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ON THE QUESTION OF TELEWORK ORGANIZATION: LEGAL REGULATION

Olga DEMCHENKO,

Candidate of Juridical Sciences, Associate Professor,
Associate Professor at the Department of State Legal
Disciplines of the V.N. Karazin Kharkiv National University

In the article the concept of «telework» is defined. The sources and methods of legal regulation of telework are considered on the example of the European Union member countries. Attention is paid to the contractual nature of the regulation of telework in a collective agreement, labor contract.

The conclusion is made about the role of imperative regulation of telework in the process of hybridization of telework. The study leaves room for further research in view of the ongoing reform of the labor legislation of Ukraine.

Keywords: the method of legal regulation, labor relations, collective agreement, labor contract, telework, téléworker, labor employment.

К ВОПРОСАМ ОРГАНИЗАЦИИ ТЕЛЕРАБОТЫ: ПРАВОВАЯ РЕГЛАМЕНТАЦИЯ

Ольга ДЕМЧЕНКО,

кандидат юридических наук, доцент,
доцент кафедры государственно-правовых дисциплин
Харьковского национального университета имени В. Н. Каразина

В статье раскрыто понятие «телеработа». Рассмотрены источники и методы правового регулирования телеработы на примере стран-участниц Европейского Союза. Уделено внимание договорному характеру регулирования телеработы в коллективном договоре, трудовом договоре. Сделан вывод о роли императивного регулирования телеработы в процессе гибридизации телеработы. Тема исследования оставляет место для дальнейшего изучения с учетом продолжающегося реформирования трудового законодательства Украины.

Ключевые слова: метод правового регулирования, трудовые отношения, коллективный трудовой договор, трудовой договор, дистанционная работа, трудовая занятость.

PRIVIND ÎNTREBAREA ORGANIZAȚIEI TELEMUNCII: REGULAMENT JURIDIC

Olga DEMCHENKO,

Candidat în științe juridice, profesor asociat,
Profesor asociat la catedra drept statal,
Universitatea Națională V.N.Karazin, Harkov

În articol este definit conceptul de „telelucru”. Sursele și metodele de reglementare legală a telelucrării sunt luate în considerare pe exemplul țărilor membre ale Uniunii Europene. Se acordă atenție naturii contractuale a reglementării telelucrării într-un contract colectiv, contract de muncă.

Se concluzionează despre rolul reglării imperitive a telelucrării în procesul de hibridizare a telelucrării. Studiul lasă loc pentru cercetări ulterioare, având în vedere reforma în curs de desfășurare a legislației muncii din Ucraina.

Cuvinte-cheie: metoda reglementării legale, relațiile de muncă, contractul colectiv, contractul de muncă, teleoperarea, ocuparea forței de muncă.



Introduction. The variety of «telework» definitions, or «telecommuting» such as «zero hours», «flexible work», «remote work» in the absence of clear classifiers for the organization of labor cooperation between the employee and the employer [1] determines the scientific interest in studying telework with respect to regulatory regulation. The more so as the transformation of telework to new organizational classifications like «mobile work» [2], «smart work» [3] is continuing today. **The relevance of the topic** is caused by the ongoing process of forming an understanding of the use of telework and methods of legal regulation. The newest state policy of Ukraine to improve the digital market and the state's strategy for European integration reinforces the current nature of the study being conducted in one of the main branches of law.

The EU member states continue to be interested in developing non-standard forms of employment in the interest of creating a more flexible and inclusive labor market. The discussion also revolves around the declaration forms of telework. The research of the article is based on the works of Ukrainian and foreign scientists: M. Inshin, V. Kohan, Y. Svechkaryova, O. Protsevsky, S. Venedictov, A. Spicina P. Nicola, L. Taskin, M. Rigaud, E. Ragu-seo, T. Torre, J. Wichert, M. Siepermann and others.

The European Commission once again raised the issue of regulation of working conditions in the tripartite social dialogue Europe 2020 New forms of employment. The document emphasized the priority of restoring the dynamics of labor markets in the European Union member states (hereinafter the EU). In accordance with the priority of the European Employment Strategy, the EU Member States should encourage those innovative forms of work that create

high-quality employment opportunities by promoting modern social, economic and informational innovations. [4]

Today, a joint study of Eurofound and the International Labor Organization (ILO) on the impact of telework on the world of work continues [5], including based on an analysis of national policies to create an effective legislative space for the issuance of local regulations, to improve their working conditions. Results are planned to be provided in December 2019.

The specifics of the legal regulation of telework in the context of a labor employment is quite diverse. Sources of regulation of labor relations are considered: Legislation on Employment of Teleworkers: 1) law, other regulations that are adopted at the state level, 2) collective agreement, 3) labor contract. **The purpose of the article is** to analyze the existing experience of the legal regulation of telework in regulatory acts of an imperative and dispositive nature on the example of the labor legislation of the EU states. The purpose of the study is associated with the need to form a comprehensively holistic attitude to telework from an institutional point of view, methods of legal regulation, taking into account national peculiarities of legal regulation in Ukraine. The study seems to be fundamentally relevant at the ongoing stage of reforming the labor legislation of Ukraine.

Summarizing the definition of telework according to the labor legislation of the European Union member states (hereinafter the EU), telework can be defined as any form of work organization in which work that could also be performed in an organized office of the employer is performed by an employee outside these premises on a voluntary basis using information and communication technologies (ICTs¹).

¹ Information and communication technologies

The implementation of international agreements in the EU states was carried out by introducing into the current labor legislation a new definition of «Teletravail»-fr., «Telepraca»-pol., «Telearbeit»-ger., «Telelavoro»-it. The Agreement on Telework of 2002 «The European Framework» gave a projection of the rule-making process of introducing telework into the national legislation of the member states. Thus, the institute of labor contract was supplemented by Art. L1222-9-L1222-16 of the Labor Code of France (Code du travail) [6], Art. 67⁵-67¹⁵ of the Labor Code in Poland [7]; in Germany, by paragraph 5 of the Law «On the constitution of the enterprise». [8] In Italy, telework received legal regulation in section 3 of chapter 5 of the Civil Code. Telework organization in some countries is standardized at the inter-branch level. For example, in France, there is a separate law for employees of the public administration and the judiciary. [9] In Italy, there is the regulation on the discipline of telework in public administrations of Italy. [10]

Labor law is a special part of the legal system, as the quintessence of norms of a centralized and local nature. Thus, changes in the labor legislation of the EU states are carried out with the participation of the state through imperative methods. Further regulation of telework is related to the field of contractual regulation in collective agreements and labor contracts.

The telework categorization based on the workplace, which is adopted in the scientific community, determines the clearest legal regulation of telework in regulatory sources of the EU states.

So far in some states, telework status is regulated in the context of HomeWork. [11] The telework organization is stipulated by the labor contract, in which there is the opportunity to work at home for a flexible number of days per year.



The author supports the thesis that telework and its more traditional and time-tested relative HomeWork are just two versions of the more general phenomenon of telework. [12] The core feature of which, in its modern interpretation, is associated with the organization of the workplace, control of the process, results of work by the employer using telecommunications and the Internet (ICTs) and is determined by the intellectual nature of the performance of labor functions.

International rule-making continues to work on the regulation of the telework conditions.

The European Pillar of Social Rights focuses on fair working conditions and equal opportunities for teleworkers. [13] Resolution on «Atypical Contracts, Secured Professional Paths and New Forms of Social Dialogue» recommends rules of employment, protection of data confidentiality, protection of the interests of teleworkers to regulate working hours, access to training and social protection [14]. Resolution on «Towards a Digital Single Market Act» defines the strategy for the development of a single digital market, focusing on the interest in the growth of jobs with non-standard forms of employment, using ergonomics of ICTs [15]; Resolution on «The EU Strategic Framework on Health and Safety at Work» contains recommendations on health care, labor hygiene and workplace safety. [16] These recommendations are transposed into the national law of the EU state. For example, health care, workplace safety and the procedure for compensation for violation of these provisions during telework are included in the Social Security Code in France. Code de la sécurité sociale. [17] In Germany, the Occupational Safety and Health Act is fully applicable to telework in terms of the workplace and the employer's responsibility for the organization of safety measures,

taking into account circumstances affecting the safety and health of workers at work. [18]

Based on the results of the research «Working anytime, anywhere: The effects on the world of work» [19] on the use of telework, there is a connection between the indicators of the use of telework from government-created institutional conditions and the level of activity of social partners.

The current trend in the development of telework points to the prospects for expanding the spatial and organizational definitions of this form of organization of labor relations. The interest on the research platform is represented by the SatelliteCentre — as a form of telework in which an employee works in a center set up by an employer outside the employer's premises, this is a working out form in which an employee works in a public place, for example, in a cafe or on transport [20]; smart-work — as a form of telework, when an employee can work anywhere using AITs², which are based on the increased potential of Internet technologies. [3, 23-29]

However, the government of some EU states has already provided for the legal regulation of this innovative form, reflecting the tendency of hybridization of telework. In Italy — by the Law on Flexible Work 2017 [21], in France — by the provision of Art. L. 1222-9 of the Labor Code. [6]

When analyzing the variety of organizational forms of telework, the nature of the regulatory framework should be determined. Legal regulations that regulate telework are close to the generally accepted standards of working space, accounting and controlling working hours, the form of using ICTs, the frequency and duration of telework, the organization of control by the employer during telework are provided for through centralized legal regulation methods. Standards that

unite the legal regulation of telework and are contained in the provisions of the collective agreement are defined and detailed. The conditions of telework, providing for a wider range of specifications of the organization, are provided for by an individual contract.

It should be emphasized that the results of rule-making depend on the national model of legal regulation of the labor relations of an individual state. So, along with the above analysis of the normative acts of Italy, France, Poland, Germany's corporate framework for the regulation of telework is still controversial.

In Ukraine, there is a regulatory vacuum on telework without the necessary government guidelines today. Nevertheless, there are positive reasons for the effectiveness of the introduction of telework into the private and public sector.

In Europe now we need better active labour market policies: provided by high-quality public administrations that deliver effectively the services our citizens and societies need. [22]

Based on the materials of the study, it can be **concluded** that the participation of the state in the regulation of telework with an imperative nature is limited to the creation of an effective legislative space for the introduction of telework at a contractual level. The greatest organizational and legal burden is delegated to local rule-making at different levels of social dialogue. Collective agreements and labor contracts are key to organizing telework.

The author supports the thesis that the priority of legal regulation in Ukraine belongs primarily to state regulation by law. Contractual regulation does not have the proper priority [23], although we have scientific studies on the use of telework with positive results. [24] It should be **added to the conclusion** that the legislator in Ukraine

² Advanced Information Technologies



should competently position telework from an institutional point of view for the further successful economic development of the state, taking into account the fundamental rights of citizens to work and the forms of its realization. It is useful to draw the attention of the legislator to the positive experience of the *timely* legislative regulation of telework in the EU member states. Thus, implement legislative initiatives regarding telework with the necessary changes to the labor code and the Law «On collective labor agreements and contracts», considering the existing types and modifications of telework.

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INFORMATION ABOUT THE AUTHOR
Demchenko Olga Vladimirovna
- Candidate of Juridical Sciences,
Associate Professor, Associate
Professor at the Department of
State Legal Disciplines of the
V.N.Karazin Kharkiv National
University;

ИНФОРМАЦИЯ ОБ АВТОРЕ
Демченко Ольга Владимировна
- кандидат юридических
наук, доцент, доцент кафедры
государственно-правовых
дисциплин Харьковского
Национального Университета
имени В. Н. Каразина;
dov8dov8@gmail.com