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НОВІ ПІДХОДИ ДО ПРАВОВОГО РЕГУЛЮВАННЯ ТА ОРГАНІЗАЦІЇ ПРАЦІ В УКРАЇНІ

Анотація. Відзначається, що на порядку денному сьогодні гостро стоять питання запровадження нових підходів у організацію праці найманих працівників. Традиційний підхід, коли переважна більшість найманих працівників в Україні працювала на робочих місцях в межах підприємств, установ, організацій, з огляду на запроваджені у 2020 р. карантинні обмеження, перестав відповідати реаліям сьогодення. Сучасність потребує розвитку дистанційного формату роботи. У статті здійснюється наукове опрацювання актуальної проблеми як для науки трудового права, так і для нормотворчої діяльності щодо сучасного стану та тенденцій правового регулювання дистанційної роботи в Україні. Актуальність дослідження обумовлене значенням дистанційної роботи для сталого розвитку національної економіки та держави, а також забезпечення інтересів працівників та роботодавців у сучасних умовах. Метою статті є надання науково обґрунтованих висновків та пропозицій із удосконалення правового регулювання дистанційної роботи в Україні. У роботі із застосуванням загальнонаукових і спеціальних методів наукового пізнання розглянуто сутність дистанційної та надомної роботи; порівняно норми Кодексу законів про працю України з нормами проекту Закону про внесення змін до деяких законодавчих актів щодо удосконалення правового регулювання дистанційної роботи № 4051 від 04 вересня 2020 р. та проектів Трудового кодексу України. Зроблено загальний висновок про необхідність розробки та прийняття сучасного комплексного нормативно-правового акту в сфері праці – Трудового кодексу України, у якому передбачити, окремий структурний підрозділ (наприклад, книгу), присвячений особливостям регулювання трудових відносин окремих категорій працівників, у межах якого слід розмістити главу з назвою: «Особливості регулювання трудових відносин працівників, зайнятих дистанційною роботою». У статтях такої глави має бути передбачено визначення дистанційної роботи, особливості укладення, зміни та припинення трудового договору про дистанційну роботу, особливості режиму робочого часу та часу відпочинку працівників, зайнятих дистанційною роботою, особливості охорони праці працівників, зайнятих дистанційною роботою, гарантії трудових прав працівників, зайнятих дистанційною роботою

Ключові слова: дистанційна робота, працівник, роботодавець, надомник, телеробота

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NEW APPROACHES TO LEGAL REGULATION AND ORGANISATION OF LABOUR IN UKRAINE

Abstract. *It is noted that the issues of introducing new approaches to the organisation of labour of employees are acute on the agenda today. The conventional approach, when the vast majority of employees in Ukraine worked at workplaces within enterprises, institutions, organisations, taking into account the quarantine restrictions introduced in 2020, ceased to correspond to the modern realities. Modernity requires the development of the telework. The paper provides a scientific study of the actual problem both for the science of labour law and for rule-making activities regarding the current state and trends in the legal regulation of remote work in Ukraine. The relevance of the study is conditioned by the importance of remote work for the sustainable development of the national economy and the state, as well as ensuring the interests of employees and employers in modern conditions. The purpose of the study is to provide scientifically sound conclusions and suggestions for improving the legal regulation of remote work in Ukraine. Using general scientific and special methods of scientific cognition, the study considers the essence of remote and home work; the provisions of the Labour Code of Ukraine are compared with the provisions of the Draft Law of Ukraine No. 4051 “On Amendments to Certain Legislative Acts On Improving the Legal Regulation of Remote Work” dated September 04, 2020 and the Draft Labour Code of Ukraine. A general conclusion is made regarding the need to develop and adopt a modern comprehensive regulation in the field of labour – the Labour Code of Ukraine, which makes provision for a separate structural division (for example, a book) covering the specific features of regulating labour relations of certain categories of employees, within which a chapter should be placed with the title: “Features of Regulating Labour Relations of Employees Engaged in Remote Work”. The articles of such a chapter should make provision for the definition of remote work, the specifics of concluding, changing, and terminating an employment contract on remote work, the features of working hours and rest times of employees engaged in remote work, the features of labour protection of employees engaged in remote work, guarantees of labour rights of employees engaged in remote work*

Keywords: *remote work, employee, employer, homeworker, telework*

INTRODUCTION

The events of 2020, primarily related to the coronavirus disease (COVID-19) pandemic, have sharply put on the agenda the issue of introducing new approaches to the organisation of labour. The conventional approach, when the vast majority of employees in Ukraine worked at workplaces within enterprises, institutions, organisations, taking into account the introduced quarantine restrictions, ceased to correspond to the modern realities. To ensure the functioning of enterprises, institutions, and organisations, their management began to make decisions on transferring employees' work activities to a remote format. This immediately raised the issue of legal regulation of remote work. Notably, until 2020, the main comprehensive regulation in the field of labour – the Labour Code of Ukraine – did not regulate the relevant relations and did not even use the term “remote work”. The opportunity to

telework was provided only by the provision on remote work, which was stipulated in Part 8 Article 179 of the Labour Code of Ukraine, and then not to all employees, but only to the mother, the father, grandmother, grandfather, and other relatives who actually take care of the child, during their stay on parental leave. In addition, a Soviet Regulation On the Working Conditions of Homeworkers, approved by the Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Centre of Labour No. 275/17-99 of September 29, 1981¹ is still in force in Ukraine, which provided an opportunity to apply home work mainly for persons who, for subjective and objective reasons, required such work (women who have children under the age of 15; disabled people and pensioners; persons who have reached retirement age, but do not receive a pension; persons with reduced working

1. Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Central Committee No. 275/17-99 “On Approval of the Regulations on Working Conditions of Homeworkers”. (1981, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0275400-81#Text>.

capacity, who are recommended to work in accordance with the established procedure; persons who take care of disabled or long-term ill family members in need of care for health reasons; persons engaged in work with a seasonal nature of production (in the off-season period); persons studying in full-time educational institutions; persons who, for objective reasons, cannot be employed directly at work in the given area).

In March 2020, the Verkhovna Rada of Ukraine introduced provisions on remote work by the Laws of Ukraine No. 530-IX “On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)” of March 17, 2020¹ and No. 540-IX “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)” of March 30, 2020². In particular, such provisions were introduced by the latest law in Article 60 of the Labour Code of Ukraine³. The national legislator has defined remote (home) work as a form of labour organisation, when work is performed by an employee at his or her place of residence or in another place of their choice, including with the help of information and communication technologies, but outside the employer’s premises. It was stipulated that for the duration of the threat of the spread of an epidemic, pandemic, and/or for the duration of a threat of military, anthropogenic, natural or other origin, the condition for remote (home) work may be established in the order (instruction) of the employer without the mandatory conclusion in writing of an employment contract for remote (home) work⁴.

In November 2020, the Verkhovna Rada of Ukraine adopted as a basis the Draft Law No. 4051 “On Amendments to Certain Legislative Acts Concerning the Improvement of the Legal Regulation of Remote Work” of September 4, 2020⁵ (hereinafter referred to as “the Draft Law No. 4051”), which amends the Labour Code of Ukraine⁶ and the Law of Ukraine “On Labour Protection”⁷. The Draft Law No. 4051⁸ proposes to change the terminological construction “remote (home) work”, which is currently stipulated in the Labour Code of Ukraine, to the terminological construction

“remote or home work” and introduce other provisions aimed at the legal regulation of these types of work.

In general, Draft Law No. 4051 introduces amendments to the provisions that were included in the Labour Code of Ukraine in March 2020. This in itself indicates a general trend of the present – the rush to adopt changes to national legislation and the lack of a proper scientific approach in preparing the relevant changes. In addition, the provisions proposed by the Draft Law No. 4051 change the working conditions of certain categories of employees, which means that such innovations require in-depth modern scientific research. Problems of remote and home work were investigated in the studies of such scientists as S.V. Vyshnovetska [1], A.S. Diligul [2], A.M. Lushnikov [3], O.S. Pochanska [4], B.A. Rymar [5], K.L. Tomashevskii [6], O.M. Yaroshenko [7], and others. Therewith, there are no up-to-date studies of the provisions of the latest draft amendments to the Labour Code of Ukraine regarding the use of remote and home work.

The purpose of the study is to provide scientifically sound conclusions and suggestions for improving the legal regulation of remote work in Ukraine. The objectives of the study are to consider the categories “remote work”, “home work”, “telework”; to provide the author’s definition of the term “remote work”; to investigate the regulatory material governing remote work in Ukraine.

1. MATERIALS AND METHODS

The study is based on the research of scientific achievements of foreign and Ukrainian scientists and the results of study on the provisions of international acts and national legislation on remote and home work. The study analysed the works of representatives of the science of labour law, which highlighted the place and essence of remote and home work. The study investigated the provisions of the Home Work Convention of the International Labor Organization (No. 177) of June 20, 1996⁹ the Labour Code of Ukraine¹⁰ the Law of Ukraine No. 540-IX “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)” of

1. Law of Ukraine No. 530-IX “On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)”. (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/530-20#Text>.

2. Law of Ukraine No. 540-IX “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)”. (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/540-20#Text>.

3. Labour Code of Ukraine. (1971, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08#Text>.

4. Law of Ukraine No. 540-IX “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)”, op. cit.

5. Draft Law of Ukraine No. 4051 “On Amendments to Certain Legislative Acts Concerning the Improvement of the Legal Regulation of Remote Work”. (2020, September). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69838.

6. Labour Code of Ukraine, op. cit.

7. Law of Ukraine No. 2694-XII “On Labour Protection”. (1992, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2694-12#Text>.

8. Draft Law of Ukraine No. 4051 “On Amendments to Certain Legislative Acts Concerning the Improvement of the Legal Regulation of Remote Work”, op. cit.

9. Home Work Convention of the International Labor Organization (No. 177). (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/993_327#Text.

10. Labour Code of Ukraine. (1971, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08#Text>.

March 30, 2020¹, the Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Central Committee No. 275/17-99 “On Approval of the Regulations on Working Conditions of Homeworkers” of September 29, 1981², as well as a number of draft laws: Draft Labour Code of Ukraine No. 1658 of December 27, 2014³, Draft Labour Code of Ukraine No. 1658, prepared for the second reading on July 24, 2017⁴, Draft Labour Code of Ukraine No. 2410 of November 08, 2019⁵ and the Draft Law of Ukraine No. 4051 “On Amendments to Certain Legislative Acts to Improve the Legal Regulation of Remote Work” of September 04, 2020⁶.

To achieve the purpose of the study, the appropriate research algorithm was chosen, which is inherent in the set of collected materials, conditions and form of work. The methodological framework of the study included the general scientific, as well as special scientific methods, the application of which is conditioned by the purpose of the study and the need to use theoretical achievements of the science of labour law in national legislation. The study employed the dialectical method, the Aristotelian method, the comparative legal method, and the method of system analysis. In their interaction, all the above methods made it possible to carry out a full-fledged completed legal research, each of them was used at a certain stage of research; therefore, the methodology of the study is balanced, thorough, and comprehensive.

The dialectical method is chosen as the basis of the research methodology as an objectively necessary logic of the cognition process, which allows considering the phenomenon under study in its development and interrelation due to the material conditions of social life. This method helped to cover the essence of remote and home work in the study. The dialectical method allowed to considering the legal regulation of remote and home work in Ukraine in the specific historical conditions of modern Ukraine and determine the expediency of the legislative provisions proposed in 2020 aimed at regulating these types of work. The Aristotelian method provided an opportunity to investigate the current state of legal regulation of remote and home work in Ukraine. Using the techniques of the Aristotelian method, the shortcomings of the provisions of both the current regulations and the Draft Law No. 4051 registered in the Verkhovna Rada of Ukraine on the legal regulation of remote and home work were identified and

proposals were made to eliminate them. The comparative legal method was used during the consideration and comparison of the provisions of the Draft Law No. 4051 regulating remote and home work, as well as when comparing the provisions of the Home Work Convention of the International Labor Organization, the Labour Code of Ukraine, and the Draft Labour Code of Ukraine. The use of the comparative legal method made it possible to determine the place of remote work in the structure of a complex regulation in the field of labour and to understand its essence in more detail.

The method of system analysis was used in the study of scientific approaches to the place of remote work in the system of modern organisation of labour. System analysis convincingly proves the need to develop remote work in modern conditions, which has proven itself positively in recent years in the world, taking into account the development of telecommunications systems, new technologies for the output of products, the provision of electronic services, as well as proceeding from modern world challenges (pandemics, anthropogenic disasters, military operations, etc.).

2. RESULTS AND DISCUSSION

The current development of the world economy, modern international social and labour standards and new challenges currently facing humanity require constant improvement of national legislation. Ukraine, as a part of the international community, does not stand aside from these processes, and therefore must reform its own legislation. The need for qualitative changes in national legislation both in the labour and social spheres, in particular in the medical spheres, has been repeatedly addressed in the studies of Ukrainian legal scientists in the field of labour [8-16]. Taking into account the COVID-19 coronavirus pandemic, the national legislator urgently introduced changes to the relevant regulations, in particular to the Labour Code of Ukraine regarding the introduction of remote work. Over time, a need arose to change the introduced standards. The Draft Law No. 4051, designed to amend certain articles of the Labour Code of Ukraine and supplement it with Articles 60-1 and 60-2.

In particular, it is proposed to make “cosmetic” changes to Paragraph 6-1 of Part 1 Article 24 of the Labour Code of Ukraine, which was included in this article in

1. Law of Ukraine No. 540-IX “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)”. (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/540-20#Text>.

2. Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Central Committee No. 275/17-99 “On Approval of the Regulations on Working Conditions of Homeworkers”. (1981, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0275400-81#Text>.

3. Draft Labour Code of Ukraine No. 1658. (2014, December). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53221.

4. Draft Labor Code of Ukraine No. 1658, prepared for the second reading. (2017, July). Retrieved from <https://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=53221&pf35401=431270>.

5. Draft Labour Code of Ukraine No. 2410. (2019, November). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67331.

6. Draft Law of Ukraine No. 4051 “On Amendments to Certain Legislative Acts Concerning the Improvement of the Legal Regulation of Remote Work”. (2020, September). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69838.

March 2020. This paragraph includes the conclusion of an employment contract for remote (home) work in the list of cases when compliance with the written form of concluding an employment contract is mandatory. The authors of the study believe that all employment contracts should be concluded in writing from the moment of publishing Part 3 Article 24 of the Labour Code of Ukraine in 2014 in the following wording: “an employee may not be allowed to work without entering into an employment contract issued by an order or instruction of the owner or an authorised body, and notifying the central executive authority on ensuring the development and implementation of the national policy on the administration of a unified contribution to mandatory state social insurance on hiring an employee in accordance with the procedure established by the Cabinet of Ministers of Ukraine”¹. In this regard, the introduction of the above-mentioned amendments to Part 1 Article 24 of the Labour Code of Ukraine is superfluous. Part 1 Article 24 of the Labour Code of Ukraine should be worded as follows: “an employment contract shall be concluded in writing.” The amendments made by the Draft Law No. 4051 to Article 29 of the Labour Code of Ukraine are not entirely correct. Firstly, such changes remove persons who have entered into an employment contract for remote work from the scope of Part 1 Article 29 of the Code, which makes provision for the employer’s obligation to perform certain introductory actions in relation to the employee, in particular, to explain to the employee his or her rights and obligations and inform them against receipt about working conditions. Secondly, Article 29 of the Labour Code of Ukraine is supplemented by Part 2, which makes provision that upon entering into an employment contract for remote work, the employer must ensure compliance with Paragraph 2 of Part 1 of this article (familiarise the employee with the internal labour regulations and the collective agreement), as well as familiarise the employee with the requirements for labour protection upon working with equipment and means recommended or provided by the employer. Thus, according to the logic of the authors of the Draft Law No. 4051, employees who will work remotely do not need to know their rights, obligations, and working conditions, but at the same time they should know the internal labour regulations. The latter comes into conflict with the provision of Part 4 Article 60-2 of the Labour Code of Ukraine proposed by the authors of the Draft Law No. 4051 as follows: “when working remotely, employees allocate working hours at their discretion, they are not subject to internal labour regulations, unless otherwise provided in the employment contract”².

Notably, in the Labour Code of Ukraine, the provisions defining the features of remote and home work are currently stipulated in Article 60 “Flexible working hours”. As mentioned above, the relevant provisions were introduced in Article 60 of the Labour Code of Ukraine in

March 2020. Thus, the national legislator, having presented this Article in a new wording, in turn failed to reflect its content in its title, which, first and foremost, complicated the search for relevant statutory material. The authors of this study believe that the title of the article would be more correct to state as follows: “Flexible working hours and remote (home) work”. Separately, it should be noted that prior to the above-mentioned amendments, Article 60 of the Labour Code of Ukraine was called “Division of the working day into parts” and regulated the corresponding working hours. As noted in the legal literature, the division of working hours into parts is a mode of working hours where the working day can be divided into parts within the limits defined by law. In particular, the working day with the division of shifts into two parts is established for drivers and conductors of buses, trolleybuses, trams operating on urban regular passenger lines [17]. The regime with the division of the working day into parts is applied at work with special conditions and the nature of work in accordance with the procedure and cases stipulated by legislation. The working day under this regime can be divided into parts, provided that the total duration of work does not exceed the established working day (Article 60 of the Labour Code of Ukraine). Such regime is usually introduced in industries where the amount of work is unevenly distributed throughout the day (for example, public transport drivers). The division of the working day into parts, first and foremost, implies the possibility of establishing a break in work for more than two hours, which the labour legislation provides for recreation and nutrition purposes [18]. Consequently, the national legislator, having provided for the regulation of such a working time regime as flexible working hours in Article 60 of the Labour Code of Ukraine, abolished the rather popular working time regime – the division of the working day into parts.

Today, the national legislator does not separate the provisions regulating remote and home work in Article 60 of the Labour Code of Ukraine, using the terminological construction “remote (home) work”. The Draft Law No. 4051 proposes to supplement the Labour Code of Ukraine with two articles: Article 60-1 “Home work” and Article 60-2 “Remote work”, as well as to amend Article 60 “Flexible working hours”, removing the provisions on remote and home work from it. This means that the authors of Draft Law No. 4051 are trying to introduce a different approach to the categories of remote and home work as independent ones. The latter is also evidenced by the use of differing definitions of the terms “home work” and “remote work”. Thus, the Draft Law No. 4051 stipulates the following provision of Part 1 of Article 60-1 of the Labour Code of Ukraine: “home work” is a form of labour organisation when paid work is performed by an employee at his or her place of residence or in other premises previously chosen by them, which are described

1. Law of Ukraine No. 77-VIII “On Amendments to Certain Legislative Acts of Ukraine Concerning the Reform of Compulsory State Social Insurance and Legalisation of the Remuneration Fund”. (2014, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/77-19#n615>.

2. Draft Law of Ukraine No. 4051 “On Amendments to Certain Legislative Acts Concerning the Improvement of the Legal Regulation of Remote Work”. (2020, September). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69838.

by the presence of a designated zone, technical means (main production and non-production funds, tools, devices, inventory) or their totality, necessary for the production of products, provision of services, performance of works or functions stipulated in the constituent documents, but outside the production or working premises of the owner of the enterprise, institution, organisation, or authorised body. According to Part 1 of Article 60-2 of the Labour Code of Ukraine, remote work is a form of organising labour relations between an employee and an employer and/or performing work, when work is performed by an employee outside the employer's premises in any place of their choice and using information and communication technologies¹.

Comparing the above definitions, one should note such a common feature as the performance of work by an employee outside the employer's premises. In case of home work, it is only specified that such work is usually performed by the employee at his or her place of residence or in other pre-selected premises that are appropriately equipped and adapted to work. The authors of the Draft Law No. 4051 use different terminology in these definitions for no particular reason. Firstly, the Labour Code of Ukraine currently uses the term "owner or authorised body", the Draft Law No. 4051 proposes to use the term "employer" in Part 1 Article 60-2 of the Code, and "owner of an enterprise, institution, organisation, or authorised body" in Part 1 Article 60-1 of the Code. The authors of this study believe that if the Labour Code of Ukraine uses the term "owner or authorised body", then this term should be contained in the provisions that are proposed to be included in it. Secondly, home work is defined as a form of labour organisation, and remote work is defined as a form of organising labour relations. As is known, the terms "labour" and "labour relations" are independent and mean different phenomena. Given the relationship between remote and home work, which follows from the above concepts, it appears appropriate in this case to apply a unified terminology, or to justify why such a difference is proposed. Thirdly, the phrase "paid work" is used for home work, and "work" is used for remote work. This also points to the need to apply a unified terminology, since both types of work are paid.

There is a certain question regarding the placement of provisions on remote and home work in the Labour Code of Ukraine in the structural part covering such working conditions as working hours (Article 60 "Flexible working hours" of Chapter IV "Working hours"²). The Draft Law

No. 4051 retains the specified placement – Article 60-1 "Home work" and Article 60-2 "Remote work" are placed in Chapter IV "Working hours"³. Notably, a similar situation is observed in the draft versions of the Labour Code of Ukraine, which in recent years have been registered with the Verkhovna Rada of Ukraine. Thus, in Draft No. 1658 of December 27, 2014 places Article 43 "Condition for home work" in Chapter 1 "Labour relations and employment contract" of the Book Two "Emergence and termination of Labour Relations. Employment contract"; the relevant provisions are also contained in Article 137 "Employees who independently plan their working hours" of Paragraph 2 "Working hours" of Chapter 2 "Working hours" of the Book Three "Labour conditions"⁴. In Draft No. 1658, prepared for the second reading on July 24, 2017, the relevant provisions are contained in Article 32 "Content of the employment contract" and Article 42 "Condition for working at home" of Chapter 1 "Labour relations and employment contract" of the Book Two "Emergence and termination of labour relations. Employment contract"; the relevant provisions are also contained in Article 149 "Employees who independently plan their working hours" of Paragraph 2 "Working hours" of Chapter 2 "Working hours" of the Book Three "Labour conditions"⁵. In Draft No. 2410 of November 08, 2019, the relevant provisions are contained in Article 32 "Content of the employment contract" and Article 42 "Remote (home) work" of Chapter 1 "Labour relations and employment contract" of Book Two "Emergence and termination of labour relations. Employment contract"; the relevant provisions are also contained in Article 149 "Employees who independently plan their working hours" of Paragraph 2 "Working hours" of Chapter 2 "Working hours" of the Book Three "Labour conditions"⁶.

The legal literature on labour law contains a somewhat different understanding of the place and essence of remote and home work. Thus, the vast majority of labour scientists do not refer remote and home work to working hours [17-23]. O.M. Yaroshenko and N.B. Bolotina distinguish the employment contract for home work as one of the types of employment contracts [21; 22]. The latter position is facilitated by the provisions of the Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Central Committee No. 275/17-99 "On Approval of the Regulations on Working Conditions of Homeworkers" of September 29, 1981, according to which homeworkers are considered persons who have entered into an employment contract with an

1. Draft Law of Ukraine No. 4051 "On Amendments to Certain Legislative Acts Concerning the Improvement of the Legal Regulation of Remote Work". (2020, September). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69838.

2. Labour Code of Ukraine. (1971, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08#Text>.

3. Draft Law of Ukraine No. 4051 "On Amendments to Certain Legislative Acts Concerning the Improvement of the Legal Regulation of Remote Work", op. cit.

4. Draft Labour Code of Ukraine No. 1658. (2014, December). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53221.

5. Draft Labor Code of Ukraine No. 1658, prepared for the second reading. (2017, July). Retrieved from <https://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=53221&pf35401=431270>.

6. Draft Labour Code of Ukraine No. 2410. (2019, November). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67331

enterprise to perform work at home by personal labour from materials and using tools and means of labour allocated by the enterprise, or purchased at the expense of this enterprise¹. Home Work Convention of the International Labor Organization (No. 177) of 20 June 1996² lists homeworkers as a separate category of employees. Thus, under Article 1 of Convention No. 177, the term “home work” means work that a person called a homeworker performs at his or her place of residence or in other premises of their choice, but not in the employer’s production premises; for remuneration; for the purpose of producing goods or services, as directed by the employer, regardless of who provides the equipment, materials, or other resources used, unless that person has such a degree of autonomy and economic independence at his or her disposal as is necessary to be considered an independent employee under national legislation or court decisions. Persons with the status of employees do not become homeworkers within the meaning of this convention because of the very fact that they perform work from time to time as employees at home, and not at their usual workplace³.

In labour law, working hours are understood as: the procedure for distributing working hours within a certain calendar period (day, week, etc.) in order to ensure the proper labour process and rest of employees [18]; distribution of working hours within a day or other calendar period [19]; distribution of working hours within a day or other calendar period, the beginning and end of daily work (shift), the beginning and end of a break for rest and food [23]. Taking into account the essence of the category “working hours” and the content of the provisions of the Home Work Convention of the International Labor Organization No. 177 of June 20, 1996⁴ and the Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Central Committee No. 275/17-99 “On Approval of the Regulations on Working Conditions of Homeworkers” of September 29, 1981⁵, remote and home work cannot be considered working hours. Employees engaged in remote and home-based work should be considered specific categories of employees whose labour relations have certain features and require appropriate legal regulation.

The authors of the Draft Law No. 4051 propose to consolidate such difference between home and remote work as the freedom to change the workplace in Parts 3

and 4 of Article 60-1 and Part 3 Article 60-2 of the Labour Code of Ukraine. Thus, when performing home work, the employee’s workplace is fixed and cannot be changed at the employee’s initiative without the consent of the employer. If it is impossible to perform work at a fixed workplace for reasons beyond the employee’s control, the employee has the right to change the workplace. When performing remote work, the employee independently chooses their designated workplace⁶. One should note the dubious expediency of introducing this condition for home work, which is not stipulated by Home Work Convention of the International Labor Organization No. 177 of June 20, 1996, as well as the difficulty for the employer to monitor its compliance.

The Draft Law No. 4051 proposes to consolidate the differences in establishing labour regulations for remote and home work in Part 5 Article 60-1 and Part 4 Article 60-2 of the Labour Code of Ukraine. Thus, when working at home, employees are subject to the general working hours of the enterprise, institution and organisation, unless otherwise stipulated in the employment contract. When working remotely, employees allocate working hours at their personal discretion, and they are not subject to internal labour regulations, unless otherwise stipulated in the employment contract⁷. The authors of this study consider the provision on extending the general mode of operation of the enterprise to homeworkers doubtful: firstly, home work requires more freedom due to the specifics of the place of performance; secondly, compliance with this provision would be difficult to control; and thirdly, such a provision is not contained either in the Home Work Convention of the International Labor Organization No. 177 of June 20, 1996, or the provision on working conditions of homeworkers, approved by the Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Central Committee No. 275/17-99 “On Approval of the Regulations on Working Conditions of Homeworkers” of September 29, 1981, fourthly, Article 60 of the Labor Code of Ukraine currently stipulates that both remote and home work employees allocate working hours at their discretion, and they are not subject to internal labour regulations.

It is proposed to supplement Part 6 Article 60-1 of the Labour Code of Ukraine with a provision that the performance of home does not entail changes in rationing, remuneration, and does not affect the scope of labour rights of employees⁷.

1. Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Central Committee No. 275/17-99 “On Approval of the Regulations on Working Conditions of Homeworkers”. (1981, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0275400-81#Text>.

2. Home Work Convention of the International Labor Organization (No. 177). (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/993_327#Text.

3. *Ibidem*, 1996.

4. Home Work Convention of the International Labor Organization (No. 177). (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/993_327#Text.

5. Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Central Committee No. 275/17-99 “On Approval of the Regulations on Working Conditions of Homeworkers”. (1981, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0275400-81#Text>.

6. Draft Law of Ukraine No. 4051 “On Amendments to Certain Legislative Acts Concerning the Improvement of the Legal Regulation of Remote Work”. (2020, September). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69838

7. *Ibidem*, 2020.

The authors of this study believe that the corresponding provision should be stipulated in Article 60-2 of the Labour Code of Ukraine regarding remote work. An analysis of Parts 7 and 8 of Article 60-2 of the Labour Code of Ukraine proposed by Draft Law No. 4051 indicates that certain provisions are established for remote work, which are not stipulated for home work in Article 60-1 of the Labour Code of Ukraine. This is the stay of an employee who performs remote work via information and telecommunications with the employer, and the latter's obligation to provide the employee with means of work related to information and communication technologies that they use. In turn, Parts 7, 9, 11 and 12 of Article 60-1 of the Labour Code of Ukraine stipulate such provisions regarding home work, which are not included in Article 60-2 of the Labour Code of Ukraine. It is the duty of the employer:

- 1) to provide the employee with the means of production, materials, and tools necessary for performing home work;
- 2) to keep records of employees who carry out home work;
- 3) to allow home work only for those persons who have the necessary housing and living conditions, as well as practical skills or can be trained in these skills to perform certain work;
- 4) to examine the housing and living conditions of home workers with the participation of a trade union body, and in appropriate cases – with the participation of representatives of sanitary and fire supervision.

The above, along with the definitions of “remote work” and “home work”, indicates that the authors of the Draft Law No. 4051 interpret remote work mainly as a mental activity related to the provision of information services, the creation of software products, the collection and generalisation of information, etc., which is performed mainly with the help of computer equipment, telecommunications systems, and transmitted to the employer by information and telecommunications means. In their understanding, home work is manifested in the manufacture of products, provision of services, performance of work using a variety of equipment, tools, devices, etc.

In the scientific literature, it is noted that from the beginning, home work as a form of employment was focused mainly on pensioners, housewives, disabled people, and people engaged in folk crafts [24]. This is also confirmed by the content of the provisions of the regulation on working conditions for homeworkers, approved by Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Central Committee No. 275/17-99 “On Approval of the Regulations on Working Conditions of Homeworkers” of September 29, 1981. As B.A. Rymar notes, the regulation on working conditions of homeworkers of 1981 regulates the work of so-called conventional homeworkers – persons of low qualifications who perform mainly simple, manual work at home [25].

Over time, the development of technology gave an impetus to the modification of conventional ways of organising labour, as well as differentiated the categories of employees whose work was carried out outside the employer's premises. New opportunities provided by telecommunications technologies in the organisation of the labour process introduced a new term into practice – “telework”. In 1990, the International Labor Organization

proposed a definition of telework based on two features: the existence of a distance from the conventional workplace and the use of communication technologies [26]. Teleworking is a form of labour where: a) work is performed from a place remote from the central office or production areas, thus separating the employee from personal contacts with colleagues; b) new technologies make this separation possible with the help of appropriate communications [27].

In 2002, at the level of the European Union, Social Partners concluded a framework agreement on teleworking between the European Commission and European associations of trade unions and employers, which established working conditions and guarantees of the rights of employees engaged in teleworking [28]. The legislation of developed countries of the world currently promotes the introduction of teleworking. Thus, in a number of US states, there is a law “On Clean Air”, which provides significant tax benefits to enterprises that use teleworking, since their employees do not pollute the environment by coming to the office by car. In recent years, many large and medium-sized firms have displayed a tendency to decentralise management, when the firm is divided into several functionally independent divisions with their individual budgets, and a number of employees are transferred to work outside the main office. Such units can often use virtual or home offices. Especially characteristic is the growth of such offices for the United States, which has about half of all computing power on the planet. The rapid development and cheapness of telecommunications services, the availability of office equipment turn the housing of TV workers into a powerful and modern office. Many managers also periodically switch to teleworking mode and, for example, remotely manage their business during business trips or vacations [29].

Conventional home work on the manufacture of products, provision of services and performance of work by an employee at home on the appropriate equipment, with the help of tools, devices, etc. remains to this day and co-exists along with teleworking. In this regard, such home work and telework should be considered as varieties of remote work.

Thus, it is advisable to understand the remote work as the paid performance of labour duties by an employee as stipulated by law, including acts of social dialogue, local acts and an employment contract, outside the employer's premises in any place at the employee's choice, which does not entail any restrictions on the scope of his or her labour rights. It is precisely this approach to understanding remote work that should be provided for in a comprehensive regulation in the field of labour.

CONCLUSIONS

The constant introduction of amendments and additions to the Labour Code of Ukraine, which is still taking place today, is not productive, since neither its structure nor the content of its provisions correspond to the modern development of knowledge in the field of labour law, does not make provision for a number of important international and European norms in the field of labour, and does not make provision for high-quality regulation of labour and

related relations. At present, there is a need to develop and adopt a modern comprehensive regulation in the field of labour – the Labour Code of Ukraine, which should preserve time-tested guarantees of labour rights of employees, introduce provisions that meet modern requirements of international and European acts in the field of Labour and the development of the science of labour law.

In the Labour Code of Ukraine, it is advisable to make provision for a separate structural division (for example, a book) devoted to the specific features of regulating labour relations of certain categories of employees. Within the framework of such a subsection, it is necessary to make provision for a chapter entitled “Features of regulating labour relations of employees engaged in remote work”, and consolidate in its articles the definition of remote work, the features of concluding, amending, and terminating an employment contract on remote work, the features of working hours and rest times of employees engaged in remote work, the features of labour protection of employees engaged in remote work, guarantees of labour rights of employees engaged in remote work. These articles should also make provision for the specific features of home work and telework.

Remote work is the paid performance of labour duties by an employee as stipulated by law, including acts of social dialogue, local acts and an employment contract, outside the employer’s premises in any place at the employee’s choice, which does not entail any restrictions on the scope of his or her labour rights.

RECOMMENDATIONS

The study provides a thorough analysis of the terminology of remote work, provides the author’s definition of “remote work”, a research as conducted concerning the relevant provisions of the Home Work Convention of the International Labor Organization No. 177 of June 20, 1996, the Labour Code of Ukraine, the Law of Ukraine No. 540-IX “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)” of March 30, 2020, the Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Central Committee No. 275/17-99 “On Approval of the Regulations on Working Conditions of Homemaker” of September 29, 1981, a number of drafts of the Labour Code of Ukraine and the Draft Law of Ukraine No. 4051 “On Amendments to Certain Legislative Acts to Improve the Legal Regulation of Remote Work” of September 04, 2020, provided scientifically based conclusions and proposals for improving the legal regulation of remote work in Ukraine.

The provisions of the study are useful for: the science of labour law in further scientific developments of the problems of labour organisation; legislative activities in the development of the Labour Code of Ukraine; the educational process in the training of doctors of philosophy and doctors of sciences.

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