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Labour Contract Functions

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The "labour contract" category as legal relation is central within this trinity of legal phenomena: a legal fact, a legal relation, and a legal document. To establish the essence (and, as consequence, a concept) of the labour contract is expedient to research features of public relations mediated by a labour contract, and features of legal relation corresponding to them .

Keywords: labour contract; labour contract functions.

Since Roman law times, the contract as a legal phenomenon has been viewed in three aspects: as the basis of legal relations occurrence; as a legal relation per se arisen from this basis; and as a shape which a corresponding legal relation takes (M.I. Braginsky, V.V. Vitryansky, 1998). Such multiplicity of aspects is also characteristic of "the labour contract" concept.

In other words, it is possible to talk about the labour contract as of a legal fact, a labour contract, a legal relation and, finally, of a legal document.

The "labour contract" category as a legal relation is central within this trinity of legal phenomena: a legal fact, a legal relation, a legal document. To establish the essence (and, as consequence, a concept) of the labour contract is expedient to research features of the public relations mediated by the labour contract, and features of the legal relation corresponding to them . The official categories for a "legal relation" category make the basis for the legal relation occurrence and its legalization. Therefore, revelation of the essence of these categories through the functions expressing their purpose and value is viewed quite natural. To talk about the functions of the labour contract as a legal relation, in our opinion, is not quite logical, it is more expedient to reveal its essence through the features of the content. Accordingly, we will consider the functions of the labour contract through its above-stated "official" categories.

1. Labour contract vs. legal fact.

Being the basis of legal labour relations occurence, the labour contract carries out two functions. Firstly, the labour contract as a legal fact is *the agreement* between the employee and the employer. Labour legal relation arises as a result of wills of the parties' coordination, but as a result of will of one of the parties, not as a result of will of any third party. Compulsion to a contract conclusion is not admissible (except for the cases when a duty to conclude the labour

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contract is stipulated by a employer's voluntary accepted obligation: assignment of quotas of workplaces, participation in target contract training of experts, invitation of an employee as transfer from another organisation).

On the one hand, it is a sort of labour freedom provision for a worker: freedom to apply their abilities to work, exclusion of forced labour. On the other hand, for the employer, in some measure, it is a way of freedom of organisation personnel formation which is a part of economic sphere of the employer.

Secondly, a labour contract as a legal fact does not only produce labour legal relation, but also makes its content as not only the fact of labour relations is defined by the will of the parties, but also working conditions, rights and duties of both parties – an employee and an employer. This reveals the regulating nature of a labour contract. However, the regulating function of a labour contract has certain features in comparison with a regulating role of others, say, civil-law contracts. We will turn to more detailed research of the function in question.

The matter is that degree of parties to the contract freedom in definition of legal relation content in employment law considerably differs from traditional civilistic understanding of freedom of the contract in a number of positions.

By the general rule, in civil-law contracts the parties independently specify the contract content. However, in some cases rules of behaviour of the parties to civil-law contracts are established by the legislator. It is carried out by means of discretionary and imperative rules. In the first case, the discretionary rule acquires an imperative nature provided that the parties have not expressed consent to deviate from it. For example, except as otherwise provided by the turnkey contract work is carried out by the expense of the customer – from his materials, his forces and means (item 1, art. 704 RF Civil code). This way of legal regulation does not limit contract freedom.

In the second case, the norm is applied directly, the parties are not entitled to change it, and it represents a way of freedom of the contract restriction. Freedom of the contract is restricted to achieve the following aims:

- Protection of the state and society interests. For example, item 1 of art. 1015 RF Civil code does not permit the state body or local government participation in the contract of confidential management of property.
- Protection of a normal marketable title. For example, item 335 of RF Civil code establishes that only a proprietor or the one to whom the thing belongs on the right of economic competence can act as the depositor of a thing.
- Protection of the weakest party. For example, according to items 1, 2 art. 504 RF Civil code at replacement of substandard goods by the goods of appropriate quality the seller is not entitled to demand compensation in the price of the goods difference while the buyer is awarded with such compensation.

Under civil law these restrictions, however, have of an exception of the general rule character of item 2 art.1 RF Civil Code according to which the parties are free to establish their rights and duties.

In employment law the situation is different. The labour contract cannot contain the conditions reducing level of rights and guarantees of workers, established by employment legislation (part 2 art. 9 RF Labour code). Thus, content of almost all the conditions of the labour contract are defined by legislation. Let us consider it on the example of each of the obligatory conditions itemised in art.57 RF Labour code.

1. Working hours conditions. The legislator establishes the following:

- not more than 40 working hours per week (art. 91 RFLC);
- in certain cases (for minors, invalids, workers engaged in works with harmful, dangerous working conditions) working hours per day cannot exceed the established quantity of time (art. 94 RFLC);
- work exceeding the normal duration of working hours cannot exceed 4 hours per day and 16 hours per week at combining jobs (art. 98 RFLC) and 4 hours within two days running and 120 hours per year at overtime work (art. 99 RFLC).

As we see, the legislator limits working time duration. Thus, parties have discretion to the following: 1) reduction of its duration and 2) distribution of given working hours within a day, a week or other period, that is working conditions establishment. Though here again we observe some restrictions, for example, working conditions and working hours of transport employees, communications personnel and others, having special kinds of work, which is defined according to the order established by the Government of Russian Federation (art. 100 RFLC LC).

2. A mode of rest time. The legislator has defined it in the following way:

- a worker is entitled to not less than 30 minutes of rest breaks and meal within a working day (art. 108 RFLC);
- duration of weekly continuous rest cannot be less than 42 hours (art. 110 RFLC);
- workers are entitled to non-working holidays according to art. 112 RFLC;
- duration of annual paid holiday cannot be less than 28 calendar days (art. 115 RFLC).

As we see, the legislator establishes kinds and duration of rest time. The following is left to the discretion of the parties: 1) increase in its duration and 2) an order of rest breaks provision. Though there are also some legislative restrictions with reference to a granting order. In particular, it is inadmissible not to provide a holiday within two years running (art. 124 RFLC), to substitute holiday within the limits of 28 calendar days for monetary indemnification (art. 126 RFLC), to withdraw from holiday, to substitute holiday for monetary indemnification for pregnant women, minors and workers engaged in work with harmful and dangerous working conditions (art. 125, 126 RFLC).

3. Payment conditions. Legislation establishes the following requirements:

- the minimum wage rate (art. 133 RFLC);
- the payment form (art. 131 RFLC);
- an order, a place and terms of wages payment (art. 136 RFLC);
- restriction of deduction from wages (item 137, 138 RFLC);
- a work payment under conditions deviating from normal ones (art. 152 – 157 RFLC): kinds of surcharges and extra charges and their minimum size are established.

So, relating to work payment parties can define: 1) the size of wages for cases, exceeding legislative minimum (including the minimum amount of surcharges) and 2) payment systems that is a way of its amount definition, including incentive payments.

4. Indemnifications and privileges to workers for work in heavy, harmful and/ or dangerous working conditions. The given condition is also defined by state standards, namely characteristics of working conditions assume attributing work to heavy, harmful or dangerous one on the basis of legislatively established lists. Indemnifications

and privileges to workers for work in such conditions are defined within the limits of provisions on working hours, rest breaks, work payment.

Thus, the partied are entitled with reference to the given condition: 1) to establish that work differs in special working conditions though is behind the frameworks of legislatively established lists, and to define kinds and amount of indemnifications and privileges according to these conditions; and 2) to establish the raised amounts of indemnifications or additional kinds of privileges, additional conditions of their granting in comparison with the legislation, for work in heavy, harmful and/ or dangerous working conditions.

5. Social insurance: kinds and conditions. Kinds and conditions of obligatory social insurance are defined by the state under the standard order exclusively. It is to the discretion of the parties to define kinds and conditions of voluntary additional social insurance.

6. Labour function of the worker or the name of a post, a speciality, a trade with qualification instructions. Here the parties are entitled to define the character, kinds, volume of performed work, official duties of the worker. However, the freedom of the parties is not absolute in this question as well. Tariff-qualifying characteristics on various specialities, trades and posts are established by legislation. And if the legislator connects performance of this or that work with granting privileges, indemnifications or establishment of restrictions, the name of posts, trades or specialities and qualifying characteristics should correspond to qualifying directories accordingly.

7. Kinds of work: mobile, travelling, in ways, etc. This condition is defined by the parties independently, but this condition is the reflection of a certain objective characteristic of work but not the result of the parties' will coordination.

The condition of the labour contract concerning the rights and duties of the parties was excluded from article 57 RFLC by № 90-FL Federal law on 30.06.2006.

It was done absolutely fairly because, according to E.B. Khokhlov, such instructions of the Code were absolutely excessive as all the conditions specified above are the very form of specification of the rights and duties of the parties of labour legal relation (C.P.Mavrina, E.b.Khokhlov, M. 2003).

Thus, with the view to the obligatory conditions itemized in 57 RFLC the parties to the labour contract are free only to define the place of work, time of the work beginning and, to a certain extent, labour functions and kinds of work. It is obvious, that it is rather a small circle of possibilities as the work place is predetermined by objective conditions, and the condition concerning work beginning date does not assume a considerable quantity of options. In other cases, as we have established above, the parties possess some contractual freedom in two areas:

1) establishment of the raised level of rights and guarantees of the worker in accordance with legislation;

2) distribution of working hours and rest breaks within the limits of this or that period; establishment of amount and the payment system (taking into account restrictions specified above).

Establishment of the labour contract conditions within the limits of the first area is carried out by the parties rather seldom, and the possibility of contractual freedom given by the legislator is not used as there are no objective basis for its implementation. After all, the worker is economically the weakest party to the labour contract, and consequently, there is no actual equality of the parties, and the real establishment of conditions on the basis of the contract is impossible.

As for the second of the specified areas, these conditions are often not defined by the parties directly in the labour contract. In most cases these conditions are defined by the employer within the limits of their economic sphere according to the corresponding local statutory acts, and the worker only joins them, entering labour legal relations.

So, freedom of the parties in the labour contract under the content of labour legal relation is essentially limited by the legislator with a view of protection of interests of the weakest party (worker). This restriction does not have an exceptional character like it does in civil law, but on the contrary, is a key rule, and even is a principle of employment legislation. Therefore, we can speak about a regulating function of the labour contract with a serious share of convention for the majority of its conditions are not developed by the parties independently in the course of the contract conclusion.

But degree of freedom of the parties in the labour contract, and, as a consequence, regulating function nature depends on the degree of economic independence of the worker, and according to it can have a considerable range. The given criterion, in our opinion, should be considered at differentiation of labour contracts both in the doctrine of employment law, and in employment legislation beginning of which has already been initiated by the Labour code of the Russian Federation. Let us consider an example of the labour contract concluded with the head of the organisation. The head as the worker is in smaller economic dependence on the employer as "a stronger figure" on a labour market, as the owner of a certain "intellectual capital". Here we can resume the possibility of more contractual freedom between the proprietor and the head. Chapter 43 of RFLC drawn up with this in view is devoted to features of the head of the organisation and members of a joint executive body of the organization work regulation. In labour relations with this category of workers the parties possess a bit more freedom under the labour contract. In particular, the parties can establish the contract term (art.275 RFLC), additional grounds for termination of the labour contract (art. 3 of item 278 RFLC), amount of indemnification for prescheduled termination of the contract (item 279 RFLC) which is inadmissible in labour contracts with the majority of workers.

2. Labour contract vs. legal document.

Employment legislation establishes the obligatory written form of the labour contract (art. 67 RFLC). The purpose of the written form requirement is the exception of the very fact of legal relation existence dispute. However, in civil law the requirement of a simple written form urged to provide interests of both parties equally. In case of non-observance of the simple written form, any party is not entitled to refer to a testimony confirming to contract existence (item 1art. 162 R FCC). In employment law (owing to unequal position of the parties in the course of labour relation mentioned above) the emphasis is made in favour of the interests of the worker. So, the duty on registration of the labour contract as a legal document lies on the employer, but on both parties (part 2 art. 67 RFLC). As a consequence, default of this duty is for the employer infringement of employment legislation that can entail administrative responsibility, as well as any other default of duties established by employment legislation. The worker in case of non-compliance with the requirement on the written form of the labour contract does not undergo legally established adverse consequences. The rules, similar to those fixed in the RF Civil code are not established in employment legislation: the worker is entitled to refer to a witness

testimony confirming the fact of labour legal relation existence.

The written form of the contract urged to provide disputes exception not only concerning the fact of labour legal relation existence, but concerning its content as well. To achieve this purpose the legislator establishes the list of conditions which the labour contract should contain. There are also considerable differences from the civil-law contracts form regulation here.

Article 57 RFLC defines the list of obligatory conditions to be included in the labour contract. The "obligatory conditions" concept has replaced the "essential conditions" concept in the mentioned edition of RFLC on 30.06.2006. The primary "essential conditions of the labour contract" wording has been borrowed by the Labour code from civil law, according to the RF Labour Code requirements. However, it is the wording but not a legal construction that was borrowed. Under civil law article, 432 RFCC considers the contract to be concluded if the agreement on all essential conditions between the parties is reached. Hence, if at least one of the essential conditions is needed in the contract, the contract is not concluded. In employment legislation, the indication on consequences of non-including essential conditions in the labour contract is needed. It is not obviously possible to apply the rule of RFCC to the given situation, as even if the labour contract is not properly written, it is still considered as concluded if the worker starts to work (art.67 RFLC). In other words, the labour contract is considered as concluded at actual performance of labour duties by the worker even at full absence of the written labour contract, and consequently with one or several essential conditions missing in its text. Thus, under civil law essential conditions form contracts as a whole and their separate contractual types as well, under employment law they are not constitutive signs, and serve as a guarantee of the worker's labour rights implementation.

Therefore, it is absolutely fair that the legislator has departed from the term "essential" with reference to the labour contract conditions as it caused stable civilistic associations.

The lists of these conditions testify to specificity of obligatory conditions of the labour contract in comparison with essential conditions of civil-law as well. So, art.432 RFCC establishes the subject matter of the contract as well as the conditions named in the legislation or concerning which under the statement of one of the parties the agreement should be reached as essential conditions.

Along with a subject matter, the term and the contract price are also separated from legislatively established essential conditions in the literature on civil law. It is possible to conclude, that the legislative list of essential conditions in civil law is minimum, it joins the conditions immanently inherent in a concrete contract, and hence they are objectively necessary for its existence. Other essential conditions presence in the contract is defined at will of the parties owing to part 1 art. 432 RFCC.

RFLC (art. 57) establishes a rather wide list of obligatory conditions of the labour contract which have been considered above. The structure of legislatively certain obligatory conditions of the labour contract comprises not only conditions which are necessary for its existence along with a work place and labour functions, but also a significant amount of other conditions. The legislator acts on the premise that the maximum possible characteristic of labour legal relations should be given in the labour contract.

Thus, the labour contract as the legal document provides distinctness for labour legal relation[1], and acts as a legal guarantee of the worker's rights implementation (carries out a guaranteeing function).

It is the guaranteeing function of the labour contract that stipulates the requirement of RFL to obligatory conclude an employment agreement reduced to writing (part 1 art. 67 RFLC). Otherwise, the legislator would admit an employment agreement concluding verbally, where its simplified form to acknowledge labour legal relation existence might be, for example, an order on employment.

Moreover, the legislator establishes the measure allowing to guarantee the worker to keep one of the labour contract. Part.1 art.67 RFLC says that reception of the copy of the labour contract by the worker should be proved by the signature of the worker on a copy kept at the employer. It also testifies that the labour contract as a legal document carries out a guaranteeing function.

[1] The employer is also interested in it as execution of labour duties by the worker is important for him for him , but the emphasize is, of course, made in favour of the worker's interests.

Функции трудового договора

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Ключевые слова: трудовой договор, функции трудового договора.