

По нашему мнению, для Республики Беларусь наиболее приемлемым является вариант внесения изменений в трудовое законодательство по примеру Российской Федерации. Очевидно, что существует определенная схожесть дистанционной работы с домашним трудом. Вместе с тем есть и существенные различия, которые не дают сторонам полноценно использовать возможности дистанционной работы. К таким различиям в первую очередь относятся: характер выполняемой работы (материальный и нематериальный), способ взаимодействия дистанционного работника и нанимателя, социальная направленность домашней работы и др.

Известно, что на практике, как правило, отношения, формально содержащие ряд признаков дистанционной работы (фриланс), регулируются в рамках гражданского права. На основе теоретических разработок ученых и законодательного опыта зарубежных стран полагаем, что можно вести речь о целесообразности трудового регулирования дистанционной работы в силу наличия признаков, характеризующих наемный труд и в этом случае.

Трудно делать футуристические прогнозы, однако можно с уверенностью утверждать, что трудовые отношения находятся на новой стадии развития. Очевидно, что вместе с изменением общественных отношений, должно развиваться и законодательство.

Дистанционная работа в Республике Беларусь это, если не существующая реальность, то очень близкое будущее. Поэтому, полагаем, что на основе законодательного опыта большинства развитых стран мира следует реализовать возможность правового регулирования дистанционной работы в рамках трудового права в Республике Беларусь.

Литература

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LEGAL REGULATION OF PRIVATE LAND WITHDRAWAL FOR PUBLIC USE

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The modern growth, expansion and development of cities, towns and villages often result in the need to establish, enlarge or improve public buildings, roads, parks and services. To achieve these goals public agencies may need to acquire private property. In this process the state is faced with a significant number of both legal and financial issues that require a solution, among them is legal regulation of land withdrawal to ensure the public interest in their use. Therefore, the most important issues should meet the needs of the state for the proper performance of its functions and observance with the constitutional

right to property through the implementation possibilities of eminent domain only for reasons of public needs.

During their existence and development most states have accumulated some experience in the process of managing the distribution and redistribution of land. There are certain norms in Belarusian legislation on this issue as well. For example, there are some provisions in articles 1, 60, 66 and 73 of Land Code of the Republic of Belarus. But the Belarusian legislation:

- does not include the definition of land withdrawal for the state needs;
- provides only the list of the state needs;
- defines the concept of land withdrawal as a set of legal actions and technical procedure of the termination of the rights to the land which has no clear interpretation;
- provides that the person, whose land is taken, can apply not only for obtaining the redemption price for the land, which is a private property, but in certain cases can also apply for receiving instead of withdrawn land of the other, equivalent site without being paid the redemption price for the withdrawn land.

In order to perfect the legislation and introduce new norms, it is necessary to do some comparison with the legislations of other countries. We did some research on legal regulation of land withdrawal in the USA. In the United States this issue is regulated by the Fifth Amendment to the Constitution which states that «nor shall private property be taken for public use without just compensation» [1]. To exercise the power of the eminent domain, the government must prove that the four elements set forth in the Fifth Amendment are present:

- 1) private property;
- 2) must be taken;
- 3) for public use;
- 4) with just compensation.

The first element requires that property taken be private. Private property includes land and other items, like buildings and other constructions.

The second element refers to taking of physical property or its portion, as well as taking of property by reducing its value. Property value may be reduced because of noise, accessibility problems and other reasons.

The third element states that the property taken be used to benefit the public rather than specific individuals.

The fourth element mandates that the amount of compensation awarded when property is seized or damaged through condemnation must be fair to the public as well as to the property owner. The amount of compensation should be measured by the owner's loss and the owner should be placed in as good a

financial position as he or she would have been in, had the property not been taken.

Whether a particular use is considered public is a question usually to be determined by courts. The court has to meet two burdens for eminent domain:

1) taking of the particular property at issue is «reasonably necessary» to achieve the city's public use;

2) taking is for «reasonably foreseeable needs».

To determine if property has been taken for public use, courts are first to determine whether the property is to be used by a broad segment of the general public, for example, building of trade centers, municipal centers, airport expansions, etc. However, if the legislature has made a declaration about a specific public use, the courts will defer to legislative intent.

Certain points of land withdrawal developed in the US jurisprudence, seem to be worth of attention and could be taken into consideration while developing the legal regulation of Belarusian legislation in this area.

One of the points is that in the USA the land taken for public purposes can be used by private owners. In the Belarusian legislation there is no clear interpretation of the definition of persons, to whom withdrawn land for state needs can be transmitted. To our mind it is necessary to fix a distinction between the land withdrawal for state needs and land withdrawal which is not connected with realization of the state needs but will be used to provide other legal and individual persons.

In the Republic of Belarus, to follow the proven experience of the USA, the regulation of public authorities' actions in land withdrawal for public use should be based on the state planning. The results of such planning should be available for public information in order that the exempted property owners could have a timely opportunity to make changes to the plans for their development and thus reduce the potential losses from such withdrawal.

The state planning of land withdrawal for public use should be conducted in the long-term perspective. Also, urban planning documentation should be considered by court in combination with other evidence when assessing the legality and validity of the decision on land taking for public use.

It is also necessary to mention that the local executive authorities must minimize the hardship that land withdrawal may entail, despite the fact that the landowners will receive equivalent compensation.

Thus, the legislative consolidation of the above mentioned provisions can play a favorable impact on raising the protection level of the rights of landowners and will help to balance the interests of the state and private persons.

Literature

1. Internet address: <http://constitutionus.com/>.