

DOI: <https://doi.org/10.57125/FEL.2024.06.25.09>

How to cite: Matyjas-Łysakowska, P., & Kyselova, O. (2024). Employee Subordination of Civil Service Officials in the Context of Remote Work: Insights from Polish and Ukrainian Experience. *Futurity Economics&Law*, 4(2). 148-167. <https://doi.org/10.57125/FEL.2024.06.25.09>

Employee Subordination of Civil Service Officials in the Context of Remote Work: Insights from Polish and Ukrainian Experience

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Received: January 18, 2024 | **Accepted:** April 30, 2024 | **Available online:** May 10, 2024

Abstract: The concept of employee subordination is a fundamental aspect of the employment relationship, which is currently undergoing evolution towards greater employee independence. This article addressed the issue of employee subordination using civil servants as a case study. The selection of this professional group was based on the classic form of subordination within their employment relationship, which has deep historical roots. The COVID-19 pandemic normalised the remote work, including in administration, presenting a new phenomenon in Poland and Ukraine. The adoption of remote work in government administration marked a significant shift towards more flexible employment rules for civil servants. This study examined how Poland and Ukraine have integrated the remote work into their post-pandemic realities. The paper investigated whether heightened flexibility in employment regulations regarding remote work can align with the distinctive responsibilities of government officials. The methodology involved a comprehensive review and analysis of legal doctrines,

judicial decisions, and scholarly literature related to subordination in labour law. Using legal frameworks and analyses, the article explored manifestations of subordination in labour law, focusing on the control and management exerted by employers over workers. Specific consequences of legal subordination, such as organisational prerogatives, regulatory powers, and disciplinary authority, were scrutinised within the employment relationships. The first section of the article explored subordination as a central feature of the employment relationship, highlighting indicators of subordination among civil servants in government administration, particularly considering employees appointed to their roles. The subsequent section discussed Polish and Ukrainian experiences with the remote work during the pandemic, alongside current legal provisions enabling the remote work in government administration post-pandemic. Drawing from legal frameworks in Poland and Ukraine, the article analysed the implications and intensity of legal subordination within employment relationships, examining employer powers like organisational control, regulatory oversight, and disciplinary actions that define the degree of subordination experienced by employees. In conclusion, the article contended that subordination should be understood not solely as a hierarchical relationship but as a system of ordered relations. The primary function of subordination is to establish order and structure within systems governed by legal norms, governmental bodies, or officials. This article was based on a paper presented at the LLRN-6 conference in Warsaw (June 25-27, 2023).

Keywords: civil service, officials, subordination, remote work, legal regulation of remote work, labour law protection.

Introduction

Employee subordination is a cornerstone of the employment relationship, reflecting the dependence of employees on their employers. This dependency encompasses various facets, including organisational subordination, adherence to official instructions, and the evaluation of work performance through mechanisms such as rewards and penalties. Differentiating employment relationships from other work arrangements depends on the existence of employee subordination, which distinguishes them from arrangements like civil law contracts, where independence in work execution is emphasised. Numerous authors have explored the intricacies of employee subordination within employment relationships, with notable contributions from Duraj (2014; 2015), Mitrus (2011), and Prusinowski (2008), shedding light on the nuances of subordination and its significance in legal classification. They argue that the intensity of subordination features determines the nature of the contractual relationship, with employment contracts characterised by prevalent subordination traits.

Moreover, the distinction between employee and non-employee forms of work carries crucial implications, particularly concerning labour law protection. Liszcz (2009) and Raczkowski (2011) have underscored the importance of accurately discerning these distinctions to effectively safeguard workers' rights. Comprehending the dynamics of subordination within employment relationships is crucial, going beyond mere obedience to encompass factors such as the nature of tasks, levels of autonomy, and supervisory responsibilities. This complexity is evident across various professional domains, including managerial positions, creative fields, and specialised professions such as medicine and law.

Furthermore, the degree of employee subordination varies based on both the nature of work and the employment basis. This distinction is particularly pertinent in government administration, where dual employment bases, such as employment contracts and appointments, coexist. Scholars like Kuczyński et al. (2011) have extensively explored the implications of these employment bases, especially in the context of civil service.

In addition to quarantine restrictions, Ukraine also faced the imposition of martial law on its territory, necessitating a shift in work practices, especially in conflict areas, to ensure workers could perform their duties safely. Introducing the remote work practices prompted changes to the Standard Rules of Internal Service Procedures (Order of the National Agency of Ukraine on Civil Service Issues dated March 13, 2020 No. 39-20, registered in the Ministry of Justice of Ukraine on March 16, 2020 under No. 277/34560), permitting civil servants to work away from the administrative premises of state bodies. This transition to remote work brought significant changes to work organization, necessitating adjustments to communication methods and management approaches. Scholars such as M. Inshin, K. Melnyk, O. Demchenko, and L. Kotova have addressed the remote work of civil servants in Ukrainian legislation, while foreign legislation has been examined by V. Alan, F. Rosioru, H. Ursula, R. Shelly, among others. Nevertheless, despite research endeavors, unresolved issues persist, notably regarding the characteristics of remote work and distance learning for civil servants, as well as their legal regulation.

Concurrently, comparative analyses concerning employment practices, such as those between Poland and Ukraine, offer valuable insights into legal frameworks and their implications for government service. Disparities and similarities in laws, recruitment procedures, and employment conditions underscore the multifaceted nature of government service across different jurisdictions. In light of these considerations, this article aimed to delve deeper into the concept of employee subordination within employment relationships, exploring its manifestations, legal implications, and comparative perspectives across diverse contexts. Through a comprehensive analysis, the aim was to contribute to a nuanced understanding of this fundamental aspect of labour dynamics, which is essential for enhancing the efficiency and effectiveness of government administration systems in Poland and Ukraine.

Subordination as a characteristic of the employment relationship

In the legal theory, the concept of subordination is primarily utilised to denote a certain hierarchy among subjects. In this regard, it is widespread in branches of public law, serving as one of the fundamental categories reflecting the public law nature of relations (for example, in constitutional law, administrative law, financial law, or tax law). It is acknowledged that relations developing in the public legal sphere (power relations) are characterised by the presence of properties such as goal setting, hierarchical subordination, specific regulatory methods, and a high degree of centralisation. The peculiarity of these legal relations is that, on the one hand, there is always the state represented by its body or official vested with authority. The legal element of subordination in labour law generally reflects the fact that the worker is subject to the management and control of the employer in terms of how the work is executed (Rosioru, 2022).

Vartolomei (2014) highlights the following consequences of legal subordination:

- a) The existence of certain powers decisive employer relations with its employee's respectively the organisational prerogative, the regulatory prerogative and disciplinary prerogative.
- b) The right of the employer to establish binding rules through specific sources of labour law represented by: Regulation of organisation and functioning, internal rules and instructions on safety and health at work. Each spring in part regulates specific issues in employment legal relationships established between the employer and employees.
- c) The right of the employer, after the time of conclusion of the individual labour contract, to establish individual performance objectives.

Employee subordination according to Poland legislation is understood as the employee's dependence on the employer (Judgment of the Supreme Court of 24 June 2015., II PK 189/14). The employer's management is evident across three levels, as organisational subordination, subordination to official instructions, subordination in the scope of assessment of the employee's work by the employer (application of order penalties, rewards). Employment relationships are distinguished from

other non-employee forms of work (for example, from civil law contracts) by the very occurrence of employee subordination. In civil law contracts, the entity accepting the obligation retains independence in its implementation, independently organises the work, autonomously determines the method, location, and timing of execution. The employee, on the other hand, is dependent and must obey their employer's instructions in terms of the way the work is performed and its organisation (Bonawenturski, 2021; Duraj, 2014; 2015; Franconi & Naumowicz, 2021; Mitrus, 2011; Parker, 2020; Prusinowski, 2008). The degree of intensity of features specific to the employment relationship is the basis for the qualification of a specific legal relationship as an employment relationship (Judgment of the Supreme Court of 5 May 2010., I PK 8/10, Lex 602668; Decision of the Supreme Court of 27 April 2021., III USK 84/21, Lex 3245430).

This signifies that a contract exhibiting characteristics of employee subordination constitutes an employment contract, irrespective of the name by which it is formalised. If the contract shows with equal intensity features common to at least two different contractual models (the employment and civil law contract), the type of this legal relationship is determined by the concordant intention of the parties and the purpose of the contract (Judgment of the Supreme Court of 26 March 2008., I UK 282/07, Lex 411051). Therefore, it is not so much the content of the contract concluded between the parties as the manner of its implementation that is of primary significance in assessing the existence of subordination (Decision of the Supreme Court of 27 April 2021, III USK 84/21, Lex 3245430). The conclusion from this is that there may be an element of subordination in a civil law contract, but in the light of the overall conditions for the performance of the contract, this is not a dominant feature. The correct distinction between employee and non-employee forms of employment is very important as the non-employment (independent) forms of work are outside the scope of protection of labour law (De Stefano et al., 2022; Duraj, 2014; Liszcz, 2009; Mitrus, 2011; Prusinowski, 2008; Raczkowski, 2011).

Subordination elements may have different intensity in an employment relationship. Working under management does not mean that the employer cannot give the employee some independence in performing the tasks entrusted to them. From a juridical point of view, a further and crucial consequence of the "autonomisation" processes the questioning of the typological method as effective qualifying tool of the work relationship as subordinated. At least as long as the main feature of the latter is to be found in hetero-direction, understood, in a sort of vicious circle, as subordination (accompanied, in the majority of case-homework excluded-by the availability in presence) of the worker to the direction power of the employer (Ales, 2019).

The cornerstone of mutual relations between the parties to the employment relationship is the execution of the employer's instructions (Judgment of the Supreme Court of 18 February 2016., II PK 352/14; judgment of the Supreme Court of 15 October 1999., I PKN 307/99, OSN PiUS No. 7/2001, item 214), although in certain workplaces, employees are expected to be self-reliant rather than solely waiting for directives from the employer (Judgment of the Court of Appeal in Łódź of 3 December 2015., III AUa 872/15). Employee subordination cannot be known with the permanent supervision (observation) by the superior over the manner or proper pace of activities performed. The role of the employer boils down to determining the tasks that are to be performed (Judgment of the Supreme Court of 7.3.2006, I PK 146/05, OSNP Nr 5-6/2007, item 67; decision of the Supreme Court of 11.10.2007., III UK 70/07, OSNP Nr 23-24/2008, item 366). Simply outlining the task and its deadline to the employee suffices, followed by evaluating the quality and punctuality of the completed work (Judgment of the Court of Appeal in Gdańsk of 2 March 2017., III AUa 1656/16; judgment of the Court of Appeal in Gdańsk of 17 May 2016., III AUa 40/16; judgment of the Supreme Court of 18 February 2016., II PK 352/14). This is the way people employed in social control positions, people managing the company, but also people performing creative work, doctors or lawyers work. The same applies to people employed to perform specific work, teleworkers or mobile workers. After all, the permanent issuing of specific

instructions to these employees is illusory, and at the same time the manner they perform their work does not exclude the existence of an employment relationship.

The degree of subordination of an employee depends not only on the type of work, but also on the basis of employment. This is particularly important in the case of government administration employees especially in Poland, where there is a dualism of employment bases in the group of officials (art. 3 Act of November 21, 2008 on the Civil Service). In Poland, two employment bases are applied in parallel to people in clerical positions: the employment contract and the appointment. The appointment is no longer as common as it was in the past, but it is still used. Obtaining an appointment is possible as a result of passing a specific qualification procedure and then the basis of employment is transformed from an employment contract to an appointment, frequently while holding the same role. Persons on different employment bases may work in the same positions in the office, and they will perform the same scope of duties. The employment relationship by appointment as a generic form is saturated with service elements to a greater extent than the contractual employment relationship. The literature in the field of clerical law divides the appointment relations according to the degree of saturation of service elements into service – employee, employee – service and employee with service elements (Kuczyński et al., 2011). For example, the employment relationships of the appointment of civil servants fall into this third group.

The use of appointments determines the special status of a given profession (Matyjas-Łysakowska & Mędrala, 2021). The first reason for distinguishing a group of appointed officials is the constitutional purpose of its existence, i.e. performing duties for the state that necessitate individuals possessing specific qualifications and personal attributes. The application of the law, its interpretation, subsumption, and enforcement of legal norms require a civil servant not only to have formal and legal characteristics (such as citizenship or the exercise of full public rights), but also certain character predispositions (e.g. impeccable reputation), ensuring the quality of decisions, actions and resolutions taken. The appointment of officials in the civil service is also justified by the type of work entailing the execution of public responsibilities and upholding the tradition and dignity associated with the position. The full approval of the use of appointment as the basis for the employment of civil servants leaves one unsatisfied, because the same type of work is performed by civil servants who are also members of the civil service corps but employed on the basis of an employment contract. Obtaining a nomination is associated with a higher professional status of a corps member, expressed in a change in the structure and principles of remuneration and greater employment stability, yet does not lead to any alteration in the held position or the nature of the tasks undertaken (Stelina, 2020).

The official elements testifying to the stronger subordination of appointed officials include, among others, strict qualification requirements, the specific nature of their duties, increased employee availability, and disciplinary responsibility. As far as the duties of officials are concerned, modifying them in favour of officials is unacceptable as these are predominantly regulated by the administrative law. Civil servants perform tasks of public administration, which is why, in addition to the obligation to comply with the law and care for public interests, they are expected to exhibit appropriate moral conduct outside of their official duties, which is why certain responsibilities may extend into their personal lives. In addition, civil servants are subject to periodic assessment, the result of which determines the possibility of further work. Disciplinary accountability for breaches of duty represents a distinct form of liability that generically related to the employment relationship by appointment, but in accordance with Polish regulations (Art. 113 of the Polish Act of 21 November 2008 on the civil service, consolidated text in Journal of Laws of 2022, item 1691), contractual civil servants are also subject to it. One potential disciplinary consequence could be dismissal from employment at the office.

What is also characteristic for the employment relationship of appointed civil servants is their higher availability for employers. The employee availability is more than subordination. The most significant right of the employer in relation to an appointed employee is that they may, by a unilateral

legal act, permanently or temporarily change the place of their work. For instance, it has the authority to relocate an employee to a different role within the same office, transfer them to another office, or even to a different city. Thus, the classic employee subordination determined by the type of work, in the case of employees employed on the basis of appointment, is supplemented by their greater availability, the scope of which includes all official positions at a given level of administration (Stelina, 2010).

First, it's important to point out that, unlike Poland, which uses the term "civil service" in line with traditional EU practices, Ukraine uses the term "public service." Civil service is a service of the professional staff of officials, that is, persons providing the functioning of state authorities and local self-government bodies. In Europe, this kind of service is usually called a civilian service, which also allows distinguishing it from the militarised service and fulfilling the main duty of these officials – to serve the community. In turn, in accordance with the provisions of the Law of Ukraine «On Civil Service», public service entails a professional, politically impartial endeavor focused on effectively carrying out the tasks and functions of the state (Shapoval & Solntseva, 2019). The Law of Ukraine "On Civil Service," dated December 10, 2015 № 889-VIII, came into force on May 1, 2016, 7 years after the enactment of the Polish law "On Civil Service." The Ukrainian and Polish versions of the law contain not only many significant differences but also similarities in their approaches to legal regulation. The main feature of the civil service in the Ukrainian labour system legal relationship is that it is not the private interest of certain persons, in particular the employer, but the public interest, and it is carried out in order to meet the needs of the state and society. Although the principle of subordination, despite its characteristic nature for the public legal sphere, has not been unambiguously enshrined in the legislation on the civil service of Ukraine. The basic principles of the construction and functioning of the civil service system of Ukraine are enshrined in Article 4 of the Law of Ukraine "On Civil Service".

Therefore, the presence of the following features characterises the civil service as a type of labour activity:

- A public-legal connection between the institution of power and the professional activity of a civil servant, which is based on unilateral appointment rather than a contractual agreement between the parties with mutual obligations.
- Availability of a set of legal, economic, and social guarantees from the state regarding the professional activity of a civil servant as a person appointed to a civil service position on a permanent basis.
- The need for special professional training for the effective performance of functional duties.
- The fact that civil servants, while performing their official duties, act within the limits of the powers defined by legislation and in accordance with job instructions.
- The obligation for subordinate civil servants to carry out the instructions of managers given within the scope of their powers.
- Multidimensionality and complexity of professional tasks.
- The high level of mental stress at work.
- Defined time frames for the implementation of assigned functions.
- Increased social responsibility for work results.

Therefore, in order to determine the peculiarities of the existence of relations in this sphere, it is also necessary to take into account the fact that civil servants have a status that is subject to strict state legal regulation. Attaining this status marks the commencement of one's civil service career (a person's full entry into legal relations) takes place only in the following sequence of actions: 1) successful completion of the selection procedure for the position of an employee; 2) official adoption of an

administrative act of a subject of public administration (state authority) on accepting a person for public service; 3) taking the oath of a civil servant.

According to Part 1 of Art. 34 of the Law of Ukraine "On Civil Service" (Law of Ukraine dated December 10, 2015 № 889-VIII), public service personnel shall be appointed to their position for an indefinite period, unless provided otherwise. Therefore, an individual may be expeditiously appointed to a public service position under the following circumstances:

1) when being appointed to a public service position of category "A" – for five years, unless otherwise provided by the law, with the right to reappointment without a mandatory contest for another term or transfer to an equivalent or lower position in another government agency;

2) when substituting another public servant for the duration of his absence; provided, however, this law provides for the retention by such public servant of his public service position;

3) when required to ensure the planning and implementation of tasks of a temporary nature, with the conclusion of a contract for public service (for public service positions of categories "B" and "C").

Art. 21 of the Law "On Civil Service" stipulates that the accession to the office of public servant is carried out by appointing a citizen of Ukraine to a public service position based on the results of a contest. Accordingly, there are two grounds for the appointment to civil service positions: an act of appointment to a position based on the results of a contest and an employment agreement (contract).

The scientific community lacks consensus regarding the placement of the act of appointment to a position among the factors contributing to the establishment of an employment relationship with public servants. Thus, Melnyk (2017) points out that today the act of appointment to a position constitutes the main reason for the emergence of an employment relationship with public servants in Ukraine. The researcher considers that it is not advisable in the public service sector to use an employment agreement as the reason for the emergence of the relevant employment relationship, because the act of appointment to a position already stipulates the specific working conditions for the relevant public servant. All other conditions of work and rest for public servants are provided for in law. Bela-Tiunova (2002) also points out the need for an authoritative act of the competent government agency, an act of appointment to a position, prioritising it over the employment contract. She stipulates that the employment relationship arises, changes, and terminates from the moment the subject of appointment/head of the public service issues an administrative act (and not the declaration of the winner of the contest, conclusion of a contract for public service, filing of a letter of resignation, etc.). Inshin (2004), on the contrary, focuses on one of the most important principles of labour: its voluntary nature and the freedom to enter into an employment agreement. Therefore, the conclusion of an employment agreement (contract) constitutes the main juridical fact that gives rise to service-labour relations. He points out that an alternative would indicate the existence of forced labour at the state level. Some lawyers identify a contest only as a mandatory precondition for concluding an employment agreement. For example, Eremenko (2000) identifies a contest-based substituting as a confluence of two legal acts: the act of a contest and the employment agreement. Andrushko (2003) considers the juridical facts provided for by the labour and civil service legislation, and are directly accountable for the establishment of these legal relationships, forming the foundation for employment relationships. They, according to the researcher, include the act of appointment, the act of election and the employment agreement (contract).

In this manner, the following features can be delineated as the characteristics of the formation of labour relations within the realm of civil service:

- The obligation to conduct an open competition (except in cases of restricted competitions due to classified information), in compliance with formally established regulations;

- Undergoing anti-corruption scrutiny and assessments based on legislation pertaining to vetting procedures;
- The mandatory requirement to take the Oath of a civil servant as a prerequisite for entering into civil service;
- The existence of the mechanism of the second deferred right based on the outcome of the candidate's competition for a vacant civil service position;
- The successful outcome of the competition or the exercise of the second deferred right by the runner-up, based on the results of the competition, serves as the foundation for entering into an employment contract and/or issuing an administrative decree - an order for admission to civil service.

The appointment to a position represents the culmination of legal relations concerning an individual's acceptance into civil service and marks the initial phase regarding the commencement of labour relations associated with the direct performance of occupational duties. One distinguishing feature of civil service performed under a contract is that the terms of the contract may allow for the execution of remote work by a civil servant (outside the premises of the government agency), incl. by means of online access. When performing tasks remotely, the parties may determine the periods of time during which a person is required to be present on the premises of a government agency (at the workplace).

Remote work in public administration in Poland – during the pandemic and currently

The provisions of the Covid Act introducing the remote work did not exclude public administration employees, including local government employees, from the group entitled to the remote work (article 3, sections 3-8 of the Act of March 2, 2020 on special solutions related to the prevention preventing and combating COVID-19, other infectious diseases and crisis situations caused by them). A breakthrough moment was the issuance of the Regulation of the Council of Ministers of November 2, 2020. Pursuant to par. 24a section 1 of this regulation, in public administration offices or organisational units performing public tasks, heads of public administration offices, directors general of offices or heads of organizational units instruct employees to work remotely, with the exception of organizational units of courts and prosecutor's offices (Sidor-Rzadkowska, 2022).

Pursuant to Art. 3 section 1 of the Covid Act, the employer could instruct the employee to perform work specified in the employment contract for a specified period of time, outside the place of permanent performance. The provision of Art. 3 section 1 of the Covid Act did not establish a procedure for unilaterally changing the permanent place of work, but was a new managerial right of the employer allowing him to temporarily instruct an employee to perform work outside the permanent place of work. The remote work does not have to be performed regularly outside the permanent workplace. The employee may work remotely on a rotating basis, partly at the permanent workplace, partly outside it. The place of remote work may change (Naumowicz, 2020).

The changing conditions of work as a result of the development of technology, and particularly the provision of work using electronic means of communication, allow employees working independently of the traditionally understood workplace, also in the case of civil servants. The remote work is an exception to the traditional understanding of the workplace. The Covid Act negatively defines the place of remote work and does not indicate where remote work can be performed, it may not necessarily be the employee's residence, what is more, the negative definition of the place of remote work means that the employer does not have to specify at all where remote work is to be performed (Brzostowski Wojciech, 2020; Prasołek, 2020; Schiffter 2020).

The report of the Supreme Audit Office on the subject: "Organisation of remote work in selected entities performing public tasks in connection with the announcement of the state of the pandemic"

published on 2 December 2021 emphasised the insufficient state of preparation of offices to perform remote tasks in a reliable and compliant manner. As a consequence, most employees of offices performed supporting tasks that did not require access to IT systems, self-educated or remained at the employer's disposal (without entrusting official tasks), often using private resources for their professional purposes. The evaluation of experiences related to remote work relied on the level of readiness of the workplace for this mode of operation. Among the things pointed out in this reports were also barriers related to the lack of adequate equipment of public entities with computer equipment and technical solutions ensuring remote access to documents, the inability to use electronic databases, correspondence, case files outside the offices, the risk of violation of professional secrecy (removal of documentation from the office, use of private computers and telephones), transferring labour costs to the employee, but also insufficient supervision by superiors, involving employees working stationary to support people working remotely, loosening the employer-employee bond. All audited units indicated organizational barriers in terms of the actual maladjustment of procedures regarding the manner of performing tasks, especially those related to direct customer service. The report demonstrated that there was no remote access to the files in any of the courts. The best prepared for remote work were the entities that performed relatively few tasks as part of direct customer service (report p. 28). The report demonstrates that proper preparation of offices for organising remote work had a decisive impact on the way it was carried out.

The assumed temporary nature of the remote work regulations in the Act of March 2, 2020 on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them has proven itself in practice and has become a part of the everyday life of many employers. Prior to the onset of the COVID-19 pandemic, remote working was acknowledged as a practice but was not extensively adopted (see, for example, Chang et al., 2021; Delfino and van der Kolk, 2021; Hafermalz, 2021). Until the pandemic abruptly disrupted conventional work patterns, accelerating existing trends toward online or virtual work environments, most workers had limited prior experience with remote work (Kniffin et al., 2021). During the pandemic, there has been a notable acceleration away from traditional office-based work towards remote working (Yang et al., 2022). Simultaneously, advancements in digital technologies have facilitated the adoption of remote work practices (Mariani & Castaldo, 2020). As a result of this demand for remote work, it is currently regulated in the Labor Code.

When it comes to the Polish regulations regarding the possibility of using remote work in public administration in the post-pandemic era, the new provisions were introduced on 7 April 2023 under the Act of 1 December 2022 amending the Act - Labour Code and certain other acts. In accordance with these new regulations, the remote work is work performed entirely or partially in a place indicated by the employee and agreed with the employer, including at the employee's residential address, particularly utilizing direct distance communication methods (art. 6718 of the Labour Code).

The Labour Code shall apply to public servants to the extent not regulated by special provisions. From a legal point of view, this means that the remote work has become available, also for public administration employees, because it has been regulated in the Labour Code. It would seem that the lack of subjective restrictions on the remote work creates a lot of flexibility in its application, but this flexibility is only apparent.

Three issues are important for remote work in public administration: the nature of remote work, the location of work, and the mode of remote work provision (completely, partially remotely or occasionally) (Matyjas-Łysakowska & Maroń, 2022).

I will start with stressing the fact that the Polish legislator has provided for two modes of introducing the remote work: at the request of the employer and at the request of the employee. Circumstances that justify imposing a remotely ordered work on an employee include: an emergency, a

state of epidemic emergency or a state of epidemic, and a situation in which the employer is temporarily unable to provide safe and hygienic working conditions in the employee's current workplace due to force majeure. The assumption for ordering work in a remote form is a statement that the employee holds the required premises and technical conditions to perform remote work. In this mode, the work can be performed completely remotely or in a hybrid pattern.

The work may also be provided remotely at the request of the employee. As a rule, the application is not binding on the employer. The employer is obliged to inform the employee about the grounds for rejecting the application. With certain employees, the legislator mandated that the employer must consider the employee's request, unless remote work is unfeasible due to work organization or the nature of the employee's tasks. This "privileged" group of employees includes pregnant employees, employees raising a child up to the age of 4, as well as employees caring for relatives, who have a disability certificate (art. 6719 par. 6 of the Labour Code). Consequently, the decision to initiate remote work is to be made by the employer. Even people in a special life situations do not have a claim for remote work.

The proposal of the so-called occasional remote work is rather interesting (art. 6733 par. 1 of the Labour Code). Occasional work means that an employee can apply for remote work for 24 days in a calendar year. Occasional remote work may only be performed at the request of the employee. It can be used in incidental circumstances, justified only by the interest of the employee, e.g. the necessity of tending to a loved one, traveling away from the permanent place of work to address personal matters, or another situation where remote work remains feasible simultaneously. The employee's application is not binding on the employer, but the refusal is subject to assessment in terms of equal treatment of employees and their non-discrimination (see in particular Art. 183a et seq.). The employer may partially accept the application, but then it is necessary for the employee to confirm their intention to perform the remote work only for part of the period proposed in the application. Performing the remote work in a shortened period may not correspond to their best interests.

The lack of subjective and objective restrictions in the scope of occasional remote work makes it possible to conclude that it is available to all employees, including public administration employees. However, it can be assumed that by introducing the remote work on a permanent basis, the Polish legislator has applied legal solutions in a very protective way, making the performance of remote work essentially dependent only on the will of employers. Nevertheless, it would be prudent to consider the interests of both parties involved in the employment relationship. Hence, the concern lies in the potential limited implementation of the new regulations of the Labour Code within public administration. More so when financial resources are not provided to improve the technical aspects of work, including the technical and IT infrastructure required to perform remote work. Obstacles of a technical nature are to be overcome, it is only a matter of time, as the willingness of officials to flexibly combine professional work with family life is already present. Therefore, it is believed that offices should meet the needs of employees and enable them to perform work remotely, even in a hybrid manner or occasionally.

The remote Work in Public Administration in Ukraine: Pandemic Experience and Current Regulations

There was no comprehensive legislation governing the remote work in Ukraine before 2020. Rather, parties involved in an employment relationship were only permitted to engage in an employment contract with a telecommuter following the procedures outlined in the "Regulations on the Working Conditions of Home-based Workers" № 275/17-99 dated September 29, 1981. The need to rapidly shift a large number of workers to remote work during the pandemic was affected by the defects in the existing Ukrainian legislation, i.e. the absence of the relevant legal framework in this area. The quarantine, enforced by the Cabinet of Ministers of Ukraine on March 12, 2020, compelled both

employers and employees to look for ways to maintain labour relations in the new status quo, which included a ban on office work. Faced with this problem, employers initially resorted to the use of short-term solutions, namely planned downtime, and time off, followed by unpaid leaves. Nonetheless, implementing such measures proves economically viable only in the short term, as they fail to reignite production processes and hence cannot be deemed suitable instruments for ensuring business survival amidst changes in the population's living conditions. In fact, some workers were even illegally dismissed or laid off. Consequently, it's the introduction of quarantine procedures brought about by the declared pandemic that gave a significant impetus to the development of the regulatory and legal framework governing remote work in Ukraine. To prevent the emergence and spread of the corona virus infection (COVID-19), Ukraine amended its Labour Code, including by adopting the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" № 530-IX dated March 17, 2020, which defines remote (home-based) work as a type of work performed by an employee at his place of residence or in another place of his choice, including online, but outside the employer's premises (Article 60 of the Labour Code of Ukraine). It means that at the time there was no distinction in the labour legislation between remote and home-based work. In terms of the presented work, this is wrong because there are differences. Therefore, the adoption of Law № 1213-IX dated February 4, 2021 "On Amendments to Certain Legislative Acts of Ukraine on Improving the Legal Regulation of Remote, Home-based and Flexible Work" was a significant development, as it defines the term "remote work" and formalises its application. Importantly, the Labour Code was amended to include Articles 60-1 "Home-based Work" and 60-2 "Remote Work," which drew a clear distinction between these two terms, meaning that they are longer viewed as synonyms in the realm of the labour law (Labour Code of Ukraine. dated December 10, 1971 № 332-VIII). A notable differentiation between a home-based worker and a remote worker lies in the latter's lack of confinement to their residence, typically designated as their workplace. Remote workers possess the flexibility to execute their responsibilities from any location where they can typically access the Internet.

Furthermore, while the deliverables of home-based workers include material goods, remote workers are typically involved in the creation of intellectual property delivered over the Internet.

Today, the key provisions of the Labour Code of Ukraine regarding remote work are as follows:

- The employee autonomously selects the workplace and ensures a safe and secure working environment. Simultaneously, the employee and the employer can mutually agree in the employment contract that remote work may involve a combination of tasks performed remotely and at the workplace within the premises or on the employer's premises.
- The employee manages working hours at their discretion, exempt from the rules of internal labour procedures unless otherwise stipulated in the employment contract. Nonetheless, the total working hours must adhere to the norms specified in the Code of Labour Laws of Ukraine.
- An employee engaged in the remote work is entitled to a designated rest period (disconnect period), during which the employee can interrupt all information and telecommunication connections with the employer.
- Generally, the responsibility for providing the employee with equipment, software, technical tools, information protection means, and other necessary resources to perform duties lies with the employer. The employer organises the installation and maintenance of these resources and covers associated costs. However, an employment contract for remote work may specify that the responsibility for these provisions lies with the employee. In such cases, the contract outlines the amount, procedure, and terms of compensation to the employee for using equipment, software, technical means, information protection means, and other resources owned or rented by the employee.

- The employee bears financial responsibility for any damage caused to the employer due to their fault, such as the lack, destruction, or damage to the equipment and tools provided for work under the remote work contract.
- - An agreement on full financial responsibility may be established with an employee who has reached the age of 18 and uses the employer's equipment and facilities provided for work.

So, the features that distinguish the application of remote work from classic labour relations include the following:

- limited organisational oversight (inability of the employer to control third-party access to the remote worker's workplace, absence of the need to ensure proper working conditions at the employee's workplace, etc.);
- the employee's independent determination of the work hours and rest period;
- exemption from specific provisions of labour legislation in these relationships (such as payment for night work or overtime, imposition of disciplinary penalties for tardiness or absenteeism, etc.).

The flexible form of employment, exemplified by the remote work, has a significant drawback - the limited application of guarantees defined for labour relations. Throughout the labour law history, the employee's subordination to the employer's authority has consistently been recognised as a fundamental criterion for acknowledging labour relations. The absence of labour independence, characterised by organisational subordination and/or the employee's economic dependence on the employer, is a pivotal aspect of the labour relationship. According to the International Labour Organization (ILO) experts (Recommendation No. 198), one of the primary indicators of subordination is the control, which refers to the power to direct workers to meet evolving labour process needs. The control encompasses "personal instructions" that determine the timing and location of work and regulations governing employee behaviour in the workplace. It also includes "functional instructions" providing guidance to employees regarding the nature of their tasks and methods of execution. The employer's right to establish the working hours is considered a specific instance of employee subordination. The requirement to adhere to particular time regulations is also part of internal labour regulations. While courts recognise it as a distinct feature of labour relations, it pertains more to ease of identification than actual independence. Historically, when employees worked remotely, it typically constituted a small fraction of their total working hours, such as spending one or more days at home regularly or as needed. Nevertheless, the landscape underwent a significant shift during the pandemic, marked by the widespread adoption of remote work within the public sector. This shift made it increasingly challenging for managers to deny employees the option to work remotely, particularly after the initial lockdown period (Williamson et al., 2022).

Distinguishing the legitimacy of actions in employer control over home and remote workers is complicated due to the near elimination of the spatial division principle (separating employees' personal lives from their professional and business activities). Previous research has operated under the assumption that remote work is a decision made by the employee in negotiation with the employer. Typically, the remote work has also been studied as a part of regular office work or in comparison with work conducted on the employer's premises. Thus, a situation in which the entire organisation may work remotely most of the time, if not full time, is exceptional, creating a new setting to study remote workers' experiences (Jämsen et al., 2022). This challenge arises because employees primarily conduct their work outside the employer's physical workspace. Addressing the establishment of privacy guarantees for remote workers in the virtual space requires developing and implementing a special procedure for monitoring employees' executive discipline. This procedure should outline specific limitations on recording the process of creating a document in a digital environment, all within the framework of specialised software installed on employees' work equipment.

The utilisation of the remote work in government agencies remains inadequately comprehended, with scarce theoretical and particularly practical studies in this domain. This lack of understanding stems from the distinct nature of the legal framework governing the operations of government entities and the ambiguity surrounding certain provisions of labour legislation concerning the remote work. In Ukraine, incorporating the remote work into civil service represents an innovative development. The introduction of remote work practices prompted modifications to the Standard Rules of Internal Service Procedures, as outlined in the Order of the National Agency of Ukraine on Civil Service Issues dated March 13, 2020, No. 39–20, officially recorded in the Ministry of Justice of Ukraine on March 16, 2020, under No. 277/34560. Consequently, civil servants gained the opportunity to fulfill tasks beyond the confines of the administrative building of the state entity. This document outlines the criteria governing the transition of a civil servant to remote work. Therefore, a civil servant can work remotely if the high-quality, efficient, and effective performance of tasks does not require:

- The use of information with limited access;
- The access to computers, telecommunications, and software that functions only within the premises of the state body;
- Other necessity of mandatory stay in the premises of the state body.

As mentioned above, government agencies today use legal structures that allow employees to work both under the terms of an employment agreement and under the terms of a contract. The remote work in the civil service is possible in two forms:

- concluding an employment contract on the remote work;
- issuing an order to introduce the remote work and determining the list of employees affected by this without the mandatory conclusion of an employment contract on remote work in writing.

If a civil servant seeks to initiate remote work, they should contact both their immediate supervisor and, if applicable, the head of any independent structural unit to propose such an arrangement. The civil servant can submit the proposal either orally or through telecommunications. Additionally, there should be a minimum of two working days between the date of application for remote work and its potential implementation. This time frame allows the manager to assess the advantages and disadvantages and make an informed decision.

The remote work of a civil servant is possible after agreement by the immediate supervisor and after notification of the personnel management service about the commencement of work of a civil servant outside the administrative building. Also, the civil servant prepares and coordinates with the immediate supervisor the tasks defined for the period of the remote work, and the deadlines for their implementation. To do this, he uses an approximate form of a list of tasks defined for the period of work outside the administrative building (appendix to the Methodological Recommendations).

If the initiator of remote work is the head of the civil service, an order is issued to authorise remote work, and a roster of employees engaged in remote work is compiled. This provision is stipulated by paragraph 1 of Decree No. 440 and Article 60–2 of the Labour Code. The immediate supervisor of a civil servant may refuse remote work if:

- There are no tasks that a civil servant can perform outside the administrative building.
- There are no opportunities to perform tasks with quality, efficiency, and effectiveness.
- The civil servant lacks proper material and technical support, and the state body cannot provide it.
- Job responsibilities involve the use of restricted information.

- A software is required to perform tasks that function only within the premises of a government agency.
- The official duties of a civil servant require his presence on the premises of a state body.

That is, if an electronic document flow has not been established in a government agency or other government organisation, the work of civil servants is associated with the reception of citizens, representatives of legal entities (IP), and also due to additional specifics of the activities of a government agency and the functional duties of a civil servant, transitioning the latter to a remote work format is practically infeasible. The introduction of electronic document management in authorities is the basis without which the transition to remote work is impossible. Even though many commercial structures have long minimised the use of paper documents, the transition to the electronic exchange of documents in government agencies should be carried out centrally. There is a practice where the manager does not sign the electronic document until a paper copy with signatures is obtained. A significant amount of time is spent on obtaining signatures and approving orders due to restrictions on exercising control and supervision within the authority of the state body (Aliushyna, 2021a; 2021b).

Also controversial is the question of the existence of positions that depend on being at the workplace. So, thus, the authors identify a number of positions that are required to be present in the workplace. In this way, it is possible to select positions for which there is currently no possibility of applying the remote work norms. For example, positions that require the support of constant and operational communication with management and that are related to production and organisational processes with other employees or are endowed with special functions to ensure the activity of a state body. The exclusion of such employees from the current work process will harm the activity of the state body (Tiutiunyk & Kotova, 2020).

Despite the significant advantages of implementing electronic governance, there are negative aspects inhibiting e-government processes. Firstly, Ukraine presently faces constraints in financial resources to guarantee the seamless and high-quality operation of electronic systems, particularly within the field. Technical risks also arise from unlicensed software, which cannot guarantee personal data protection and cybersecurity. Civil servants themselves, with their conservatism, professional level, and difficulties associated with developing new technologies, can also impede progress. Regarding citizens, the problem is their low level of trust in public service and political processes, low awareness of the benefits of e-government, and reluctance to participate in public affairs.

On February 24, 2022, the active phase of Russia's full-scale war against Ukraine began, affecting the remote work use. After all, as a result, an unprecedented migration began in Europe, the majority of which are women and children, and Ukraine's economy began to transition to a new mode of operation under martial law. Therefore, during the armed aggression, the introduction of remote work became even more critical in order to support the country's economy and help employers and employees organise the work process. Currently, Ukraine is faced with extremely difficult living and working conditions. Many citizens of Ukraine were forced to leave their homes in search of safety for themselves and their families and, therefore went abroad.

While the Labour Code of Ukraine does not restrict the remote work performed abroad by individuals employed by domestic employers, specific legislative acts come into effect in times of war, introducing such limitations. Consequently, civil servants and employees of state bodies may engage in remote work during martial law, but this is restricted to the territory of Ukraine. This authorisation is bestowed at the discretion of the head, in accordance with the guidelines delineated in the Cabinet of Ministers of Ukraine resolution titled "Certain Matters Regarding the Organization of Work for Civil Servants and State Employees During Periods of Martial Law," dated December 4, 2022, number 440. Freedom of movement for workers has been enshrined in the directly applicable Article 45 TFEU. It has been further developed by secondary legislation, especially complementary Regulation (EU) 492/2011,

which prohibits discrimination in the fields of employment, remuneration and other working conditions and guarantees EU workers equal access to social and tax advantages etc. Directive 2014/54/EU is trying to close the gap between the law and its application in practice. Hence, it does not create any new substantive rights for workers and/or their family members in addition to those provided under Art. 45 TFEU and Regulation 492/2011. It only seeks to achieve more effective and uniform application and enforcement of existing rights (Vukorepa, 2020).

However, the resolution "Some issues of organising the work of employees of economic entities of the state sector of the economy during the period of martial law," dated April 26, 2022, number 481, has raised significant concerns. This resolution stipulates that employee of economic entities in the state sector of the economy, based on the decision of the executive body or the business entity's manager, may engage in remote work but only within the territory of Ukraine. The members of the administrative body or the head of the economic entity, as determined by the managing entity of state-owned objects, general meetings of shareholders/participants of financial companies in which the state holds 50% of the shares/parts in the authorized capital, and supervisory boards of economic entities, are permitted to work remotely within the territory of Ukraine. Hence, civil servants and employees of state bodies outside of Ukraine may engage in work solely upon issuance of a business trip approval in accordance with established protocols. Should a civil servant or state body employee in Ukraine be absent from the workplace during working hours without authorization from the head of the public service, or be abroad, disciplinary measures may be taken in accordance with the law (Kolesnik, 2022).

This has raised questions regarding the potential discriminatory nature of such regulations and limitations. After all, the essential aspect of remote work lies in the proper execution of job duties, irrespective of the geographical location from which the employee chooses to perform these functions. Moreover, concerns arise regarding the authority granted to employers to enforce disciplinary measures against employees in the public sector of the economy who fail to fulfill their work duties within the territory of Ukraine. The belief is that remote work fundamentally embodies a unique approach to labor organisation, granting employees the autonomy to select where they conduct their work tasks. Imposing limitations on this autonomy undermines the essence of remote work itself. The activities of state bodies have an unquestionable specificity, including a high degree of subordination and regulation of all procedures. Therefore, it is understandable that legislators exercise caution and do not rush to introduce innovations into the activities of government agencies. The concept of the remote work is not applicable to all positions. As mentioned above, the National Agency of Civil Service has clarified the conditions under which a civil servant can switch to remote work. Nevertheless, developing a list of positions whose functionality allows for remote work is also necessary. In this regard, government agencies need to define the conditions for implementing remote work clearly. It is also essential to make changes to the legislation to regulate the location of the workplace and determine the working regime of a civil servant who wishes to work remotely. Clearly defining the resources, a civil servant will use for work and the methods of communication with colleagues and management is also necessary. All of the above unquestionably requires improvement from a legal perspective and legislative consolidation, including the amendments to the Law of Ukraine "On Civil Service."

Conclusions and Implications

What is the perspective for maintaining the remote work in government administration in post-pandemic realities? Civil servants' modernisation employment relationship formula by breaking the time and place relationship between the employee's professional activity and the office is a novelty. This form of work was forced by the situation in the country and the world, but it has worked and should be maintained. However, to establish remote work as a sustainable model for employment, the conventional notion of the employment relationship for civil servants, who are typically appointed, needs restructuring. The remote work, although provided outside the office, still remains work in conditions of subordination. The independence of the employee in determining and organising the

workplace does not exclude the managerial power of the employer over the official. The employer will continue to have managerial powers, including those that are a testimony to the professional origin of the official's profession. The fact that the remote work in a sense deprives the employer of control over the way, place and time of work remains undisputed. Nevertheless, recent years have demonstrated that the new model of subordination with the provision of appropriate technical facilities is also possible to use in government administration and remote work can be equally effective. However, this requires additional investment of public entities. They are gaining in popularity of the solution of electronic contact between the office and the client, such as ePUAP, which gives the opportunity to perform some of the duties without personal meetings. This creates a field for the development of remote work. Therefore, it is crucial to prioritise communication quality to enhance the experience of remote workers. Research by Wang et al. (2021) highlights that inadequate communication not only impedes performance but can also strain professional relationships and contribute to heightened work-related stress.

The law should keep up with social changes, and evidently it should not hinder these changes. Therefore, the inclusion of civil servants in the circle of beneficiaries of the remote work are here positively assessed. There is a deep hope that where remote work has been successfully introduced so far, it will be possible to maintain it based on new regulations, and in other places, still insufficiently prepared, remote work can become attractive as a form of making working time more flexible as a formalised and occasional tool for organising working time tailored to the employee needs. Remote work is part of the tendency to make it easier for employees to reconcile work and personal life (work life balance). Remote work, in addition to allowing you to combine professional work with personal life, can contribute to counteracting burnout and act as a magnet for work in public administration.

On the example of Ukraine, remote work also plays an important role in ensuring the continuity of public administration. Thus, it is currently necessary to improve Ukrainian legislation and a number of issues regulating remote work (encourage flexibility in scheduling and work location to cater to the varied needs and preferences of civil servants; establish mechanisms for monitoring and assessing the performance of civil servants involved in remote work; enhance regulations for data protection and privacy; streamline the utilization of digital collaboration and communication platforms). And employers and employees need to pay maximum attention to the content of labour contracts regarding remote work and record in them the maximum number of conditions and situations, as well as possible ways of their settlement.

In any case, today we can confidently say that the coronavirus pandemic has not only provoked a powerful temporary trend but has given a new round to the widespread spread and development of remote (remote) employment, revealing the potential of this type of labour relations, the formation of which was laid down by the processes of digitalization and globalization of the economy.

Suggestions for Future Research

The proposed legislative improvements aimed at regulating the remote work for civil servants present a comprehensive framework to enhance the efficiency, accountability, and security of government operations. These proposals recognise the evolving dynamics of work and the growing acceptance of remote work practices, underscoring the need for proactive measures to adjust legislative frameworks accordingly. Promoting flexibility in work scheduling and location appear as a pivotal strategy to accommodate the diverse needs and preferences of civil servants. By allowing for hybrid work models and flexible hours, government agencies can foster a conducive environment that prioritizes work-life balance while guaranteeing optimal productivity.

Moreover, the implementation of mechanisms for monitoring and evaluating the performance of remote civil servants is crucial for maintaining accountability and productivity standards. Clear performance objectives, regular reviews, and the utilisation of appropriate technology enable effective

oversight and management of remote work activities, facilitating optimal outcomes. Strengthening data protection and privacy regulations constitutes another essential aspect of legislative improvement. Ensuring the protection of sensitive information managed by remote civil servants is crucial to mitigate risks and maintain confidentiality. Measures such as securing electronic communication channels and enforcing compliance with data protection laws contribute to maintaining the integrity of government operations.

Promoting the utilization of digital collaboration and communication platforms is essential for bolstering connectivity and teamwork among remote civil servants. Investing in user-friendly tools for virtual meetings, document sharing, and project management fosters efficient collaboration and knowledge exchange, thereby enhancing overall productivity and effectiveness. Developing a legal framework for resolving disputes and conflicts stemming from remote work arrangements is crucial to tackle potential challenges and ensure fair resolution. Provisions for mediation, arbitration, and legal recourse offer avenues for conflict resolution, promoting transparency and fairness in the remote work environments.

In conclusion, the proposed legislative improvements provide a holistic approach to regulating remote work for civil servants, emphasising flexibility, accountability, security, collaboration, and dispute resolution. By incorporating these recommendations into legislative frameworks, government agencies can effectively navigate the complexities of remote work and uphold the integrity of public service delivery in an evolving work landscape.

Acknowledgements

None.

Conflict of Interest

None.

Funding

The Authors received no funding for this research.

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