

Electronic Self-employment: International Practice and Regulation Features

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Abstract

The article examines the problems of legal regulation of electronic self-employment. Currently, due to the development of information technologies and the emergence of the information society, socio-economic prerequisites are being created for the massive spread of a new form of employment – electronic self-employment. The authors highlight the analysis of the regulatory component and social problems that currently arise in this direction as a goal. The authors show the history of the development of this form of employment and note the economic and social prerequisites for its emergence and spread in the world economy. The paper describes the advantages and disadvantages and actualizes the issue of the development of the regulatory framework of electronic self-employment as a special form of employment. The existing international experience of legal regulation has been considered. Until now, electronic self-employment has practically been not regulated and is the subject of various disputes, since the decisions made, according to the authors, have not yet been able to solve the tasks set. The main conclusion of the article is the statement of the problem and the justification of the need for further improvement of the legal regulation of this phenomenon in the structure of the labor market. The authors, relying on international experience, propose a solution to the problem of bringing electronic self-employment out of the shadows through the provision of legal guarantees for the protection of the economic rights and interests of self-employed persons.

Key-words: Labor Market, Electronic Self-employment, Freelancing, Economic Significance, Regulatory Framework.

1. Introduction

The recent rapid changes in the global economy have led us to take a fresh look at the current state of the labor market and employment. In the era of the development of the Fourth Industrial Revolution, driven by increasing automation, economic activity is moving to the service sector, and labor is increasingly associated with the production and processing of information. A key role in the development of the digital economy is assigned to digital technologies and computer networks, which reduce transaction costs and allow for effective coordination of the interaction of agents dispersed in space. The above factors lead to the fact that a new segment of the world labor market – electronic self-employment, or freelancing, begins to develop rapidly in the 21st century and is being formed [20, 21]. Its emergence can be explained by increased competition in the traditional labor market and staff cuts, a decrease in wage growth, and a reaction to the search for new sources of income outside the state of firms, as well as changes in the modern market for intellectual labor caused by globalization [1]. Freelancers are usually highly qualified and creative workers (designers, programmers, translators). There are many representatives of creative professions, IT-sphere among electronic freelancers: development and support of websites and programming, advertising, etc. [2].

Electronic self-employment (the term Internet employment is also used) is interpreted by modern researchers as a special form of professional activity outside the traditional workplace, based on virtual interaction, to meet individual (personal) and social needs using electronic information and communication resources [3]. This type of employment, first of all, involves the use of the Internet as a condition, means/resource of labor, and its procedural implementation. Internet workers create fundamentally new strategies for social and labor relations and lifestyle, but they are also carriers of a complex of socio-economic and legal risks. Following this, a new fundamental scientific problem is the contradiction between the emergence of a new social phenomenon of electronic self-employment and the limited conceptual concepts, empirical approaches, methods for identifying and justifying legal criteria for working in the conditions of electronic self-employment. Modern studies of mobile forms of employment, work on the Internet are mainly devoted to the analysis of their socio-cultural [4], economic [2], psychological [5], and other aspects, while legal aspects are considered to the least extent. Scientific research on professional self-employment abroad is actively developing, the results of which are reflected in monographs and articles in international scientific journals. The socio-economic features of the "electronic self-employment" of specialists working remotely are analyzed in their works [6]. Despite the rather long development of electronic self-employment, at least in developed countries (more than 20 years), there is no scientifically based legal status of its

representative. The financial and economic analysis of virtual labor activity is being developed [7]. The available studies are rather observations of electronic self-employment [8], rather than scientific fundamental-applied, complex studies.

Thus, the legal features of electronic self-employment in the scientific communities of Russia and abroad are actually out of the field of attention of scholars. Local studies show a lack of consensus on the definitive features of electronic self-employment, its parameters. Relevant legal models of electronic self-employment, the legal status of the self-employed person in the electronic sphere in the context of Russian science are not presented. Therefore, the purpose of this study is to analyze the legal nature and possibilities of legal regulation of electronic self-employment. *Research hypothesis.* The legalization of the work of the electronic self-employed persons should be based on providing them with the opportunity to enjoy legal protection in relations with contractors and support from the state.

2. Methods

The methodology of the presented research is based on the author's idea of electronic self-employment as a special activity that transforms a new way of life, the everyday life of an employee, but also forms his/her special legal status. This determines the appeal to the resources of the formal legal method, the complex application of qualitative and quantitative methods of collecting and analyzing empirical material, testing professionally and legally significant qualities, and methods of statistical analysis. The appeal to this tool is due to the complexity of the phenomenon of electronic self-employment, its versatility, the multiplicity of manifestations, the ability to generate a new style of work and a new way of life, as well as the legal status of the self-employed person. The information basis for proving the hypothesis was statistical data and legal information from the official websites of government agencies in Russia and the US, as well as the results of social research.

3. Results

Information and communication technologies create opportunities for new forms of organization of the labor process. The terms "remote work", "telework", "telecommuting", etc. have entered scientific circulation. The concept of working at a distance was first established by Jack Niles in the early 1970s when he led the first telecommuting project at the University of Southern

California. He noticed that in some cases it is easier to deliver the work to the person, and not vice versa [9]. Thus, "remote work" or "telework" means working at a distance outside the traditional workplace (office) when communication (transmitting and receiving information) is supported by modern communication technologies (computer networks, modern telephone communication). In other words, the performers in these cases are at a certain distance from the place where the results of their work are needed, or from those workplaces where these works are usually performed. Today, more workers are involved in telework to a greater or lesser extent. Therewith, stable categories of workers are formed, whose work, due to its specifics, is organized exclusively in this way. These are, first of all, specialists related to the development of network infrastructure (in particular, the creation of Internet sites) and e-business. Telework is not strictly tied to employment status. Organizations are increasingly taking advantage of telecommuting opportunities, allowing employees to work for a certain amount of time at home or in specially created "telecentres" located far from the main office. The so-called "call centers" are also a typical example. However, telework has become most widespread among independent workers. American researcher Thomas Malone, by analogy with the neologisms "e-mail", "e-business", introduced a special term "e-lancer" (electronic freelancer), which means a freelancer who carries out his/her work remotely using information and communication technologies [10]. That is, an e-lancer is a freelance teleworker. Without the risk of making a big mistake, we can say that almost all self-employed workers representing "computer professions" (programmers, web designers) are e-lancers. Also, more representatives of traditional freelance professions are becoming e-lancers. For example, this form is extremely convenient for journalists and translators. In certain cases, information technology has a limited impact on the employment of freelancers. Some types of work involve direct contact with the client and cannot be performed remotely. This refers to the "live" musicians, showmen, film artists, and, to a large extent, business consultants. In this case, new technologies facilitate job searches and business contacts with the client. In general, it can be assumed that there is a tendency for freelancing in the post-industrial economy to mainly act in the form of e-lance. In the developing market of electronic freelancer services, its infrastructure is being formed, represented by special Internet sites – "remote work exchanges". They are not only a meeting place for supply and demand, but also develop "rules of the game", form mechanisms for regulating contractual relations, and strengthen trust. The first and largest of these sites <http://www.elance.com> appeared in 1999, which, marked the institutionalization of a new category of employees – electronic freelancers [11].

Naturally, for the state, any work shall be legal, i.e. covered by labor, general civil, tax, pension, etc. legislation. In Russia, the first serious step to bring alternative forms of employment out

of the shadows was Federal Law No. 422-FL of November 27, 2018 "On conducting an experiment to establish a special tax regime" Tax on professional income "in the city of federal significance Moscow, Moscow and Kaluga regions, as well as in the Republic of Tatarstan" [12]. The period of this experiment is limited to the time frame from January 1, 2019, to December 31, 2028. Following this federal law, individuals, including individual entrepreneurs (sole proprietors), who receive income from activities in which they do not have an employer and do not employ employees, are entitled to apply a special tax regime. The tax period is a calendar month. The rates are distributed as follows: 4% if the sale is carried out by individuals; 6% if the sale is carried out by sole proprietors and legal entities. Registration is voluntary, and the payment of tax is proposed to be carried out using the free mobile application "My Tax". Therewith, the tax authorities will rely only on information about income that the person himself/herself entered into this application, or track the movement of funds in bank accounts. A person receiving income that exceeds 2.4 million rubles in the current calendar year cannot be considered a self-employed person [13]. While the majority of citizens do not realize the need to pay this type of tax and register their activities officially. Even with such a low tax rate, employees are not willing to part with a portion of their income. The lack of readiness comes from the fact that the state has not identified clear guarantees that self-employed citizens will receive if they register their activities. Except for contributions to the pension fund, which remain voluntary. It turns out that this law so far works only for the benefit of the state in the form of control over the self-employed persons and additional tax revenues to the budget. There is no question of any state support program for self-employed persons, as in European countries and the US [14].

The adoption of the law on taxation of self-employed persons at the stage of its discussion was justified by the need to bring millions of workers out of the shadows. Since the beginning of January 2019, the innovation has turned into a side negative effect. Against the background of higher VAT, indexation of excise taxes, rising fuel, and rental rates, employers began to look for ways to optimize their workload. As it turned out, such a tool may well be the law on tax for self-employed persons. The law on the "self-employed persons", instead of being useful, in the first stages of its introduction, hit the state itself and employees. Many firms began to use it as a loophole to optimize their taxes. Companies actively began to register employees as "self-employed persons", drawing up a lease agreement with them for a workspace to insure in the event of an audit from the Federal Tax Service or Labor Inspectorate [14]. The law turned out not to bring illegal activities out of the shadows, but to save taxes for those who already earned very well. When registering as a "self-employed person", the employee costs the employer much cheaper – only 4% of his/her income, the need to pay 22% in the PSF and 5.1% in the Federal Compulsory Medical Insurance Fund, disappears

automatically [14]. Employees of such companies are in a very losing position, as the employer ceases to be responsible for the working conditions of the employee, for the safety and security of his/her work. Employees of such companies in this situation either agree to the terms of the employer, are forced to look for another job, or shall create a trade union organization and fight for their violated rights. After all, any social guarantees during the transition to the status of "self-employed person" are lost. Employees are deprived of guaranteed paid leave, sick leave, maternity leaves to care for a child. In this situation, people have to either fight or hope for the integrity of the employer. According to the statistics of the Federal Tax Service, as of January 1, 2021, there are only 3,961 people registered as self-employed persons in the huge metropolis of Moscow [15].

This federal law establishes the same rules for all self-employed persons, without distinguishing electronic forms of employment, although, on the official website of the Federal Tax Service in the list of specializations to which the professional income tax applies, there are remote workers who carry out activities through electronic platforms [13]. This wording does not cover those electronic self-employed persons who negotiate with the counterparty (customer) directly, so it is not clear to which category of taxpayers these persons belong. Today, the mentioned law looks incomplete, and, most likely, it will be adjusted considering international practice, which has already begun to take shape. The main goal that the state achieves with proper regulation of the activities of self-employed citizens is to increase entrepreneurial activity, realize the labor potential of the population, and create new jobs that contribute to the development of the economy. Also, support for the activities of the self-employed persons will reduce the level of unemployment and social tension, as well as provide an opportunity for the population to acquire entrepreneurial skills and realize their labor potential. That is why self-employment requires support and effective regulation by the state. The lack of a loyal tax policy and a full-fledged legislative framework can alienate potential self-employed persons from such activities or force them to go to the informal sector of the economy, which continues to happen in the Russian economy. Thus, the legal status of the self-employed persons, especially the electronic self-employed persons, has not yet been fully clarified in Russia, but the state is already making attempts to legalize them, primarily for fiscal purposes. Firstly, these people need to be counted. Secondly, it is necessary to offer such conditions that it would be profitable for them to come out of the shadows. Unfortunately, so far, neither one nor the other has been achieved [14].

4. Discussion

The primary task that the government should set for itself in the issue of self-employment is to create favorable conditions for its development, as is done in several developed countries and, above all, in the US [14]. According to available data, as of December 1, 2017, the total working-age population of the US was 205,823,370 people, of which 57.3 million people were freelancers [16].

The presented data show that during the period 2014-2017 in the US, the number of people engaged in freelancing increased by 4.3 million people and amounted to 57.3 million, while there were 53 million of them in 2014 [16], i.e. about 27.8% of the total US population of working age were independent workers. According to the forecast of the American independent research firm Upwork in cooperation with the Freelancers Union organization, by 2027 the number of Americans engaged in freelancing may increase significantly and reach 86.5 million people [17], i.e. there are more Americans who receive income from work that is not traditional, in other words, standard.

The most popular areas of activity in 2016 were art and design, which accounted for 38%. The profession of graphic designer dominates. People of this profession work in various fields – from publishing to marketing, from advertising to production. They design websites, publications, infographics, advertisements, logos, and even packaging. The second place was taken by such a field of activity as creating and editing files (22%). This is because companies are increasingly outsourcing their written requests. The demand for content writers is growing every year. As well as working for newspapers and magazines, writers are involved in marketing, social media, and advertising and write everything from long articles to video scripts. Less popular fields of activity include photography, audio/video, technology, and consulting. Freelancers also work in the fashion, food, legal, and accounting industries [18].

According to the data presented above, today freelancing is one of the most common forms of employment. At the moment, there is no single law in the US regulating the legal status of freelancers. In 2017, New York City, which is home to more than one million free workers, enacted the first law in the country to protect freelancers from insolvent employers. The bill was drafted by Brad Lander, a member of the New York City Council, in conjunction with the Freelancers Union and the New York City Department of Consumer Affairs. This law is called "Freelance Isn't Free Act" [16]. At present, provisions on the rights of freelancers of the City of New York, which entered into force on May 15, 2017, are contained in the New York City Administrative Code [19] and the Rules of the City of New York.

As we can see, in these provisions, the freelancer acts as an independent contractor, not bound by the traditional labor relations between the employee and the employer. The hiring party can be any person who engages a freelancer to provide any services, except for the government: – the US; – the state of New York, including any offices, departments, agencies, departments, or other bodies of that state, including the legislature and the judiciary; – the city, including any offices, departments, agencies, departments, or other bodies of that city; – other local authorities, municipalities, or counties; – another country [19]. The requirements for entering into a written Agreement between the hiring party and the freelancer and for the minimum information contained in the Agreement in question are as follows: 1. The name and address of both the employer and the freelancer (independent contractor). 2. Details of all services provided by the freelancer, the cost of services provided under the Agreement, the amount and method of payment of monetary remuneration. 3. The date of payment of the contractual remuneration by the hiring party or the mechanism for determining such a date. If the Agreement does not provide a date, the freelancer's service must be paid no later than 30 days after the completion of the work. The Agreement may be supplemented with other terms and conditions. Also, the mentioned document sets several restrictions for persons who cannot be electronic freelancers. These are sales representatives, lawyers, and medical professionals who require a license to operate. This restriction seems to be fair [19]. The first law, which to a certain extent reflects the legal status of the electronic self-employed – freelancer, appeared only in 2017, i.e. approximately two decades after the professional status was formed. Thus, legislators around the world have yet to form legal norms that allow legalizing the work of a large number of economically active, highly professional people who have found their place in the developing innovative economy.

5. Conclusion

Thus, fundamental changes in the field of information technology and at the same time – labor markets at the beginning of the 21st century led to the emergence of a new non-traditional form of employment — electronic self-employment or freelancing. Self-employment through electronic resources – the Internet, software, computer technology – is a separate promising one in the context of employing a part of the population, realizing their labor skills through information and communication technologies, optimal satisfaction of a set of personal needs. An employee in this field is primarily a highly qualified professional who does not depend on a standard work schedule, is often engaged in intellectual work, with a full set of competencies required by the employer, but does not belong to the staff of organizations and is not included in traditional labor relations. Therefore,

empirical studies aimed at the possibility of legal registration of the analyzed phenomenon are currently relevant. At the moment, there is no consensus on the socio-economic nature of freelancing, as there is no solution to the problems of determining the legal nature, protection of rights, and fair taxation for this category of employment. The electronic self-employed persons include both individual entrepreneurs who offer their services in electronic forms and remote employees. With all the advantages, representatives of this form of economic activity from this segment of the labor market need more regulation from the state. The regulation of this sphere is limited to the establishment of lower tax rates, and the threat of liability for income tax evasion, which does not yet contribute to the mass emergence of this sphere of labor. It seems that such measures should be taken only as a supplement to the provision of electronic self-employed persons with the possibility of the legal protection of their economic rights concerning counterparties and their support from the state. Thus, the research hypothesis was proven.

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