

U.D.C. 349.22

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LEGAL NATURE OF EMPLOYMENT CONTRACT IN THE MARKET ECONOMY

Summary

This article examines the legal nature of the employment contract in the modern social and economic conditions. It analyzes the differences of the employment contract against civil-law agreements.

Key words: employment contract, civil contract labor, legal nature of the employment contract.

Formulation of the problem. Changes in the structure of the labor market and in work organization lead to changes in forms of work both within and outside the scope of employment. One of the consequences of changes in the structure of the labor market, labor and inefficient application of the legislation, is to spread the category of workers who actually have employees, but denied protection under labor relations by concluding civil contracts related to work (contract award, contract assignments, etc ..). In such circumstances, it remains questionable distinction of the employment

contract of civil-legal agreements on labor, as the literature suggests that in a market economy the employment contract actually replaced civil law contract labor.

Analysis of recent research and publications. Problems employment contract has always been the focus of scientists. Theoretical and practical issues of legal regulation of the employment contract in his works explore the representatives of science of labor law: N.B. Bolotin, E.M. Bondarenko, Yu. Baranyuk, V.S. Venediktov, L.P. Garashchenko, S.Y. Golovin, K.N. Husov, O.V. Danyluk, S.V. Drizhchanyy, V.V. Ershov, O.O. Ershova, V.V. Zhernakov, M.I. Inshyn, I.J. Kiselev, V.V. Lazor, L.I. Lazor, V.M. Lebedev, A.M. Lushnikov, N.V. Lushnikova, I.P. Lavrinchuk, O.V. Makogon, O.M. Mogilnuy, S.P. Mavrin, P.D. Pylypenko, S.M. Prylypko, V.I. Prokopenko, O.I. Protsevskyy, V.G. Rotan, B.A. Rymar, S.O. Silchenko, O.V. Smirnov, M. Stadnyk, V.M. Tolkunova, G.I. Chanysheva, E.B. Khokhlov, N.M. Khutoryan, O.N. Khutoryan and others.

The purpose of this article is to determine the legal nature of the employment contract in the current socio-economic conditions and its correlation with related civil contracts on labor.

Presenting main material. International Labour Organization (ILO more) pays great attention to the definition of the scope of employment. The ILO recognizes that concept of employment is equally present in all legal systems and traditions, but the obligations, rights and benefits related to labor relations, vary from country to country.

ILO encourages Member States to provide a clear definition of the conditions applied to establish the existence of an employment relationship, such as such as liability to or dependence.

ILO notes that in the interests of all parties involved in the functioning of the labor market, to ensure that all arrangements and a wide variety of conditions in which employees perform their work or provide services that were delivered to the appropriate legal framework. For many countries this is a difficult task because of one of the following factors or their combination:

- Vaguely worded legislation, its scope is too limited, or it has other weak points;

- Labor relations hidden in the form of civil or commercial arrangements;

- Labor relations are uncertain;

- The worker is in fact an employee, but it is unclear who is his employer, what rights the worker has and who is legally obliged to enforce these rights;

- Did not ensure compliance and law enforcement.

However, the ILO specifies that the employment hidden harms the interests of workers and employers and an abuse that is contrary to decent work and should not take place. In this regard, governments, employers and workers should take active steps to prevent this practice, wherever it took place.

ILO calls attention to the need for clear wording of the legislation, its scope. The legislation and its interpretation should be consistent with decent work - namely quantitative promote growth and improve the quality of employment, they should be flexible enough to not obstruct the emergence of new forms of decent employment, and promote such employment and growth. Legal and other regulations must be sufficiently clear and precise to offer predictable results, but at the same time to avoid creating rigid structures and interference in purely commercial or purely independent contractor relationship.

The problem of separating the employment contract of civil law related legal actions, especially the contract award, has acquired urgency in the 20's. Last century. Most authors isolated the differences on two groups of grounds: legal and economic.

Some researchers consider the employment agreement as a kind of civil law on the basis of similarity of these agreements. Thus, we speculate that in the future the employment contract is transformed into a kind of civil contract when all labor relations are governed by civil law, which together will form a corresponding structural element of civil law, its institution [1, p.78].

The employment contract is endowed with civil legal properties. Thus, the legal definition of employment contract implies that it is always a two-way and mutual

(Article 21 of the Labor Code). His party is the employer and employee related mutual rights and obligations. Regarding oplatnosti or chargeless, the employee performance features resulting from the employment contract, from the perspective of civil law is its provision of material employer, which entails mandatory counter-property provision by the employer to the employee in the form of payment of wages for work performed, manufactured products worked or working hours.

Through these and other similar traits studied treaties, there has been a substitution of labor relations civil-law that not only zaschemlyaye worker rights, and may cause adverse consequences for the employer.

Analysis of the current legislation reveals the following differences of labor and civil contracts. The subject of the employment contract is the fulfillment of certain employee determined by agreement work function. The employee agrees to perform certain job or hold a position in the organization, and the employer shall ensure that its work to provide the means of production, equipment, machinery, etc., to give specific problem. The employer has the right to instruct the employee to perform any tasks within the work resulting from the employment contract. At the same time the subject of civil contract labor is labor embodied product or to a single character. That is the subject of this contract is the final result of work (building construction, prepared accounting, etc.).

The employment contract is usually for an indefinite period and terminated only on grounds prescribed by law. Fixed-term employment contract may be awarded only in cases stipulated by law (Article 23 of the Labor Code). These rules also turns focus of labor laws to protect the employee. Civil legal agreements concluded work on the implementation of specific and limited work done (services, products).

The specificity of the subject and determines the effect of contracts that are considered, in time: a civil contract terminated after the parties assumed obligations, the employment contract is continued, ie, as a general rule, the parties of their responsibilities in relation to each other does not terminate the contract.

Since the subject of the employment contract is the realization of a person's ability to work, it is clear that this property of the employment contract can be realized only by the man himself, and to entrust the realization of their own ability to work to another person a man can not. Hence, on the side of the worker in the employment contract has always advocated a living human person, an individual who personally sells it actually inherent ability to work, and a full range of related fact of rights and obligations. On the contrary, the parties to a civil contract can act as physical and legal entities.

There are differences in the manner conclusion, modification and termination of civil law and labor contracts. Conclusion, modification and termination regulated in detail by labor laws. With certain categories of persons the employer must conclude an employment contract. Termination of employment is on the grounds and in the manner prescribed by law. Civil contracts concluded by agreement of the parties, subject to the principles of voluntariness and equality and terminate on the grounds defined by civil law.

An employee concluding an employment contract included in the state organization and must be subject to internal regulations, approved in a particular enterprise or to carry out orders of the employer - physical person. Labor relations are governed by legal regulations of different levels - from central to local. Failure of such rules is considered as violation of labor discipline, for which an employee may be disciplined. In labor relations the employer has disciplinary authority on employee until release. For violation of employment duties, which resulted in causing material damage to the employer, the latter is entitled to bring an employee to liability and own damage charge in the amount of average monthly earnings of the employee. In civil matters the employer has no disciplinary authority in respect of the employee. In the case of causing property damage penalty carried by the courts.

During the work the employee is required to perform a certain extent work in a part-time - labor standards, observe the rules of labor protection and industrial safety. In carrying civilian labor contracts valuation work is absent, the process of labor is not regulated by law and carried out independently by the person on your own.

Labor laws set standards and guarantees in pay, terms of payment of wages, indexation rules, wage compensation in case of delay of payment. Law "On labor" provides two areas of regulation of wages - the scope and sphere of public contract regulations. In a civil contract wage (scope of work) is set by agreement.

There are agreements between the studied differences in risk sharing lost, damaged products, without fault of the employee who is on labor law by the employer. Under civil law contract this risk lies with the employee.

For an employee who works under an employment contract, subject to the guarantees and benefits provided by labor legislation. The employer pays premiums to social insurance funds for salaried employees (the Pension Fund of Ukraine and social insurance funds). In civil contracts, the employer also bears the costs for social security contributions, but it fulfills its obligation to respect all of society, not employees of a particular company, financing social funds from which payments are made on the basis of the solidarity principle.

Different ways of protecting human and civil rights and interests. An individual as a subject of civil relationships can turn to the labor disputes commission to resolve individual labor dispute may not participate in the strike.

It noted that the draft Labour Code of Ukraine for the first time included provisions on the invalidity of the employment contract or some of its provisions (Articles 54, 55) [2]. The mechanism envisaged project differs from the mechanism of recognition of the transaction invalid in accordance with the Civil Code of Ukraine.

In recognition of the employment contract null and void in the interests of employee termination is permitted in the future, but not with the conclusion, as in the invalidation of civil transaction. The project provides for the invalidation of the individual contract of employment that do not entail the annulment of the employment contract as a whole. Article 217 of the Civil Code provides the legal consequences of the invalidity of individual parts of a transaction that does not preclude the annulment of the transaction as a whole. This article refers to the following: "Invalidity separate part of the transaction does not entail the invalidity of other parts and the whole

transaction if it can be assumed that the transaction would have been committed without the inclusion of invalid".

199

Different terms and judicial protection of civil and labor rights. To appeal to the court to protect the civil rights provided trohlyitniy limitation antiquity (Art. 257 Civil Code of Ukraine), while the protection of violated labor rights provided three months from the day when he knew or should have known about the violation of his right (p. 1 st.233 Labor Code).

In judicial practice, the criteria for differentiation of labor and civil contracts (contracts, services) are formed within the two categories of disputes: claims of citizens to employers concluded agreements on the recognition of labor provided by law and provide working conditions; the demands of the executive bodies of social security or tax authorities to employers about retraining civil legal contracts with citizens in employment contracts and collection of mandatory payments of social security (in the amount of accrued benefits under employment contracts).

According to Clause 8 of Resolution of the Supreme Court of Ukraine of on March 17, 2004 № 2 «On Application of the RF Labor Code of the Russian Federation" if the parties entered into a contract of civil law, but during the trial it is established that this contract actually governed the employment relationship between the employee and the employer, such relations because of ch. 4 should apply the provisions of Article 11 of the LC RF. A similar provision is advisable to include in the resolution of the Supreme Court of Ukraine on November 6, 1992 № 9 "On the practice of courts of labor disputes."

An important question is how to protect their employee rights in the event of dispute as to the legal nature of the contract. For the determination of the existence and content of the employment contract worker is entitled to apply directly to employers through the courts with a claim for recognition agreement concluded labor contract and the provision provided by law conditions. According to ch. 8 Art. 6 of the draft Labour Code of Ukraine labor legislation does not apply if a person performs work under civil law contracts. We believe it is reasonable Making Addendum to the above provision of the draft Labour Code of Ukraine as follows: "In cases where the court found that civil

law contract actually governed the employment relationship between the employee and the employer, such relationship, the provisions of labor law." Consistent application of this provision exclude arbitrary interpretation of the question of the legal nature of contracts governing labor relations.

The application of labor laws to relations that are at the crossroads of civil and labor law or to labor relations, veiled under civil, associated with difficulties due to the inconsistency of this relationship and the uncertainty of their industry sector. In case of dispute in many foreign countries to the delimitation of the employment contract of the contract award is offered to use the following criteria: extent to which company-customer determines when and how work should be carried out, including working hours and other working conditions; or the company pays the employee-customer due to him remuneration periodically and according to pre-established criteria; the extent to which a user undertaking surveillance and control of the contracting officer regarding work performed, including control of the discipline; the extent to which a user undertaking investments and provides tools, equipment and machinery necessary to perform appropriate work; whether the employee profits or at risk to suffer losses in the performance of work; whether the work is performed on a regular and continuous basis; or a person working for one company-user; the extent to which the work is part of the ordinary activities of the enterprise; or provides enterprise employee training [3, 172]

In many countries the trend was to include these "border" of relations within the scope of the labor law, which is evidence of its spread.

Conclusions. Thus, in a market economy legal nature of the employment contract remains unchanged - the employment contract remains *trudopravovu* nature and can not be replaced by civil contracts related to the difficulty. Between the latter and the employment contract except in common, there are fundamental differences that can not be considered as a form of employment contract of civil contracts related to the difficulty. The main difference between the employment contract of civil contracts lies in its deep social nature that can be considered as a means of ensuring labor rights and interests of workers in a market economy, to distribute to employees the guarantees

provided by current labor legislation. The employment contract was in the contemporary socio-economic conditions continues to be the main form of the right to work.

201

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