

Right to Work in Modern Russia

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Abstract. The Constitution of the Russian Federation guarantees every citizen the right to work. Article 37 of the Basic Law proclaims: "everyone has the right to freely dispose of his abilities to work, to choose his occupation and profession, forced labor is prohibited." The list of labor rights defined by the 1993 Constitution of the Russian Federation includes not only the proclaimed freedom of work, but also the right addressed to each person (outside his legal relationship with the state through the category of "citizenship") to freely choose his work, depending on his abilities and received profession (qualification). In modern Russia, the guarantee of the right to free skilled labor is regulated by the norms of industry legislation, which in recent years has been subject to significant adjustments. In May (2018) Decree of the President of the Russian Federation No. 204 "On National Goals and Strategic Tasks of the Development of the Russian Federation for the Period Until 2024" and national projects adopted on its basis, including to increase productivity and support employment, the task was set and identified the main directions of breakthrough socio-economic development, entering the TOP-5 of the largest economies in the world.

Analyzing legislation, statistics and examples of law enforcement practice, the authors show not only the positive aspects of the implementation of modern labor relations, but also identify the main unresolved problems in the implementation of constitutional provisions in the field of labor relations in capitalist Russia: low wages, high unemployment, violation of conditions labor and collective agreements between workers and employers, etc.). The article also examines legal uncertainties, including partial legislative gaps, legal conflicts, inaccuracies in legislative formulations giving rise to violations of citizens' constitutional rights in the field of labor relations.

1. Introduction

Art. 7 of the Constitution of the Russian Federation proclaims Russia a social state whose policy is aimed at creating conditions designed to ensure a decent life and free human development. "Decent life" and "quality of life" are one of the most important social categories, characterizing the structure of human needs, as well as the possibility of their satisfaction [1]. However, it would be wrong to reduce the study of quality of life only to its material component. It is the most integrated social indicator. Therefore, the quality of life can be defined as the degree of satisfaction of material, spiritual and social needs, including the satisfaction of citizens with the level of development of health care and education, the quality of the environment, the development of science and technology, the quality and comfort of living conditions, the quality of social services, etc.

We emphasize the fact that when conducting a study of the categories “decent human life” and “quality of life”, the authors take into account, first of all, the legal foundations, economic indicators and criteria characterizing these categories. Thus, we use some indicators regularly used by the Federal State Statistics Service as economic “measures” of quality of life, including incomes, expenses and savings of the population, social security and social assistance, distribution of incomes of the population, living wage, poverty level, consumer expectations of the population and others. In particular, per capita nominal and real cash income, indicators of income differentiation, begin the average average wage (nominal and real), the amount of the pension granted (average and real), the subsistence minimum, the share of the population with incomes below the subsistence level, the minimum wage and pension, final consumption expenditures, the share of deposits in household expenses, acquisition foreign currency and securities, real estate, household disposable resources, minimum consumer budget, etc. [2]

The main integral indicators of the population’s life are the ratio of income and expenses, the ratio of per capita income and the cost of living, the size of the conditionally free part of disposable income, poverty, etc.

Often, the listed economic indicators are directly dependent on the quality of realization of one of the two constitutional rights - the right to work and the right of everyone to freely use their abilities and property for entrepreneurial and other economic activities not prohibited by law (Articles 37, 34 of the Constitution of the Russian Federation).

The study of the right to work causes scientific interest today not only among lawyers [31], but also among philosophers [32], economists [33], and others, as evidenced by the available scientific literature, including monographs, articles, and dissertation research. However, despite the depth and comprehensiveness of the research, some problems of the implementation of the constitutional right to work in modern Russia remain either not completely disclosed, or require a more principled and critical approach to the accumulated problems. Therefore, the authors attempted to fill in some gaps in the study of labor relations in capitalist Russia.

2. Goals and objectives of the study

The main goal of the work is to study the regulation of various components of the content of the right to work. Based on this goal, the authors set the following main tasks: firstly, to analyze the real capabilities of Russian citizens to freely dispose of their abilities to work, choose a type of activity and profession, realize labor functions subject to proper safety and hygiene conditions. Secondly, to study the problem of obtaining a decent remuneration for labor, while showing the main disadvantages of wages in modern capitalist Russia. Thirdly, to identify the legal capabilities of citizens to protect their labor rights in cases of violation, while showing a real picture of the realization of the right to work in modern Russian realities.

3. Research questions

In the Russian Federation, labor is protected by the state, which establishes a guaranteed minimum wage. Moreover, this size is so minimal that it is almost impossible to live on.

It should be noted that according to official statistics, in modern Russia the constitutional right to work is very actively implemented. Thus, the number of labor in the Russian Federation in 2019 exceeded 75.2 million people [3].

In the field of labor relations, labor freedom is manifested not only in the free choice of the type of activity and profession, but also in the contractual nature of labor. The distribution of the employed population by type of economic activity in Russia is very heterogeneous. So, in 2018, the leaders in terms of the number of employees were those related to wholesale and retail trade, repair of motor vehicles and motorcycles (15.9% of the employed population), manufacturing (14.1%), and educational activities (9.5 %). The smallest percentage of employees carry out labor activities in the

fields of culture, sports, leisure activities (1.8%), water supply, sanitation, waste collection and disposal, pollution elimination (0.7%) [3].

A cursory examination of such data may give the impression that there are no problems with the realization of the right to work. However, there are two significant BUTs. Firstly, the labor force indicators in the Russian Federation include all persons aged 15 years and older who are not only recognized as employed, but also unemployed. And for information: the unemployment rate in Russia in 2017 was 5.2%, in 2018 - 4.8%, and for the period from January to August 2019 - 4.6% [3]. In percentage terms, the number of employees seems to be not so much. And now we will translate this data into quantitative indicators. The picture immediately becomes different and takes on a pronounced dark color. So, in February 2018, the workforce in Russia amounted to 75.8 million people, of which 3.8 million were unemployed [4]. Strictly following the letter of the law, we will take into account that only those people who have official unemployed status and are registered with the employment service authorities are included in these indicators [5].

Secondly, practice shows that obtaining the status of an unemployed person and fully and timely exercising this right was very problematic (especially in the initial period of the constitutional construction of the modern Russian state). Law-enforcement problems arose, which were often caused by the presence of uncertainties in the legal regulation of employment and the consolidation of an incomplete list of persons who may receive unemployment status upon termination of their employment relationship. Monitoring the practice of constitutional legal proceedings gives grounds to state with confidence that it is under the influence of the decisions of the Constitutional Court of the Russian Federation and the legal positions formulated in them that the list of persons eligible for unemployment benefits has been expanded repeatedly [6].

Thirdly, a comparison of the labor force in Russia in 2017, 2018 and 2019 indicates a tendency to decrease, which is primarily due to demographic problems, including high mortality. Alas, these are modern Russian realities.

The constitutional right to work must be provided with real opportunities to realize it, and without any artificially created barriers in the form of federal, regional laws or by-laws. This fundamental provision is contained in the Convention of the International Labor Organization "On Discrimination in Labor and Occupation" [Convention 111], adopted on June 25, 1958 at the forty-second session of the General Conference of the International Labor Organization (ILO). A document ratified by the Soviet Union in 1961 provides for the prohibition of discrimination in the field of labor relations, meaning any distinction, exclusion or preference made on the basis of race, color, gender, religious beliefs, political opinion, social origin (other reason stipulated by the state) and leads to the destruction or violation of equality of access to exercise the right to work and to carry out various activities, as well as vocational training [7]. Taking into account the fact that the Russian Federation is officially the legal successor of the USSR, it is therefore obliged to comply with the principles set forth in this universally recognized international document. Note that according to Article 4 of the 1993 Constitution of the Russian Federation, universally recognized principles and norms of international law and international treaties are an integral part of the legal system of the Russian Federation, and it is obliged to comply with them.

It should be noted that according to paragraph 2 of Art. 1 of ILO Convention No. 111, discrimination is not recognized as "distinctions, exceptions or preferences in the field of labor and occupation based on the specific requirements associated with a particular job". An example is the service in the internal affairs bodies, where special requirements and special duties have been established for employees, including requirements for official conduct (both in the process of performing official activities and outside of office), restrictions, duties and prohibitions, which are associated with service in the internal affairs bodies [8]. Let us recall in this connection some legal positions of the Constitutional Court of the Russian Federation (hereinafter referred to as the Constitutional Court of the Russian Federation), which notes that the presentation of special requirements to the employees of internal affairs bodies and the imposition of special duties on them is

consistent with the public nature of the service and the fulfillment by the employees of constitutionally significant functions [9].

One of the priority areas of the social policy of modern Russia is to ensure the rights of persons with disabilities. Ordinary citizens do not think about the fate of people with disabilities very often, because when comparing with foreign countries, people with disabilities living in Russia are not so often found on the street, in shops, government offices, etc., since they are largely limited in exercise of their rights. In particular, just a few years ago, the practice of installing ramps and other structures recognized to ensure their unimpeded movement of disabled people gained momentum. But their quality still leaves much to be desired.

In the past few years, state targeted programs and other measures for the development of social, transport and engineering infrastructure have been developed and are being implemented, aimed at creating a barrier-free environment for people with disabilities and introducing comprehensive measures for their integration into society [10]. The issue is relevant and topical, since the number of people with disabilities in our country is very significant. According to official data, the total number of people with disabilities in Russia in 2016 amounted to 11.625 thousand people in 2017, 11460 thousand people in 2018, and 11277 thousand people by the beginning of 2019. The structure according to the severity of disability in the total accumulated contingent is dominated by disabled people of 2 groups [11].

The Convention on the Rights of Persons with Disabilities, concluded in 2006 [12], one of whose participants was our country, is provided for in Art. 27 the need for States parties to the Convention to recognize the right of persons with disabilities to work on an equal basis with other persons. Ensuring its implementation is carried out through legislative consolidation of measures to prohibit discrimination on the basis of disability, protecting the rights of persons with disabilities to fair and favorable working conditions (including not only equal opportunities, but also equal remuneration for work of equal value), and expanding the employment market for disabled people and their promotion, hiring of people with disabilities in the public sector, etc. Norms of a similar content are duplicated in Russian legislation [13], including in terms of the employer's responsibility for failure to fulfill the obligation to create or free quota jobs for people with disabilities [14].

Employment of people with disabilities in our country is an acute and urgent social problem, which is caused not only by problems of a legislative nature, but also by the long-established stereotype that a person with disabilities does not have sufficient work skills. However, among the disabled there are those who actively wish to exercise their right to work. In particular, in 2017 for assistance 166,993 disabled people applied for a suitable job, half of which 88,574 people. - work (profitable occupation) was provided, in 2018 their number amounted to 154,432 and 84,228, respectively [15].

Such a desire for people with disabilities is often due to at least two reasons. First of all, the desire to be a full-fledged member of society, realizing not only their abilities and skills for work, their education, but also their communicative function. The second reason is very commonplace - the desire to get at least some kind of financial independence, because, let's not be afraid of this word, it is simply impossible to survive on the disability pension established and paid by the state. In order not to be unfounded we turn to the numbers. For example, according to the data for February 2019, the social disability pension of the 1st group amounted to 12,432.44 rubles. for disabled people from childhood and 10,360.52 for disabled people with a disability group according to the general disease, for disabled people of 2 groups - 10,360.52 and 5,180.24 rubles, respectively. and 3 groups - 4403, 24 rubles. [16]. And these are the sizes of disability pensions that were indexed in the spring of 2018 by 2.9% [17].

We believe that the fact of the presence of a disease should not be an obstacle to considering a disabled person as a full member of a society that has the same needs and rights as physically healthy people. Yes, of course, not every disabled person is able to engage in absolutely any type of work. Meanwhile, certain compromises must be found, including by stimulating employers, since it is clearly not economically profitable for them to hire people with disabilities for various reasons, including the cost of equipping a workplace for a disabled person [18], establishing a shorter working day for them and etc. As the Supreme Court of the Russian Federation has repeatedly noted, even if an employee

agreed on an 8-hour working day and the employer knew that the employee is disabled, such a condition of the agreement worsens the situation of employees and, therefore, should not be used [19].

Secondly, freedom of labor, the prohibition of forced labor and discrimination in the field of labor are named among the main principles of legal regulation of labor relations and other relations directly related to them, fixed in labor legislation [20]. The obligation to create safe working conditions and healthy working conditions rests with the employer. Separate regulation is applied to identification of harmful and (or) dangerous factors of the working environment (this includes chemical and biological factors, noise, ultrasound, infrasound, vibration, non-ionizing and ionizing radiation, etc.) and labor process (severity and tension), assessment the level of their impact on the employee, as well as the provision of social assistance to such workers [21]. The proportion of workers who are entitled to compensation for work in harmful and (or) hazardous working conditions is increasing annually.

A special assessment of harmful and (or) dangerous working conditions is carried out by the employer in conjunction with an independent organization. The legislator determined the frequency of conducting a special assessment of such working conditions - at least once every five years, which is criticized by experts who, when substantiating their position, draw attention to the fact that this frequency conflicts with established international practice and does not allow for effective management of risks associated with production activities. The effectiveness of labor protection, as A.Ya. correctly notes. Petrov, can be achieved only with constant (and not periodic) monitoring of working conditions, which will allow for prompt, timely adjustment of the revealed violations, stop violations of the rights of workers in the future, etc. [22]

Labor protection legislation is constantly being improved. Over the past ten years, only in the Labor Code of the Russian Federation have several significant changes and additions been made regarding labor protection issues, including the adjustment of labor protection requirements, conducting state examination of working conditions [23], labor safety standards [24], and the procedure for assessing the level of professional risks [25] and others. We recognize that the legislation in the field of labor protection is being improved, but de facto compliance with it leaves much to be desired, which is confirmed by statistics on the number of accidents at work odstve. Only in 2018, 4479 accidents with serious consequences were officially recorded, including group violations of labor rights, as well as fatal cases. Despite the fact that there is a positive trend (if such a phrase is generally applicable to human life), there is a decrease in the number of workers killed in the workplace in relation to the indicators of 2017, but these figures remain appalling - 1,158 who died in 2017 and 1,186 in 2018 year [26].

Thirdly, in part 3 of Art. 37 of the Constitution of the Russian Federation, the right to equal remuneration for equal work is proclaimed, without any discrimination and not lower than the minimum wage established by law. From January 1, 2019 it is 11280 rubles. per month [27]. The establishment of a minimum wage performs several functions, providing the ability to calculate wages for employees whose wages (cash) are paid from the budget, and also allowing to determine the minimum below which human labor cannot be paid. The Constitutional Court of the Russian Federation on this occasion has repeatedly noted that, based on the humanistic principles of the social state, the federal legislator is obliged to carry out legal regulation in such a way as to create favorable conditions for everyone to exercise their rights in the world of work, including the right to fair remuneration for your work. It should ensure a worthy human existence [28].

No less painful of all the previously mentioned issues is the issue of wages. Yes, you can be able to exercise the right to work, receiving remuneration for the performance of your labor functions (sometimes beyond the standards of working time established by labor legislation) that does not at all meet the constitutional criterion of "decent life". Having been working in an educational organization for many years, more than once they asked students the question of how much, in their opinion, should be a normal salary in order to feel confident and comfortable in life. Of course, the trainers gave very different answers. But all the amounts mentioned are far, and sometimes several times, from the level of real wages paid in modern Russia. Turning to the official data caused at least bewilderment, since according to the Federal State Statistics Service, in 2017, the average monthly nominal accrued wages

of employees for a full range of organizations amounted to 39167 rubles, in 2018 - 43724 rubles, and according to the data of the second quarter of 2019 - 48453 rubles . [29, 39]. We dare to assume that, having seen these data, many workers in health care, education, social services, etc., would very much like to receive this salary.

A number of questions also arise regarding the level of average wages in the light of the implementation of the May (2012) decrees of the President of the Russian Federation. Despite the fact that all the deadlines for their implementation have long passed (the task was set by 2018), however, the federal government and the leadership of the regions failed to implement the May 2012 decrees of the President of Russia. Almost everywhere, the salaries of state employees were lower than what was required by decrees of the President of the Russian Federation dated 05/07/2012 No. 597, dated 01/06/2012 No. 761, dated 12/28/2012 No. 1688. Moreover, this happens against the background of a surplus of the state budget, which is only in 2018 amounted to more than 2.7 trillion rubles. And in 2018, just 14.5 billion rubles were allocated to fulfill the president's requirements to increase the remuneration of certain categories of employees of budgetary institutions. or only 0.053 of the actual financial opportunities in the form of a surplus.

4. Conclusion

1. A study of the various criteria for a person's worthy life, considered over several years in dynamics, gives reason to recognize that to this day not all conditions have been created and are being implemented that provide a decent life, free development and self-realization of the individual's creative potential. In modern realities, the task of the legislator is to issue and amend normative legal acts aimed at implementing a fair social policy and comprehensive social support of the population.

2. The national security strategy of the Russian Federation among the national interests of our country for the long term called "improving the quality of life, strengthening the health of the population, ensuring stable demographic development of the country ...", which are put on a par with such ambitious tasks as strengthening the defense and security of the state, ensuring the inviolability of the constitutional order, state sovereignty, state and territorial integrity, etc. We believe that this is not accidental about, since modern society, in order to ensure the safety of its citizens, must protect them not only "from war, but also from social uncertainty in life", ensuring social security and normal conditions for the realization of the right to work. The understanding and awareness of this fact by modern scientists, the regular reform of legislation in the field of social security, the preservation of its conflict and whiteness so far create favorable conditions for discussions on the main directions of social state policy, on the regulation and content of socio-economic rights and freedoms person and citizen as forms of constitutional consolidation of social obligations of the Russian state, etc.

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