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REGULATORY CHALLENGES IN THE GIG ECONOMY

This text discusses regulatory challenges in the gig economy, addressing how the transformation of labor relations from traditional employment to gig-based work impacts workers' rights and social protections. This work also references various legal cases and regulatory approaches in different countries, highlighting the ongoing debate about the employment status of gig workers.

Keywords: *gig-economy, sharing economy, regulation, platform employment, freelance, remote work.*

One of the effects of the 4th industrial revolution in the social and labor sphere was a change in the forms of labor organization, the significance of which allows us to talk about a new level of their qualitative state – labor relations are changing [1].

Economic relations of labor, representing the performance of labor function for wages, are transformed into the provision of work and services on demand (work-on-demand). This trend in the field of labor and employment is characterized by the term "gig-economy". In this regard, theories of human beings as services are emerging in modern foreign scientific works [2].

The technical infrastructure of platforms leads to the emergence of gig-economy with a labor force "on demand". This concept was introduced by journalist T. Brown and defined as "atypical work consisting of free-floating projects, consultations and part-time employment". Compared to the "traditional" economy, the gig-economy is a flexible arrangement for workers and employers, which intricately combines a moderate degree of freedom and precise control of algorithms [3].

The increasing prevalence of such "new" forms of employment gives rise to a number of problems related both to the technical aspects of the legal organization of labor of people employed in these forms of employment, and to the protection of their labor rights.

This trend forms the transition of legal relations in this area from the field of regulation of labor law to the sphere of independent regulation at the intersection of regulation of civil and business law.

Technology changes the nature of people's work, giving impetus to the development of "free economy", in which organizations hire self-employed workers on short-term contracts.

Flexible working hours, on-demand work, digital platform as a labor intermediary – these attributes increasingly bring self-employment closer to entrepreneurship [2].

There is widespread information that digital platforms are increasingly capturing the labor market, attracting citizens by concluding civil law contracts with them or without a contract at all (as self-employed or individual entrepreneurs), shifting tax obligations and obligations on state social insurance (including pension, temporary disability benefits, etc.) to them.). As a result, gig-employed (platform workers) find themselves outside the scope of labor law, outside of the social and labor guarantees provided to employees by labor and social security legislation. Gig-employed are not only outside of individual, but also outside of collective labor law [4].

In the Republic of Belarus, workers performing remote work are subject to labor legislation and other legislative acts. In particular, their labor is regulated by the chapter 251 of the Labor Code "Peculiarities of regulation of labor of employees performing remote work".

In the traditional sense, remote work is considered as a modern form of continuation of ordinary labor relations. But at the same time, this way of organizing labor gives the worker an opportunity to perform additional work in his free time from the main work without the control of the main employer within the framework of gigonomics.

Since the balance between work and private life of workers changes, the labor and rest regime is established selectively: in fact, there are no restrictions on the length of the working day, restrictions on the work of certain categories of workers, including those employed in harmful and (or) dangerous working conditions, restrictions in terms of the duration of labor leave, etc.

The Law of the Republic of Belarus of June 23, 2008 No. 356-3 "On Labor Protection", unlike the Labor Code, has a more extensive interpretation of public relations in the field of labor protection, operating with the concepts of "employer" and "worker". In the Law of the Republic of Belarus "On Labor Protection" for the specified category of workers it is appropriate to consider how their labor protection should be carried out:

– limit participation in work that may be contraindicated to them for health reasons;
– define the procedure for training, briefing and testing the knowledge of workers on labor protection issues;
– propose a procedure for informing workers about the existing risk of health damage and the personal protective equipment available to them;
– establish rules for regulating the work and rest regime;
– stipulate the methods and criteria for participation in state social insurance and insurance of workers against accidents and occupational diseases.

It should be taken into account that it is difficult to control the compliance of freelancers with the legislation on labor protection in a permanent mode [1]. This is evidenced by the plethora of studies on issues including both conceptual and measurement problems related to the emergence of a "freelance economy" or "participatory economy". At the conceptual level, there are ongoing debates about whether activities on both capital and labor platforms should be considered as employment and what defines a digital platform [4].

Thus, the following problems can be identified that arise during this kind of activity:
– problems of social security: pensions and social guarantees;
– income instability, dependence on seasonality and level of competition, risks of hidden costs;
– problems with legal protection;
– loss or significant reduction of leadership qualities that make it possible to move up the career and career ladder;
– problems of work environment organization and time management [5].

Of course, customers also bear certain risks due to the following understatement.

The 1998 ILO Declaration on Fundamental Principles and Rights at Work enshrines that all employed persons have a full set of universal rights regardless of the form of employment. These universal rights include the right to social protection from birth to old age, as well as the right to continuing education due to possible limitations and disruptions caused by digitalization and algorithmization.

Meanwhile, persons working through platforms are effectively deprived of social guarantees due to the new form of employment and cannot enjoy these universal rights. The following characteristics of platform employment that distinguish it from classical labor relations are doctrinally mentioned: the absence of rigid subordination between the performer and the platform; the performer is not bound by a rigid schedule, but fulfills orders as they arrive; remuneration depends on the amount of work performed; and, finally, the work is performed with the tools of the worker himself, not the platform [3].

Thus, normative legal acts, including technical normative legal acts containing labor protection requirements, should take into account the peculiarities of regulated labor processes when it is possible to perform them by freelancers.

It is necessary to clearly define the boundaries of the sphere of social security, i.e. to decide how freelancers should receive medical care, participate in pension systems, including for those working in harmful and (or) dangerous working conditions, in insurance against accidents at work and occupational diseases. The need to regulate legal, organizational and financial issues of social security of freelancers is ripe in society. Many problems are related to their irregular income [1].

Let's consider the main signs of the ongoing changes in the economic foundations of the functioning of society, which also lead to remote work. To denote these processes, the corresponding concept of a rank economy has appeared, which provides for the effective use of existing assets.

Uber was one of the first companies to work according to the principles of the rank economy. Uber itself and other organizations working in a similar way (for example, BlaBlaCar) do not own a single car, but occupy a significant share in the transportation market [3].

The employment of taxi drivers through order aggregators or online platforms has become widely discussed in different countries, including the Republic of Belarus. After Internet aggregators entered the taxi market in the country the number of trips and the volume of the taxi transportation market increased drastically, taxi rides became much more affordable, and drivers' incomes decreased several times. Falling incomes, as well as difficult working conditions associated primarily with the forced extremely long duration of work, led to the fact that the protests of taxi drivers working through aggregators dramatically changed the sectoral structure of workers' protests in various countries by the end of 2020 [6].

In this regard, a legal analysis of the regulation of taxi drivers' work through Internet aggregators in foreign countries and an assessment of the prospects for modifying the relevant legal models in different countries seem very relevant.

Let's look at some examples of countries where problems with this online platform served as a basis for initiating legal proceedings.

In January 2019 The Paris Court of Appeal recognized as an employment contract a contract concluded between Uber and a driver who worked for the company for 2 years and completed 4 thousand trips, but was subsequently disconnected from the platform by the decision of Uber. The court motivated the decision by the fact that the employee was economically dependent and subordinate to the company, could not independently choose customers and set his own tariff [7]. Uber announced its intention to appeal the decision [8].

The Swiss Agency of Compulsory Labor Insurance, in connection with a request about the obligation of Uber-Switzerland to pay contributions for compulsory accident insurance, recognized Uber-Switzerland as an employer in the understanding of public law [9].

The Agency's arguments also boiled down to the fact that, based on the provisions of the contract with the driver, Uber exercises full control over the trip in the process of providing its services. Among the arguments indicating the presence of subordination, it was indicated that it was Uber that decided what information about the trip the driver and passenger received, set the price for each trip, requirements for the technical condition of the car, tracked the movement of drivers using a geolocation system, forbidding them to stop or take an additional passenger, acted on its own behalf, and not on behalf of the driver when ordering and paying for services, etc.

At the level of the European Union as a whole, on December 20, 2017, the European Court of Justice recognized Uber as a company that is a taxi service provider. Therefore, when analyzing the legal relations arising between drivers and Uber, the competent authority should be guided by 4 basic and 9 specific criteria for determining the nature of legal relations [10]. Uber drivers meet only 2 specific criteria: they have no influence on the company's procurement policy and work mainly for one customer. Moreover, Uber taxi drivers who own their own car and have a taxi license are not considered employees for social security purposes.

The courts did not investigate the following issues:

1) was the driver's decision to register as a professional income tax payer or an individual entrepreneur related to the requirements of the platform itself;

2) did the driver independently set the rules for the provision of transportation services and the tariff, or did the platform dictate the rules, and the driver was obliged to comply with them;

3) did the driver have the opportunity to negotiate with the passenger about the payment method or the form of payment, in fact, the passenger and the platform agreed;

4) was the driver obliged to personally fulfill the order or could he transfer the order to a third party without notifying the platform, as is typical for contract agreements;

5) what consequences did the driver expect in case of refusals to accept the order for a long time;

Meanwhile, from surveys of drivers, it can be concluded that positive answers to most of these questions, which can be described as arguments in favor of the existence of labor relations. During personal surveys, drivers of this company give the following information about their relationship with the platform:

1) a trip offer is automatically sent by the online platform always to one driver (and not offered to several drivers) who meets the criteria of the Yandex system (driver rating, car class, territorial proximity to the passenger);

2) the driver learns about the price of the trip from the application, without having information about the principles of tariff formation, and Yandex writes a check for the services rendered;

3) the driver has the right to refuse the order, but such actions reduce his rating, as a result of which the platform offers orders to the driver less often or disconnects him from orders. in order to maintain their rating, the driver must accept at least 90 % of orders;

4) the platform prohibits drivers from taking passengers without fixing the trip in the Yandex application, transferring the car or access to the account to third parties (that is, the driver must personally perform the trip);

5) the online platform fixes the maximum duration of the "shift" – 16 hours (!), after which the platform "takes a break" and does not provide the driver with orders;

The reviewed foreign and national experience of legal regulation of taxi drivers working through the Uber online platform in economically and socially developed countries shows that, firstly, these relations are currently the subject of acute debate between all parties involved. Secondly, the studied examples demonstrate that the lack of a clear framework for legal regulation of this area allows online platforms to carry out unfair competition with other transport companies and ignore the fundamental labor rights of drivers. Thirdly, there are serious arguments for recognizing the relationship between taxi drivers and online platforms as labor, which has already been implemented in a number of national legal systems.

***A survey conducted using Google Forms**, in which 26 people participated, sheds light on the problems of legal regulation of the sharing economy. Valuable information was obtained on how people understand the role of legal regulation in the sharing economy, how they assess the development of this concept in their country and what measures should be taken in the future.*

Most of the people who took part in this survey are between the ages of 18 and 25 (namely 80 %). Most of people are business professionals (44 %), less technology professionals (16 %) and education professionals (16 %), Service industry professionals (12 %), Manufacturing professionals (4 %), Healthcare professionals (4 %) and Public sector professionals (1 %). The majority of the respondents think that there are problems in the legal regulation of the gig economy (52 %). But it is important to note that almost the same percentage finds it difficult to answer this question (40 %). The overwhelming majority believe that protection of workers' rights and safety in the gig economy, determining the status of workers in the gig economy, labor rehabilitation and social guarantees in the gig economy require special attention in the gig economy (namely 76 %). Violation of labor rights and exploitation of workers, unfair wages and lack of social guarantees are the main problems that arise due to insufficient attention to the legal regulation of this sphere according to people (80%). The introduction of new laws and regulations regulating the economy of concerts is the main solution to this problem according to those who voted (80%), as well as the establishment of minimum wage standards and social guarantees for gig economy workers and the development of support and training programs for gig economy workers (56 %). The state should find a balance between regulation and freedom of activity in the gig economy – the opinion of the overwhelming majority (84 %). When asked which bodies or institutions should be responsible for the legal regulation of the gig economy, they mostly answered that the gig economy platforms together with the government (80 %). Opinions were divided when answering the question of what advantages or opportunities an effective legal regulation of the gig economy can bring, but the dominant positions remained behind these answers - protecting the rights and ensuring the safety of workers (56%), increasing the trust and attractiveness of the gig economy for workers and consumers (48 %) and improving working conditions and social guarantees for employees (40 %). To the question of how people evaluate legal regulation in our country, the leading position is difficult to answer (36 %), also the answer is that the average (28 %). There were several responses to the proposal to propose one measure that everyone would individually introduce. The answers are as follows - the introduction of regulations regulating this field of activity, the change would be associated with the provision of guarantees for both the entrepreneur and the customer, Remuneration not only for the result, but also for the time of work.

Based on the information provided, several conclusions can be drawn about the necessary measures to improve the legal regulation of the gig economy:

It is important that the majority of respondents believe that the state should find a balance between regulation and freedom of activity in the gig economy. This means that it is necessary to develop flexible rules and regulations that will ensure the protection of workers, but will not limit the opportunities of entrepreneurs and gig economy platforms too much.

In general, in order to improve the legal regulation of the gig economy, laws and regulations should be developed that will ensure the protection of workers' rights, establish clear standards of remuneration and social guarantees, and balance the interests of entrepreneurs and employees. Cooperation and dialogue between the gig economy platforms and the government will also be important factors for achieving effective legal regulation of the gig economy.

In conclusion the socio-economic model focused on the accelerated growth of non-standard forms of employment is characterized by new types of part-time employment and short-term employment contracts at the expense of replacing long-term employment relationships with the employer. The information revolution of our time dictates the need to develop new, more flexible, universal and broad approaches to the definition of labor legal relations, allowing involving a much wider range of workers, including those who currently cannot be recognized as employees, in the sphere of protection through the norms of labor law.

In order to optimally regulate evolving industrial relations, socially acceptable employment models must be defined; the need to balance flexibility and protection must be taken into account; the characteristics of non-standard labor relations must be legislated; instruments for ensuring social guarantees for standard employment must be developed and social guarantees for non-standard employment must be established. As a result, conditions should be created to support competition between standard and non-standard employment models.

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