

SCIENTIFIC AND PRACTICAL RESEARCH THE RIGHT OF A PERSON TO LEAVE: COMPARATIVE ISSUES THE LABOR LEGISLATION OF CHINA AND UKRAINE

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The Article 24 of the Universal Declaration of Human Rights states that: “Everyone has the right to rest and leisure, including the right to a reasonable limitation of working hours and periodic paid leave” [1]. In the legislation of Ukraine, this provision was reflected in Art. 45 of the Constitution of Ukraine and the Law of Ukraine “On vacations”. At the same time the legislation of China fixed this right in Art. 43 of the Constitution of China, Labor Law of the People’s Republic of China, Art. 18 of Law of the People’s Republic of China “On the Protection of the Rights and Interests of the Elderly (2018 Amended), Regulation “On Paid Annual Leave for Employees” and so on. Thus, the principle of “right to rest” occupies a significant place in the system of principles of modern labour law, and vacation, in turn, is one of the significant ways of its realization. Nowadays the improvement of the legal regulation of leaves is of particular relevance. This is due to the fact that there are currently some violations of the employee’s right to rest in the process of giving them leaves.

If we’ll compare the legislative base of China and Ukraine, we’ll find out that most types of leaves are the same, and approaches to their getting are also similar. It should admit according to the legislation of both countries – Ukraine and China – paid leaves are also known as paid annual leaves, which refer to the annual leave system that employees can have according to the law to keep their original salary if they work continuously for more than one year. Both labour legislation bases show us the most important features: employees have their rights according to the law, employees can reach an agreement with the employer and enjoy paid leave after their own conditions

meet the regulations, employees do not need to work during the leave period, but they can still get paid. But the main differences in the duration of these leaves. For example, in 2008 the government of China according to the actual situation of the country's social development has issued "The Regulation on Paid Annual Leave for Employees" with special amendments which made the paid vacation system content the following: if the staff and employees have worked for more than one year but less than ten years, the annual leave should be five days; if the employee has worked for ten years but less than twenty years, the annual leave should be ten days; for those who have worked for 20 years, the annual leave is 15 days [2].

If we'll talk about the labour legislation base of Ukraine, we can define that in accordance with Art. 6 of the Law of Ukraine "On Leave" [3] that stipulates the annual basic leave is granted to employees with a duration of not less than 24 calendar days for the worked out year, which is counted from the date of the employment contract. It should admit that the quantity of leave's day also depends on the sphere where the employee works, but not less than 24 day. It means that the leave's quantity in China in general is twice less than in Ukraine. Here arise the Question: "The right to leave has got every person, but why this right in different countries differs?"

It's important to admit that in order to safeguard the rights and interests of seafarers and promote the development of shipping industry, it was adopted by a vote at the 16th meeting of the 12th NPC Standing Committee on August 29, 2015. It is decided to ratify and accede to the maritime Labour Convention 2006, which will come into force for China on November 12, 2016. And taking into account that China as a global seafarer – a third of the shipping powers have always attached great importance to seafarers' labor rights. The regulations of the People's Republic of China on seafarers were enacted in 2007. In an effort to comply with the 2006 maritime Labour Convention, such as article 30, paragraph 2: in addition to enjoy the national statutory holidays and holidays of the crew. In addition, it is entitled to an annual leave of not less than five days for every two months "work on the ship". This is a special law in the legislation of paid annual leave in China that is called "Regulation of the People's Republic of China on Seamen".

We also researched some interesting comparative facts about the validity of the leaves. For example, in Ukraine if the employee doesn't have a time for leave concerning the production processes or something else, he or she can get it next year. At that time the Chinese legislation forbids to use this year leave for the next year. In this case we can analyse and say that the China's law takes care about the right a person for rest, it declares that everyone not depending on the company's working processes should be on rest as the law says. But another side of this problem is disability of a person to have the rest. In this case, the legislation of Ukraine is more flexible and gives the Ukrainian employees to choose themselves whether to work or to have the rest. So, is the human right for rest in this case broken? We consider that, of course, no. in both countries employee's rights are not broken. So, when we made deep research in the labour legislative base of China we revealed that it isn't used the accumulative annual leave on practice as a rule. Moreover, the cumulative annual leave has long been controversial in China. Although China's central administrative interpretation requires that the cumulative use of annual leave must obtain the consent of workers, it does not make clear restrictions on the cumulative use of vacation time, in the unequal employment relationship between labour and capital forces, it is easy to lead to the abuse of power in enterprise human resource management and the failure of leave.

In practice of Ukraine the most popular question that can held to the labour disputes is the division of the leave into suitable parts. So, part 1 and 2 Art. 12 of the Law "On Leave" defines that the annual leave at the request of an employee may be divided into portions of any duration, provided that the principal continuous portion thereof shall be at least 14 calendar days. At the same time, we note that this article only provides for the possibility, but not the employer's obligation to divide the annual leave into parts as the employee wishes. In order to avoid loss of working time and taking into account production circumstances, the employer may not agree to split the leave as the employee wishes. Moreover, even the employee has the right to offer his or her own terms of annual leave or just do not share it at all. There is one but for the persons with disabilities. Paragraph 2 Part 13 of Art. 10 of the Law "On Leave" underlines that the annual leave for disabled people is granted at their own will and at their convenient time.

According to the scientific research of labour regulation in China we found out that Article 5 Regulation on Paid Annual Leave for Employees defines that the unit shall, in light of the specific conditions of production and work and the wishes of the employees themselves, make overall arrangements for their annual leave. Annual leave can be centrally arranged within a year, can also be arranged in sections, generally not across the year. Because of the unit production, work characteristic is really necessary to cross a year arrangement employee's year leave, can cross 1 year arrangement. If the unit can't arrange the leave for the employee because of the company's plan of production and the employee agrees for this, there is the following way out. For the number of days of annual leave that the staff and workers should have, the unit shall pay the annual leave salary remuneration according to 300% of the daily wage income of the staff and workers.

The next step that where we made the scientific and practical research was social leaves. For example in Ukraine, there is the so called extra 10 days for a social leave. This right has got the woman who has two or more children. This leave also has the cumulative feature. At the same time, we know that China does not encourage too many children. But at the same time according to the Chinese legislation there exist the "home leave". This the time point to the time for the employee to meet with spouse, father, mother, additional, give journey leave according to actual needs. For example, if the employee visits his or her spouse, he or she will be granted a family leave once a year, with a leave of 30 days.

What is really impressive by the Chinese labour legislation that there is the so called Family leaves. Thus Art. 18 of Law of the People's Republic of China "On the Protection of the Rights and Interests of the Elderly" (2018 Amendment) family members should care for the mental needs of the elderly, and shouldn't ignore or cold-shoulder the elderly. So, family members living apart from the elderly shall frequently visit or greet the elderly. That's why in accordance with the relevant provisions of the state, employers should ensure the rights of the supporters to have the family visit leave.

We consider that the Ukrainian legislation such as Law of Ukraine "On Leave" should be amended by the type of leave as "family leave".

There is also the so called family leave for unmarried employees, when they can visit their parents, in principle, every year to leave once, vacation for 20 days, or according to the actual situation, two years to leave once, vacation for 45 days. Married employees visit their parents, every four years to leave once, vacation for 20 days. But it applies only in the state organ, the people organization and the state-owned enterprise, the institution work the employee just can enjoy the family leave treatment. The period of it is one year. We want to notice that there is a subject to the following conditions: 1) those who do not live together with their spouses and cannot be reunited on public holidays may enjoy the treatment of visiting their spouses; 2) with father, mother with whom the employee doesn't live together and cannot be in general holiday again reunite, can enjoy the treatment that visits parents. If you and your family can't get together on official holidays, you can take extra family leave.

The Chinese nation has always been a hardworking nation, and the national spirit is to promote a sacrifice and dedication [4]. In the labour relations, "capital strong labour weak" is determined by the nature of both sides, the capital has the right to choose and employ people, and the employees are mostly mobile workers. In a competitive market, unions worry that if they take paid leave they will be seen by their bosses as not working hard. If the leader takes the lead and does not take time off, the staff will lack the courage to take time off. In Ukraine there are too much rights and free choice for the nation, so they have to appreciate the employees right for leave. And remember: too much freedom has to led for too much results.

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