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FEATURES OF LEGAL REGULATION OF LABOR RELATIONS OF AVIATION PERSONNEL

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Hordeiuk A.O., Zhyla A.V. Features of legal regulation of labor relation of aviation personnel.

The author emphasizes the great importance of civil aviation as an industry that actively contributes to the development of the global and domestic economy of any country and points to the European integration processes that took place in Ukraine in peacetime and are continuing during wartime in this area. The author emphasizes the dominant mission of aviation personnel in providing flight safety and the need for their training and retraining even in difficult situations, which is important for the resumption of the effective functioning of civil aviation in peacetime. The author analyzes the specifics of legal regulation of labor of aviation employees and makes conclusions about its differentiation due to the specifics of the labor function of aviation personnel, which is associated with the risks of operating air transport as an object of high risk and responsibility for the life and health of air passengers, and safety of baggage, goods and mail. The author made a conclusion that the norms of labor law institutions should be extended to aviation personnel, but at the same time, their labor should be regulated in more detail by the air law norms contained in the Air Code of Ukraine and other regulations (including international law) which constitute the legal support of the aviation industry, in particular, the activities of employees of the aviation sector of the economy.

In order to clearly define the legal status of workers in the field of civil aviation, an analysis of the rule-making activities of the International Civil Aviation Organization (ICAO) was carried out in terms of the developing and the adoption of Standards and recommended practices (SARPs) as Annexes to the Convention «On International Civil Aviation», where in Annex 1 of the SARPs «Requirements for civil aviation personnel when issuing a certificates», it is recommended to establish in the air legislation of the countries party to the Convention the requirements that must be met in order to obtain a certificate for a flight crew member and ground worker. Based on a study of the norms of national air legislation, its compliance with the SARPs recommendations regarding the requirements for certain categories of civil aviation workers was established.

Problematic issues in the field of civil aviation that arose due to the military aggression of the RF against Ukraine (loss of jobs by, search for new approaches to personnel work). It is proposed to solve them by increasing funding, which should be aimed at retaining qualified personnel and can be considered as a strategic investment in the further development of the industry.

Key words: aviation personnel, staffing, civil aviation employees, civil aviation, labor relations, labor function, differentiation of legal regulation, flight crew.

Гордеюк А.О., Жила А.В. Особливості правової регламентації трудових відносин авіаційного персоналу.

В даній статті зауважено на велике значення цивільної авіації як галузі, яка активно сприяє розвитку світової та вітчизняної економіки будь-якої країни і зазначено на євроінтеграційні процеси, що відбувалися в Україні в мирний час та пролонгуються під час воєнного стану в цій сфері. Вказано на доменантну місію авіаційного персоналу у забезпеченні безпеки польотів та необхідності його підготовки та перепідготовки навіть у складних обставинах, що має значення для поновлення ефективного функціонування цивільної авіації у мирний час. Проаналізовано особливості правової регламентації праці працівників авіаційної сфери та зроблено висновки про її диференційованість, що обумовлена специфічністю трудової функції авіаційного персоналу, яка пов'язана з ризиками експлуатації авіаційного транспорту як об'єкта підвищеної небезпеки та відповідальністю за життя та здоров'я авіапасажирів, збереження багажу, вантажу та пошти. Зазначено про поширення дії норм інститутів трудового права на авіаційний персонал, але при цьому здійснення більш детальної регламентації їх праці нормами повітряного права, які містяться в Повітряному кодексі України та в інших нормативних актах, в тому числі в міжнародних, які становлять правове забезпечення авіаційної галузі, зокрема діяльності працівників авіаційного сектора економіки.

З метою чіткого визначення правового становища працівників сфери цивільної авіації було проведено аналіз нормотворчої діяльності Міжнародної організації цивільної авіації (ICAO) в аспекте розроблення та прийняття Стандартів і Рекомендованої практики (SARPs) як додатків до конвенції «Про міжнародну цивільну авіацію», де у Додатку 1 SARPs «Вимоги до особистого складу цивільної авіації при видачі свідоцтва» рекомендовано встановлювати у повітряному законодавстві країн-учасниць конвенції вимоги, дотримання яких необхідно для отримання свідоцтва члена льотного екіпажу та наземного працівника. На підставі вивчення норм повітряного вітчизняного законодавства встановлено його відповідність рекомендаціям SARPs щодо вимог до певних категорій працівників сфери цивільної авіації.

Виділено проблемні питання в галузі цивільної авіації, які виникли через військову агресію РФ проти України (втрата робочих місць працівниками авіаційної сфери, необхідність пошуку нових підходів до кадрової роботи тощо). Запропоновано шляхи їх вирішення через посилення фінансування, яке має бути спрямоване на збереження кваліфікованих кадрів та може розглядатися як стратегічна інвестиція у подальший розвиток галузі.

Ключові слова: авіаційний персонал, кадрове забезпечення, працівники цивільної авіації, цивільна авіація, трудові відносини, трудова функція, диференціація правового регулювання, льотний склад.

Introduction. Civil aviation is one of the most important sectors of the economy both at the national and global levels. Air transport is becoming more important for the global economy in the context of growing international and cultural ties. Therefore, high-quality staffing in the civil aviation industry is a key to its clear, efficient operation and development.

Taking into consideration the European integration processes taking place in Ukraine, a number of European standards have been introduced in the civil aviation sector of Ukraine. The new changes adapt Ukrainian legislation to the norms of the European Union, and this is a positive process, but due to the martial law in the country, the civil aviation industry is in a difficult condition. In order to comply with the requirements of the Air Code of Ukraine and the Regulation on the Use of Ukrainian Airspace, immediate measures were taken to close Ukrainian airspace to civilian air users and aviation entities, and, as a result, aviation personnel were put on standby.

However, Ukraine's civil aviation is not gone, and three large domestic airlines continue to function abroad (SkyUp, Skyline Express, Windrose). Further recovery of the industry needs constructive decisions today. To make sure that companies whose aircraft will fly in Ukraine can function under the new simplified air transportation rules, the Law on Civil Aviation Deregulation was recently adopted by the Verkhovna Rada of Ukraine and signed by the President of Ukraine on 26.04.2023. The Law of Ukraine on Deregulation of Civil Aviation Activities.

Considering the need for innovations in the air transport sector, the issue of training and retraining of aviation personnel is quite acute today. This is due to its dominant mission, which is to ensure flight safety. Its realization is strictly correlated with the development of the aviation industry as a whole, and the category of «safety» is correlated with all elements of the civil aviation personnel system [1].

The challenges of today require new approaches to the organization of personnel work in the civil aviation sector, especially with regard to the selection, placement, evaluation and incentives of aviation personnel with a view to its “dominant mission”.

Thus, all of the above gives rise to scientific interest in the issue of peculiarities of legal regulation of labor relations of aviation personnel, in particular under martial law, as well as further state support for this category of employees in order to ensure effective staffing of civil aviation.

The aim of the article. The aim of this scientific work is an analytical study of the peculiarities of the legal position of labor relations of aviation personnel in accordance with the norms of labor and aviation national legislation, as well as the provisions of international air law, which, both at the conventional and recommendation levels, provide for legal regulation of ensuring the safety of activities of a certain category of civil aviation workers in the context of European integration processes and martial law in Ukraine.

Literature Review. The subject of legal regulation of the labor activity of aviation personnel in both the state and civil aviation sectors attracted the scientific interest of experts in peacetime and is the area of research of domestic scientists during the full-scale occupation of Ukraine by the Russian Federation. Among the scientists who have devoted their works to this topic are Y. Bershadska, O. Husar, I. Vetukhova, N. Darahanova, G. Zabarnyi, M. Kovtyukh, S. Sinenko, G. Digtarenko and others.

Among foreign authors, there are interesting works on the specifics of labor relations in the aviation sector by Restellini J. («Labor Relation in Aviation»), Bliss T.J., Robert W. Kaps, J. Scott Hamilton, Timm J. («Labor Relations in the Aviation and Aerospace Industries»).

The questions that are quite actively studied by scientists relate to the definition of the labor function of aviation personnel, their professional training, legal regulation of the work of aviation personnel of the State Aviation of Ukraine, the content of civil aviation personnel in the modern air law of Ukraine, and so on. However, today, in our opinion, the priority research directions are to renew the functionality of civil aviation employees, their adaptation to new working conditions according to new standards, taking into account the European integration processes in our country, primarily as a result of the signing of the Common Aviation Area Agreement between Ukraine and the European Union and its member states, ratified by Ukraine on February 17.02.2022, as well as the above-mentioned European Integration Law from 26.04.2023, which was adopted to simplify air transportation.

Main Content Presentation. The Convention on International Civil Aviation of 1944 (the Chicago Convention) classifies aviation personnel into two groups depending on whether they perform their professional duties in flight (flight personnel or flight crew) or on the ground (ground personnel). At the domestic level, legislative and other regulations define the qualification characteristics and standards for aviation employees performing their specific job functions.

Therefore, in the Air Code of Ukraine, which establishes the legal framework for activities in the field of aviation, clause 9, part 1, Article 1 defines the concept of aviation personnel: «as persons who have undergone special professional training, have a relevant certificate and carry out flight operation, aircraft maintenance, air traffic organization, technical operation of ground-based communication, navigation and surveillance facilities» [2].

Section VII of the Air Code of Ukraine is entitled «Aviation Personnel» and is devoted to determining the composition of aviation personnel, regulating restrictions and limitations for holders of aviation personnel certificates, certification and access of aviation personnel to aviation activities, training and retraining, confirmation/renewal, advanced training of aviation personnel and ground handling personnel, state regulation of aviation medical activities in relation to the examination of the health status of aviation personnel (Articles 49-52, Articles 54, 55 of the Air Code of Ukraine). Also, in particular, part 1 of Article 53 provides for labor relations and social protection of aviation personnel, which are regulated by the legislation of Ukraine on labor, social coverage and state support, other acts of Ukrainian legislation, the sectoral agreement between the central government department in the field of transport and trade unions of civil aviation workers of Ukraine, and collective agreements. In Part 2 of this provision, it is stated that: «the specifics of working conditions, social and living conditions, housing, working hours, and rest time for certain categories of aviation personnel are determined by law, taking into account international requirements and recommendations on safe working conditions and special conditions for social protection of certain categories of aviation personnel» [2].

Based on the content of Art. 53 of the Air Code of Ukraine, it can be concluded that it is a form rule (a reference rule), that is, it refers to labor regulations for aviation personnel as employees to labor

legislation and other special laws. And according to Part 3 of Article 22 of the Labor Law of Ukraine: «requirements regarding the age, level of education, and health status of an employee may be set by the legislation of Ukraine». That is, the special law which regulates labor relations, in turn, determines the possibility of regulating these requirements in other special laws. It may be worth adding that the project of the Labor Code of Ukraine contains provisions according to which: «the laws of Ukraine may provide for specifics of regulation of labor relations of certain categories of employees – crew members of sea, river and aircraft vessels» [3; 4].

As for other norms, except for Art. 53 of the Air Code of Ukraine, which are included in Section VII «Aviation Personnel», they determine the requirements for persons who perform their labor function exactly in the field of aviation, that is: «they must meet the qualification requirements on professional grounds, health status and have a duly prepared certificate in accordance with the aviation rules of Ukraine» [2]. As for the reference to aviation rules, this also means a reference to the regulations that regulate in detail the certification of flight personnel, certification of dispatchers, and so on, and are developed by the State Aviation Administration of Ukraine (SAAU), which is the authorized governmental body for civil aviation in Ukraine.

In order to determine the specifics of regulation of labor relations of aviation industry employees, attention should be paid to the specifics of the labor function of aviation industry employees. A labor function is a list of labor rights and duties defined by centralized acts of labor legislation, local regulations and an agreement between the parties that an employee must perform based on knowledge (skills) and professional training in accordance with his or her specialty, qualifications, profession, job title [5]. One of the specific features of the labor function of aviation personnel is that the circle of labor rights and obligations of this category of employees is additionally regulated by the centralized government. The labor function of such employees includes a number of functions defined not only by labor legislation, and more specifically, not only by an agreement (employment agreement (contract)) between the parties to individual labor relations, that is workers and employers.

Considering that Ukraine is a member of the Chicago Convention of 1944, which sets forth a number of state obligations regarding the safe development of international civil aviation, a number of state obligations relate to providing conditions that ensure compliance with international standards that present certain requirements for aviation personnel. In fact, Article 32 of the said Convention, regarding certificates for flight crew members, states that: «the pilot of each aircraft engaged in international navigation shall be provided with qualification certificates and certificates issued or validated by the State in which the aircraft is registered» [6]. In turn, civil aviation personnel, in the course of performing work under an employment contract, must perform their labor function in compliance with international standards and domestic aviation legislation. The above shows that one of the key conditions for aviation personnel to perform their labor function is a qualification that allows an employee to perform a certain type of work in the field of aviation activities. In other words, the qualification of an employee to be classified as aviation personnel is the criterion by which the personalized content of his (her) labor function is determined. The specific feature of the assessment of aviation personnel qualifications is that it is not a one-time fixation of the employee's skills and abilities, according to article 51 of the Air code of Ukraine, the procedure for certification of employees is determined, the main purpose of which is to create favorable conditions for the correct resolution of the following legal issues: preservation of the content of labor relations in the previous form; change in the content of labor relations due to the adjustment of the employee's labor function, which is to take place; termination of labor relations [2; 7, p. 73]. Aviation personnel's licenses, certificates and ratings are of a fixed-term character, in particular, the Aviation Rules of Ukraine regulate the requirements for holders of flight crew member licenses, candidates for obtaining such licenses, requirements for issuing, maintaining, amending, restrictions, rights and obligations of license holders [8].

The regulation of the procedure for certifying the qualifications of flight personnel with relevant certificates, ratings and certificates is not limited to the verification of the skills of aviation personnel, but includes a comprehensive administrative procedure that covers: «special training (education); health assessment, which indicates the suitability of a person for a particular type of work; assessment of theoretical knowledge for obtaining certificates and ratings; practical skills testing; crediting of flight time; use of license; flight recording; language proficiency; permissible breaks in flights; restrictions on the rights of certificate holders over 60 years of age to commercial air transportation; restrictions, suspension and revocation of certificates, ratings and certificates» [8].

The experience of training flight personnel, in particular pilots, in the United States is useful. For example, the Federal Aviation Administration (FAA) assesses a cadet's professional readiness during a check ride exam, which includes theoretical and practical components (testing of theoretical knowledge and flight skills). Theoretical knowledge is tested through computer testing, which eliminates the subjective factor in the assessment. The training is carried out using modern training equipment, which makes it possible to get the necessary practical experience in the competent and safe operation of aircraft. The FAA strongly emphasizes that it is advisable to test the pilot's general theoretical knowledge after the pilot has completed an individual route flight, as the practical skills acquired during flights will significantly help in passing the test. [9].

As for the legal regulation of labor relations, the specifics of legal regulation of professional training and performance of labor functions of aviation personnel have been established already during admission to work and in other areas of labor relations, in particular, this concerns such labor law institutions as working hours and rest periods. For example, in accordance to the Rules for Determining Working Hours and Rest Periods of Civil Aviation Crews of Ukraine, approved by the Ministry of Transport of Ukraine from 02.04.2002, № 219, working hours are the time during which the aircraft crew is obliged to perform work specified in the employment contract and internal labor regulations [10].

In addition, the Aviation Rules of Ukraine «Technical Requirements and Administrative Procedures for Flight Operations in Civil Aviation», approved by Order of the State Aviation Administration of Ukraine № 682 dated 05.07.2018: «set age limits for crew members that affect their admission to perform professional duties. A cadet pilot must be at least 16 years old at the time of the first solo flight, the minimum age of applicants for a private pilot's certificate for airplanes or helicopters is 17 years old, and the minimum age of applicants for a commercial pilot's certificate for airplanes or helicopters is at least 18 years old. The upper age limit for a person to perform aviation-related work is set by the ACU, in particular: a commercial aviation pilot is allowed to act as an aircraft commander during flights until he or she reaches the age of 60; 65 years - if flights are performed as part of a crew on an aircraft certified for flights by more than one pilot, and the second pilot is less than 60 years of age; a commercial aviation pilot performing the functions of a second pilot is allowed to perform his duties during flights until he reaches the age of 65» [11].

So, the features of the regulation of labor relations of aviation personnel, taking into consideration the above analysis of this issue, are that the norms of all labor law institutions fully apply to them, unless there is a contradiction related to the specifics of the labor function of this category of employees. In other words, in this case, we can point to a differentiated approach to the legal regulation of aviation personnel, which means that certain categories of employees are subject to additional regulation by special legislation. In this case, we are talking about special legal regulation provided by the air legislation of Ukraine at the level of the codified law (CCU) and through numerous rules, procedures and instructions. This approach is explained by the risky character of the labor activity of air transport workers, their increased responsibility for the safety of air transportation, primarily of air passengers, as well as baggage, goods or mail.

In order to provide for the safety of civil aviation, the Council of the International Civil Aviation Organization (ICAO), in accordance with Article 37 of the Chicago Convention, developed and adopted Standards and Recommended Practices (SARPs) to achieve the maximum possible degree of uniformity in rules, standards and procedures for aircraft, aviation personnel, airways and auxiliary services in all matters where such uniformity will facilitate and improve air navigation. SARPs are 19 Annexes to the Chicago Convention and include all aspects of international civil aviation. Appendix 1 is devoted to aviation personnel with the title «Requirements for civil aviation personnel when issuing a certificate». It specifies the qualification requirements necessary to obtain a certificate for aircrew and ground personnel. The Standard also establishes medical requirements for obtaining a certificate for certain crew members and ground personnel (ship's commander, navigator, flight engineer, air traffic controller, etc Annex 1 is regularly reviewed and updated to meet the requirements of a certain category of aviation personnel in accordance with the current conditions of aviation activity (such as airspace congestion, complexity of airfield zone schemes, complexity of modern equipment, etc.) The seventh edition is currently in force. It should be noted that the aviation legislation of Ukraine complies with the recommended ICAO standards, in particular with regard to the legal status of aviation personnel [12].

In the context of martial law in Ukraine, when the skies over Ukraine have been closed to flights since February 2022 due to the Russian invasion, most airlines have lost their aircraft, and thousands

of people have been unemployed, it is necessary to look for new approaches to the organization and technology of human resources. However, some employees of the civil aviation sector continue to perform their duties, in particular, employees of the SAAU. They are provided with the necessary resources, means of communication, materials and information. The work is mostly performed remotely using the electronic document management system of the SAAU. The SAAU also oversees aviation entities and the maintenance of airworthiness of civil aircraft registered in the State Register of Civil Aircraft of Ukraine in accordance with SARPs, the Tax Code and the Aviation Rules of Ukraine.

A positive innovation during the period of martial law is the introduction by the Aviation Security System Department of the SAAU of the possibility of aviation security training (including online) in some aviation security training centers. However, online training is only possible for persons who have previously completed the relevant offline course and are not aviation security personnel.

The foregoing allows us to summarize the special working conditions of aviation personnel during martial law in Ukraine, when employees perform their functional duties with significant changes in working conditions, communication format, or have been fired at all. And the last ones are, of course, flight personnel, who are not in demand in Ukraine today for obvious reasons, but a certain number of employees continue to work for Ukrainian companies (SkyUp, Skyline Express, Windrose) that have managed to keep their aviation resources and work abroad.

It is currently impossible to fundamentally improve the situation in the aviation industry because of the activity of Russian attacks on critical infrastructure, which include civil aviation facilities, but certain constructive steps can be taken, including more active training and retraining of aviation personnel for work in peaceful conditions and allocating state funding for this, in our opinion, would be a reasonable strategy and a long-term investment in the further development of the industry, which can bring large profits to the state treasury and help strengthen Ukraine's international economic relations.

Conclusions. Therefore, based on the results of the study of the specifics of legal regulation of labor relations of aviation personnel, we can determine the following:

- despite the difficult situation of the civil aviation industry in Ukraine due to the military aggression of the RF, and as a result, the closure of the sky for civil aviation aircraft, our country continues European integration processes to further ensure efficient and safe air transportation of passengers, goods, baggage and mail, which began with the agreement on Common Skies between Ukraine and the European Union, the SAAU also performs its functional duties, although to a limited extent;
- given the European integration vector of the country in the aviation sector, the issue of quality staffing of the civil aviation sector is becoming more acute, which indicates the need to organize personnel work in the field of civil aviation in relation to the selection, placement, evaluation and incentives of aviation personnel, taking into account the possible decrease in the level of qualification of air transport workers due to downtime in their work during martial law;
- the need to intensify and finance the training and retraining of aviation industry employees is due to the special role of aviation in the country's economy, the specifics and content of the professional activities of the relevant category of employees whose labor function is related to the maintenance of a source of increased danger, with a special mode of operation of air transport.
- the specificity of the labor function of aviation personnel, especially flight crew, dictates the specificity of legal regulation of legal relations of this category of employees, which provides for the application of both labor law provisions on their regulation and detailed legal regulation by the provisions of Ukrainian aviation legislation. Such differentiation in the legal regulation of the labor of persons working on or servicing vehicles is primarily based on the responsibility for the lives of people using the services of transport companies, as well as the responsibility for providing high-quality air transportation services for baggage, goods and mail.

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