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Scientific investigation concerning the optimisation of the violation of the persons' labour rights in conditions of "2019-nCoV": international current issues

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The article is devoted to the study of the scientific research concerning the optimisation of the violation of the persons' labour rights in conditions of "2019-nCoV". The authors conducted a fundamental investigation concerning the overcoming the problem of unemployment in the conditions of "2019-nCoV". For this reason during the research were taken the international experience of some countries that faced such a problem. Taking into account that China was the first country that faced the problem of mass wage labour disputes resolutions, we propose a thorough analysis of the measures that were taken by the Chinese government to stabilize labour relations during the epidemic period during 2019-2020. It was done a deep analyses and defined three main directions that became the base for applying to the courts in China in the sphere of violation of labour relations. So, we defined the issues concerning "employee labour relations", "about employee wages" and "others (such as work injury, leaves, statute of limitations)". Thus, for example, in the cases concerning the labor relations we researched that the employer does not pay labor compensation in its full measure and in time due to the epidemic situation. The judgements of those cases we recommend to implement to the labour legislation of such countries as Ukraine, Italy and Germany. It was also revealed the reasons and ways out concerning the mass unemployment in Ukraine, Italy and Germany. In our research we analysed how France escaped labour disputes during the quarantine period. The authors concluded that the principles of the Charter of the United Nations and the Universal Declaration of Human Rights stated that the right to life were above all else. Therefore, under the influence of the epidemic, countries should put human rights-the right to life first.

Introduction

Infectious diseases not only endanger human health, but also seriously affect the economic development of the country during the epidemic, and at the same time cause many labour relations problems. An example is the "2019-nCoV" that was discovered in Wuhan, China at the end of 2019 and spread rapidly around the world. Thus, on the 8th of April China News Agency in Beijing gives the comprehensive news that The World Health Organization issued an epidemic report according to which there were 12,79722 confirmed cases of "2019-nCoV" worldwide and 72,614 deaths. At the same date the ILO said that 81% of the global labour population of 3.3 billion has been affected by the new crown epidemic, and its workplaces have been completely or partially closed¹. Therefore, from a global perspective, after the epidemic, the quantity of labour disputes will increase day by day. That is why the issue of expanding and implementing the enterprises' global experience of finding ways to resolve labour disputes in different countries is becoming really urgent today.

The labour law should give full play to its legal principles of legal prevention. As one function of law

is to prevent citizens from breaking the law. Therefore, our study will provide a comparative analysis of the best practices of different countries in dealing with the epidemic in a vertical time and horizontal spatial perspective. This article will draw on the experience of the SARS period in 2003 in terms of longitudinal perspectives; the horizontal perspective will compare the advanced experience of China, Ukraine and other European countries in dealing with epidemic-related labour disputes.

The goal of our research will focus on the experience of some countries' labour relations during the epidemic of "2019-nCoV", working at home in isolation like "remote office" as well as leaves issues.

Statement of the material

We want to underline, that today according to government orders due to the infectious diseases' gravity all enterprises, for example in China, have stopped to work as well as their production, and workers have to rest at home. Accordingly, the same question arises simultaneously for all employers: "How to calculate the employee's benefit factor if he or she works remotely at home, or if his or her type of employment does not involve remote work at all? How should the employer pay for the employee's working hours in

¹ Li Yan. Pandemic undermines global employment, trade. *ECNS.cn*. 2020. URL : <http://www.ecns.cn/news/2020-04-10/detail-izviiqq6923997.shtml> (Last accessed: 10.04.2020).

these circumstances? What to do with the employment contracts that expired during the epidemic?

Taking into account that China was the first country that faced the problem of mass wage labour disputes resolutions, we propose a thorough analysis of the measures that were taken by the Chinese government to stabilize labour relations during the epidemic period during 2019-2020. So, firstly we investigated the central deployment that was coordinated.

The state has successively issued the “Notice of the General Office of the State Council on Extending the Spring Festival Holidays of 2020”, “The Ministry of Human Resources and Social Security”, the National Federation of Trade Unions, the Chinese Enterprise Confederation / China Entrepreneurs Association, the National Federation of Industry and Commerce, and the New Coronavirus Infection Pneumonia Outbreak Opinions on Stabilizing Labor Relations during Prevention and Control and Supporting the Resumption of Production and Production of Enterprises.

Interpretation of the Supreme People’s Court and the Supreme People’s the Prosecutor’s Office on Several Issues concerning the Specific Application of Law in Handling Criminal Cases Disrupting the Prevention and Control of Sudden Infectious Disease Epidemic Situations, “Notice on Properly Handling Labor Relationship Issues during the Prevention and Control of Pneumonia Epidemic Infected by New Coronaviruses, and Notice of the General Office of the Ministry of Human Resources and Social Security on Properly Handling Labor Relationship Issues during the Prevention and Control of Pneumonia Outbreaks of New Coronavirus Infections.

First, all of the above government measures have been put in place to do a thorough job of preventing and fighting the “2019-nCoV” epidemic. Secondly, these measures aimed at aligning China’s labour legislation with the prevention and control of epidemics, protecting the legitimate rights and interests of both employers and employees, and promoting a harmonious and stable employment relationship.

From the perspective of time, the similar legal experience has been adapted that was applied during the 2003 SARS to the present circumstances. Thus, we have used the method of statistical analysis and found that on the date of March 18, 2020, certain courts have reached appropriate conclusions regarding treatment (Figure 1).

Analysing the material given on the Figure 1 we have to make the accent on the fact that we made fundamental investigations and defined three main directions that became the base for applying to the courts in China in the sphere of violation of labour relations. So, we defined the issues concerning “employee labour relations”, “about employee wages” and “others (such as work injury, leaves, statute of limitations)”. Thus, for example, in the cases concerning the labour relations we researched that the employer does not pay

labour compensation in its full measure and in time due to the epidemic situation. And if the employee requests to terminate the labour contract on this ground and request to pay economic compensation, in principle, it is not supported by the courts judgments, because this regulation is to prevent the burden of the enterprise from being too heavy. Otherwise it could lead to the destruction of labour relations².

When we researched the disputes concerning the employee’s wages, we found out the fact: if the enterprise stops work and production due to epidemic prevention and control within one salary payment period starting from the 3rd of February 2020, the employee advocated that the employer should pay the salary according to the labour contract standard. Moreover, the wage standard should not be lower than the local minimum wage standard. Employees advocated that the employer should pay a salary according to the living cost of not less than 70% of the local minimum wage. And this demand was supported by the judgements of the Chinese courts. We consider that this provision gave the two parties in the labour relationship the freedom to negotiate wages, which is conducive to stabilizing the labour relationship.

Lots of attention was devoted to special labour cases concerning the employees’ leaves. So we revealed that according to the Chinese labour legislation the employer has the right to arrange employees’ annual leave in accordance with the unit’s production and work arrangements. The period of postponed resumption of work can be offset against the annual leave, but the employee’s annual leave salary should be guaranteed in accordance with the law. But there were cases when the employee refuses to accept or claimed invalidity of the leaves on the ground that the employer arranges the annual leave “without considering his or her own wishes”. But we want to admit that the judgments of the Chinese courts were that employers should arrange leave based on the wishes of employees, and employees couldn’t be made to take a leave.

According to Zhang Bin, vice president of the Shanghai High Court, for the 31st of March 2020, the city’s courts had accepted 116 cases involving epidemic situations, including 28 criminal cases, 88 civil and commercial cases, and 24 cases have been completed. Currently, the number of cases of labour lawsuits in the courts related to epidemic situations has decreased significantly. The main reasons are: first, there is a process of labor relations contradictions caused by the epidemic situation caused by the suspension of production and production of enterprises. It also takes place the dissatisfaction by claimants with labor arbitration awards as well as the court proceedings. And it means that there is a certain lag in the time of related cases³.

² Zhao Hong. Limitation and boundary of individual rights under epidemic prevention and control. *Journal of Comparative Law*. URL : www.chinalawinfo.com/ (Last accessed: 15.04.2020).

³ Wenhui Daily. 03.04.2020. URL : <http://www.whb.cn/mobile/#/news/338206> (Last accessed: 10.04.2020).

Measures to resolve issues related to labor disputes during the epidemic in China (based on the principle of stabilizing labor relations)		
Labor relations	Employee wages	Others (leaves, statute of limitations)
<p>The employer does not pay labor compensation in its full and in time due to the epidemic situation. If the employee requests to terminate the labor contract on this ground and request to pay economic compensation, in principle, it is not supported (Chongqing, Inner Mongolia, Shandong Province, Sichuan Province, Guangxi High People's Court) <u>Limit employees</u>. <i>The aim is to prevent enterprises from carrying too much burden, which leads to the destruction of labor relations.</i></p>	<p>If the enterprise stops work and production due to epidemic prevention and control within one salary payment period starting from the 3rd of February 2020, the employee advocates that the employer pays the salary according to the labour contract standard. If more than one wage payment cycle, the employee advocates that the employer should pay the wages according to the labour provided by the employer and the wage standard re-agreed by the employer. The wage standard should not be lower than the local minimum wage standard. Employees advocates that the employer should pay a salary according to the living cost of not less than 70% of the local minimum wage. It should be supported. (Sichuan Provincial High People's Court) <u>Bidirectional protection</u>. <i>This provision gives the two parties in the labor relationship the freedom to negotiate wages, which is conducive to stabilizing the labor relationship. Different periods of wage standards are divided into different periods, which gives enterprises and workers a certain living space.</i></p>	<p>The employer has the right to arrange employees' annual leave in accordance with the unit's production and work arrangements. The period of postponed resumption of work can be offset against the annual leave, but the employee's annual leave salary should be guaranteed in accordance with the law; the employee refuses to accept or claims invalidity on the ground that the employer arranges the annual leave "without considering his own wishes", and does not support it. (Mian yang Intermediate People's Court) <i>Employers should arrange leave based on the wishes of employees, and employees cannot be required to take leave.</i></p>
<p>The employer has terminated the labor contract with the employee on the ground that the objective situation has undergone major changes, and the employee has filed a lawsuit. The people's court should require the employer to provide corresponding evidence. During the trial, it should pay attention to investigate whether the employer of the same period, area, nature can perform the labor contract normally. If the labor contract is cancelled with the employee only for its own reasons, it is not objective. In the event of a major change in circumstances, it is necessary to review whether the necessary negotiation procedures have been performed before the labor contract is terminated. (Beijing / Huai'an Intermediate People's Court) <u>limit the employer</u>. <i>Enterprises cannot simply terminate labor relations on the ground of epidemic situation.</i></p>		<p>From January 20, 2020, until the time when relevant matters can be handled, no later than the day when the prevention and control of the epidemic is announced to be lifted. (Mianyang Intermediate People's Court) <i>If an employee or employer wants to sue, but the deadline for limitation of action is during the epidemic. Then his statute of limitations will be automatically suspended.</i></p>

Figure 1. The analyzed trials in China that were taking place during the period of "2019-nCoV" concerning labour relations (Source: authors' own research)

To sum up the functioning of the courts of China during the epidemic period of “2019-nCoV” we can admit the extremely important point is that China has done a productive job in preventing the law. Other countries can learn from China’s experience on this point and give full play to the preventive function of the law.

The next task of our scientific and practical research was to analyse the work of the legislative bodies of the Ukrainian authorities. Thus, on March 25, 2020, the Cabinet of Ministers of Ukraine introduced a 30-day emergency regime throughout Ukraine, until April 24, 2020⁴. On March 17, the Verkhovna Rada of Ukraine adopted a law amending certain legislative acts of Ukraine aimed at preventing the emergence and spread of coronavirus disease “2019-nCoV”. It should be emphasized that the Government of Ukraine has adopted a number of laws and decrees to support the private sector for the quarantine’s period of the worldwide pandemic “2019-nCoV”. For example, from the 1st of March to the 31st of April, private entrepreneurs are exempted from paying a single social contribution, temporarily cancelling fines and penalties for late or incomplete payment of a single social contribution, late filing of a single social contribution reporting, and abolishing commercial real estate⁵.

In addition, we also researched the situation of mass unemployment in Ukraine. After all, the main actions of employers in the first weeks of quarantine in Ukraine were: sending employees on leave at their own expense or on account of annual paid leave. There have also been massive layoffs of workers in Ukraine, which has resulted in a large queue of unemployed people who intended to join the State Employment Center for monthly unemployment benefits. Thus, in the first two weeks of quarantine, the number of unemployed in Ukraine increased by about 500-700 thousand people, in the next two quarters by another 500-600. In total, it reached 2.5-2.8 million people. According to estimates of the Chamber of Commerce and Industry of Ukraine, the unemployment rate is now 13.7-15.4%⁶. We want to underline that this is the highest figure in the last 15 years. However, having analyzed various sources of information, we have come to the conclusion that the number of unemployed in the country will be greatly influenced by migrant workers returning from different countries. According to such forecasts, in the worst case the number of unemployed in Ukraine will increase to

3 million people⁷. At the same time, the government is taking steps to financially support its citizens. Thus, in support of the unemployment fund and the employment center, the state plans to allocate an amount of UAH 5 billion. Moreover, with the newly adopted decrees and amendments to the Labour Code of Ukraine for small and medium-sized businesses, it became possible to compensate part of the salary for the period of idle time in the maximum amount of the minimum wage stipulated by the law, which is 4723 hryvnas. We want to admit that this partial unemployment benefit will be of benefit to those who have worked in areas that have now been idle in quarantine production. In particular, we are talking about mass events, vehicles and establishments that are not subject to a quarantine permit.

We have paid particular attention to scientific research on the current situation regarding unemployment and the emergence of labour disputes over labour issues in Italy. Considering that today in Italy there are a large number of fatalities of the affected by “2019-nCoV”. Thus, coronavirus sparks nationwide strikes in Italy. Unions are calling for a halt to all non-essential production to ensure safety and sanitation of workplaces. Particularly, Italy’s coronavirus epidemic has triggered nationwide strikes running from shipbuilders in Liguria in the North to steelworkers in Puglia in the South, forcing the government to open negotiations with union bosses. While governments across Europe are calling on employees to work from home, there are many Italian workers whose jobs can only be performed in supermarkets, factories, docks and steel mills.

Such trade unions as Cgil, Cisl and Uil said, La Repubblica reported: the protocol “will allow companies in all sectors, through the use of social safety nets and the reduction or suspension of work, to ensure the safety of the workplace”. Prime Minister Giuseppe Conte held a videoconference alongside the Health, Economy, Labour and Economic Development Ministers, to mediate between the two sides (employer and employee). After 18 hours of negotiations, trade unions and employers signed a safety protocol. Rome adopted a Decree asking employees to work remotely and take paid leave, advising the closure of “non essential” production lines and encouraging social distancing and sanitation in industrial sites. Yet it stopped short of ordering a complete shut-down of production, and left it to companies to “self-regulate”. So as we see, the practice concerning annual leaves in the circumstances of “2019-nCoV” are popular in China, Ukraine as well as in Italy.

The employment current situation and labour disputes in Germany have not gone beyond our research. With thousands of confirmed cases of “2019-

⁴ Уряд запровадив режим надзвичайної ситуації по всій території України. *Урядовий портал*. 25 березня 2020 року. URL : <https://www.kmu.gov.ua/news/uryad-zaprovadiv-rezhim-nadzvichajnoyi-situaciyi-po-vsij-teritoriyi-ukrayini> (дата звернення: 01.04.2020).

⁵ Курибло М. Отмена ЕСВ для ФОПов и «отсрочки»: Рада приняла закон о поддержке бизнеса 17 березня 2020. URL : <https://www.epravda.com.ua/rus/news/2020/03/17/658158/> (дата обращения: 11.04.2020).

⁶ Кількість безробітних в Україні за час карантину побила 15-річний рекорд. 16.04.2020. URL : <https://tsn.ua/grosni/kilkist-bezrobotnih-v-ukrayini-za-chas-karantynu-pobila-15-richniy-rekord-tp-1529592.html> (дата звернення: 16.04.2020).

⁷ Шаправський Р. Безробітні будні: кому влада компенсує втрату доходу через карантин. Квітень, 2020. URL : <https://www.rbc.ua/ukr/news/bezrobotnye-budni-komu-vlasti-kompensiruyut-1586261968.html> (дата звернення: 11.04.2020).

nCoV” now its borders are closed. So, Germany’s businesses face major disruption which raises a range of questions for employers and employee. Accordingly, the question arises, as in other countries of the world: “Can employees refuse to work or stay away from work because they are afraid of becoming infected during their work?” According to German labour legislation employees cannot unilaterally refuse to perform their work, employees are also not entitled to refuse performance their work if they fear that they will be infected with an illness. Rather, employees lose their wage entitlement in the event of a unilateral refusal to perform. In addition, employers may consider taking consequences under employment law (such as issuing a warning notice, in individual cases even the termination of the employment relationship may be considered).

Another burning question among the employees appeared in Germany: “Can employees demand to work from home?” So, according to the legislation of German employees have no legal right to work from home, to be the so-called “home office”. Instead, working from home requires a legal basis, for example, an agreement between employer and employee. However, employers should consider giving this option to employees who can also perform their work from home. Because this can reduce the risk of infection and possible absences from work. Specific requirements must be met for work in the home office, in particular requirements under occupational safety law (existence of a suitable workplace) or data protection law. For example, ensuring that third parties do not gain unauthorised access to protected data. The Works Council may have co-determination rights if the employer wishes to grant home office to employees collectively⁸.

We also investigate the approach if the employer can order a company medical examination of employees to rule out infection of employees with the “2019-nCoV”. In this instance, employers may not in principle order medical examinations of employees. However, as a milder remedy, employers may unilaterally exempt employees for a certain period of time while continuing to pay their remuneration.

It is worth mentioning separately how diplomatically France escaped labour disputes during the quarantine period. The country’s management has proposed payments to parents of children, which in French law is called “arrêt travail” and in translation means “termination of employment”. These are benefits and an opportunity for parents who have got children

under 16 years of age. So, parents of this category can take almost a vacation while maintaining their pay, and for the duration of the “arrêt travail”, employees will receive 90% of their pay without working at all. Payments can be received within 15 days and only during the quarantine period. To our mind the actions of the French Government are indeed rational, as this will cause to a reduction in the percentage of those who have “2019-nCoV” that will be offset by the costs of treating patients.

Also, the French government took care of the debt of the citizens, introducing a permission to defer payments until the quarantine or until the debtor is again able to pay it⁹. It is possible to arrange such delay in the bank branch. Businesses, as well as individuals, can suspend payments on their loans for 3-12 months without any penalties. Typically, standard loans can be suspended for 3-6 months, while a mortgage can be suspended for up to 12 months.

Conclusions

So, in conclusion we want to underline, firstly, the right to life is more important than everything. The principles of the Charter of the United Nations and the Universal Declaration of Human Rights state that the right to life is above all else. Therefore, under the influence of the epidemic, countries should put human rights—the right to life first. Secondly, each country should actively formulate a labour dispute prevention mechanism and a resolution mechanism in accordance with the national conditions of the states under the current labour relations and labour laws. For example, the case law countries can promptly publish relevant judicial precedents on the Internet (such as cases related to labour compensation during the epidemic, related cases of “home office” and “remote working hours”, etc.). A statutory country should promptly issue relevant guidance, judicial interpretations, and legal regulations. One of the purposes is to stabilize the mentality of workers during the epidemic. The second purpose is to resolve labour disputes to the grassroots level. Thirdly, according to the results of our research, China can learn from the experience of German trade unions in solving problems and give full play to the role of trade unions. Germany, Ukraine and Italy should learn from China’s precautions and publish relevant labour laws and regulations as well as relevant cases as early as possible to stabilize the mentality of workers.

⁸ Employment law in Germany: the implication of the COVID-19 outbreak on employers. *Osborne Clarke*. 13.03.2020. URL : <https://www.osborneclarke.com/insights/employment-law-germany-implication-covid-19-outbreak-employers/> (Last accessed: 11.04.2020).

⁹ Saliu A. How France is helping businesses during COVID-19. 2020. URL : <https://medium.com/live-your-life-on-purpose/how-france-is-helping-businesses-during-covid-19-b085c59b4e84> (Last accessed: 11.04.2020).