

ATYPICAL EMPLOYMENT CONTRACTS: BETWEEN FLEXIBILITY OF THE LABOR MARKET AND THE PROTECTION OF WORKERS' RIGHTS

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ABSTRACT

In article are considered issues of legal regulation of atypical employment forms in the key of Flexicurity conception. Authors analyze positions of Russian and foreign (P. Blanpain, M. Weiss, W. Daubler, M. Freedland, N. Kountouris) researchers by issued of determination of traditional employment and also of atypical forms of employment. The latter is related to individualization and differentiation in legal regulation of labor relations, atypical employment agreements. Particular attention is paid to classification of atypical employment agreements. Positive and negative expressions of atypical employment forms are distinguished. Authors had made an effort of determination of legal limits of flexible employment in conditions of labor market instability. Such limits should become, first of all, international principles (prohibition of discrimination in labor relations, prohibition of forced labor etc,) and international standards of labor rights, and also the established by law minimum level of labor rights and guarantees (national standards of labor rights). A conclusion is made that the use of flexible forms of employment should be directed at provision of decent work for everyone. In regard on atypical employment the ILO Program "Decent labor" should serve as generally acknowledged standard.

Keywords: *atypical employment agreements, atypical employment, Flexicurity, labor relations, decent labor*

INTRODUCTION

The need of amplification of flexibility of state-legal regulation of labor market is considered by many researchers within last decades as imperative, caused by objective requirements of contemporary innovative economic. The initial is the accordance to three major markets providing functioning of market economic: capital, goods and labor. Mobility of capital and goods markets in conditions of globalization and fast development of technologies is practically unlimited. In this connection the labor, employees eventually, have to adapt for these changes, i.e. to be flexible (mobile). On ability of contemporary labor law to acquire the necessary flexibility depends, to significant degree, its survival as necessary and important for society social institute.

In such conditions the special significance is acquired by atypical (flexible) labor agreements, whose

growth of number and increase of role is noted by practically all authors analyzing tendencies of development of contemporary labor law. So, rather consequentially this tendency was noted in articles of authors of collection "Labour Law in the Post-industrial Era" (Aldershot, 1994) [1], prepared by leading European specialists on labor law. To similar conclusions came scientists - authors of bulky edition "The idea of Labour Law" (Oxford, 2011) [2]. In similar key was writing participants of other resonant collections, for example, "Labor market in XXI century: in search for flexibility and protection" (Vilnyus, 2011). In Russian science of labor law the first one who wrote in this aspect about flexible labor agreements was I.Ya, Kiselev [3]. This problematic in their previous researches was touched by authors of this article too [4, 5, 6, 7].

The significance of atypical (flexible) labor agreements predetermines the need of their further study and stipulates the *objective* of this work. Realization of stated objective is achieved via analysis of law construction of labor agreement in the key of major tendencies of labor laws development in post-industrial era.

METHODS

Historical-legal method of research was applied at analysis of labor relation evolution from traditional forms to atypical (flexible) employment.

Sociological method was applied at research of expressions of flexible labor relations in contemporary society, and also at detection of positive and negative results of growth of number of atypical labor agreements.

Comparative-legal method of research allowed to compare the degree of flexibility of labor relations and their legal regulation in different countries and to select models of flexibility models on this basis.

Application of formal-law method of research allowed to separate types of atypical labor agreements and limits of their flexibility.

DISCUSSION

In scientific literature under traditional employment (on basis of typical labor agreements) is usually understood the employment by hiring: 1) in regime of full working day, 2) on basis of term-less labor agreement, 3) on stationary work place under direct management and control of employer. The stated model existed in more or less manner up to 1970s, when mass spread began to be received atypical (flexible) forms of employment, deviating from described standard.

Sociologists and economists understand under flexibility of labor relations the following: a) flexibility of hired employees, i.e, their readiness to change of profession, "life-long learning", to autonomous labor activity and acceptance of independent decisions, to intellectualization and informatization of labor (adaptivity); b) flexibility of salary (its individualization in labor agreements and bit its setting in tariff agreement or by state pricing); c) labor flexibility, i.e. readiness to change the place of work once in several years, including the readiness to move into other location for work, spreading of term labor agreements (mobility); d) time flexibility (growth of number of working places with partial or unregulated working day, with "flexible" schedule of working hours, with shift works, with necessity to work in weekends and holiday days, overtime works etc.).

From the point of view all this falls into frames of individualization and, partially, differentiation of labor relations. In the first case is involved the mechanism of agreement individualization of labor condition namely at the level of individual labor agreements. In the second case is involved the mechanism of

differentiation of legal regulation of labor relations, including statutory legal acts on labor, local statutory acts and statutory conditions of collective agreements, establishing peculiarities of legal regulation of atypical forms of employment. This allows to consider flexibility of labor relations at two levels, i.e. regulation in agreement procedure and regulation in statutory procedure.

On basis of combination of differentiation and individualization can be separated 3 models of labor relations flexibility. 1) individual flexibility, where the basis are individual relations between employee and employer (Great Britain, Ireland); 2) flexibility where an important role in regulation of atypical labor relations belongs to state (France, Spain, Finland; Russia gravitates toward this model too); 3) agreement flexibility, where the leading role is played by collective contracts and agreements (Denmark, Germany, Netherlands).

atypical (flexible) labor relations are mediated by atypical (flexible) labor agreements that can be divided into two types:

1) traditional atypical labor agreements that were legalized already at the beginning of the second half of XX century.

2) non-traditional atypical (flexible) labor agreements emerged mostly in the last quarter of previous century.

To the first, traditional ones, can be related: 1) agreements on temporary employment - these are term labor agreements [8]; 2) agreements on partial employment - these are agreements for not-full (shortened) working time (on not-full working day and (or) working week) [9]; 3) agreements on flexible working time [10] - these are agreement on work with flexible schedule of working time; agreements on work with summary account of working time (including annual working hours). To the second, non-tradition ones. are related: 1) agreements on labor beyond the major office, including with remote employees (computer home-workers. teleworkers) [11]. We should note that labor agreements with traditional home-workers rather belong to the first group, but their meaning had significantly reduced; 2) agreements on borrowed labor (in Russian version - on provision of employees (personnel)); 3) agreements on working places division [12] 4) agreement on work by call.

It is obvious that innovative economic anticipates the extension of atypical (flexible) labor agreements application. Furthermore, universality of labor law based on unity of natural-legal and positivist origins allows to spread this institute on other spheres of professional labor activity application that are different from traditional hired labor (labor of professional sportsmen; labor of state civil and municipal servicemen; labor of persons undergoing alternate civil service, attorneys, policemen etc.). In fact we can state the general tendency of extension of labor law standards action sphere extension in order of social protection of law rights of these categories of employees.

But atypical employment can have both positive and negative consequences. First are connected to objective reasons of atypical employment growth. They can be divided into two groups. First, this is the objective need of separate categories of employees in job positioning, for whom a full employment is complicated or undesirable due to some reasons (elder employees, lone mothers, parents with many children, unemployed youth without professional skills, persons freed from detention facilities, invalids, persons combinint work with study etc.) atypical employment allows workers to combine work by hire with performance of family duties, participation in social life, support of health, study etc. Second, the atypical employment is dictated by objective need of the market in mobile labor force, caused by globalization, decentralization and specialization of production and also by emergence of new technologies. Employment of specialists in field of information technologies had a flexible nature by

definition.

Negative consequences of atypical employment spreading are associated, first of all, with absence or reduction of social protection, warranties of employees' labor rights, with absence of perspective of professional development. because the employer is not interested to invest funds in increasing of employee's professional qualification. To social costs of non-standards forms of employment can also be related the limitations in access to receiving of social payments and services (pension, medicine service, payment for days of illness etc.).

Modern sociologists and philosophers see as negative expression of atypical employment also the formation of new class, along with proletariat that is called precariat. Its major feature is the unstable condition ("cutdown status"), incomplete of temporary employment, not related to presence of traditional labor agreement [13]. In this category falls, first of all, migrants and refugees, yous starting the labor activity, persons of elder age, persons, freed from detention facilities, trainees etc. It's not a coincidence that atypical employment more and more often is called unstable, even in statutory acts. This gave the grounding for British scientists-laborers M. Fridland and N. Kaunturis to change the traditional "binary system" of relations on labor. It was reduced to labor and civil-legal relations or, as variant, dependent and independent relations. They proposed to separate three types of relations:

1) protected relations on labor, where the working person uses the maximum amount of rights and is substantially protected from negative, destabilizing impact of market. By sense this employment is mediated by typical labor agreements.

2) autonomous relations on labor, where the working person did not received any substantial warranties from employer. In this case it appears that civil-legal agreements are meant.

3) unstable relation on labor, comprising elements of both relations groups [14].

CONCLUSIONS

Increase of labor agreements' flexibility is the general tendency for majority of countries, because is considered as one of the major measures directed at support of innovation economic.

But flexible labor agreements, mediating the atypical employment can had their "pluses" and "minuses". Positive moments are stipulated by a certain degree of stability of atypical labor relations and equality of employees rights in traditional and non-traditional sectors of employment. A new concept emerged, the principle of *Flexicurity* "flexi-reliability (flexi-stability)" that suggests organic unity of two origins in legal regulation of labor relations: flexibility and security (protection, stability).

Negative consequences are related to reduction of professional level of employees, worsening of their physical and moral condition due to terminal nature of their demand, weakening of professional connections and extension of abilities for evasion of labor legislation standards. More and more attention is emphasized on interests of consumers and not on interests of employees; on the latter social labor costs start to be transferred.

The stated leads to the conclusion that deregulations by separate issues should be accompanied by amplification of regulation in other spheres, such as prohibition of discrimination in labor relations, regulation of labor of persons working at dangerous productions, protection of personal data of employee etc. [15]. Amplification of flexibility in regulation of labor relations brings into order of business the issue of atypicality (flexibility) limits, as which should act, first of all, 1) generally accepted standards and principles of international labor law, and also 2) branch principles (prohibition of discrimination in labor

relations, prohibition of forced labor etc.), 3) established by low minimal level of labor rights and warranties (national standards of labor rights).

SUMMARY

In acts of International labor organization (ILO) is noted the need of combination of warranties if employees protection and simultaneous flexibility for enterprises, stability of labor relations and mobility of labor resources. Flexible forms of employment should first of all provide everyone with decent work, and in this connection in relation to atypical employment as generally acknowledged international standard should serve the ILO Program "Decent Labor" [16] that included the conception of "social security" as its necessary constituent. And labor rights should become the determining factors of man's self-realization, his personal development.

ACKNOWLEDGEMENTS

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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