

DISTANCE WORK AND ITS SIGNIFICANCE IN TERMS OF QUARANTINE RESTRICTIONS AIMED AT PREVENTING THE SPREAD OF THE COVID-19

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ABSTRACT

The authors of the article have studied the problems caused by quarantine restrictions aimed at preventing the spread of the COVID-19, in particular the implementation of labor rights of the population. It has been substantiated that the situation, when the majority of persons working on the basis of an employment contract in Ukraine are directly employed at workplaces within enterprises, institutions, organizations, ceased to meet modern world challenges. It has been offered to apply distance work in Ukraine more widely based on the current global tendencies by making appropriate amendments into national labor legislation and by ensuring proper control over the employers' observance of labor rights of the employees while introducing such work.

Key words: Distance Work, Quarantine, Coronavirus, An Employee, An Employer, Labor Legal Relations, Labor, Labor Rights.

INTRODUCTION

The current problem in the world is the COVID-19 pandemic. Thus, more than 80 million people have been infected with the coronavirus since the beginning of the pandemic in the world as of December 26, 2020. Leaders in the number of infected people are: the United States – 18 million 794 thousand 545 people, India – 10 million 169 thousand 118 people, Brazil – 7 million 448 thousand 560 people, Russia – 2 million 992 thousand 123 people, France – 2 million 604 thousand 595 people. Most deaths from coronavirus were registered in the United States (330 thousand people), Brazil (190 thousand people), India (147 thousand people), Mexico (121 thousand people) and Italy (71 thousand people). As of December 26, 2020, Ukraine was ranked 16 in this world ranking. 1 million 019 thousand 876 people were infected during the whole time of the pandemic in Ukraine. 651 thousand 917 people of them recovered, and 17 thousand 702 people died (Coronavirus in Ukraine, 2020).

The vast majority of countries introduced quarantine measures in 2020 aimed at curbing the spread of the COVID-19. Those measures, given their radical nature, which was manifested in closing the enterprises, institutions, organizations, restricting the operation of public transport, introducing the isolation regime, raised the issue of changes in the organization of labor of employees.

MAIN TEXT

The COVID-19 pandemic had a corresponding impact in Ukraine as well as around the world on the functioning of the national economy in 2020. Thus, the Cabinet of Ministers of Ukraine approved restrictive measures in March 2020, initially for three weeks – from March 12 to April 3. All educational institutions were closed for quarantine. In a few days it was decided to close all restaurants, cafes, cinemas, entertainment venues, sports clubs, shops, except grocery stores. A ban on holding mass events was also introduced. On March 17, 2020, the border of Ukraine for foreigners was finally closed and the movement of transport, except for own vehicles, was stopped both inside the country and abroad (Coronavirus in Ukraine, 2020). The Cabinet of Ministers of Ukraine introduced on March 25, 2020 a state of emergency throughout Ukraine for 30 days until April 24, 2020. From April 6, 2020 the Cabinet of Ministers of Ukraine introduced strict restrictions for the population throughout Ukraine. In particular, a ban was imposed until the end of the quarantine on: being in public places without wearing a mask, respirator; movement of more than two people by a group of persons (except in cases of business necessity and accompaniment of children); staying in public places of persons under 14 years of age without parents; visiting parks, squares, recreation areas, forest parks and coastal areas (except for walking pets by one person and in case of business necessity); visiting sports facilities and children playgrounds; visiting institutions and organizations providing palliative care, social protection, institutions and organizations providing social services; being on the streets without identity documents, etc. (KMU, 2020).

Quarantine measures were weakened in the summer of 2020 due to the positive dynamics related to the reduction of the number of infected of COVID-19, the problems in the national economy and the dissatisfaction of the population caused by the introduction of restrictive measures. Adaptive quarantine was introduced in Ukraine from August 1, 2020, which provided the division of all regions into four zones – “green”, “yellow”, “orange” and “red”, depending on the epidemiological situation in each individual region. Different quarantine restrictions were established in each of the epidemiological zones. The softest ones were in the green zone and the toughest bans were in the red zone.

At the end of October 2020, the vast majority of settlements in Ukraine were in the “red” and “orange” zones. In this regard, the point of view on the need to return to strict quarantine restrictions throughout Ukraine began to be dominated in the expert and managerial environment of the country.

The Cabinet of Ministers of Ukraine adopted Resolution No. 1100 on November 11, 2020, which abolished adaptive quarantine with the division into zones and introduced nationwide weekend quarantine. Thus, the work of catering establishments (except for takeaway); work of shopping and entertainment centers; entertainment establishments; activities of business entities engaged in trade and consumer services, except for trade in food products in retail space, where at least 60 percent is intended for trade in food, fuel, medicines and medical devices, veterinary drugs, feed were banned in Ukraine in the period from 00:00 on Saturday till 00:00 on Monday starting from November 14 till November 30, 2020. Holding all mass cultural, concert, social, religious, advertising events with the participation of more than 20 people; activity of theaters and cinemas, occupancy of cinemas or halls more than 50% of places; activities of museums that do not provide the opportunity to limit the number of visitors in the hall at the rate of one person per 20 sq.m. were also banned (Coronavirus in Ukraine: May easing of quarantine, 2020).

Currently, the weekend quarantine has been lifted and the country is preparing for a nationwide lockdown, the introduction of which is planned by the Cabinet of Ministers of Ukraine from 8 till 24th of January 2021. It is expected to ban the activities of cafes,

restaurants, bars, except for the delivery and takeaway orders; non-food stores, cinemas, fitness clubs, gyms, theaters, shopping and entertainment centers, except for establishments operating in shopping and entertainment centers and selling food, medicine, veterinary drugs, hygiene products and household chemicals. All educational institutions, except kindergartens, will be on vacation. There will be a ban on any entertainment, advertising, sports, cultural, mass events during this period. At the same time, public transport will continue to operate so that people can get to work.

It should be noted that the quarantine measures introduced in 2020 have significantly raised the unemployment rate in Ukraine. Thus, almost 432 thousand people received the status of the unemployed during the lockdown period (spring-summer 2020) in Ukraine, which is 67% more than during the same period in 2019. “Hundreds of thousands citizens, both representatives of intellectual area and the simplest professions have become unemployed. 431.8 thousand of people have received the status of unemployed since the beginning of the quarantine (from March 12 till August 20), which is 67% more than in the same period of the last year (276 thousand people)”, – was noted in the State Employment Center.

In this regard, the issue of ensuring the realization of the human right to labor and its decent payment has become very relevant in Ukraine in 2020.

We should recall that Ukraine, having ratified the European Social Charter (revised) by the Law No. 137-V dated from September 14, 2006, has undertaken a number of obligations in the field of ensuring the labor rights of the population. Thus, Ukraine in accordance with the Articles 1 and 4 of Part II of the European Social Charter (revised), has undertaken, in particular, to recognize the right to labor and the right to fair remuneration as one of its main objectives and one of its main responsibilities to achieve and maintain the highest possible and most stable level of employment, with the aim of achieving full employment, as well as ensuring the right of employees to such remuneration that provides them and their families with a sufficient standard of living.

The vast majority of the economically active population (69%) in Ukraine work on the basis of employment contracts, being within employment legal relations with employers (Hintsburh, 1977). Nowadays, the work of such persons is regulated by labor legislation, the main comprehensive regulatory act, which is the Labor Code of Ukraine. Thus, the right of citizens of Ukraine to work in accordance with Part 1 of the Art. 2 of the Code, *i.e.* to receive jobs with salaries not lower than the minimum set by the state, including the right to freely choose a profession, occupation and job, is provided by the state. The state creates conditions for effective employment, promotes employment, training and advanced training, and if necessary provides retraining of persons released as a result of the transition to a market economy (Hulevych, 2010).

Special attention in the legal literature was paid to a certain inconsistency of the stated provision of Part 1 of the Art. 43 of the Constitution of Ukraine, which enshrines the right of a man, not just a citizen, to labor (Hurova, 2020).

The realization of the right to labor within the framework of labor legal relations takes place within certain legal regimes of work. The corresponding feature of labor legal relations is traditionally indicated by scholars in the field of labor law (Karpushin, 1958; Labor Code of Ukraine, 2021; Melnyk, 2020; Melnyk & Babenko, 2016). The distribution of working time within a day or other calendar period is understood as the modes of work in the legal literature (Melnyk, 2009).

The main mode of work in Ukraine is a five-day working week with two days off. Thus, a five-day working week with two days off is established for employees in accordance with Part 1 of the Art. 52 of the Labor Code of Ukraine. The duration of daily work (shifts) in a five-day working week is determined by the rules of internal labor regulations or shift

schedules approved by the employer in consultation with the elected body of the primary trade union organization (trade union representative) of the enterprise, institution, organization in compliance with the established duration of the working week (Hulevych, 2010).

Other modes of operation are used in Ukraine based on the nature of production and working conditions at relevant enterprises, institutions and organizations. For example, a six-day working week with one day off in accordance with Part 2 of Art. 52 of the Labor Code of Ukraine is established at those enterprises, institutions, organizations, where a five-day working week is impractical due to the nature of production and working conditions. The duration of daily work with a six-day working week may not exceed 7 hours at a weekly rate of 40 hours, 6 hours at a weekly rate of 36 hours and 4 hours at a weekly rate of 24 hours (Hulevych, 2010).

The COVID-19 pandemic has made adjustments to the organization of the labor process. The situation, when the majority of people working on the basis of an employment contract in Ukraine is employed directly in their workplaces within enterprises, institutions, organizations, has ceased to meet modern global challenges. Closure of enterprises, institutions, organizations, the need to comply with the isolation regime, the abolition of public transport operation brought on the agenda the issue of adjusting the modes of operation and the introduction of distance work.

We can distinguish the following approaches to the definition of distance work in the legal literature. Thus, I.M. Hurova understands distance work as a special form of organization of the labor process, where the company's employees perform their duties outside the workspace, and the main communications in the process of work are carried out using digital technologies. The distance employment from the point of view of I. I. Motorna is the interaction of employees and employers at the labor market, which provides flexible social and labor relations directly in the virtual environment using information and communication technologies (Motorna, 2008).

The above indicates that both authors identify one common feature of distance work, namely: the use of information and telecommunications technologies by the employee for its implementation. In our opinion, the main feature of distance work is still the performance of the obligations by the employee outside the location of the enterprise, institution, organization, where he works, because it follows even from the name of this work.

The following types of distance work are distinguished in the scientific literature. Thus, O. Hulevych considers the following types of distance employment: 1) distance employment, which is distributed in several places: partly – at home, partly – in the premises owned by the employer. Such work is usually performed by qualified, professional staff enjoying the full trust of the employer. Most of such works are covered by the collective agreements; 2) completely home-based work, which consists of monotonous, often repetitive operations that do not require high skills. Such work is paid for the end result and is usually performed by women; 3) freelance distance work, which is entirely based on home-based work and is carried out by freelancers who perform various tasks on the basis of agreements with the employer (client), such as translations, writing, design, computer programming; 4) mobile distance work, which involves the use of new technologies in traditional forms of mobile activity, for example, the work of sales representatives, inspectors, operational engineers; 5) work in a specially equipped office – work at a distance is carried out in premises of the employer or subcontractor equipped with telecommunications (The law of Ukraine, 1993).

It is impossible to completely agree with the conclusions made by O. Hulevych. First of all, it should be noted that the collective agreement covers all the employees who work at the company, despite the specific features of their work, and all the works performed by the

employees within the employment legal relations. Thus, in accordance with the Art. 9 of the Law of Ukraine “On Collective Agreements and Treaties” dated from July 1, 1993 No. 3356-XII, the provisions of the collective agreement are applied to all the employees of enterprises, regardless of whether they are members of the trade union and are mandatory both for the employer and employees of the enterprise. The employer must familiarize all the employees, as well as newly hired employees with the collective agreement (Shabanov et al., 2019). Secondly, the work accomplished in a specially equipped office, *i.e.* the work at a distance, which is carried out in the premises equipped with telecommunications cannot be considered as distance work, because it takes place in the premises of the employer.

Such an important quality of the employee as professional mobility, which is currently necessary at the labor market is distinguished along with distance work in modern conditions. The category of professional mobility is defined in the scientific literature as the ability of a person to adapt to new professional activities or to the activities under new conditions, which are caused by the requirements of today (Pavlynska, 2020).

According to the assessment of the International Labor Organization (ILO) presented in the report “Working from Home: Estimating the worldwide potential” as of April 2020, about 260 million people (approximately 7.9% of the total workforce) worked remotely before the pandemic. The ILO report notes that distance work is more popular in the countries with developed economies, *i.e.* in countries with less “manual labor”. The report of the International Bar Association (IBA) “Report on the Future of Work” published in September 2019, states that teleworking has proved to be a flexible way of work and allows the employees to use virtual networks, shared platforms to work at home or outside the employer’s office (Reynolds, 2019).

Nowadays, distance employment is becoming increasingly popular in the world. Thus, distance work is most actively used by English-speaking countries (71% of relevant vacancies posted on the WWR profile service come from them). And the absolute leader – is the United States (56.3% of vacancies on WWR, where only 85% of companies in the country use various forms of remote work), and the second place is occupied by the United Kingdom. According to the FlexJobs analysis, the five leading areas in distance employment in the United States in 2019 were occupied by the medicine (health care), IT (computers), support services, education (training) and sales (Rymar, 2016).

Many international corporations developed distance employment even before the introduction of quarantine restrictions in 2020, considering it not in terms of response to the epidemiological situation, but as the way to ensure the efficiency and stability of staff activities. Such corporations include not only a number of IT companies – for example, Automattic, Basecamp, GitLab, GitHub (USA), Atlassian (Australia), but also representatives of other areas: Ctrip travel agency (China), Magellan Health medical company (USA), Monzo Bank (UK), etc..

The following results were received in the course of the survey conducted by the IGES and Forsa research institutes commissioned by the German hospital fund DAK, where seven thousand employees participated. Two-thirds said that they were able to better combine work and family responsibilities through distance work. Approximately the same number of people positively assessed the extra time, which appeared due to the fact that you no longer needed to get to work. However, every second person lacks a clear line between work and private life. A majority of 52 percent complains this fact among respondents between the ages of 18 and 29. Three quarters miss communication with colleagues. Nevertheless, most respondents do not want to part with distance work: 76 percent of the employees, who have been working regularly at home since the beginning of the pandemic, want to work in this way in the future, at least partially.

The distance format of work in Ukraine before the pandemic was used mainly in the work of homeworkers, which was regulated by the Soviet Regulations on working conditions of homeworkers, approved by the Resolution of the USSR State Labor Committee and the Secretariat of the All-Union Central Council of Trade Unions dated from September 29, 1981 No. 275/17-99. Part 8 of the Art. 179 of the Labor Code of Ukraine allowed to work at home, and provided that at the request of the woman or persons referred to in part 7 of this Article (the child's father, grandmother, grandfather or other relatives who actually care for the child), while being on childcare leave, may work part-time or at home (Hulevych, 2010). The term of "distance work" was not used at all by the Labor Code of Ukraine until 2020.

According to B.A. Rymar the Regulations on Working Conditions of Homeworkers of 1981 regulate the work of so-called traditional homeworkers – low-skilled people who perform mainly simple, manual work at home. The specificity of the new distance worker is based on a qualitative change in the equipment used, the nature of the workforce, the labor function of such workers can be carried out without being linked to their home. K.Yu. Melnyk points out that distance work covers all forms of performance by an employee of an employment function defined by the employment contract outside the location of the employer. Such work is carried out with the use of public information and telecommunications networks to perform the labor function and to interact with the employer.

In the spring of 2020, that is during the quarantine, the issue of distance work was regulated by the Verkhovna Rada of Ukraine in the Laws of Ukraine "On Amending Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus (COVID-19)" dated from March 17, 2020. No. 530-IX and "On Amending Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Regard to the Spread of Coronavirus Disease (COVID-19)" dated from March 30, 2020 No. 540-IX.

In particular, the norms regulating the use of distance work were introduced for the first time in the Labor Code of Ukraine. Thus, the condition of distance (home-based) work and flexible working hours may be established in the order of the employer without the obligatory conclusion in writing of the employment contract on distance (home-based) work in accordance with Part 2 of the Art. 60 of the Labor Code of Ukraine at the time of the threat of epidemic, pandemic and/or threat of military, man-made, natural or other nature.

The national legislator has defined distance (home-based) work as a form of work organization, when the work is performed by an employee at his place of residence or at another place of his choice, including with the assistance of information and communication technologies, but outside the employer's premises. In case of distance (home-based) work, employees distribute working time at their discretion; they are not subject to the rules of internal labor regulations, unless otherwise provided in the employment contract. At the same time, the total duration of working hours may not exceed the norms provided in the Articles 50 and 51 of the Labor Code of Ukraine. The performance of the distance (home-based) work does not entail any restrictions on the scope of labor rights of employees (Hulevych, 2010).

We cannot agree with the national legislator, who used such a terminological construction "Distance (Home-Based) Work" in the Labor Code of Ukraine, because we believe that home-based work is a kind of distance work. Besides, the suggested norms of the Art. 60 of the Labor Code of Ukraine quite sparingly regulate the use of distance work, without revealing all its features.

CONCLUSION

Based on the current global tendencies, Ukraine needs to apply distance work more widely by making appropriate amendments into national labor legislation and by ensuring proper control over the employers' observance of labor rights of the employees while introducing this format of work.

The Labor Code of Ukraine should provide a separate Chapter focused on distance work (for example, Chapter XIII-A "Work of Remote Employees"). The Articles of that Chapter should clearly enshrine the definition of distance work, specific features of concluding, amending and terminating an employment contract on distance work, specific features of working hours and rest time of remote employees, specific features of labor protection of remote employees, guarantees of labor rights of remote employees. The relevant Article should also provide that while introducing distance work in regard to threats provided by law (epidemic, pandemic, martial law, man-made accident, etc.), the provisions of Part 3 of the Article 32 of the Labor Code of Ukraine, which stipulate that the employee must be notified no later than two months of such changes, shall not be applied.

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