

ABOUT THE UNITY AND DIFFERENTIATION OF CIVIL LAW AND EMPLOYMENT CONTRACTS

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ABSTRACT

The issues of law branch interaction are raised in the research of scholars. However, no proper answer was given concerning the inter-branch relations of civil law with other branches of law. Meanwhile, there is a need to ensure the balance between civil and legal and labor law regulation of public relations, presented in a contractual form and related to the work activity of a person. The development of various communication forms between people put forward the need to provide them the opportunity to use legal models proposed by a legislator or to create the legal models by themselves in the form of various treaties. A treaty has become one of the main ways and tools for legal norms implementation in public life, the most important means of binding relations implementation, which is the agreement of its participants without the coercion from outside. This article has an idea of the unity and the differentiation of civil-law and labor contracts, the contractual regulation is being analyzed, and the inter-industry relations of two branches of law are being studied.

Keywords: activity, work, services, labor, contract, attitude, law, regulation.

INTRODUCTION

The environment of scholars, dealing with labor law issues, has a great concern that the content of the employee-employer relationship began to be determined not by labor law, but by civil legislation [1, p. 3; 2, p. 227]. It seems to us that these fears are premature and vain. Comparing the civil law on the transactions with labor legislation on an employment contract, one can find out that the labor law has demands on an employment contract similar to those that the civil law deems necessary for any actual transaction.

METHODS

The civil approach to the study of civil law interbranch links in the field of labor relation contractual regulation is relevant. The determination of these links allows us not only to verify the validity and the effectiveness of an employment contract structure in new economic conditions, to reveal the relationship between an employment contract and related civil-law contracts, but also to analyze the need and the expediency of relation civil-law regulation in the area under study, and also to perform the conflict-of-laws regulation in some extent, i.e. to coordinate civil-law and labor-legal means in the regulation of specified social relations.

RESULTS AND DISCUSSION

As in any bilateral transaction, two parties, an employee and an employer, also participate in an employment contract. Both parties must have legal capacity and the necessary degree of capacity. An obligatory condition for the validity of a bilateral transaction is also the conclusion of it on the basis of the agreed and free will of its participants, excluding fraud, violence and threats. In labor law, these

requirements were presented by the prohibition of forced labor, the discrimination in the field of work, the guarantees for the conclusion of an employment contract, the principles of labor relation legal regulation and other directly related relationships (Article 2-4 of RF LC).

In relation to transactions civil law pays much attention to the form of their commission. Depending on the form of a transaction conclusion, they may be:

- oral ones, if it is permitted by federal law;
- concluded in a simple written form;
- notarially certified;
- requiring state registration.

The same attention is paid to the form of an employment contract and in the labor law. As established by the Art. 67 of the Labor Code, an employment contract must be entered into in writing, in two copies, each signed by the parties. One copy of an employment contract is given to an employee, the other one is kept by an employer.

As a type of transaction, an employment contract must comply with all basic requirements of the transaction law. In particular, an employment contract must be concluded by the parties on the basis of free and coordinated will, in accordance with the principles of equality and discretion, in order to realize the citizens' constitutional right to work [3], the meeting of their individual interests, material and spiritual needs by the parties of an employment contract. An employment contract in its legal definition given in art. 56 of the RF LC, in which an employment contract is called the agreement between an employer and an employee acts as a bilateral transaction aimed at the establishment of mutual rights and obligations by its participants concluded in the form of an agreement.

V.G. Soifer draws attention to the fact that the participants (an employee and an employer, an executor and a customer) choose labor activity regulation method at the labor market by themselves. There is no "absorption" of one contract by another one, one branch of law by another one. There are often cases when an employer (a customer) is in a relationship with one citizen who acts simultaneously as a wage worker under an employment contract and an executor under a civil law contract. Another situation is possible: one and the same citizen is employed under an employment contract from one employer and at the same time he acts as an executor under a civil law contract with another legal or natural person (a customer).

Such combinations of labor relation legal regulation are very promising, and the real steps of further cooperation between labor and civil law are represented by this in order to ensure the employment of population, reduce unemployment and create the conditions for material well-being of an individual. In order to make an employer conclude an employment contract with an employee according to the labor legislation instead of civil one, it is necessary to provide the possibility of a contractor status change at the end of a contract term (or ahead of a schedule) with a customer - a potential employer by drawing up the continuation of labor relations between the subjects already on the basis of a labor agreement with the corresponding reflection of the work fact under a civil law contract in a workbook [4, p. 85].

The use of the most civilized contract design in the regulation of individual labor relations allows us to speak about interbranch relations of the sectors under consideration. This causes difficulties in differentiation between civil-law and labor contracts [5].

In a labor contract it is possible to use additional conditions in addition to the mandatory ones, they are also called optional ones. They are established by mutual agreement of the parties, which is similar to the establishment of the rights and obligations of the contract parties in Art. 421 of RF Civil Code, which stipulates that the parties determine the terms of a contract by themselves. This contract, in accordance with the existing view in civil science, should be considered as a transaction (the legal fact of the Article 16 of the LC RF - the basis for the emergence of legal relations) and as a legal relationship simultaneously, which are put into a contractual form [6].

According to the Art. 432 of RF Civil Code of a contract is considered as a concluded one if an agreement is reached on all material terms of the contract between the parties in the form required under certain cases. The conditions on a contract subject, the conditions that are specified in a law or other legal acts as essential or necessary for this type of contracts, as well as all those terms concerning which an agreement must be reached upon the request of one of the parties are considered as important ones. A contract is concluded by sending an offer (a proposal for a contract conclusion) by one of the parties and its acceptance (the proposal acceptance) by the other party.

The current RF Labor Code does not contain the concept of an employment contract essential condition, calling them mandatory ones. Labor relations may also appear without a concluded labor contract or without its proper drawing up. The emergence of employment relations, make it sufficient to allow an employee to work with the knowledge or on behalf of an employer or his representative authorized to do so (art. 16, 67 of RF LC). However, in this case a legislator obliges an employer to formalize the relations with an employee within three working days from the moment of the employee's actual admission to work. Thus, there is no need to reach an agreement on all the essential terms of an employment contract to conclude it, unlike a civil law contract.

The analysis of RF Labor Code standards showed that the changes of an employment contract terms determined by the parties, including the transfer to another job, are permitted only by the agreement of an employment contract parties. The exceptions, under which the change of employment contract terms is possible, also at the initiative of one of the parties, are provided by the labor code itself (articles 72-76 of the RF Labor Code). A similar approach is also in the case of civil-law contract condition change for the performance of works and the provision of services. The change and the cancellation of a contract are possible by an agreement of the parties, unless otherwise provided by a civil code, other laws or a contract. However, there are special cases of termination for an employment contract: there are general conditions for termination, the termination by an agreement of the parties, the cases of a short term employment contract termination are listed at the initiative of an employee and also at the initiative of an employer, and also under the circumstances beyond the control of the parties.

Paragraph 3, Art. 450 of RF Civil Code allows for a unilateral refusal from a contract performance fully or partially, when such a refusal is allowed by an agreement of the parties. Consequently, the parties of any civil law contract have the right to admit the possibility of its unilateral change and termination. In the employment relationship a unilateral cancellation of a contract is allowed only on the initiative of an employee (Article 80 of RF LC), and an employer is limited in the possibility of a contract unilateral termination by an exhaustive list of Art. 81 in RF LC, which can be extended only by the RF LC and other federal laws. Here THE Art. 278 of the RF LC on the grounds of a contract termination with an organization head may be an example. As for unilateral change of a labor contract by its parties, it is not allowed by a general rule (article 72 of RF LC).

If we talk about the invalidity of a civil law transaction, we will have to answer the question about the property consequences of its invalidity. Shablova E.G. believes that such a term is not applicable in the employment relationship [2, p. 228]. However, he does not give reasons for his justification. It seems to us

that the general provisions of the Civil Code on the invalidity of transactions are applied to an employment contract. The list of such grounds is great in the civil code. In the Labor Code we will be able to find the issues of invalidity only if the employee conditions become worse and only if the conditions contradict the labor code and other acts that contain labor law norms.

The RF CC contains other consequences of contractual relation drawing up violations. According to the Art. 162 of RF CC, the non-compliance with a simple written form of a transaction deprives the parties of the right in the case of a dispute to refer to the confirmation of a transaction and its conditions for evidence, but does not deprive them of the right to provide written and other evidence. In the cases directly specified by law or by an agreement of the parties, the failure to comply with a simple written form of a transaction entails its invalidity. The failure to comply with a simple written form of a foreign economic transaction entails the invalidity of the transaction.

An employment contract has such a consequence as its cancellation. If an employee does not start work on the day of work commencement, then an employer has the right to cancel an employment contract. An annulled employment contract is considered as not concluded. This is not provided by civil-law relations for the performance of work and the provision of services (only one-sided refusal to perform a contract on the part of a customer is allowed here, in the cases specified by law and by a contract).

A.V. Miroshnik points out that the difference between an employment contract and a service provision contract can be found in the degree of an employee subordination, in other words, in different power over an executor [7, p. 41]. V.I. Mironov proposed a number of criteria on which it is possible to distinguish between civil-law and labor contracts [8, p. 89]. L.S. Tal, describing labor relations, noted the subordination of an employee within certain limits to a master's will as their feature [9].

CONCLUSIONS

Not all conclusions of the authors can be accepted. For example, V.I. Mironov was embarrassed by the fact that if a performer receives a monthly payment from a customer within a stipulated period, then this can not indicate the existence of employment relationship. However, such a procedure can be provided by a civil law contract. Moreover, we can not accept the author's position on the one-time nature of a service, and the impossibility of lasting relations. A.V. Miroshnik believes that the relations for the care of children, the elderly and sick, the upbringing of minors, etc. is closer to civil ones by its legal nature, that no one announces a remark or a reprimand for a nurse or a governess. But what about the relations regulated by the norm of the Art. 20 of RF LC, according to which natural persons entering into labor relations with the employees for the purposes of personal servicing and assistance in housekeeping (hereinafter - the employers - the individuals who are not individual entrepreneurs)? This rule regulates the relations in the sphere of household works.

At present, the solution on the issue of a contract qualification falls within the competence of general jurisdiction court [10, p. 20]. As we have said already, it is very difficult sometimes to define the legal nature of certain relations. Recently, there is a fairly wide range of judicial decisions and resolutions regarding the delineation of labor contracts and civil-law contracts.

All the problems with a contract qualification are related to the fact that a legislator did not determine the criteria that make it possible to define a contract as a labor or a civil law one unequivocally. During the analysis of disputes concerning the re-qualification of a contract the courts take into account many different criteria, the application of which depends on a huge number of circumstances, including whether a labor dispute or a tax dispute is considered, the specifics of a particular situation and the documentary registration of civil law relations.

SUMMARY

We agree with the opinion that the labor force acquires a commodity character and that the line between civil and labor law is blurred and that more and more civil-law elements are used to regulate labor relations [11, p.70; 12, p. 13]. Perhaps in the future, as the researchers indicate, if the reunification of an employment contract with a civil one takes place [12, p. 33], this attribute will also disappear. Although, over the years of labor law existence, built on civil law and administrative principles, the same science proved the existence of a subject and the method of its industry. Therefore, in our opinion, the reunification of two branches of law is hardly possible. As the researchers point out, we talk about "mutual enrichment" of certain legal institutions from various branches of law [2, p. 226]. From our point of view, we can talk here about the existence of interbranch relations within civil and labor law.

Let us note that an analogous course of reasoning can be proposed to distinguish the civil-law concept of services and the works used in public branches of law. Karl Marx also mentioned the services of state officials [14, p. 414; 15, pp. 197-198], however, one can hear about this kind of services nowadays. Here one of the criteria, by which the distinction can be made, is the nature of the relations regulated by law, the ownership of the rules of law in this or that branch of law, and, ultimately, the legal mode of implemented activity.

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