

Legal protection of labor rights in the context of sustainable development

Protección jurídica de los derechos laborales en el contexto del desarrollo sostenible

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Abstract

The article is devoted to the study of individual labor relations in the context of sustainable development, and to the definition of changes in labor legislation that occurred in connection with the introduction of martial law. The main trends in the development of modern labor law in Ukraine include: the establishment of certain restrictions in the organization of labor relations with the observance of minimum labor guarantees for employees; strengthening the flexibility of legal regulation of labor relations, employee mobility when exercising the right to work; expansion of the contractual basis for the regulation of labor relations. It is noted that in the conditions of martial law, when the freedom of labor is limited in favor of state needs and interests, the main task is to develop an effective mechanism for ensuring the labor rights and interests of employees and employers. In particular, provisions of legislation regulating the organization of remote, home or other atypical forms of work have a powerful regulatory potential. In addition, in order to guarantee the labor rights of medical workers, it is considered appropriate to standardize the relevant provisions in a separate legal act.

Keywords: Labor law; Protection of labor rights; Remote work; Right to rest; Medical workers.

Resumo

El artículo está dedicado al estudio de las relaciones laborales individuales en el contexto del desarrollo sostenible y a la definición de los cambios en la legislación laboral que se produjeron en relación con la introducción de la ley marcial. Las principales tendencias en el desarrollo de la legislación laboral moderna en Ucrania incluyen: el establecimiento de ciertas restricciones en la organización de las relaciones laborales con el cumplimiento de garantías laborales mínimas para los empleados; fortalecer la flexibilidad de la regulación legal de las relaciones laborales, la movilidad de los empleados en el ejercicio del derecho al trabajo; ampliación de la base contractual para la regulación de las relaciones laborales. Cabe señalar que en condiciones de ley marcial, cuando la libertad laboral está limitada en favor de las necesidades e intereses estatales, la tarea principal es desarrollar un mecanismo eficaz para garantizar los derechos e intereses laborales de los empleados y empleadores. En particular, las disposiciones legislativas que regulan la organización del trabajo a distancia, a domicilio u otras formas atípicas tienen un poderoso potencial regulatorio. Además, para garantizar los derechos laborales de los trabajadores médicos, se considera apropiado unificar las disposiciones pertinentes en un acto legal separado.

Palabras-clave: Derecho laboral; Protección de los derechos laborales; Trabajo a distancia; Derecho al descanso; Trabajadores médicos.

1 Introduction

Today, the characteristics of human rights and freedoms are organically complemented by another important factor - the sustainable development of society. It is generally accepted that achieving sustainable development is impossible without solving social problems that are directly related to people, their interests, freedoms and needs.

The United Nations in the Human Development Report 1994 defines that “sustainable development is such development that leads not only to economic growth, but also to the fair distribution of its results, restores the environment instead of destroying it, increases the responsibility of people, rather than turning them into soulless performers. Such development puts poor people first, empowering them and ensuring their participation in decisions that affect their lives. Such development is development for people, for nature, for increasing the number of jobs and improving the position of women in society” (Human Development Report, 1994). In the modern understanding, human development is positioned not only as improving people’s well-being, but also as ensuring a satisfactory state of health care, environmental protection, as well as other opportunities for shaping the conditions of socio-economic development of society (Bratko, 2017).

On September 25, 2015, the UN General Assembly approved the resolution “Transforming our world: The 2030 Agenda for Sustainable Development” (Transforming Our World: The 2030. Agenda for Sustainable Development, 2015), which established 17 Sustainable Development Goals. For each of them in the social, economic and environmental spheres, the 2030 Agenda formulates tasks and defines target indicators, which are proposed to be achieved by 2030. During peacetime, Ukraine adapted the global list of tasks and indicators to national development plans, taking into account its characteristics, defining the Goals sustainable development of Ukraine for the period until 2030 (On the Sustainable Development Goals of Ukraine for the period until 2030, 2019).

Russia’s aggression against Ukraine created many indirect obstacles on the way to its sustainable development, but it did not stop the desire for European integration and sustainable development. In the current conditions of Ukraine, the problem of assessing the effectiveness of the functioning of the social sphere, in particular the legal protection of labor rights, is relevant. The experience of the developed countries of the world convincingly shows that it is a clear strategy of managing the social sphere and social processes that ensures the solution of the economic and social tasks of the development of society, high standards of living and equal access of its citizens to such public goods as education, health care, culture, security personality (Prykhodchenko, 2012; Hrynyuk *et al.*, 2019), ensuring its social and labor rights.

The Constitution of Ukraine indicates the indisputable importance of observing the equality of rights and freedoms of a person and a citizen for any legal relationship

between the state and its citizens in the organization of the functioning of every sphere of life, in particular, the sphere of labor relations. By entering into an employment contract, employees exercise their constitutional right to work, the right to proper, safe and healthy working conditions, to a wage not lower than that determined by law, the right to timely remuneration (Article 43), the right to participate in trade unions with in order to protect their labor and socio-economic rights and interests (Article 36), the right to rest (Article 45), the right to social protection (Article 46) and others (Constitution of Ukraine, 1996).

State regulation of social processes is constantly faced with various difficulties caused by the specificity of these processes and the peculiarities of their course. Recently, the situation has worsened against the background of insufficient funding and increased social tension in the conditions of war on the territory of Ukraine. In this situation, contradictions between the interests of employers and employees in the conditions of a special legal regime require state intervention, the adoption of new laws, the introduction of appropriate changes and additions to the current legislative acts.

Amendments to the labor legislation somewhat complicated legal relations in the specified area regarding: legal regulation of remote labor activity, implementation and fulfillment of labor obligations by persons in different statuses, responsibility for non-fulfillment of contract terms, regulation of the right to vacation, etc. That is why, in order to ensure the sustainable development of working conditions, it is important to find out the trends in the development of labor relations in Ukraine, the specifics of the legal regulation of the right to decent working conditions, decent pay, rest and vacation in view of the special legal regime introduced in the country, which is at war.

2 Methodology of the study

To carry out the research, a system of methods of scientific knowledge was applied, in particular general philosophical, general scientific (dialectical, analysis, synthesis, abstraction, analogy), special scientific methods of knowledge used in many branches of science (comparative, quantitative and qualitative analysis), as well as special legal (comparative-legal, formal-legal, systemic-structural).

The general philosophical (universal) method of cognition was used at all stages of the cognitive process. The dialectical method was used to analyze doctrinal approaches to understanding the concept of sustainable development and the place in it of guarantees of labor rights. With the help of the method of analysis, characteristic features were revealed and individual features of human labor rights were studied under the conditions of a special legal regime, analytical interpretation provided an opportunity to decompose this concept into separate elements and investigate it as a separate part of the whole.

Such methods as formal-legal and systemic-structural were used in the development and study of the terminological apparatus of this work, namely in clarifying the content of the categories “remote form of work”, “right to rest”, “proper, safe and healthy working conditions”, as well as when formulating relevant conclusions and recommendations. In particular, the formal-logical method came in handy when analyzing the content of the current legislation of Ukraine regarding the normalization of legal relations in the field of labor law. Thanks to the comparative legal method, a comparative analysis was carried out and the peculiarities of legislative regulation and protection of human rights in the conditions of special legal regimes were studied in order to identify the most advanced legal means that can be incorporated into national legislation in the relevant field.

The regulatory framework for this study includes current laws and other legal acts of Ukraine, international legal acts regulating socio-legal labor relations. In addition, the work uses doctrinal sources that reveal the content and characteristic features of the implementation of human labor rights and offer promising ways to protect them from possible threats.

3 Analysis of recent research

Today’s socio-political situation in Ukraine requires the state to review approaches to the creation and practical implementation of its own strategy for sustainable socio-economic development. Organizational and legal aspects of the organization of labor relations were studied in scientific works, which were mostly related to the normalization of these relations in peacetime conditions. However, the conditions in which Ukraine found itself as a result of military operations require additional research. This question is relevant in the realities of wartime in Ukraine and in view of legislative changes in the legal regulation of labor relations.

The purpose of the article is to clarify the features and main trends of the development of labor law in the conditions of the European integration vector of Ukraine’s development, the country’s support for the implementation of the concept of decent work and sustainable development.

4 Results and discussion

The main task of labor law is to develop an effective mechanism for ensuring the labor rights and interests of employers and employees. One of the characteristic trends in the development of labor law and the reform of the labor legislation of Ukraine in the conditions of the pandemic, and currently - martial law, is the strengthening of the protection of the labor rights of employees and guarantees of their implementation. First

of all, it is about the proper legal definition of the system of labor rights of the employer and the employee in accordance with international standards, about guarantees of their implementation, forms, methods and means of protection and protection.

The legal regulation of labor relations should be understood as the influence of a set of legislative prescriptions on the order of organization of relations between an employee and an employer; such relations, by their socio-economic essence, involve the performance of work on behalf of, under the direction and control of the employer personally by the employee for remuneration determined by the employer.

The introduction of martial law in Ukraine on the basis of the Law “On the Legal Regime of Martial Law” (On the Legal Regime of Martial Law, 2015) led to a new stage in the development of legal relations in the labor sphere. After all, it was this area in which the interests of citizens are intertwined that required an immediate response from the legislator in order to ensure its stable functioning.

Among other things, two important laws were adopted in the field of labor law: “On the organization of labor relations under martial law” dated 15.03.2022 No. 2136-IX (On the organization of labor relations under martial law, 2022.) and “On introducing changes to some legislative acts of Ukraine on the optimization of labor relations” dated 01.07.2022 No. 2352-IX (On making changes to some legislative acts of Ukraine regarding the optimization of labor relations, 2022). These legal acts define the procedure for public service, service in local self-government bodies, specifics of labor relations of employees of all enterprises, institutions, organizations in Ukraine regardless of the form of ownership, type of activity and branch affiliation, representative offices of foreign economic entities in Ukraine, as well as persons who work under an employment contract concluded with natural persons (hereinafter - employees) during the period of martial law introduced in accordance with the Law of Ukraine “On the Legal Regime of Martial Law”.

Law of Ukraine No. 2136-IX “On the organization of labor relations under martial law” stipulates that the norms of labor legislation in the part of relations regulated by the adopted Law do not apply, and individual constitutional rights of citizens may be limited during the entire period of martial law. The law defines the main aspects of the legal regulation of the processes of concluding and terminating an employment contract, establishing and accounting for the time of work and rest of employees, wages, vacations and suspension of the employment contract under martial law (On the organization of labor relations under martial law. Law of Ukraine, 2022).

The unexpected outbreak of COVID-19, in addition to changes to the usual rhythm of life, forced the vast majority of countries in the world to reconsider their approaches to the legal regulation of social relations, because some, at first glance, unusual things for us have become commonplace. Thus, in order to prevent the spread of the virus among the residents of Ukraine, the government established a quarantine, which, in particular, caused the transition of most enterprises to remote work.

If in developing economies this is rather a plus and is perceived positively both by the employees themselves, who want to earn more, and by consumers who are comfortable, for example, making purchases at night, then in developed countries traditional values (the right to rest and privacy) take the mountain. In France, in August 2016, the Law on Labor, Modernization of Social Dialogue and Ensuring Professional Careers (LOI No. 2016-1088) was adopted, one of the sections of which is called “Adaptation of labor law in the digital age”. For the first time, the law enshrined the employee’s right to turn off digital devices (in particular, the phone and e-mail) in order not to disturb his time for rest, vacation, as well as to respect private and family life. That is, during non-working hours, French employees have the right not to answer the employer’s calls and e-mails. And indeed, on weekends and holidays, the French are practically “unavailable”. France became the first country to include this right in labor legislation.

Currently, it is difficult to deny the importance of non-standard, remote or home-based forms of work. The legislative basis of labor relations is also a typical labor contract, however, the key distinguishing feature is that these types of employment are built on the principle of flexibility of the working time regime, which allows the establishment of a different work regime than that defined by the rules of the internal labor procedure, but subject to compliance with the law of Ukraine “On the organization of labor relations in the conditions of martial law” of daily, weekly or other, determined for a certain accounting period, the norm of the duration of working hours (“On the organization of labor relations in the conditions of martial law”, Law of Ukraine, 2022). The principle of self-regulation of working hours allows the employee to adjust the start and end of work and the length of the working day, which is especially important in war conditions and determines the level of safety and security of an individual.

The concept of remote (home) work should be understood as such a form of organization of the employee’s work, when the work is performed by him at his place of residence or at another place of his choice with the help of information and communication technologies, but outside the employer’s premises. The possibility of remote work increases the availability of work for many categories of the population - pensioners, people with disabilities, pregnant women and other categories of employees who choose or are forced to work remotely. In addition, the employee can personally shape his time to perform work, perform the labor function in conditions convenient for him, which has a positive effect on his productivity.

Despite the fact that the Ukrainian legislation did not contain relevant concepts - remote work, remote work or work from home - and did not regulate the practical aspect - control of the employee’s working hours, the obligation to provide the employee with the necessary equipment for remote performance of duties, etc. - and

employers and employees quickly began to adapt to new circumstances, revise work regimes and mutual rights and obligations. Currently, remote employment corresponds to the pace of people's lives. Without a doubt, remote work, taking into account all the positive points, will continue to be popular.

Compared with foreign ones, the Ukrainian legislator has only begun to make separate attempts to introduce such a type of work as remote work. In our opinion, such issues as distinguishing remote work and similar legal relationships (work under a civil-law contract), arranging the workplace by the employer or compensating employees for expenses, labor protection of persons working remotely, the scope of social guarantees and determining the status require legal regulation remote worker for tax purposes. Clear legal regulation of these processes is an important aspect in the organization of work, as it allows you to ensure the order of work and distribute areas of responsibility between the employer and the employee, to make the process of their interaction as comfortable and efficient as possible, even in such somewhat unusual conditions.

At the same time, Ukraine is a pioneer in the settlement of certain issues. In particular, during the period of martial law, the provisions of the Law of Ukraine "On the Legal Regime of Martial Law", which regulate some aspects of labor relations, have priority application. The presence of a threat to the life and health of the employee, as a result of which the employer is unable to guarantee the safety of the latter, the lack of the ability to perform the indicated work remotely is a reason for suspending the employment contract even if there is a desire of the employee to continue working at his own risk (Decision of the Zhytomyr Court of Appeal in case No. 279/1611/22 from 18.08.2022).

It should be emphasized that the Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding the Functioning of the Spheres of Employment and Mandatory State Social Insurance in Case of Unemployment During Martial Law" established a number of additional guarantees in the spheres of employment and mandatory state social insurance for case of unemployment in a special period. Among the novelties introduced by the specified law, in particular, the introduction of one-time financial assistance for the organization of entrepreneurial activity, simplification of the procedure for awarding unemployment benefits, regulation of the procedure for providing benefits for partial unemployment, etc. (On making changes to some laws of Ukraine regarding the functioning of the spheres of employment and mandatory state social insurance in case of unemployment during martial law, 2022).

Since employees' leisure time can no longer be occupied with professional inquiries (e.g. answering emails), one promising possibility is that a large proportion of these employees spend even more time on social networks such as Facebook, YouTube or Twitter. Thus, paid professional time can be replaced by digital work, in particular on microtechnology services such as Amazon Mechanical Turk.

The main provisions regarding the realization of the right of citizens to proper, safe and healthy working conditions in the course of work are declared in international acts ratified by the Verkhovna Rada of Ukraine, and defined in the Constitution of Ukraine, the Code of Labor Laws of Ukraine and other normative legal acts. In particular, in accordance with Art. 77 of the Basic Law of Ukraine on health care, medical workers have the right to: proper conditions of professional activity; mandatory insurance in case of damage to their life and health in connection with the performance of professional duties; social assistance from the state in case of illness, disability or in other cases of loss of working capacity, which occurred in connection with the performance of professional duties. An important guarantee of the protection of the labor rights of medical workers is the right to judicial protection of professional honor and dignity (Fundamentals of Ukrainian legislation on health care. Law of Ukraine, 1992).

In accordance with the provisions of Art. 10 of the Law of Ukraine “On the Organization of Labor Relations in the Conditions of Martial Law” No. 2136, wages are paid to the employee under the conditions specified in the labor contract. The employer must take all possible measures to ensure the realization of the right of employees to timely receipt of wages. The employer is released from responsibility for the violation of the obligation regarding the terms of payment of labor, if it proves that this violation occurred as a result of the conduct of hostilities or the action of other circumstances of force majeure. Releasing the employer from responsibility for late payment does not release him from the obligation to pay wages. In case of impossibility of timely payment of wages as a result of hostilities, the term of payment of wages may be postponed until the time of resumption of the enterprise’s activities (On the organization of labor relations under martial law. Law of Ukraine, 2022).

In the context of the research questions, special attention should be paid to the regulation of labor relations in the activities of medical workers as a category of persons who perform their professional duties in special conditions.

Medical workers have the right to reduced working hours in accordance with Art. 51 of the Labor Code of Ukraine (The Labor Code of Ukraine, 1971; On the approval of the List of industries, workshops, professions and positions with harmful working conditions, work in which gives the right to a shortened working week, 2001). Medical and other workers directly engaged in the elimination of the epidemic and the implementation of measures to prevent the spread of the acute respiratory disease COVID-19 are paid a salary supplement in the amount of three salaries (tariff rates) starting from March 2020 (On the approval of the List of positions of medical and other workers directly engaged in the elimination of the epidemic and the implementation of measures to prevent the spread of acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus and the treatment of patients with

cases of acute respiratory disease COVID-19 caused by the SARS coronavirus -CoV-2, which is paid in the amount of three salaries (tariff rates), 2020). Also, in accordance with the Law of Ukraine “On Vacations”, medical workers have the right to the following vacations: vacation for work with harmful and difficult working conditions lasting up to 35 calendar days, vacation for the special nature of work, associated with increased neuro-emotional and intellectual load - duration of up to 35 calendar days, vacation for an irregular working day lasting up to seven calendar days, vacation for continuous work in a medical institution (On vacations, 1996; Fundamentals of the legislation of Ukraine on health care, 1992).

If the performance of the work threatens the health of the employee or the health of the people around him, and the employer does not follow the norms of labor protection legislation, such a medical worker has the right to refuse the assigned work or terminate the employment contract at his own will. In this case, the employee is paid severance pay in the amount stipulated by the collective agreement, but not less than three months' earnings (Part 3, Article 38, Article 44 of the Labor Code of Ukraine) (The Labor Code of Ukraine, 1971). In case of violation of labor legislation, the employee has the right to contact the administration of the medical institution, the trade union of the territorial body of the State Service of Ukraine on labor issues, law enforcement agencies, and the court.

Therefore, the labor rights of medical workers in Ukraine are sufficiently protected in the legislation. But the difficult economic situation of Ukraine does not always contribute to their implementation and guarantee, which makes it necessary to reflect the relevant rights of medical workers in a separate legal act.

5 Conclusions

In the context of the sustainable development of Ukraine, when the freedom of labor is limited in favor of the defense needs of the state, the main task of modern labor law is to develop an effective mechanism for ensuring the labor rights and interests of employees and employers. The main trends in the development of modern labor law in Ukraine include: the establishment of certain restrictions in the organization of labor relations with the observance of minimum labor guarantees for employees; strengthening the flexibility of legal regulation of labor relations, employee mobility when exercising the right to work; expansion of the contractual basis for the regulation of labor relations.

The analysis of the current legislation that regulates labor relations allows us to conclude that the legislative approach to the adoption of new laws, amendments and additions to the current regulations should take into account not only public interests, but also provide sufficient guarantees for the realization of labor rights by individual

citizens. In particular, provisions of legislation regulating the organization of remote, home or other atypical forms of work have a powerful regulatory potential. In addition, in order to guarantee the labor rights of medical workers, it is considered appropriate to standardize the relevant provisions in a separate legal act.

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