Precarization as a form of negative impact of digital transformation on the system of labor rights realization

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Abstract. The processes of precarization actively developing at the present time are examined in this article. Precarization is considered to be the process of increasing the importance of atypical employment forms, accompanied by a decrease in the level of realization of labor rights and social protection of workers. The particular attention is paid to the problems of strengthening the precarization processes in the context of the development of various forms of labor activity organization based on the use of digital technologies. The most striking manifestation of the regulation lack of labor rights and, as a result, the development of precarization processes is manifested in relation to those categories of workers who offer their services to the consumer through “online platforms”. In this way, the article substantiates the need to separate these employees into a separate category and, as a result, the implementation of legal regulation of their rights and obligations, as well as the peculiarities of interaction with employers. At the same time, this article states the necessity of ensuring the adaptive orientation of the development of legal regulation systems of labor relations, which should be a barrier to the development of precarization processes in the context of the digital transformation of the entire socio-economic system.

1. Introduction

The use of various forms of atypical employment, which is increasingly widespread nowadays, largely provokes a transition from regulated labor employee-employer relations (which also provide for the presence of a fixed set of social guarantees) to rather short-term ones, not always formalized in accordance with labor legislation and, as a result, significantly reducing the level of the social employee protection. Such a trend is called the precarization of labor relations, and its consequence is the immersion of a significant part of the workers involved in such forms of labor relations in a rather unstable and vulnerable material, social and psychological state.

Speaking about the origins of this socio-economic and legal problem, it should be noted that precarization began to manifest itself in the 1970s, when discussions about the search for the formation directions of the organization of labor relations and their legal regulation were actualized in market-oriented states. In this context, the expediency of focusing on the

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so-called “flexible” contractual relations between the employee and the employer was stated. One of the aspects of this process was to reduce the protective function of the system of legal regulation of labor relations. At the same time, as K. Engels quite rightly notes, it was a very difficult problem to establish an adequate balance between the level of flexibility in the regulation of labor relations and the degree of protection of labor rights of workers [1]. That is why the “flexible” regulation of labor relations in many cases is a deregulation of mechanisms for ensuring the implementation of labor rights of employees. It is focused on the maximum possible reduction in the costs of the employer, and sometimes the state, on the ensuring their social protection. In particular, it is also manifested in the forms of concluding civil law agreements instead of employment contracts (especially in the implementation of outsourcing schemes), mass transfer of employees to part-time work, temporary employment, etc.

Therefore, G. Standing notes that among the basic rights of an employee threatened by precarization processes should include the availability of an adequate opportunity to generate income, guarantees of maintaining their jobs, protection from illegal dismissal, the possibility of improving their qualifications, a guarantee of a stable income and a social package, as well as the ability to express their opinions [2]. At the same time, Zh.T. Toshchenko, points to their alienation both from the results of their work and from society as a whole as one of the key characteristics of workers exposed to precarization processes [3].

Considering the essential content of this concept, we note that T.A. Kamarova defines precarization as a movement towards the transition from the dominance of the standard form of employment, which, first of all, is characterized by the presence of permanent labor relations and guaranteed working conditions, to the decisive role of precarious forms of employment, implying a radical change in the standards of working conditions [4].

At the same time, at present, one of the most important catalysts for strengthening the problem of precarization is the active development of forms of labor activity organization based on its implementation with the help of information and communication technologies (so-called “remote employment” or “telework”), on the one hand, and based on the use of mechanisms ensuring the implementation of labor functions using the “online platforms”, on the other hand. This particular article shows the analysis of various aspects of this problem.

2. Materials and methods

This particular study was focused on the analysis of the impact of the formation development of qualitatively new types of non-standard employment on the parameters deterioration for the implementation of labor rights. It was carried out on the basis of familiarization with a significant array of scientific works of Russian and foreign representatives of legal and economic thought dealing with this issue.

In this regard, the objectives of the study were to analyze the essential content of the concept of “precarization”, to study trends in the expansion of precarization processes in the context of the widespread development of digital technologies, to identify problems in the implementation of labor rights of workers in such conditions, as well as to determine the directions for improving the legal regulation of labor relations within the framework of atypical forms of employment.

In this context, the authors of this study formed an analysis of the points of view expressed both in Russian and foreign academic literature on the development of precarization processes under the influence of digital transformation, an analysis of the dangers that they pose both from a socio-economic and legal point of view, as well as the directions of their leveling.
In addition, the considerable attention was paid to the analysis of the legal framework of the Russian Federation, the United States of America, the states of the European Community and the Commonwealth of Independent States, which regulates the implementation of the citizens’ labor rights whose professional activities are directly related to the use of information and communication technologies in its process.

3. Results

The main factors contributing to the development of precarization processes are the development of atypical forms of employment and the corresponding labor relations, which are characterized by the absence of a full-fledged indefinite employment contract, a stable regime of work and rest, standardized working conditions, as well as a workplace located at the employer’s enterprise.

These characteristics distinguish the similar form of organization of labor activity, so-called as “remote employment” or “telework” in many foreign countries. In particular, in the framework agreement adopted in 2002 at the level of the European Union, telework was defined as a form of performance of official duties on the basis of an employment contract (contract), involving the implementation of work activities on a regular basis, which can be performed on the premises of the employer, outside this premises using computer technologies [5]. As a follow-up to this framework agreement, many European states have adopted normative legal acts that implement the main provisions contained therein in relation to the level of national legislation. Therefore, considerable attention is paid to the regulation of remote work, as well as the postulation of the employer’s obligations in relation to employees operating in this format.

Undoubtedly, the organization of labor activity based on the use of digital technologies provides the possibility of its implementation outside of territorial binding to one’s workplace and subordination to rigidly defined time frames of the labor regime, to determine its orientation and the circle of contractors. However, on the other hand, such activities are characterized by instability of income from its implementation, which often occurs in irregular working day mode. In addition, the relationship between an employee engaged in such activities and an employer is very often not regulated by any official documents.

That is why one of the most important problems generated within the labor sphere by the processes of constant development of digital technologies, many experts consider the need to ensure social guarantees for employees, which, as already noted, are to some extent reduced due to the development of qualitatively new forms of employment [6].

The development of the domestic legislative framework in the field of regulating the labor rights of workers engaged in remote work, the origins of which were laid in 2013, was due to extraordinary circumstances caused by the COVID-19 coronavirus pandemic, which forced the absolute majority of enterprises and organizations to transfer their employees to a work regime involving its implementation outside the enterprise or organization using digital technologies.

According to N.V. Manokhina and N.V. Mityaeva, the consequences of the precarization processes are a fairly wide range of negative manifestations related to the regulation of the relationship between the employer and the employee, in particular, they are expressed in the following points:

- the employer has the opportunity on the basis of his own desire to terminate employment relations with the employee;
- dissemination of the practice of carrying out labor activities without concluding an employment contract with an employer;
– institutionalization of types of employment, for which one of the distinctive characteristics is the restriction, and sometimes the absence of the most important social guarantees;

– the spread of various forms of borrowed labor, involving the recruitment of employees solely to meet the needs of customers for the services of these employees [7].

At the same time, the legislation of many European states pays significant attention to the problems of ensuring not only labor rights, but also social guarantees of workers who carry out their work remotely.

Thus, in French legislation there is an indication of the need to ensure the rest of an employee engaged in remote work, providing for the blocking of electronic communication channels used by him in the course of his work during this time period. In Germany, the text of the Declaration on the Mental Health of Employees provides for a restriction on sending electronic correspondence to persons engaged in remote work on weekends [8]. In turn, Romanian legislation gives the labor inspection bodies the right to monitor the working conditions of persons engaged in telework, and establishes penalties against those employers who violate their obligations to ensure compliance with the labor rights of these persons [9]. Within the framework of domestic legislation, there is also a set of important provisions regulating various aspects of this issue, in particular, in the context of such aspects as compliance with the working regime of employees who carry out their activities in a remote format, and ensuring its protection.

However, with all the positive aspects that characterize the attention of legislators of many countries of the world to the problem of ensuring the labor rights of workers engaged in remote work, it should be noted that there are problematic moments in the system of forming new approaches to the regulation of these rights that hinder the development of precarization processes. In particular, the most striking manifestation of the lack of regulation of labor rights is manifested in relation to those categories of workers who offer their services to the consumer through the mechanisms of the so-called “online platforms”.

4. Discussion

The processes of precarization are characterized, on the one hand, by an independent exit, and on the other hand, by the withdrawal of employees initiated by the employer outside the existing legal field. One of the typical manifestations of this practice is the activities of employees in the framework of the so-called “online platforms”, which are virtually unregulated by law, which has become a fairly widespread phenomenon, referred to as “uberization” in accordance with the name of one of the most popular such platforms.

As part of this form of activity, with the help of an online platform, customers (customers of certain services) are given the opportunity to contact a fairly wide range of performers of these services unknown to them, providing them on a paid basis [10]. At the same time, according to studies conducted by the International Labor Organization, two-thirds of workers who work through the mechanism of “online platforms” receive the income below the median level, while performing a certain additional amount of work that remains unpaid [11]. Such circumstances allow the authors of this study to state the development of precarization processes within the framework of such labor activity.

Therefore, O.V. Chesalina points to the significant distinctive features of the nature of labor relations implemented in the implementation of the activities of employees using online platforms, which make it impossible to apply unified legal norms in their regulation.

At the same time, she considers it necessary to apply the norms fixed in the Chapters 49.1 and 53.1 of the Labor Code of the Russian Federation [12] to the regulation of the activities of employees who carry out their labor activities through the use of the online platform model. In turn, E.A. Chernykh notes the legal debatability of classifying employees
operating in a similar format as employees, self-employed, or separating them into a separate category, which takes place in a number of foreign countries [13].

The above-mentioned information determines the importance and relevance of the legal regulation of the problem associated with the need to provide employees in various fields of activity who provide services to consumers by means of using online platforms, the whole range of social and labor rights and guarantees provided for by the Russian legislation.

It should be noted that, despite the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 15 dated May 29, 2018, which determines the need in the process of making court decisions to proceed from the actual existence of labor relations, and not their formalized expression in documentary form, judicial practice indicates that the courts are repelled precisely from the fact that there are no formal signs of these relations. At the same time, online platforms, as a rule, position themselves as intermediaries offering information services, although legal scholars reasonably identify a set of characteristic features that allow us to talk about the performance of these platforms as an employer [14]. It is important to note that, for example, the issue of the nature of the relationship between Uber and drivers providing transportation services using this online platform has been the subject of litigation in France, Belgium, the United States and a number of other states, and has also been considered at the EU level [10].

At the same time, in foreign legal practice, the regulation of various aspects of employment using the mechanism of online platforms is developing either by extending the provisions of labor legislation to persons providing services to consumers using this mechanism (Germany, Sweden), or by forming judicial precedents that qualify the relationship between the aggregator and the person providing these services as labor (USA) [15]. In any of these cases, as L.V. Zaitseva quite rightly notes, there is an expansion of the scope of labor law [16].

All of the above-mentioned data, in the authors’ opinion, determines the fundamental need to separate employees who work through the mechanism of “online platforms” into a separate category and, as a result, the implementation of legal regulation of their rights and obligations, as well as the specifics of interaction with employers.

At the same time, it can be stated that there are significant legal features of relations related to ensuring the implementation of the labor rights of citizens who carry out their activities based on the use of modern digital technologies in general and with the help of “online platforms” in particular. Such a situation determines the need for both employees and employers to possess a set of certain rights and obligations, differing in certain specifics regarding the rights and obligations established in relation to the parties to labor relations, implemented in the traditional format, which determines the directions for improving the system of legal regulation of these relations.

5. Conclusion

Summing up the analysis results, it should be stated that the processes of digital transformation have a very significant impact on the legal implementation system of the labor citizens’ rights in modern conditions; in particular, it significantly expands the range of problematic issues that are still insufficiently the subject of this regulation. That is why the most important characteristic of the regulation system of labor relations should be such a quality as a high degree of adaptability to the constant emergence of new and transformation of traditional forms of employment.

It is this adaptive orientation of legal regulation systems that should be a barrier to the development of precarization processes both in general on the scale of the country’s labor sphere and in the most vivid expression in relation to the sectors most exposed to the risks of its manifestation (such risks are associated with the development of atypical
employment), including due to the ever-increasing role of digital technologies as a tool for ensuring the implementation of labor relations.

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