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Problems of Prevention of Crimes and other Violations in the Sphere of Labor Relationship of Modern Russia

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Abstract

The purpose of this study is to identify problems in labor relationship in the Russian Federation. The authors use the term 'labor fraud'. There is a differentiation from the fraud in general criminal sense. There is a necessity to introduce criminal responsibility for 'labor frauds'. Similar experience of foreign countries is considered the in a positive way. Among main conclusions derived from the work it is to provide the following theses:

- *The constitutional right of employees to receive compensation for labour is not protected fully. Civil and administrative legal responsibility is not sufficient to realize this right fully;*
- *The solution of the problem on the observance of employees' rights in full should be based on the achievements of legal science, in particular, science of labour and criminal law;*
- *The actual legal status of the employee provided by the law and its implementation mechanism brings the labor relationship to a new level which positively affects the reputation of the welfare state.*

Keywords: labour relationship, employee, employer, compensation for labour, 'labour fraud'.

JEL Classification: A12, C3, H76, H83

1. Introduction

Recently we have witnessed several high-profile scandals connected with the non-payment of salaries in the Russian Federation.

Thus, in the Amur region builders of the cosmodrome went on strike because the employer had not paid them more than 14 million roubles for the first two months of 2015. The fact that the building was known nothing short of the "building of the century" contributed to the publication in the media. It is impossible to underestimate the value of a new cosmodrome. It is prestige of the country and acquisition of space independence after the

actual loss of current Kazakh Baikonur. The authorities' response was not long in coming. Dmitry Rogozin, Deputy Prime Minister of the Russian Federation in charge of the defense industry arrived at the cosmodrome. Result of the inspection is the following: displacements and opening several criminal cases. It is noteworthy that according to the investigation there were money but they were not paid to the employees. The feeling of employers overindulgence simply shocks. At the time when 26 employees went on hunger strike one of the leaders of the Federal State Unitary Enterprise GUSS Dalspetsstroy fixed up his wife for a job and paid her 800 thousand rubles for the month. (Guberniya online) The Prosecutor's Office of the Amur region opened a criminal case against the leadership of OOO "Stroyindustria-C" under Part 4 Clause 160 of the Criminal Code of the Russian Federation "Impropriation or waste, i.e. misappropriation of property of another entrusted to the guilty, committed by an organized gang or in especially big amount". It was also opened a criminal case under Part 2 Clause 145.1 of the Criminal Code of the Russian Federation. (Aif.ru).

After a while, in July 2015 there was a new scandal. In Ufa, the capital of Bashkortostan there was successfully held the summit of the SCO and BRICS but it soon became clear that the salary was not paid to the employees who worked on the preparation of objects. The information that migrant workers from Central Asia were brought to the construction sites and were not only unpaid but also were beaten found its way into the global Internet. Ilgiz Yusupov, Bashkir rights activist filed a petition in the prosecutor's office about the non-payment of employees' wages on behalf of 60 people. Yusupov has begun collecting builders' evidence since January. They told that they had begun working on the preparation of objects for the SCO and BRICS summits in Ufa the previous summer. The organization with a great name of "Nanotehstroy" hired the employees and they were promised 120 thousand roubles as a minimum for half a year. The following objects were being prepared for the summit: Ufa airport, hotel Hilton, hotel "Bashkiria". The budget of all the works for the summit amounted to 10 billion roubles. 600 million roubles were devoted to one airport. However, the majority of employees were left without wages. According to the human rights activist, some employees were suggested five thousand roubles and they were told to "rejoice" (Tomin 2015).

And these are only just two examples. Employers neither scrupled any projects of national importance, nor were afraid of the damage caused to the prestige of the state.

These cases became public because of their real significance but what is the case with other workers, what is the situation with salary payment?

Official statistics on unpaid wages is available at Russian Federal State Statistics Service. According to official figures on the 1st of August 2015, according to the organizations' data (not relative to small businesses), the total wage arrears in a circle of the apparent types of economic activity amounted to 3,519 million roubles and increased by 205 million roubles (6.2%) compared to the 1st of July 2015. Past due debt is explained in a greater degree by the lack of the capital base of the organizations (Figure 1).

Dynamics of past-due debt on salary
for the 1st day of month, mln. roubles

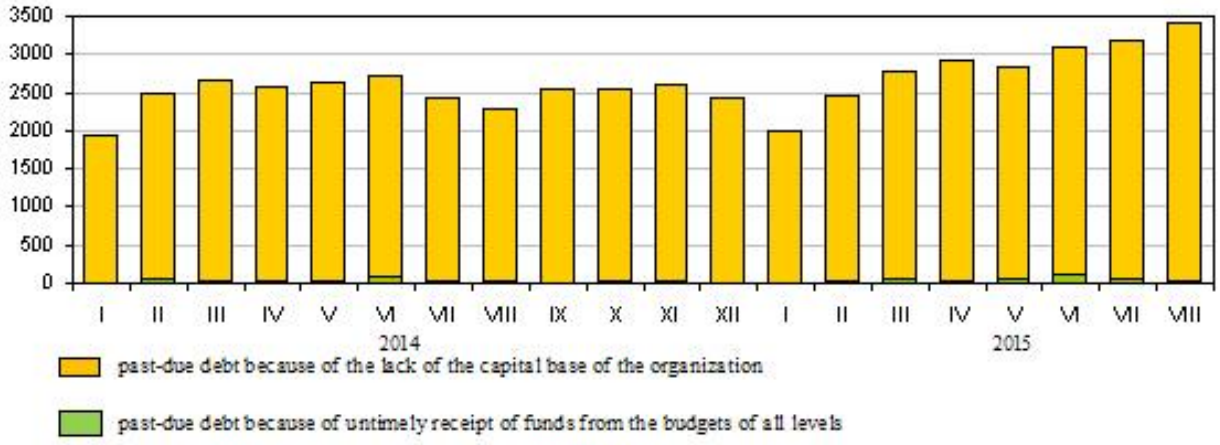

Figure 1. Dynamics of the past due debt on the 1st day of the month, mln. roubles
(Federal State Statistics Service 2015)

Examples mentioned above do not fit in the statistics provided by the Russian Federal State Statistics Service. Money to projects of national importance was allocated but it did not reach the workers. These examples

show that the employees have been cheated because employers have cited to the lack of the capital base while there have been some. Official statistics never reflects the unpaid amounts committed as a result of "labour fraud" (Ryzhkova 2013). This term is known as "labour fraud" abroad. There is no criminal or administrative liability for "labour frauds" in the Russian Federation and as a result they have received the widest dissemination. But "labour fraud" should be distinguished from the genuine fraud committed in the area close to the subject work. For example: on the 19th of August 2015 there was broadcast a story in the evening news on the first channel about fraudsters who worked under the guise of Recruitment company. The company named "Trans-Alliance Plus" offered people information about non-existent job vacancies and executed phony certificates or medical records. Customers were attracted by very lucrative offers. For example, they promised to employ a packer with a salary of 50 thousand roubles and even with the provision of housing. Applicants paid money, about 3 thousand roubles, and were waiting for the call. But when they were already worried and called again into the office, they were reported that the candidacy had been rejected by the security service. The company has existed for several years and even expanded into a large net. The domiciliary visits of fourteen locations were carried out simultaneously by the police. Sixteen people were arrested. According to preliminary data the employees of the false company impropriated more than three million roubles. The company name was changed several times but the essence remained the same. Today there are dozens of people as victims in the case but the real number may amount to hundreds (Channel One Russia). The victims leave reviews about the false company in the Internet where they describe the criminal scheme of the fraudsters. Here is an example: 1. You call – the invite you for an interview, you come. 2. They register you and ask to bring a medical certificate a model of which they have. 3. They request the medical record, and even if there is one it is again not of the sample that they need. 4. They give you the number of the "friend-doctor." 5. You call the "doctor" – and they tell you at once the amount of the medical record together with the certificate: 2900 roubles plus 1500 roubles. 6. They make the medical record and a certificate but they are false. 7. You come back to your "manager" and then you are told they you do not fit or they already have no vacancies (Sor v izbe). This is the pure fraud but it is close to the labour environment only objectively. Criminal liability accrues on objective reasons. The victims themselves, having been deceived and misinformed, give money. The environment is close to the labour one but it is difficult to call this fraud to be "labour". There occur no labour relations in the result. They are marked only as a cause. But, as noted above, there have been no responsibility for the labour fraud in Russia yet.

Criminal liability for fraud is established in Clause 159 of the Criminal Code of the Russian Federation. The sanction this Clause provides for the most severe punishment in the form of imprisonment for a term up to ten years with a fine of up to one million roubles or in the amount of the salary or other income of the convicted for a period of up to three years or without it and with a restriction of freedom for up to two years or without it. Under the Federal Law of 29.11.2012 N 207- FL of the Russian Criminal Code there were made some amendments which complemented the components of the fraud with six new special components (Clause 159.1. Fraud in the sphere of crediting, Clause 159.2. Fraud by obtaining payments; Clause 159.3. Fraud with the use of payment cards, Clause 159.4. Fraud in the sphere of entrepreneurship; Clause 159.5. Fraud in the sphere of insurance, Clause 159.6. Fraud in the sphere of computer information). However, the law has not established the special components of the fraud in the sphere of labour relations. There is a criticism to introduce special components of the fraud in Russian law press (Epikhin 2013).

Meanwhile, cheating of the employees occur almost everywhere. In this article we review some examples.

Methods. We state that corruption in Russia has reached a level that poses a threat to national security. A number of scientific papers indicating the connection of corruption economic crime is dedicated to the investigation of corruption. In addition, corruption is studied in many areas of public life - education, health, etc. Signs of corruption are studied in these areas including the regional level. However, some areas, despite being affected corruption, have dropped out of the study. One of these areas is the world of work. This study in the methodical plan is an analysis of foreign legislation, the practice of Russian legislation in the sphere of labour relationship. The research is aimed at drawing attention to the stated problems, it is expected to introduce some unlawful acts committed by employers in the labour area, as well as the legal background and offer of the main solutions to the problems identified in the study. The following methods have been used for this purpose: comparative law, sociological, statistical. The authors have used surveys and questionnaires and applied the method of diagrams. Based on the evidence found there were formulated the key conclusions that could justify the use of the term "labour fraud", to establish the need to introduce the articles providing for the punishment for the labour fraud to the Russian criminal law which in the long term will have a positive impact on the reputation of the social state (Constitution of the Russian Federation, Clause 7).

2. Results

Let us come over directly to the examples:

Example 1. One way of non-payment of the statutory compensation for labour by the employer to the employee is a deliberate failure to pay for overtime work when recording of working time (Ryzhkova 2014).

Cl. 97 of the Labour Code of the Russian Federation tells us that the overtime work - is work that is performed beyond the fixed working hours. This means that the employee has worked their normal hours and only then they may be involved in the performance of work beyond their hourly norm.

The employer has the right according to the procedure established by Labour Code of the Russian Federation to involve employees in the performance of work beyond the working hours established for the employee in accordance with the Labour Code of the Russian Federation, other federal laws and other stature instruments of the Russian Federation, the collective agreement, contracts, local stature instruments, labour contracts - for overtime work (Cl. 97 of the LC RF). The initiator of the overtime work is always the employer. Involving in the performance of overtime work is possible either with the employee's consent or without their consent where provided for by law.

If this happens the employer is obliged to provide accurate records of the duration of the overtime work of each employee.

Separately, the legislator calls this type of overtime work as work beyond the working hours established for the employee at the recording of working hours in excess of the normal number of working hours for the reference period. Not just an hour or two but all overtime hours worked for the reference period are taken into account by the record of cumulative hours worked.

Record of cumulative hours worked is set if the established for the current category of employees daily or weekly duration of working time cannot be honoured subject to the conditions of production (work) of the self-employed entrepreneur, of the organization as a whole or by implementation certain types of work. The purpose of the introduction of the record of cumulative hours worked is to ensure that the duration of working hours for the reference period (month, quarter, or other periods) does not exceed the normal working hours and id it exceeds they should be paid. Reference period cannot exceed one year and in case of presence of the harmful factors - three months (Cl. 104 of the LC RF).

Normal working hours for the reference period are defined judged by the established for the current category of employees weekly duration of working time. The normal working hours for the reference period are reduced accordingly for employees working part-time (shift) and (or) short week (Cl. 104 of the LC RF).

Normal working hours for the reference period, in turn, are determined by the factory calendar.

Let us account the reference period as a quarter. Suppose, for example, that an employee has to work 440 hours in the first quarter of 2015. But they work in shifts, sometimes they have to go to work more often. The reasons are different: someone is sick, someone has left work and a new employee is not hired, someone is on leave. Let us assume that they have worked not 440 but 470 hours for a quarter and that is 30 hours more.

How these 30 hours should be paid?

Labour Code establishes the following payment option: first two hours - at a time-and-a-half rate, following hours - at double rate. At that specific amount of payment for overtime work can be determined by the collective agreement, local statutory instrument or labour agreement (Clause 152 of the LC RF).

If we follow the Labour Code of the Russian Federation, the two hours will be paid at a time-and-a-half rate, following hours - at double rate (unless other ways not aggravating the employee’s position are not established by local acts). In fact, the employer must pay not for 30 but for 59 hours (2x1.5 = 3; 28x2 = 56, 56 + 3 = 59).

Let us go back to our basic question - whether the employer pays for overtime work by the record of cumulative hours worked?

In all cases known to the authors (about 50 organizations where the record of cumulative hours worked is introduced) – there has been no payment for the overtime work. State Labour Inspectorates are aware of such violations but they accept the employers understandingly. In addition, Inspectorate leaders prefer not to quarrel with the employers in any way trying to bypass these issues.

However, the employer cannot just elude the legal compensation for labour. They need to cheat somehow, to find a way out.

What does the employer say to employees to explain the alleged lack of funds? Here is an example:

- You know, you have worked overtime. But you have fewer hours under the labour agreement. What should we do? We need to solve the problem somehow. Do you want to be paid for the overtime work?

Employees: certainly.

Employer: Then please write the following statement to us: "I ask you to make payment for me for hours actually worked."

Thus, we have 30 hours again. 29 hours remained unpaid. And most importantly is that the workers themselves asked to do so. Now, if they had not asked ... Then the employer would have to pay for overtime work. And now - only for the hours actually worked. Workers who are grateful to the employer's care write such statements.

Now remember that the legislator is authorized to introduce the reference period for one year. It is very profitable for the employer. Who from the employees calculates the number hours worked overtime for the year? You can only hope to be paid for hours actually worked or worse. There is nothing to talk about the legal extra payment – double payment.

As a rule, the employee does not know much or knows nothing in this part of the provisions of the Labour Code of the Russian Federation of little known or not known at all. It is not difficult to guess that there will arise no suspicions, for example, if the employee receives an additional payment for 50 hours instead of the 100 which they know nothing about.

The second trick of the employer used to keep employees in the dark - is a direct (but unobtrusive) violation of Cl. 104 of the Labour Code of the Russian Federation indicating the need to introduce a record of cumulative hours worked in the internal labour regulations of the organization. Employers do not include the provisions of the record of cumulative hours worked as a violation of the Labour Code, do not stipulate the reference period in the Rules; they often operate "as fools" including these provisions into other local statutory instruments which are generally not available to the employee, for example, to "The statutes of the financial policy of the organization."

The employer (employer's representative) deceives them using the official position, acting intentionally, with selfish interest, abusing the trust of employees. The employer must pay the salary in full but they do not do it.

How can we protect the rights of workers?

Let's consider some options.

Defence of rights of the employees in the civil order: the employees are afraid to pursue the employer. Labour union can also make a stand for the employees' rights only upon their request and it is obliged to provide proof of such request upon action on tort. Failure to comply with this requirement is cause for returning the statement of claim as a statutory non-judicial labour conflicts resolution procedure is set forth in the law of the Russian Federation.

Defence of rights of the employees in the administrative order: the Code of Administrative Violations (CAV) of the Russian Federation contains Clause 5.27. which establishes administrative responsibility for violation of labour legislation and labour protection. This clause is too general, it has never been applied to such relationship.

Defence of rights of the employees in criminal order: the circumstances described are very similar to the crime. Criminal Code contains Clause 145.1. which is "Non-payment of salaries, pensions, educational grants, allowances and other payments."

Part 1 of this Clause establishes liability for the partial non-payment of the above mentioned payments for three months or more made by the head of the organization or the employer - physical person for selfish or other personal interest. The partial non-payment of salaries means making payments in less than half of the amount payable. At the same time it should be noted that criminal liability arises only in case of determination and proof of a direct intent of the head of the organization or the employer not to pay and their present ability to do it.

It is almost impossible to reveal this even if the amount for overtime work to be paid at the end of the reference period is higher than the payable salary for the month. If the employees deceived by the employer have a monthly salary, as a rule, there arise no suspicion and unnecessary questions.

Let us refer to Cl. 165 of the Criminal Code of the Russian Federation "Infliction of property damage by false pretenses or abuse of trust." According to the dispositions of this Clause infliction of property damage to the property owner or to the other tenant of property damage by false pretences or abuse of trust in the absence of signs of stealing executed on a large scale is criminally liable.

The following circumstance does not allow bringing the employer to responsibility under this Clause – it is big amount - 250 000 roubles - caused to one employee.

There is an objective element in the form of damage by false pretences or abuse of trust there but the employee is neither the propriety owner nor the owner of work because only the property may be fully owned. Part 2, Clause 209 of the Civil Code of the Russian Federation sets forth the following: "The owner has a right at

their own convenience to perform any acts with respect to their property which do not contravene the law and other legal acts and do not violate the rights and interests of other persons protected by law such as to alienate the property by right of ownership to others, transfer possession, right of use, right of administration and disposal of property to them remaining the owner, put the property in pledge and to burden it by other means to dispose it in any other way".

It is impossible to consider Cl. 201 "Abuse of authority" of the Criminal Code of the Russian Federation here. Despite the fact that there are no necessary regulatory acts which a person is obliged to perform according to their official position in this case the interests of the citizens are considered as an optional subject. Besides, even the heads of public and municipal institutions allow such illegal activities.

However, the legislator finds such acts as theft, misappropriation, fraud, causing property damage socially dangerous.

It is obvious that there is a need in responsibility for such actions.

According to the fair statement of O.A. Kuznetsova "only effective legal standard can be valuable" (Kuznetsova 2005).

A.S. Pashkov, L.S. Yavich detect effectiveness terms of the legal standard in the following way: the legal standard is effective if it meets the objective needs, considers an optimum alternative of behaviour required to achieve the goal, and really contributes to the actual result (Pashkov, Yavich 1970).

It is possible to agree with the stated opinion. Indeed, the legal standard is effective if it the goal of its determination is achieved in the form of a positive change of social relations regulated by the law.

The Labour Code standard for payment of overtime hours at a higher rate by the record of cumulative hours worked is not effective. The rule established by the Labour Code of the Russian Federation is not followed.

The sanction for the non-compliance with the standard is absent indeed.

Meanwhile, this act can be criminalized on several grounds:

- violation of the constitutional provision on the right on remuneration for the labour,
- social danger,
- sufficient distribution,
- fraud and abuse of trust,
- infliction of property damage,
- lucrative impulses,
- presence of a special subject.

We suppose that this is not about a special Clause in the Criminal Code of the Russian Federation that would establish criminal liability only for committing of such acts. It's not the only possible fraud in the field of payment for labour. We will consider some other options.

It should be noted that, for example, there is a Clause 173 "Gross violation of the labour agreement" which establishes criminal liability for gross violation of the labour agreement by the officer enterprises, institutions, organizations, irrespective of the form of ownership... by fraud or abuse of trust in the Criminal Code of Ukraine. The sanction is a fine up to fifty non-taxable minimum incomes or deprivation of right to hold specific posts or prohibition to engage in specified activity for up to five years or arrest for up to six months, or restriction of freedom for up to two years (Criminal codes of foreign countries 2015).

Here is another example. Bulgarian Criminal Code establishes the general standard and punishes for the fraud: Cl. 209 of the Criminal Code –

(1) The one who abuses someone or support their wrong beliefs for its own property benefit or for the benefit of others and causes property damage to them or to the others by these means shall be punished for the fraud by imprisonment up to six years.

(2) The one who uses wrong belief, inexperience or lack of knowledge of a person with the specified purpose herein and thus causes property damage to them or to the others is punishable by imprisonment up to three years.

Cl.210**.** (1) The fraud is punished by imprisonment from one year to eight years: ……

(3) if committed by an officer or an authorized person who had used their position or authority for this (Criminal codes of foreign countries 2015).

There are similar provisions, for example, in the Criminal Code of the Netherlands. Clause 236 allows initiating criminal proceedings against a person who dispose the complainant by clever tricks in order to obtain illegal profits ... to wave claims. This person is guilty of the deliberately fraudulent representation and shall be punished by imprisonment up to three years or by a fine (Criminal codes of foreign countries 2015).

The problem of our reality is that there is fraud, fraudulent representation occurs, the employer uses "clever tricks" but the payment fund saved by illegal means does not become illegal. It turns out that payments to employees made by employers at the expense of the saved funds are technically legal.

It is possible, of course, to talk about the employers' fraud in Russia. It is not prohibited. But the legislator has not paid attention to this problem. Law enforcement agencies do not detect such actions of the employers. Meanwhile, the term "labour fraud", as it has been mentioned above, is quite widespread. For example, web search engine gives 5 million pages at the request of "labour fraud" on the Internet.

For example, one of the first links on the Internet http://www.lni.wa.gov/ClaimsIns/FraudComp/WCFraud/About/default.asp - leads to the site of the Department of Labour and Industry of Washington State (USA) where employees are informed about possible frauds for and on behalf of the employer (Employer Fraud; Potential Fraudulent Activity by an Employer).

The Department requests to inform "if you know an employer who ...does not maintain or report complete and accurate employee payroll information...» ("... does not maintain or report complete and accurate employee payroll information ...").

Example 2. Here is another example of the employees' false suggestion. It happens more often when they are authorized to do additional work without release from work under the labour agreement with the aim to reduce the supplement pay for additional work. Personal mercenary motives of the employer are also evident (Ryzhkova 2014).

Despite the fact that the money in the salary fund seems to have no direct relationship to the head of the organization, however, unscrupulous employer will claim the part of it at the end of the fiscal year. Hence, there is a task - to save by any means including illegal ones.

Labour Code tells us that when the employee performs additional work without release from work under the labour agreement the supplement pay is fixed to the employee, the amount of which is stipulated as agreed by Parties of the labour agreement with due regard for the content and (or) the amount of additional work (Cl. 151 LC RF).

If the additional work is entrusted to the employee under Cl. 60.2. of Labour Code of the Russian Federation (Figure 2) it should be remembered that the additional work is performed without release from work under the labour agreement. That is, the employee performs work under the labour agreement simultaneously with additional work entrusted by the employer.

Additional work is divided into several types by the legislator.

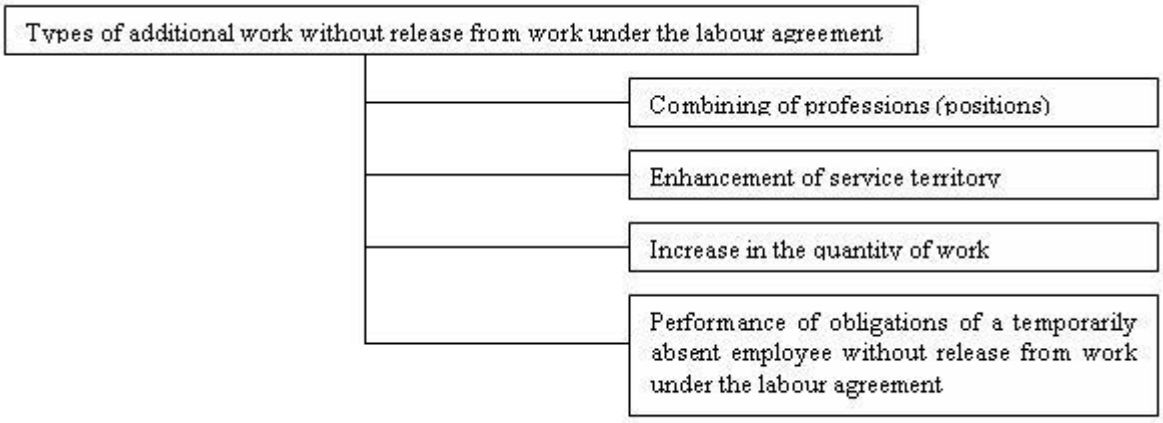

Figure 2. Types of additional work (under the law of the Russian Federation) without release from work under the labour agreement

Legally the instruction to perform additional work is given to the employee only with their consent. Additional work is performed for an additional charge and is performed by an employee in the fixed duration of the working day (shift) along with the work under the labour agreement.

Additional work may be performed by other profession (position) or by the same profession (position).

Additional work entrusted to the employee by other profession (position) can be performed by combining of professions (positions). Additional work entrusted to the employee by the same profession (position) can be performed by enhancement of service territory, increase in the quantity of work.

To discharge the duties of a temporarily absent employee without release from work under the labour agreement the employee may be entrusted with additional work both by the other and by the same profession (position).

The period during which the employee is to perform additional work, its content and quantity are set in by the employer with the employee's written consent.

Cl. 60.2. of the Labour Code of the Russian Federation sets forth that an employee has the right to refuse the performance of additional work before time and the employer - has the right to cancel the instruction of its performance notifying the other party in writing at least three working days in advance.

The legislator provides for that the additional payment is set in by mutual agreement of the parties in Cl. 151 of the Labour Code of the Russian Federation.

A “paper-based” execution is also possible. The employer executes a written proposal to an employee which indicates the type and quantity of additional work, the terms and proposed additional payment. The employee signs indicating “agree” / “disagree”.

Everything seems to be simple and clear but what is actually happening?

An employee is suggested to “make money”. Some workers are absent for various reasons or the employer deliberately leaves vacant positions unoccupied (it is actual for budget organizations). As a rule, workers agree. But the employer consciously uses another mechanism as described in the Labour Code of the Russian Federation. If acting under the law the employee will understand everything. It is necessary to “hide at most” the information about additional payment from the employee. Well, we study the algorithm:

1. The employer offers the employee to write a letter of request to “allow” him combining of professions, positions, increase in the quantity of work or Performance of obligations of a temporarily absent employee, etc.

2. The employee writes a letter of request where he asks the employer about making additional money.

3. The head attaches the letter of request instructing an economist or an accountant to calculate the amount of additional payment.

4. The letter of request is sent to the accounting department where additional payment for extra work is “calculated” at their election and very often it amounts to 10-15% from the fixed salary.

However, the legislator clearly stated in Cl. 151 of LC RF that this payment should be stipulated by as agreed by Parties. That is, there should be a written consent - an agreement but not the letter of request with one-side calculation.

The outcome is the following: an employee realizing that they are working for two men or even three, hopes for a significant increase in payments in the current period. However, they receive only a small addition, for example, several hundred roubles while working with greatly increased intensity. There arise a conflict, however, but the employer is “right” here: “You have agreed yourself”, etc.

At the same time employees are not given any explanation.

One can reasonably argue, may the employee refuse, may they read the Labour Code of the Russian Federation, may they get to know their rights, etc.

However, one can adduce the following counter-evidence:

Firstly, labour law relations are studied from the standpoint of their legal implementation even in law schools. You will not find a paragraph on the employers’ fraud of employees in currently available textbooks on labour rights.

Secondly, it is impossible to study labour rights without special training whether you are an engineer, a doctor or anyone else, to determine what shall be done under the law for themselves and how the employer abuses the law.

Thirdly, we see examples in foreign criminal codes which establish criminal responsibility for employers’ fraud of the employees. Why is such fraud not criminally liable in Russia? Who should protect employees: trade-union or state labour inspector? But there aren't enough of them to go round! And they may act only by convincing the employer not to commit fraud and by giving explanations to employees. There is no law that establishes the employer's liability for fraud. In this case everything is simple: an employer pretends to misunderstand the content of the Labour Code of the Russian Federation.

Example: charge nurse work in a hospital, in one of the departments. There should be 18 nurses according to Payroll and Job Description Schedule. But only 6 work. The others have resigned because of poor working conditions – they constantly had to work at night having a very modest salary.

The employer offers to make extra money - additional work without release from work under the labour agreement. In this case this means increase in the quantity of work. Of course, the nurses agree.

Six nurses work for eighteen people. At night they have to take care of have to take care of, deliver medical care to thirty-six patients instead of twelve. Arguing in the simplest way they realize that the salary will be at least twice as big, they were told about it, assured that they will be extra paid. According to the employees it is impossible to work in such way. The intensity of labour is so high that there are heartaches and night are especially difficult. We agreed to work overtime because of the difficult financial situation. At the end of the month the nurses received an additional payment of 350 roubles. It turned out that the employer has set in an additional payment of 10% from the fixed salary. Where can I complain to? – This is the question which interest the employees. Anywhere! You have agreed to such additional payment yourself!

The main argument of the employees – "if we knew that we would receive such additional payment we would not boil the pot."

If the employer has issued documents as it is necessary, proposed to sign an agreement, given sight of the order on an additional payment the things would be different. But they do not do it! The employer has saved money, enabled work in all "open" places. However, they concealed information from the workers that is important to them, and got all the papers "mixed up."

Let us see how much the employer has saved. Roughly estimate: 350 multiply by 6, we get 2100 (RUB). Thus, twelve monthly salaries are saved.

Example 3. Another version of "labour fraud" for the employer which, unfortunately, is used too often is the following (Ryzhkova 2014).

Let the workers have started to perform additional work in January. But they have not been paid extra. The employer explains: now the basic salary will be paid, additional payment will be made a bit later, the employees should be patient for a few months. Employees agree. The employer begins to make additional payments in March but for the previous months: in March - for January, in April - for February, etc. The employee receives a salary and additional payment thereto during the year. In December the employer cancels an instruction for additional work and pays to the employee a salary for December and an additional payment, for example, for October. Employees forget about two or three additional payments which are not made by the employee. No one is going to remind them about it.

According to the current law of the Russian Federation the salary is not limited by the maximum size, and we do not put our hand in someone else's pocket. The thing is that the employer must implement their duties with respect to employees in the sphere of remuneration of labour and the employee for sure must receive the salary provided for in the law. We have the things just the other way about - employees do not receive what is provided for in the law.

The employer will always excuse themselves: overlooked, misunderstood. Even if to consider the administrative responsibility theoretically - the amount of the fine for the officials amounts to from one thousand to five thousand roubles (under Cl. 5.27 of the Administrative Offences Code of the Russian Federation).

There is no criminal liability here. The main argument of the employer is that the employees have agreed themselves. But the employer led them to the "consent" so skilfully that they did not understand anything.

We do not give statistics or any official data here because there simply are not any. Only few people are puzzled with this problem. According to personal observations of the author - most employers behave in such a way. In addition, employees getting to know the provisions of the labour law are still afraid to appeal to the employer personally with a request to make agreements in advance and familiarize them with the amount of the expected additional payment.

According to the Russian criminal law we cannot directly talk about the fraudulent activities of the employers. By fraud the owners themselves transfer the property to the criminal (Cl. 159 of the Criminal Code of the Russian Federation). We cannot speak of causing property damage by fraud and abuse of trust (Cl. 165 of the Criminal Code of the Russian Federation). The employer has promised nothing to the employees. But the fraud is clear here. The rights and interests of employees are really seriously violated. How shall the situation be changed? Is it necessary to establish liability for similar actions of the employer?

The authors' position on this issue is quite categorical. There is a need for criminal liability for fraud committed by employers against employees. There are enough methods of committing fraud, as we see.

Often you can find (call it nominally) securing the "principle of unequal pay" for work of equal value.

Some people believe that dispositive regulation of relations in the sphere of labour is quite widespread in terms of market economy, in a democratic regime. The employer has sufficient freedom in determining working

hours, salaries and other working conditions. If someone does not like something, it is necessary to find another job.

Unfortunately, such image of labour relations has expanded to all social groups including students who have not worked a single day. Imposed images penetrate our consciousness affecting, in particular, legal consciousness of citizens. We suppose that "everything is possible", and that the law allows this "everything", in principle. It is referred to one aspect of discrimination. Here we do not intend to consider all possible cases. Let us consider the anti-discrimination principle of equal pay for labour of equal value.

International Labour Organization Convention of the 29th of June 1951 (Geneva) № 100 with respect to equal remuneration for men and women for labour of equal value was ratified by the Decree of the Presidium of the Supreme Soviet of the USSR on the 4th of April 1956.

This obligation has begun to appear in a gender aspect in the practice of the European states due to the Convention mentioned above.

However, this principle has come to Russia in its broadest sense.

Clause 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (entered in Rome on 04.11.1950) prohibits discrimination in the following way: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without any discrimination on grounds of gender identity, race, skin colour, language, religion, political or other opinions, national or social origin, membership in a national minority, property status, birth or other characteristics" (Convention for the Protection of Human Rights and Fundamental Freedoms).

Clause 37 of the Constitution of the Russian Federation states that everyone has the right to labour without any discrimination and to salary not below the statutory minimum.

Clause 3 of the Labour Code of the Russian Federation prohibits discrimination in employment in the following way. Thus, "everyone has the equal opportunities to exercise their labour rights. No one may be restricted in their labour rights and freedoms or receive any benefits regardless of sex, race, skin colour, nationality, language, origin, property, family, social or employment statuses, age, place of residence, attitude to religion, political opinions, membership or non-membership in the public associations and other circumstances unrelated to the professional qualities of the employee. "

Furthermore, discrimination is criminally liable. Cl. 136 of the Criminal Code of the Russian Federation establishes liability for violation of the rights and freedoms of a person and citizen: "Discrimination that is a violation of rights, freedoms and legitimate interests of a person and citizen depending on their sex, race, nationality, language, origin, property and official statuses, place of residence, attitude to religion, beliefs, membership in public associations or any social groups committed by a person using their official position shall be punished ... ".

There is a definition of discrimination even in the Administrative Offences Code of the Russian Federation. Thus, for example, Cl. 5.62 gives the same definition but the Criminal Code of the Russian Federation includes a feature of committing by a person using their official position, so in this case it is necessary to talk about the criminal prohibitions in relation to the sphere of labour relations.

The principle of equal pay for labour of equal value was not included into Clause 2 of the Labour Code of the Russian Federation which defines the basic principles of legal regulation of labour relations and other relations directly connected with them but it was attached as the obligations of the employer in Cl. 22 of the Labour Code of the Russian Federation.

It goes without saying that this obligation is not fulfilled by employers almost everywhere.

The Criminal Code of the Russian Federation, as mentioned above, contains Clause 136 "Violation of equality of rights and freedoms of a person and citizen" which imposes criminal liability for discrimination. However, the Clause nearly does not work.

Here is an example:

Organization is checked on a complaint received by the trade union relating to the remuneration.

During testing they reveal a fact having no relation to the complaint. 3 programmers worked in the organization. They performed similar duties, had the same labour standards. The salary of each employee under the labour agreement amounted to 4500 roubles at the moment of verification. There was a following paragraph in one of the contracts where it was stated: "The salary is applied to with the multiplier of 3k". Agreeably, the incentive and compensation payments were calculated from the salary multiplied by three, that is, from 13,500 roubles. The salary of the privileged employee differed from the salary of two other employees fourfold in general. Other employees did not know about the salary increases of the privileged employee. The head replied rather

abruptly to the question: “Why does it happen?” The head said: “I pay as much as! The salary is the same for all of you! “

The colleagues shared the information about the privileged employee - the cousin the head appeared to have an increased salary. The principle of equal pay for labour of equal value did not work.

The question is: is there discrimination in this case? If yes, is the person committed discrimination of the employees subject to the criminal liability?

Well, discrimination in labour law means abridgement of labour rights and freedoms or getting any advantages depending on gender, race, skin colour, nationality, language, origin, property, family, social or employment status, age, place of residence, attitude to religion, political opinions, membership or non-membership in public associations or other circumstances unrelated to the professional aptitude of the employee.

Labour Code of the Russian Federation tells us that establishment of differentiations, exceptions, preferences as well as the restriction of employees’ rights under the federal law which are determined by the requirements specific for this kind of labour or are under the special care of the State to persons in need of higher social and legal protection is not discrimination (Labour Code of the Russian Federation, Cl. 3). There were no “requirements specific for this kind of labour” in this example. All employees performed the same work. The benefits, however, were in a “three-fold increase” but the employer thought that he behaved normally!

We suppose that there were components of crime in the described case under Cl. 136 of the Criminal Code of the Russian Federation. Discrimination is a violation of rights (equal pay for labour of equal value by the same employer), ... and legitimate interests of a person and citizen depending on their ... origin, property and official status ... committed by a person using their official position shall be punished ... “.

Object of the offence is a legal relationship protected by criminal law to ensure equality of rights and freedoms of citizens. Objective element is commission of actions aimed at discrimination. Subjective element is a specific intent. There are both purpose and motives but the qualifications are not important. The subject is a person using their official position. That is, in this case, we can talk about allotting independent component in the Russian criminal law, that is the process of criminalization (Epikhin 2012).

3. Discussion

What conclusions can we draw?

Firstly, the perpetrators of such acts do not consider that they commit any violations. They consider their actions as legitimate, have a sense of permissiveness. This condition is caused by high latency of these violations.

Secondly, those who are discriminated against are not aware of the defensibility and they also take the permissiveness of the employer for granted.

Let us consider the attitude to discrimination in the sphere of payment. The example stated above has been discussed in the group of 46 people (Figure 3).

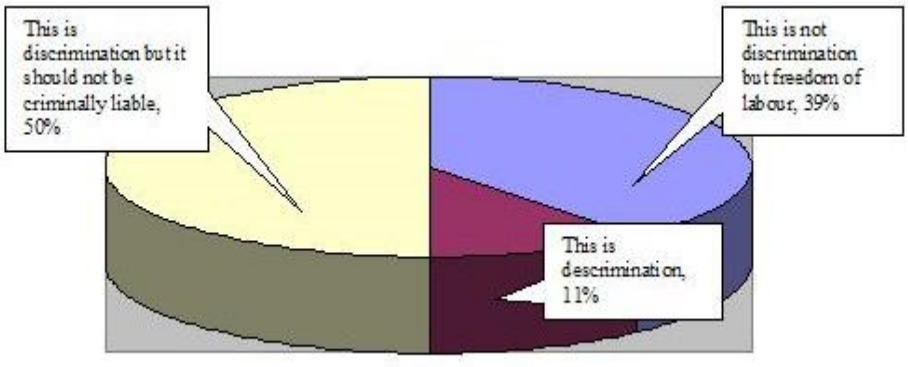

Figure 3. The results of a public opinion on the discrimination in labour relations

The conclusion that can be drawn: discrimination is not socially dangerous and is perceived as the norm in social consciousness.

The current conflict in labour and criminal law prevents the acknowledgement of discrimination as a criminal act. Article 391 of the Labour Code specifies that the employee may apply to the labour dispute to court, if it considers that discriminated against.

Russian law is a case law to some extent. If we watched some statistics of criminal cases on discrimination including in the world of work, we would be able to break the stereotypes and to protect the rights and interests of citizens apart from gender, race, skin colour, nationality, language, origin, property, family, social and official status, age, place of residence, attitude to religion, political opinions, membership or non-membership in public associations or other circumstances unrelated to the professional aptitude of the employee.

4. Conclusion

Summarizing everything said above and drawing conclusions to the undertaken study it is necessary to note the following.

In the frames of this article we attempt to draw attention to the world of work, to consider it from the point of wrongful acts committed inside.

This field is not investigated by the specialists of criminal law more because the attacks that can be combined by an objective characteristic have various generic objects.

Employees working in different areas often do not realize how the employer commits a fraud to them merely without paying remuneration in full. At that we speak about the minimum amount of remuneration under the law of industrial relations.

Representatives of the employer (administration of the organizations) artificially create the mechanisms of impropriation of funds as if the payments have been made to their employees. Abuse of authority in the sphere of payment for labour affects the whole spheres at the regional level. One employer shares their discovery - illegal schemes to reduce payments to employees - with others. Accountants of the organizations asked to write statements which confuse employees about the hours worked. The employer consciously violates their duty - to ensure equal pay for labour of equal value (Labour Code of the Russian Federation, Cl. 22) establishing higher payments to relatives and acquaintances who work in the organization from the payroll budget while minimizing payments to other employees.

The problem needs to be solved at the legislative level. Experience of a number of foreign countries is positive for the Russian Federation.

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