Article

The service contract in Russia: parties, definitions, contents and form

by Mrs E A Ershova

The author provides commentary on the legal regulation of service contracts, and suggests some possible improvements.

Article 23, Part 1 of the Federal law No. 79-FZ "On State Civil Service of the Russian Federation" of July 27, 2004 defines a service contract as an "agreement between **a representative of the employer** [author's emphasis] and a person willing to join the civil service or a **civil servant** [author's emphasis] on their civil service employment or holding of a civil service post. The service contract provides for the rights and responsibilities of both parties" (*Rossiyskaya Gazeta,* July 31, 2004). This concept raises quite a few questions of a theoretical and practical nature. First, who are the parties to a service contract? Second, what is the essence of such a civil contract?

The above-mentioned law provides that one of the parties to a service contract is a "representative of the employer". At the same time Article 182, paragraph 1 of the Civil Code of the Russian Federation stipulates that:

> *a contract, concluded by a person (representative) on behalf of the other person (principal) by virtue of authority vested in him in accordance with a power of attorney, law or decree by a duly authorized state or local self-government body, directly establishes, alters or annuls civil rights and responsibilities of the principal.*

Hence, one may conclude that "representative of the employer" does not conclude a service contract in his/her personal capacity but rather on behalf of the principal, and the rights and responsibilities under such a service contract are those of the government body where the civil servant is to take service. The definition of "representative of employer" as contained in Article 1, part 2 of the Federal law of the Russian Federation "On State Civil Service of the Russian Federation" is very telling in this regard: "a representative of employer may be head of a government body, a person holding a government post or individuals, **acting as employers on behalf of the Russian Federation or a constituent territory of the Russian Federation"** [author's emphasis]. Thus, in my opinion a comparative interpretation of the Federal law of the Russian Federation "On State Civil Service of the Russian Federation" and the Civil Code of the Russian Federation necessitates the following conclusion: each civil servant is employed by the Russian Federation or constituent territory of the Russian Federation rather than by a "representative of employer".

Article 23, part 1 of the Federal law of the Russian Federation "On State Civil Service of the Russian Federation" provides that the other party to a service contract – or "the employee" – may be a person "willing to join to civil service **or** [author's emphasis] a civil servant." The alternative conjunction "or" gives us the right to conclude that there are two categories of "employees": (1) an individual willing to join the civil service; and (2) a civil servant. The Federal law that is being analyzed is quite contradictory in this respect. On the one hand Article 3, part 1 of the Federal law of the Russian Federation "On State Civil Service of the Russian Federation" in my opinion quite reasonably defines that civil service is "a professional **activity** [author's emphasis] in the government's employ by the citizens of the Russian Federation… occupying posts in the state civil service of the Russian Federation..." In addition, Article 13 of the aforementioned law quite rightly specifies that a:

> *civil servant is a citizen of the Russian Federation who undertook* **responsibilities to serve in the civil service** *[author's emphasis]. A civil servant performs his or her* **professional service duties on a civil service post** *[author's emphasis] in accordance with their assignment act or service contract and is reimbursed out of federal budget or budget of the constituent territory of the Russian Federation.*

On the other hand, Federal law of the Russian Federation "On State Civil Service of the Russian Federation" contains a number of norms that in contradiction with the aforementioned principles may lead us to the conclusion that a government employee may retain this status while neither performing any professional

service activities nor occupying a specific civil service post. Thus, for example, Article 31, part 3 stipulates that when liquidating a government body, government service relations with its civil servants may remain in force if:

(1) a civil servant is provided with employment in a different government body, which assumes responsibilities of the liquidated one or in a different government agency taking into account his or her qualifications, professional education and length of government service or employment;

(2) or in cases when civil servant is sent for professional retraining or advanced training.

First of all I believe that in accordance with the comparative interpretation of Articles 57–61 of the Civil Code of the Russian Federation it is highly unlikely that a government body would be liquidated only in order to transfer its powers to a different agency, since liquidation of a state body in my opinion is most likely to mean that the government ceases to perform certain functions rather than transferring them to another government agency. I think that in cases like this it is more correct to speak about reorganization of government bodies by way of their merger, for example. Second, I also believe that when providing a civil servant with employment (office) in a different state agency, it is more correct to classify this procedure as transfer to another job (office) in a different government agency rather than define it as a "continuation of government service relationship". Third, I presume that liquidation of a government agency where that civil servant performed his or her professional duties means that all employer-employee relationships with them are over. Fourth, according to this approach such individuals shall be sent for professional retraining not as civil servants but rather as retrainees. I propose to suggest appropriate amendments and changes to the Federal law of the Russian Federation "On State Civil Service of the Russian Federation".

SUGGESTED AMENDMENTS TO THE FEDERAL LAW

Article 39, part 1 of the Federal law of the Russian Federation "On State Civil Service of the Russian Federation" also gives ground for discussion when it states that:

> *a service contract may be* **suspended** *[authors' emphasis] in case of a* force majeure *of one of the parties when civil servants are relieved of their duties while keeping their names in the registrar of civil servants and adding them to the personnel reserve: (1) when a civil servant is drafted to a military service or an alternative unarmed service; (2) when reinstated in the previous civil service post under a court ruling; (3) when elected or appointed to an elective office in a government body, or when elected to a local self-government body or to an elective office of profit in a trade union, including a primary trade union organization, established in that government agency; (4) in case of a* force majeure *that would prohibit the parties from continuing their civil service relationship (warfare, accidents, natural disasters, major emergency, epidemics or other emergency circumstance), if such an event is officially recognized in an emergency decree by the President of the Russian Federation or a government body of a corresponding constituent territory of the Russian Federation.*

At the same time, Article 83 of the Labour Code of the Russian Federation stipulates that a civil servant's service contract shall be cancelled rather than suspended when he or she is drafted or sent to an alternative unarmed service; when reinstated in the previous civil service post under a court ruling; or in case of a *force majeure* that would prohibit the parties from continuing their civil service relationship. Secondly, Article 375 of the Labour Code of the Russian Federation guarantees that:

> *an employee, who was* **relieved of his or her duties in their organization** [author's emphasis] *when elected to an elective office in a labour union of his or her organization, shall get his or her previous job (office) back when the term of their elective office is over, or, upon the employee's consent, a similar job (office) in the same organization.*

Taking this approach by the legislature into account it seems more reasonable not to suspend but rather to cancel a service contract while granting the appropriate civil servants an opportunity to get their previous job (office) back (if available), or if not, than, upon consent by those citizens of the Russian Federation, an equivalent job (office) in the same organization after they complete their service in the armed forces or at an alternative unarmed service, or when they are elected or appointed to an elective office in a government body, local self-government body or trade union of that government body. In case a civil servant is reinstated to his/her previous civil service office in accordance with a court decision, then, in my opinion, the civil contract shall be annulled rather than suspended and, upon agreement of the parties to the service contract, grant the employee the right to be transferred to a different job upon his or her consent.

The *force majeure* circumstances in labour relations are a more difficult issue from the theoretical and practical point of view. In my mind the basis for settling legal disputes may be Article 401, paragraph 3 of the Civil Code of the Russian Federation, which states that:

> *unless otherwise provided in the legislation or a contract, the person who fails to fulfill his or her obligations or inadequately fulfill their obligation when engaged in entrepreneurial activities, shall bear responsibility for it unless he or she manages to prove that the failure was due to a* force majeure, *meaning extreme circumstances that are unavoidable under the present conditions.*

In my opinion this legal approach necessitates singling out all circumstances, related to *force majeure*, or extreme circumstance that are unavoidable under present conditions mentioned in Article 39, part of the Federal law of the Russian Federation "On State Civil Service of the Russian Federation". Among the circumstances listed in Article 39, part 4 of the above law in my opinion only natural disasters without doubt belong to this category. In case of a dispute other objective and subjective causes leading to hostilities, catastrophes, major accidents, epidemics and other emergency situations shall be established by court rather than executive branches of authority. It would only seem appropriate to settle all these problems in this federal law.

PRINCIPLES TO BE USED AS A BASIS FOR LEGAL REGULATION

The following principles may be used as a basis for legal regulation here: (1) responsibility, as a rule, is based on the principle of guilt; (2) in absence of guilt a government body is responsible only in cases provided for in the law or a service contract. After the adoption of such legal norm a state body will bear responsibility as a result of events stipulated in the law or service contract. In the case of adoption of such legal norms state bodies as employers would bear responsibility before civil servants for allowing circumstances that are the fault of federal government bodies or government bodies of the constituent territories of the Russian Federation, like, for example, hostilities, catastrophes, major accidents, epidemics and other emergency situations (in particular, the Chernobyl disaster, hostilities in the Chechen Republic, etc.) In cases like these a service contract may be suspended for an appropriate period of time while paying civil servants monetary compensation, as provided for in the federal legislation, rather then their regular remunerations and premiums.

In the event of an emergency that is not the fault of the federal government bodies or government bodies of the constituent territories of the Russian Federation, like, for example, military actions of one country against the other, industrial disaster or epidemics that are not the result of action or inaction by the corresponding government body, provisions for responsibility of the employer and suspension or termination of a service contract may be specified in the federal legislation or service contract. My proposal is to introduce the required amendments and updates into the federal law.

In accordance with Article 23, part 1 of the Federal law of the Russian Federation "On the State Civil Service of the Russian Federation", "a service contract **specifies** [author's emphasis] rights and responsibilities of the parties". At the same time Article 420, paragraph 1 of the Civil Code of the Russian Federation identifies a civil law contract as an "agreement of two or more individuals **on establishing, amending or terminating** [author's emphasis] of civil rights and responsibilities". Taking into account the corresponding nature of laws of different branches of law, Article 9 of the Labour Code of the Russian Federation says that: "… regulation of employer-employee relations and other kinds of relations linked to them may be carried out through **concluding, amending or updating** [author's emphasis] of collective contracts, agreements or labour contracts by employers and employees". And finally, Article 56 of the Labour Code of the Russian Federation identifies a labour contract as an:

> *employer-employee agreement where employer takes responsibility to provide employee with a job in accordance with his or her labour function, ensure working conditions as provided for in this Code, other laws and norm-setting legal acts and pay his or her remuneration in time and in full while an employee is obliged to personally fulfill his or her labour function under that agreement and to abide by the internal regulations.*

Thus, the active civil and labour legislation in contrast with the law on state civil service clearly names the parties and subject of an agreement and provides for the procedure to establish, amend, update and terminate civil and labour relations.

At the same time Article 23, parts 2 and 3 of the Federal law of the Russian Federation "On State Civil Service of the Russian Federation" merely stipulate the following:

> *a representative of the employer is obliged to provide the individual citizen entering civil service with an* **opportunity** *[author's emphasis] to serve as a civil servant and to provide the above citizen or a civil servant with an* **opportunity** *[author's emphasis] to fill a certain civil service position, to ensure their civil service or filling of a civil service position in accordance with the present Federal Law, other laws and norm-setting legal acts on civil service, pay out his or her remuneration in time and in full and provide state social guarantees. A citizen, entering civil service* **when** *[author's emphasis] signing a service contract on entering civil service or filling a civil service position, and a civil servant* **when** *[author's emphasis] concluding a contract on filling a civil service position are obliged to fulfill their responsibilities* **in accordance with office regulations** *[author's emphasis] and to abide by the service order of that government body.*

Bearing in mind that provisions of a service contract constitute its immediate essential conditions and taking into account the comparative interpretation of civil and labour law, I propose Article 23 of the Federal Law of the Russian Federation "On State Civil Service of the Russian Federation" should read as follows:

> *Service contract is an agreement between the employer (the Russian Federation or the constituent territory of the Russian Federation) and the employee (a citizen of the Russian Federation), who joins the civil service, on establishing, amending, updating or terminating their work relationship under which the employer takes the responsibility to provide*

the employee with a job according to his or her employment function, to ensure working conditions as provided for in the international labour legislation, Constitution of the Russian Federation, federal laws, laws of constituent territories of the Russian Federation, other norm-setting legal acts, local norm-setting acts and agreements by the parties, to pay his or her remuneration in time and in full and provide state social guarantees, while the employee takes the responsibility to personally perform the employment function, stipulated in the agreement, other job responsibilities set out in the norm-setting legal acts and agreements by the parties.

Article 432 of the Civil Code of the Russian Federation contains major provisions pertaining to conclusion of a civil law contract:

an agreement is concluded if the parties have in due form agreed on all the essential aspects of their contract. The essence of a contract shall be those conditions that are named as such in a law or other legal acts regulating agreements of this kind, as well as all other conditions, which are marked by one of the parties as requiring mutual agreement.

Introduction of the concept "essence of a labour contract" in Article 57 of the Labour Code of the Russian Federation is one of the newest innovations enacted in this law. These are, in particular, wage conditions, working places, employer-employee rights and responsibilities and employment commencement date. The problem was that previously the rights and responsibilities of an employee were defined by job regulations, which, as a rule, are changed by the employer without any consultation with the employees, and their compensation package was settled by local norm-setting acts. Such practice usually resulted in violation of employees' labour rights when employers changed their local normative acts. Labour contacts, in their turn, did not stipulate any specific labour rights of employees while responsibilities of employers were very vague and poorly defined.

That is why it is so important that Article 24 of the Federal law of the Russian Federation "On State Civil Service of the Russian Federation" followed this positive trend and introduced the notion of "essence of a contract" and listed these essential conditions.

Unfortunately, some other sources contain a different opinion. Thus, Ms L Chikanova writes without, in my view, advancing sufficiently convincing arguments that:

introduction… into the Labour Code of the Russian Federation of the notion of 'essence' of a labour contract seems unjustified and unpractical. The same applies even more to the service contract. Its conditions are spelled out in the legislation in more detail than in the labour contract ("Application of labour legislation to employer-employee relationship in state civil service: theory and practice", synopsis of a thesis for the degree of doctor of law, Moscow 2005, page 33).

On the basis of the above she claims that when regulating the contents of labour and service contracts it is necessary to abandon the notion of contract "essence" altogether and to proceed from the traditional division of terms of a labour contract (service contract) into derivative (provided for in the legislation and other norm-setting legal acts) and direct (that are worked out by the parties themselves).

In my opinion Article 24, parts 1 and 2 of the Federal law of the Russian Federation "On the State Civil Service of the Russian Federation" write a bit incorrectly that:

service contract shall include rights and responsibilities of the parties that are specified in Article 23, part 2 and 3 of this Federal law. A service contract shall contain the first, middle and last name of an individual citizen or civil servant and the name of the government body (the first, middle and last name of the employer).

First, the controversial provisions of Article 23, part 1, were analyzed above. Second, Article 24, part 2 of the Federal law of the Russian Federation "On the State Civil Service of the Russian Federation" makes the issue of being an employer for state civil servants even more complicated. Article 23, part 1 of this law names "a representative of the employer" as one of the two parties of a service contract while Article 24, part 2 of the same law stipulates that a service contract shall contain "name of the government body (first, middle and last name of the employer's representative)," thus equaling a government body and a representative of employer.

To my mind Article 57, paragraph 1 of the Labour Code of the Russian Federation identifies parties to a labour contract in a more precise way: "a labour contract shall include: the first, middle and last name of the employee and name of the employer (first, middle and last name of the employer as a physical party) who enter into a labour contract."

Indeed, every agreement begins with identification of its parties. That is why Article 24 of the Federal law of the Russian Federation "On State Civil Service of the Russian Federation", which is entitled "Contents and form of a service contract", quite logically shall begin by naming the parties to such a contract. That is why I propose to word Article 24, parts 1 and 2 of this law as follows:

A service contract shall contain the first, middle and last name of the civil government servant and the name of the government body as well as the first, middle and last name, position and powers of its representative, who conclude such service contract.

JOB TITLE

An essential part of the service contract is the "civil service job title and name of the government body's branch". It is worth mentioning that Article 57 of the Labour Code of the Russian Federation identifies such

essential parts of a service contract as workplace and job title, line of profession, including qualifications. I deem it necessary to introduce such a subdivision of different essential conditions into Article 24 of the analyzed law. In accordance with Article 10 of the Federal law of the Russian Federation "On State Civil Service", the register of positions in the federal civil service is approved by a decree of the President of the Russian Federation and the register of positions in the state civil service of a constituent territory of the Russian Federation is enacted by adoption of a law or other norm-setting act of that constituent territory. The register of positions in the federal civil service and registers of positions in the state civil service of constituent territories of the Russian Federation are collectively known as the Summary Register. Everything means that the civil service job title will be completely in line with the above Summary Register.

Quite often the employer requires his employees to perform more than one labour function, and equally often this requirement in labour relations is dealt with quite controversially. In practice there are two options. The first one is to establish two positions, qualifications, professions or labour functions and join them with a hyphen – driver-forwarder, locksmith-plumber, cleaner-loader, etc – though such an approach leaves unsettled a number of issues including labour hours, remuneration, and benefits for this or that capacity. The second option is even simpler. The labour contract specifies only one position, specialty, profession or labour function while the job description contains the notorious formula: "and other functions…, individual one-time requirements by the employer, etc." It is difficult to agree with such a practice. In my opinion this problem could be solved both in the labour and service relations through Article 151 of the Labour Code of the Russian Federation "On remuneration in case of combining professions and discharge of duties of a temporary absent employee". In line with this approach when an employee (civil servant) combines professions he or she may sign two labour agreements (service contracts), which would specify the essentials for each of them.

NAME OF GOVERNMENT BODY

The exact name of the branch of the relevant government body is the second essential condition of a service contract. However, we must bear in mind that the Civil Code of the Russian Federation envisages two ways for government bodies division: separate subdivisions and structural subdivisions. Separate subdivision is a branch and (or) representative office of a legal entity that is located outside its registered location (Art 55 of the Civil Code of the Russian Federation). Location of a legal entity is its state registration address unless founding documents of that legal entity do not provide otherwise in accordance with the legislation (Art 54, para 2 of the Civil Code of the Russian Federation). The structural subdivision of a legal entity is a branch, located at its registered address. Thus, if a government body has separate subdivisions where a civil servant is directly employed, then the service contract shall contain names of those separate subdivisions and structural subdivisions. In view of that I propose to word Article 24, part 3, Para 1 and 2 of the analyzed law as follows:

(1) "Name of the state civil service position in accordance with the register of positions;

(2) name of a structural subdivision; (and its separate subdivision, if available)".

DATE OF COMMENCEMENT OF OFFICE

The third essential condition of a service contract in accordance with the legislation is the date of the commencement of office. Article 26, part 5 of the Federal law of the Russian Federation "On State Civil Service of the Russian Federation" states that "a service contract shall enter into force as of the date of its signing by the parties unless otherwise provided in the federal legislation, other norm-setting legal acts of the Russian Federation or provisions of that service contract".

Previously labour contracts did not contain the date of commencement of office. Currently the analyzed law identifies the date of commencement of office as an essential condition of service contract since its inclusion is mandatory for every service contract. It is quite easy to distinguish between different points in time: (a) "conclusion of a service contract"; (b) "entry of a service contract into force"; (c) "execution of a service contract". A service contract is concluded at the date of its signing by an employee and a plenipotentiary representative of the employer. A service contract usually enters into force right after its signing, though there may be a time gap between the signing date and its entry into force. It means that the date of signing and the date of entry of a service contract into force do not necessarily coincide. This approach is more preferable than transferring to another job because it allows for a better protection of labour rights when moving from one employer to another.

In practice, however, one cannot exclude a case when a state civil servant is absent from work after signing his or her service contract. What is the legal leverage available to the employer in a case like this? Article 61, paragraph 3 of the Labour Code of the Russian Federation is quite open to debate in my opinion. It states: "if an employee is absent from his or her work with no good reason for a week than the labour contract is **terminated** [author's emphasis]". In practice "terminated" has led to a number of controversies and questions. Indeed, how should a labour agreement (service contract) be terminated in practice? What is the nature of a termination of a labour agreement (service contract)? My view of the law is that the most acceptable ways of defence are as follows: (1) termination of a labour agreement (upon mutual consent, upon initiative of one of the parties, in cases provided for in the legislation or in accordance with court decision); (2)

application of an invalid null and void deal; (3) invalidation of a deal in question and application of effects of its invalidation (Art 12 of the Civil Code of the Russian Federation). When judging the nature of the de facto existing relationship (when a state civil servant violates provisions of his or her service contract by being absent from work), I think it would be more preferable not to "terminate the labuor contract" but rather to rescind it in accordance with Article 37(3)(a) (absence from workplace for more than four consecutive hours during working day without good excuse) of the Federal law of the Russian Federation "On State Civil Service of the Russian Federation".

RIGHTS AND RESPONSIBILITIES OF A CIVIL SERVANT

The fourth essential condition of a service contract is "the rights and responsibilities of a civil servant and job regulations". Article 47 of the Federal Law of the Russian Federation "On State Civil Service of the Russian Federation" stipulates that "professional activities of a civil servant shall be carried out in line with the additional regulations that are approved by the representative of employer and make part of the administrative regulations of that government body". They in particular include "employment duties, rights and responsibilities of a civil servant". Systematic interpretation of these legal norms leads to a number of questions.

The first one is as follows – if a service contract is an agreement between its parties, then why are the most important rights and responsibilities of a civil servant regulated by job regulations which are unilaterally adopted by the representative of employer? The second one is whether it is possible to bring together Article 24, part 2, paragraph 3 of the above law, which names "the rights and responsibilities of a civil servant and job regulations" as an essential condition of a service contract, and Article 47, part 2, paragraph 2 of the same law, which requires that job regulations include rights and responsibilities of a civil servant. This raises the following question: are rights and responsibilities of a civil servant part of job regulations or are they inherently different legal concepts? The third question is whether the essential rights and responsibilities of a civil servant should be identified in job regulations or by service contract and labour and civil law.

Previously, labour rights and responsibilities were part of job regulations that were unilaterally adopted by the employer. In practice this leads usually to their regular changes without any consultation with employees, and to innumerable violations of their labour rights. In my opinion job regulations are somewhat similar to job description, and in reality may again lead to serious violations of service rights of civil servants. It is characteristic that in accordance with Article 57, paragraph 2 of the Labour Code of the Russian Federation rights and responsibilities are an essential condition of a labour contract. There is no reference to a job description. In addition, when concluding civil law contracts their parties quite often intentionally exclude from the text of the contract its essential conditions, hiding them in annexes, bills, cost estimates, additional agreements, etc which in their opinion constitute an "integral" part of that contract. In reality this usually leads to the violation of civil rights of the parties to such a contract. Article 432, paragraph 2 of the Civil Code of the Russian Federation stipulates as follows: the subject matter of a contract, conditions that are named by a law or other norm-setting acts as essential or indispensable for contacts of this kind, as well as all those conditions which upon request of one of the parties require arriving to a settlement, are essential conditions of the civil law contract proper rather than its annexes, which quite often are adopted unilaterally or by unauthorized officials. The results of this are numerous court disputes and violations of civil rights of the parties to the contract.

In this connection I first of all presume that the rights and responsibilities of a civil servant cannot be simultaneously an essential condition of a service contract concluded by the parties and a part of job regulations that are unilaterally adopted by a representative of the employer. Second, I suggest working out model job regulations on the basis of which it would be possible to get down to the specific conditions of a service contract or abandon it altogether. Third, in connection with the above arguments I suggest heading this paragraph of a service contract as follows: "rights and responsibilities of a civil servant". Fourth, it is necessary to underline that job responsibilities of civil servants provided for in service contracts shall not impose limitations on their rights, established in the legislation. If such conditions are included in a service contract then they shall not have any power (Art 9, para 2 of the Labour Code of the Russian Federation, Art 55, part 3 of the Constitution of the Russian Federation).

MEDICAL AND OTHER INSURANCE

Types and conditions of medical insurance and other types of insurance make the fifth essential condition of a labour contract. In practice, however, there are cases when types of insurance are imposed that are not required by the legislation or when disadvantageous and illegal conditions of medical insurance or specific insurance companies are being lobbied. I think that cases like this merit court arbitration in accordance with requirements provided for in Article 55, part 3 of the Constitution of the Russian Federation. Service rights and freedoms of a civil servant may only be limited by the federal legislation, and then only to the extent necessary to protect the constitutional system, good morals, health, rights and legitimate interests of other individuals, and ensuring national defence capabilities and state security.

RIGHTS AND RESPONSIBILITIES OF AN EMPLOYER

"Rights and responsibilities of an employer" is the sixth essential condition of a service contract. First, bearing in mind the above arguments I propose to word this provision as follows: "rights and responsibilities of an employer". Second, while the Labour Code of the Russian Federation contains both Article 21, "Major rights and responsibilities of an employee," and Article 22, "Major rights and responsibilities of an employer," the Federal law of the Russian Federation "On State Civil Service of the Russian Federation" contains only Articles 13 to 18, which have to do only with responsibilities of a civil servant. At the same time, in my opinion, it is necessary to add to the analyzed law an extra article similar to Article 22 of the Labour Code of the Russian Federation entitled "Major rights and responsibilities of an employer". It is necessary to bear in mind that the list of such provisions may be considerably extended in a service contract.

CONDITIONS OF PROFESSIONAL SERVICE ACTIVITIES

"Conditions of professional service activities, compensations and benefits for heavy service or critical and (or) harmful work" constitute the seventh essential condition of a service contract. The most common mistake here is that conditions of professional service activities, compensations and benefits for heavy service or critical and (or) harmful work are stipulated in local norm-setting acts, unilaterally adopted by the employer, rather than in service contracts. As a result it may lead not only to violation of the legislation but also of service rights of civil servants.

To my mind Article 57 of the Labour Code of the Russian Federation uses a more precise terminology: Instead of "labour conditions" it speaks about "characteristics of labour conditions…" Thus, in accordance with the law a detailed description of characteristic and distinguishing features of service relations is an essential condition of a service contract. This requirement is frequently violated. Compensations and benefits to employees for heavy or critical and (or) harmful work may be established in norm-setting legal acts and service contracts. I deem it necessary that service contracts should always name sources for service rights of employees. Employees quite often do not work, say, in harmful conditions all of their working hours. This of course affects the amount of compensation and benefits for employees.

In this connection it is necessary through different means to establish the length of heavy service or critical and (or) harmful work. This conclusion is based on the comparative analysis of Article 121 of the Labour Code of the Russian Federation which stipulates as follows: "the length of service that entitles an employee for annual additional paid leave because of heavy service or critical and (or) harmful work **shall include only the actual hours worked under such conditions**" [author's emphasis]. In view of the above arguments I suggest that this paragraph of the law should begin with the word "characteristics".

WORKING HOURS AND REST TIME

"Working hours and rest time regime (if for an employee it is different from the service regulations of a government body)" make the eighth essential condition of a service contract. Quite often the working hours and rest time regime (if for an employee it is different from the service regulations of a government body) is not set out in the service contract, which may contain only a reference to the service regulations of that government body which is applicable to all. At the same time a civil servant may work irregular hours, or working hours of different civil servants may start and end at different times, or a civil servant may have an additional paid leave, etc. In view of the above when the working hours and rest time regime differs from the service regulations of a government body, individual service contracts must contain precise working hours and rest time, eg working hours, part-time work, daily working hours, extra working hours, work in excess of normal hours, irregular working hours, flexible working hours, aggregate working hours, split working day, breaks, daily rest, weekends, public holidays, leave periods, etc.).

WAGE CONDITIONS

"Wage conditions (post salary of a civil servant, service allowance and other payments, including performance bonuses), as provided for in the present Federal law, federal legislation and norm-setting legal acts" make up the ninth essential condition of a service contract. Previously, Article 15 of the Labour Code of the Russian Federation listed "remuneration" of an employee as an essential condition of a labour contract. At the same time in real life employment application traditionally contained such notorious formulas as "remuneration in accordance with the staffing table", or "in accordance with the labour legislation", etc. Quite often these applications did not contain any reference to remuneration whatsoever, and this practice still continues to exist. A labour contract may contain information only on post salary or wages scale while service contracts make reference only to remuneration. These documents frequently contain references to non-existent local legal acts, or they may be too vaguely formulated.

In my opinion a service contract should directly provide for the amount of remuneration, which consists of a monthly post wage of a civil servant in accordance with his or her civil service office, a monthly salary of a civil servant, calculated on the basis of his or her civil service rank, and other additional monthly payments that are allocated in accordance with the appropriate norm-setting legal acts. A service contract should contain information on the

monthly salary for the position and monthly and additional bonuses. Thus, for example, the percentage of monthly bonus for special conditions of civil service should be specifically defined in a service contract, eg 100 per cent, rather than be vaguely formulated as "amounting to up to 100 per cent of post salary". The procedure, amount and reasons for bonus payment should be governed by norm-setting or local legal acts. In this case a service contract may contain reference to these sources of labour legislation since such bonus payments cannot be exactly identified in a service contract.

TYPES AND CONDITIONS OF SOCIAL SECURITY

"Types and conditions of social security, related to professional service activities" form the tenth essential condition of a service contract. Unfortunately social security for employees in general and for state civil servants in particular has not been properly dealt with either in the Labour Code of the Russian Federation or in the Federal law of the Russian Federation "On State Civil Service of the Russian Federation". In this connection the role of specialized norm-setting legal acts on social security and service contracts is gaining in importance.

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