna Rada of Ukraine
Kyiv-8, 5 Hrushevskoho Str., 01008

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Re: Draft Law of Ukraine No. 4303 “On Promoting the Development of Digital Economy in Ukraine”

Your Excellency,

The International Lawyers Assisting Workers (ILAW) Network, which unites over 550 workers’ rights lawyers and advocates in more than 70 countries (including in Ukraine), respectfully expresses its serious concerns about *Draft Law of Ukraine No. 4303 “On Promoting the Development of Digital Economy in Ukraine”*. Submitted to Parliament on 2 November 2020, the law would, in our analysis, severely undermine the rights of workers in the information technology sector, including those who provide their labor via platform-based apps.

The draft legislation is situated within the context of an initiative called “Diya City”, which is a virtual geography in which taxes and regulations are reduced or eliminated in order to attract investors in the information technology sector.¹ As is typical with such “free trade zone” initiatives, we anticipate that a few investors will reap substantial rewards while workers and the general public will pay a heavy price -- in the form of fewer rights and lower wages and the loss of state revenue -- for the mere promise of new jobs. The “residents” of Diya City (namely, tech companies) will have full freedom to hire workers as “gig workers” under “gig contracts”². Indeed, regardless of the actual nature of the relationship between the “resident” and the “gig worker”, workers so designated will have their labor regulated entirely under the aforementioned draft law. As such, they will be excluded from the protections otherwise afforded under the Labor Code, as well as numerous other labor laws regulating, e.g., holidays, remuneration, trade unions, collective bargaining and the resolution of collective disputes.

Importantly, “gig workers” will be denied the right to form or join a union, to bargain collectively, or to strike. Without question, Draft Law 4303 violates international and European labor and human rights law, including the rights protected by Conventions 87 and 98 of the International Labor Organization and Article 11 of the European Convention on Human Rights. Together, these instruments make clear that all workers without distinction should be able to exercise these rights. The ability to simply disregard the nature of the employment relationship allowed by this draft law also ignores the well-established legal guidance set forth in ILO Recommendation 198.³ Moreover, the 2019 ILO Centenary Declaration recently underscored the “continued relevance of the employment relationship as a means of providing certainty and legal protection

¹ While Draft Law 4303 is aimed at IT activities, it contains a provision that allows “residency” in Diya City to be extended to any activity approved by the Cabinet of Ministers.

² Article 4, Part 7, Draft Law 4303

³ ILO Employment Relationship Recommendation 198, online at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535

to workers” and that “all workers should enjoy adequate protection in accordance with the Decent Work Agenda, taking into account... respect for their fundamental rights.”⁴

Draft Law 4303 is also contrary to the accelerating trend among tribunals throughout Europe, which have found that so-called “gig” workers, including those performing labor via an app-based platform, are in fact *employees* and are therefore entitled to the same rights available to other workers. See, e.g., Spain (Glovo)⁵, Italy (JustEat)⁶, France (Uber)⁷, Netherlands (Deliveroo)⁸, and Germany (Roamler)⁹, to name just a few.

Of additional concern, these “gig contracts” have no limits as to duration and no limits on the wages and conditions of work; instead, these contracts are entirely left to what the parties can negotiate. Of course, individual workers will have little if any power to negotiate and will likely be forced to choose between a highly exploitative contract or unemployment. “Gig-contracts” are not governed by the minimum wage and can be terminated without cause, including when workers on sick leave. “Gig workers” will even be responsible for their own safety and health measures. These provisions violate several other ILO Conventions that Ukraine has ratified.¹⁰

The law also grants to “residents” the ability to monitor “gig-worker” performance through any electronic means, including telecommunications devices owned by the company and even by video surveillance. This is in breach of the international and European law, including Article 8 of the European Convention of Human Rights its jurisprudence.¹¹

We note that reducing labor rights protections facially violates the Constitution of Ukraine.¹² Moreover, Art. 296 of the EU-Ukraine Association Agreement states that “*A Party shall not weaken or reduce the environmental or labor protection afforded by its laws to encourage trade or investment, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, its laws, regulations or standards, in a manner affecting trade or investment between the Parties*”. However, Draft Law 4303 was introduced for the explicit purpose of attracting investment, including by significantly weakening its labor laws.

⁴ ILO Centenary Declaration for the Future of Work, 21 June 2019, Article 3(b), online at

https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf

⁵ Reuters, *Spain's Supreme Court rules food delivery riders are employees, not freelancers*, 23 Sept 2020, online at <https://uk.reuters.com/article/uk-spain-glovo-ruling-idUKKCN26E2NR>

⁶ ANSA, *Just Eat to hire its food-delivery riders as employees*, 9 Nov 2020, online at

https://www.ansa.it/english/news/business/2020/11/09/just-eat-to-hire-its-food-delivery-riders-as-employees_e9a0514c-f564-4fbb-8132-f0e3b8b4659a.html

⁷ Mathieu Rosemain and Dominique Vidalon, *Top French court deals blow to Uber by giving driver 'employee' status*, Reuters, 5 March 2020, online at <https://mobile.reuters.com/article/amp/idUSKBN20R23F>

⁸ NL Times, *Deliveroo workers are employees, not freelancers: court*, 16 Jan 2019, online at <https://nltimes.nl/2019/01/16/deliveroo-workers-employees-freelancers-court>

⁹ Taz, *Erfolg für Crowdworker*, 1 Dec 2020, online at <https://taz.de/Bundesarbeitsgericht-zu-Plattform-Jobs/!5734735/>

¹⁰ See, e.g., ILO Convention 95 (Protection of Wages), 131 (Minimum Wage Fixing) 155 (Occupational Safety and Health), and 158 (Termination of Employment).

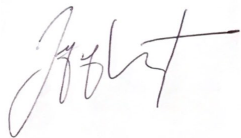
¹¹ Judgment of 3 April 2007, *Copland v. The United Kingdom*, Application no. 62617/00; para 41. Judgment of 5 September 2017, Case of *Barbulescu v. Romania*, Application no. 61496/08 para 140, 141.

¹² Constitution of Ukraine, article 22.

Finally, the draft law is vague and does not meet the internationally recognized principle of legal certainty of law, and as such violates the fundamental human rights as declared by various international tribunals such as the European Court of Human Rights¹³ and the European Court of Justice¹⁴.

The International Lawyers Assisting Workers (ILAW) Network therefore urges the Parliament of Ukraine to withdraw the draft legislation and instead re-examine its provisions with platform workers' and trade unions in order to develop legislation that guarantees decent work for all workers regardless of the manner in which that work is performed. We hope the Parliament will take all necessary steps to ensure that any future draft law on these issues fully respects workers' rights, consistent with ILO standards, the Association Agreement and principles of social dialogue.

Yours Sincerely,



Jeffrey Vogt
Chair, ILAW Network

cc:

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¹³ Judgment of 26 November 2016 *Lupeni Greek Catholic Parish and other v Romania* App. No. 76943/11, para 116

¹⁴ Judgment of 12 February 2015 in *Parliament v Council*, C-48/14, EU.C.2015. para 45; Judgment of 3 June 2008 in *Intertanko*, C-308/06 para 69.