Workers' Protection
National Study

Prepared by Gorbatcheva Janna
Russia

INTRODUCTION

The problem of workers' protection is increasingly becoming a vital issue in the Russian Federation. The study below examines the law and practice on the subject. In particular it provides for an overview of the existing forms of labour in Russia.

The study is divided into four Chapters.

The **First Chapter** reviews the conceptual background of different types of employing in Russia. It also dwells upon the labour market situation in the country. Such analysis are necessary to evaluate the subject of the research as a vital one. A special attention is given to the situations in which workers need protection most.

Chapter Two is aimed at giving a systematic overview of legal rules concerning the criteria for employment under Russian Labour Law (standard contract of employment). The most frequent problem areas will be received a special attention.

Chapter Three contains a report of legal status of self-employed (individual entrepreneurs and parties of commercial contracts). The main question has to be solved in this connection whether such category of workers is suffered by inadequate protection.

Chapter Four is aimed at giving a brief survey of intermediate situations between subordinate work and self-employment in which workers are in need of protection (some aspects concerning dependent-independent workers).

Chapter Five contains an outline of main possible types of «triangular situation» in the Russian Federation.

Ñurrent Russian legislation, courts' decisions, some recent and major research reports including views of scholars (both lawyers and economists), data contained in the official periodicals and information extracted from the interviews carried out in the course of the research have become a variable information base for the study, although fragmentary and in some respect incomplete.

General terms in which the problem of workers' protection should be set

Russian legislation and legal theory use different terms concerning performance of work and provision of services, but rarely give clear definitions.

For the purposes of the present study the following terms shall have the following meanings:

A. The term **«workers»** will cover all existing types of performance of work and provision of services, regardless their legal forms. Therefore a worker is someone who performs works for or renders services to physical or legal person during a certain period of time and under the different degree of authority in return for fee or remuneration. This includes therefore **employees** and other types of **workers (**e.g. **self-employed, dependent-independent workers, etc.)**.

B. The term **«employee»** means a party to a contract of employment concluded under Labour Law. The Labour Code of the Russian Federation (hereafter - the Labour Code) shall regulate the relationships of **all employees**, with a view of *«assisting an increase in productivity, improvement of quality of work, increase an efficiency of public production and increase on this basis of material and cultural level of employees' living standards, strengthening of labour discipline, etc.»* (Art.1)[1].

A contract of employment forms the basis of employment relationship where the worker plays a subordinate or dependent role. The definition of a contract of employment is contained in the Labour Code. According to the **Art.15** of the Labour Code, a contract of employment means an agreement between an employee and an employer (physical or legal person) in compliance with which an employee shall be bound to carry out the work on specified speciality, qualification or post with subjection to an internal order, and an employer shall be bound to pay an employee the wage and ensure labour conditions, stipulated by labour legislation, collective contract and mutual agreement. The main elements of the legal status of the parties of a contract of employment are related by other acts of labour legislation.

Within the employees it may be found different types of workers which are also concerned by Labour Law as employees (such as public servants, managers, etc.). Peculiarities of their legal status are stipulated by specific legislation[2]. These workers seem to be in no more protection (for example, state servants have sufficient social guaranties according legislation and enjoy definite scope of individual and collective rights provided by Labour Law). But some may be recognised in need of certain protection (e.g. managers because of the absence of clear legislative position on their legal status as workers).

C. The term **«self-employed» (independent workers)** applies to all workers without any dependency or with some dependency on those for whom they work. This category covers respectively **«individual entrepreneurs»** and **«contractual workers (independent contractors** or **contractors)».** In particular it mostly concerns craftsmen, farmers, members of the liberal professions who organise their own activity and supply products and services to a varied clientele, according to their own criteria and for a price or fixed fee that is generally determined by the market or by the mutual consent.

D. Between subordinate (or dependent) work and self-employment there is a whole range of more or less complex intermediate situations involving the supply of labour where it may be difficult to identify the precise legal status, or the employer is there is one. Ambiguous or confused situations such as these may derive from the very nature of the occupational activity carried out, or from the natural evolution of certain employment relationships, or from the desire of the interested parties not to be covered by the relevant legislation - labour, social security, for example - governing people working in a subordinate capacity, thereby disguising the nature of the relationship. To the workers involved in such situations the term **«dependent-independent workers»** is applied. It should be noted that in some cases a **dependent-independent worker** may be at the same time an employee or a self-employed or its status may not be defined precisely. The lack of conceptual clarity regarding these workers gives rise to contradictory interpretations and therefore inhibits the establishment of adequate protection for the workers, while this form of employment has become more and more widespread in the recent years in Russia. In

[1] Unofficial translation into English provided by Legal Base.
[2] *See* The Act ***On Fundamentals of State Service*** 1995, the Act ***On Joint Stock Companies*** 1995.

particular an increasing number of companies use the civil-law contracts to hire workers - instead of contracts of employment. More flexibility and reduced social changes seem to have been the main driving forces behind this trend in Russia.

E. The term **«contract labour»** is not used by Russian Law. Neither in Labour Law nor in Civil Law status of **«contractual workers»** or the notion of contract labour is not clearly determined (in particular there is no special acts regulating this point in essential aspects). The relevant labour market data on this subject is also strongly limited.

F. As regards the so-called **«triangular employment relationship»**, there are two types of intermediaries in Russia - state and private employment (recruitment) agencies. State employment agencies have not used such form of hiring workers at all. Private agencies have tried to use it but without due effect (because of the absence of appropriate demands at Russian labour market). Therefore the situations involving relationships among more than two parties have not been a significant in the Russian Federation. Russian legislation and the theory have no references to such situations.

The present study identifies and describes the main situations in which workers lack sufficient protection with special references to the problems caused by a lack or insufficient degree of workers protection and possible means for solving the problems.

CHAPTER ONE

Russian labour market

This Chapter contains a general description of main characteristics of Russian labour market with brief references to the statistics and the main reasons for their being misinterpreted. It should be noted that official statistic data are provided by the Central Statistical Office of the RF. Therefore some information (e.g. as concerns self-employment, employment in private sector, etc.) have not been shown with references to official reports. Some data were also available from periodicals, reports prepared by Servants of The Committees and Workers' Centres of State Duma of the RF, by The Moscow Committee of Labour and Employment and from the relevant interviews.

Total population

By the 1-st of January of this year the **total population** of the Russian Federation has been accounted as **146,3 million** people[3] (for comparison - by the 1-st of January of 1998 this figure was **147,1 million people[4]).** Over the past decade the total number of population

[3] *Rossiyskaya Gazeta/ Russian Newspaper. 30 September 1999.*

[4] In accordance with official data provided by Goskomstat of the Russian Federation. *See:The Population of The Russian Federation: The annual report prepared by The Institute of Economical Planning of Russian Academy of Science. - M., 1999. P.6.*

has been reducing. This is indicated in the following table 1:

*Table 1: The Population of the **RF***

1993	*148,3 mln. People*
1994	*148,2 mln. people*
1995	*147,9 mln. people*
1996	*147,5 mln. people*
1997	*147,1 mln. people*

The same tendency takes place in Moscow. In accordance with the official Annual Reports provided by The Moscow Committee of Labour and Employment[5], the total population of Moscow has gradually reducing over the last decade (from 1991). The appropriate figures are indicated in the Table 2.

Table 2 : *The Population of **Moscow***

1990	*9 002 900*
1991	*9 003 300*
1992	*8 956 900*
1993	*8 881 200*
1994	*8 792 900*
1995	*8 717 400*
1996	*8 664 400*
1997	*8 638 600*
1998	*8 629 200*
by 1-st Jan. 1	*8 538 200 (from whom 58,2% are working-aged)*

Economically active population

The total number of **economically active population** has reduced over the last decade in the Russian Federation (e.g. 75 millions people in 1993 as compared with 1992, when the same figure were accounted as 75,6 millions)[6].Unfortunately it was difficult to asqiare the recent figures concerning economically active population in Russia. But as it follows from economic and sociological literature its total number has been reducing from the beginning

[5] Estimates based on official statistics.
[6] Federal Employment Service. The Department of Employment Statistics: Labour Force at Labour Market. - M., 1995.

of 1990-s[7]. One of the main reasons for such reducing is the relevant reducing of total population. At the same time population gets older.

Employed

According to official statistics the employed include only employees. Usually self-employed persons (especially as concerns workers under civil-law contracts on performing works and provision services) are not covered by official estimates.

The **employed** are distributed over different branches of the economy. The great portion of employees traditionally is engaged on industry. But this figure has been reducing gradually. There is no recent official statistics concerning the distribution of workers, so it is difficult to evaluate the portion of employees in the total number of workers with a view of the current study.

The main trends and developments of employment situation **in Moscow** are indicated in the Tables 3.

Table3. *Economically Active Population of Moscow*

	Labour Resources (% of total population)	Economically active population (% of Labour Resources)
1992	68	83
1993	67	88
1994	71	88
1995	71	90
1996	72	90
1997	*72*	*91*
1998	71.2	90,7
1999	70,4	88,5

The above data shows that in Moscow the numbers of labour resources and economically active population had grown by 1997. But from 1997 the appropriate figures has reduced.

In Moscow the most part of employed work in big and middle enterprises (e.g. in June 1999 this figure estimates as 2 720 000 - 54% of the total number of employed). It should be noted that data concerning employment in Moscow contains the estimates of applying labour under civil-law contracts (e.g. in Moscow the number of workers under such contracts by big and middle enterprises is 280 000- 10,3% of total number employed by such enterprises). The number of workers in industry has been reducing gradually. The same process takes place in the spheres of science and education. The distribution of employees by sectors of economy is presented in the Table 4.

[7] See *The Population of The Russian Federation: The annual report prepared by The Institute of Economical Planning of Russian Academy of Science. - M., 1999;* Enterprise Restructuring in Russian Industry and Mass Unemployment. The RLFS, 4-th round, 1994. G.Standing.- ILO, Geneva.

Table 4 . *The Distribution of Employees by Sectors of Economy in Moscow*

Sector of economy	***1997***	***1998***	***1999***
Total*	100	100	100
industry	16,2	14,9	15
science	12,0	10	9,4
education	11,7	8,8	9,1
construction	10	11	10,4
medical care, sport, social services	8,7	6,5	6,8
transport	8,4	6,9	7
trade	7,8	16,3	15,9
official managing bodies	7,7	5,3	4,8
financing, insurance, pensions	4,1	3,4	3,4

* enterprises without taking into consideration small enterprises and co-operatives.

Self-employed

It is difficult to establish the exact figures concerning self-employed in Russia. The relevant literature shows that there is no systematic analysis of the composition of the percentage of self-employed. There is no enough comprehensive information available regarding the distribution of employees and contractors of all sorts by age, sex, sectors of economy, etc.. The situation has become worse if we take into account an unemployment (especially a shadowed one) and illegal cases of using work (in particular in the sphere of applying foreign labour force and in the field of secondary employment).

Even where some data may be find out, the distinctions of such key terms as «self-employed», «individuals» are by no means universally accepted, and the systems by which the data were collected often differ widely, reducing the comparability of statistic. Consequently, no precise data on self-employment were collected.

Non-full employment

One of existing problems in Russia is non-full employment. The analyses in this field may be useful, from the one hand, in order to evaluate the scope of problems concerning lacking of workers' protection, from the other - to make clear the picture of unemployment in Russia. It is difficult to provide real available figures concerning the Russian Federation, but it should be noted that such form of employment is viewed by experts as a very widespread form in Russia[8]. As regards Moscow, only in the first half of 1999 about 4% of workers of big and middle enterprises was in state of non-full employment. Non-full

[8] Vlasov V. Non-full employment: workers' protection. -M., 1996. P.36-40.; Labour Market in Russia. - (Smirnov S.N., Kashepov A.V., etc.). -Moscow, 1998.

employment mostly concerns enterprises in industry, construction and science[9].

Secondary employment is called as one of the characteristics of labour market in the RF. Secondary employment has more widespread since 1990's. Sociological estimates contain different figures on this point. Some of them evaluate secondary employment as about 10-15% of all employees. Undoubtedly that there are a lot of violations in this sphere as concerns workers' protection. Data available indicate that more than 65% of workers involved into secondary employment perform work without any contract. In cases of concluding contracts legal nature of such contracts is not clear[10]. It is difficult to acquire any objective estimates concerning secondary employment because of the absence of its due registration.

Unemployment in Russia

It should be noted that the first statistic researches concerning unemployment in Russia occurred in 1993. There are two main methodological principles used in estimating unemployment. The first one is based on all unemployed; the other - on the unemployed, who are registered by State Employment Service. As a consequence, very different figures of the level of unemployment in Russia are given by officials and used by researches.

The conventional view has been that unemployment has covered around of the labour force since 1992. This view stems from a literal and uncritical reading of the registered unemployment figures. Briefly, from its base of zero the number of workers registered as unemployed grew rapidly in 1992, then stabilised in 1993 (even declining a little). On January 1, 1994, the total stood at 835 504. Since then, it has been growing moderately, reaching about 1,5% in mid-1994. The basic appropriate statistics are presented in Table 5 .

Table 5 *:Registered Unemployment in the RF*[11]

	Sept. 30, 1993	July 1, 1994	Spt.30, 1994
Non-employed jobseekers	968,645	1,516,102	1,687.895
of whom			
% Official Unemployed	72,9	83,1	84,5
Number notified for «mass release»	n.a.	56,633	46,989

The more recent official data on unemployment level in Russia describe the situation not to be a serious one. For example, in August the Work Centre of Russian Government estimated that the average level of unemployment has become lower (within all Russian regions). According to materials received from the above Centre aforesaid the figures are as follows[12]:

[9] The Annual Statistic Reports provided by The Moscow Committee of Labour and Employment.
[10] *Chelovek i Trud (Man and Labour). 1998. N9. P.53. See also* Temnitsky A.L., Bessokirnaya G.P. Secondary Employment and its Social Aftermath. /Sociological Studies. 1999. N5. P.34-39.
[11] State Employment Service of the RF. *See in*: Enterprise Restructuring in Russian Industry and Mass Unemployment. The RLFS, 4-th round, 1994. G.Standing.- ILO, Geneva. - P.4.
[12] According to the materials provided by the the Work Center of the Government of the Russian Federation.

Table 6: A*verage Level of Unemployment in Russia*

1992	*0,8% (officially registered)* *5% (all unemployed)*
1993	*1,1% (officially registered)* *5,5% (all unemployed)*
June 1998	*2,5% (officially registered)*
May 1998	*2,4% (officially registered)*
June 1999	*2,2%, which includes **10,6 millions**[13]*

According to the official statistics and the materials provided by the above Centre the minimum level of unemployment is in **Moscow** (0,6%) and Smolensk region (0,5%). The data provided by The Committee of Labour and Employment of Moscow describe the employment situation in Moscow as more serious one.[14] It is stated that the number of applicants to the State Employment Service of Moscow has increased, especially from the crisis of 17 August 1998 (e.g. the appropriate figure concerning 1999 is in 1,7 times more as compared to 1998). The level of registered unemployment in Moscow in the first half of 1999 was 1% from the total number of economical active population. It should be noted that there is a tendency of increasing of such figures.

Among economists and specialists in the sphere of sociology there is a general opinion that the total actual (open) unemployment is accounted higher (e.g. in mid-1994 it may be estimated as something like 7,5%[15]). There are also some reasons for believing that the above figure may be much more higher. This means that data on real level of unemployment may be received with many difficulties. Every statistic should be subject to a critique. Undoubtedly, there is a rampant «black economy» and an unrecorded streetside economy. And some of those involved in the black economy would have recorded jobs as well, while most of those involved in such activities are doing them as «survival activities' and are essentially unemployed. In this respect the subject of workers' protection is becoming more actual.

It is obvious that official statistics on employment do not include the private sector of economy entirely. But, in mid-1994 for the first time ever, according to official statistics, only a minority of total employment in the country was a state enterprises[16]. And the number of workers in private sector has been increased because of mass dismissals from state financed enterprises. As a consequence the scholars do not have at their disposal adequate statistical instruments and to evaluate information on real situation in the labour market of the RF.

[13] *Rossiyskaya Gazeta/ Russian Newspaper. 30 September 1999.*

[14] The Annual Statistic Reports provided by The Moscow Committee of Labour and Employment.

[15] Enterprise Restructuring in Russian Industry and Mass Unemployment. The RLFS, 4-th round, 1994. G.Standing.- ILO, Geneva. - P.5.

[16] Enterprise Restructuring in Russian Industry and Mass Unemployment. The RLFS, 4-th round, 1994. G.Standing.- ILO, Geneva. - P.5.

Sociological researches provides different figures concerning real level of unemployment in Russia and, in particular, in the regions (e.g., according to sociological estimates, the number of unemployed has increased from within the period between 1992 and 1996 in 23 times[17]) .

Shadowed (hidden) unemployment is currently a phenomenon of Russian labour market. This term differently understood by various specialists. In general shadowed (or hidden) unemployment means situations whereby workers who formally remain to have the status of employees do not receive job assignments from their employers because of the reasons of economical nature. But some economists explain shadowed unemployment as a unfull using of formal employees[18]. Therefore with taking into consideration the shadowed unemployment the number of all unemployed in Russia will be much more higher. Some of experts believe that actual unemployment was five times the registered total[19].

Unemployment is a particularly sever prospect for women, disabled and other **vulnerable groups** in the labour force - those who could be adversely affected by the development of a market-oriented economic system.

As concerns the distribution of unemployed, the figures are as follows:

Table 6. *The Distribution of Unemployed by Professions in the RF (1993)*[20]

Managers - 3%

Specialists -21,1%

Servants - 2,7%

Workers (blue-collars) - 61,2%

Now the situation has changed a little by increasing the number of specialists, especially from the sector of banking and other finance structures.

The data received from economic and sociological literature, interviews with specialists and employees' representatives confirms an existing tendency of reducing unemployment in Russia. It seems that in reality the figures are much more worse. In this conditions, it is clear that appropriate practice increases the flexibility of using different forms of working performance.

The information concerning shadowed unemployment in Russia may be useful in order to evaluate the possible scope of so called **informal sector**. It is known that many unemployed really work under different conditions. There are some grounds to suggest that the part of unemployed are covered by different types of contracts. But any relevant information may not be absolutely correct because of impossibility to give objective

[17] Kossiakova T.I. Unemployment in Moscow Region./*Sociological Studies. 1998. N4. P.102.*

[18] Dudnikov S.V. The Minimization of Shadowed Unemployment as A Factor For Economical Growth.- Moscow, 1997.

[19] Enterprise Restructuring in Russian Industry and Mass Unemployment. The RLFS, 4-th round, 1994. G.Standing.- ILO, Geneva. - P.5.

[20] Federal Employment Service: The Department of Labour Statistics. Labour Force in Labour Market in 1994. - M., 1995. P.5.

estimates of informal sector. The problem is that this sector is mostly illegal. It has tended in the past to be more prevalent in Moscow, but today is a feature of most parts of Russia.

There are no objective estimates on this subject in Russian literature. Special official statistics data do not exist. In accordance with economic researches[21], this sector includes not only unskilled workers (e.g. different forms of trade), but also high-skilled ones (private classes, medical care, etc.). Under sociological surveys about 60% of responds may be recognise themselves as informal workers (by sectors of economy - 19,9% in trade; 20,5% - construction; 6% - home-work). Many estimates define the scope of informal sector as 40% of active population[22].

From legal point of view the relations in the field of informal sector may be regulated by employment contract with many violations; by civil-law contracts, etc.. But some relevant situations are not legally regulated. Therefore workers involved may be regarded as employees, self-employed and so on. Usually there are no written contracts at all. The negative consequences are as follows: the absence of real guaranties, the absence of measures to control the terms of work and so on. It is obvious that such situations can really provide the need of adequate protection of workers' rights by Law.

The structure of informal sector may be defined in the hereafter scheme[23]:

SCHEME 1: *Informal Sector in the RF (economical estimates)*

- SELF-EMPLOYED (means - self-providing of work)
- WORKERS AND OWNERS OF SMALL NON-REGISTERD ENTERPRISES
- WORKERS OF REGISTERED ENTERPRISES WITHOUT DUE WRITTEN CONTRACTS
- WORKERS OF FORMAL SECTOR, PERFORMING UNREGISTERED ACTIVITY AT WORK
- WORKERS OF FORMAL SECTOR, RECEIVED THE PROFIT FROM UNREGISTERED ACTIVITY OF AN ENTERPRISE

It should be noted that definite part of informal sector is a secondary employment. It also should be taken into account that unemployment in Russia led to a huge growth of informal sector. Inevitably, workers preferred to be a contractor instead of to be unemployed. Therefore hundreds of millions ready to work under conditions which are much lower that ones we consider to be normal standards or without any contracts at all. As a consequence the problems of inadequate protection (as regards conditions of employment and remuneration, occupational safety and health conditions, social security, freedom of association, collective bargaining, access to justice) appear.

Migration

For the purposes of the research a special reference should be made to labour migration as a significant feature of Russian reality. For example, data received from Russian State Migration Service shows that in 1998 the total number of workers coming in

[21] Labour Market in Russia. - (Smirnov S.N., Kashepov A.V., etc.). -Moscow, 1998
[22] Doroshenko S.V. Social-economical Grounds and Peculiarities of Employment in Informal Sector. The Dissertation research for the Degree of a Candidate of Science of Economics. -S-P.1997.
[23] Labour Market in Russia. - (Smirnov S.N., Kashepov A.V., etc.). -Moscow, 1998. P.156.

Russia were 243,3 thousands people. At the same time the total number of workers leaving Russia was 32,5 thousands people. But it should be pointed out that estimates may not be exact. It is difficult to establish with accuracy the number of migrant workers in Russia today.

The more difficulties occurs when trying to define the legal status of migrant workers. Temporary migrant workers frequently change from one job to another and from one category from another (for example, self-employed or a contract of employment).

The situation is even worse if we take into account the degree of illegal employment as a significant feature of migration. The majority of migrant workers occupy semi-skilled or unskilled positions, often under illegal conditions.

But the fact is that the number of migrant workers has increasing. This is mostly important for Moscow region where the majority of migrants are refugees. Foreign labour is usually applied in such spheres of economy as construction, trade, transport, commercial enterprises[24].

As a result of all the trends outlined above, workers' protection occupy an increasingly significant position on the agendas of discussions not only among lawyers, but also with participation of economists and specialists of sociology.

The above mentioned data was mostly received from official periodicals and considerable number of interviews with individuals (in particular, with those who work at labour organisations). Information from sociological questionnaires was also used. Some of the problems has drawn on special researches of economists. Unfortunately there is not enough legal researches on relevant point.

CHAPTER TWO

Employment relationship

Under Russian Law the maximum protection is provided for the situation of subordinate or dependant employment which is carried out within the framework of an employment relationship. The prevailing legal theory defines the term **«employment relationship»** as an engagement in subordinate, dependant work as distinct from other relationships arising in the sphere of labour performance. The science of Labour Law refers to the **criteria** of employment relation :

- the work undertaken is a broader group of tasks belonging to a «type of job» (so called **«labour function»** which defined by profession, specialisation, qualification) as distinct from the definite work (task) product or services undertaken by independent contractor;

- Concluding the contract of employment an employee automatically has been included into the **collective** (which called the stuff), he or she is to a certain extent integrated into the organisational structure of the enterprise. The employer has the right of

[24] Annual Employment Report of Moscow Committee of Labour and Employment. 1999.

organising and managing the stuff. This power of employer is one of his powers in business sphere (an employer has an economic and organisational authority to decide how the business should be carried our, including the manner of labour utilisation). Therefore employee has an obligation of obeying of employers' instructions (which are viewed as elements of so called **internal labour order).** Under **Art.130** of Russian Labour Code, labour order shall be determined by the Rules of Internal Labour Order confirmed by the General Meeting (or Conference) of employees of the organisation upon the recommendation of an employer (administration). In practice rules of labour order within the concrete organisation may be follows from different local sources - such as a Collective agreement, Working time regulation, acts of administration and others. It should be noted that employer may choose one or more legal forms to regulate labour order within an enterprise.

- An employee is obliged to follow **instructions** on the broadest sense (as regards doing not only «what» but also «how» and «when», he may be ordered to use certain instruments or methods, to stop one task and start with another, etc.) whereby he becomes subject to the control of the employer (the subordination). An employee agrees to perform certain work under the authority of an employer, who in turn as a rule provides the necessary machinery, materials, tools;

- An employer has to pay the agreed **wage.** This means that the work under a contract of employment is remunerated by a «wage» that is a regular payment, separate from the business risk of the employer and subject to minimum-wage and other legal rules and limitations;

- As a rule the work has to be performed on regular, continuous basis, normally within the organisational setting of the employer;

- An employment relationship is a **personal** one. It should be noted that labour duties shall be performed personally (as distinct from some types of civil-law contracts).

The above criteria following from the theory are based on different legal provisions. The employment relationship is a contractual one. In order to identify such relationship it is necessary to define rules determined by Russian Labour Code. The definition of a contract of employment as used in **art.15** of Labour Code reads:

The contract of employment is an agreement between an employee and an employer (physical or legal person) in compliance with which an employee shall be bound to carry out the work on specified speciality, qualification or post with subjection to an internal order, and an employer shall be bound to pay to an employee the wage and ensure labour conditions, stipulated by labour legislation, collective contract and mutual agreement.

The employee's duty to obey an internal labour order is detailed as the duty disciplinary duties. Most of them are listed in **Art.127** of the Labour Code. In particular, employees shall be obliged to work honestly and bona fide, observe the labour discipline, timely and precisely implement administrative directions, increase the labour efficiency, improve quality of production, observe technological discipline, requirements on labour protection, safety conditions and industrial sanitary, take care of property of an enterprise.

The duty of an employer to provide work have to be concrete in **Art.129** of the Labour Code. In particular an employer shall be obliged to organise in the right way the labour process, provide conditions for increase of labour efficiency, ensure labour and industrial

discipline, strict observe labour legislation and rules for labour protection, attitude with care to needs and requests of employees, improve their labour and social conditions.

Therefore among the criteria for employment relationship followed from the legislation may be indicated such ones as working on specified speciality, qualification or post (the type of work); subjection to an internal order (and disciplinary duties of an employee); an obligation of employer to pay agreed wage under certain rules; ensuring labour conditions, stipulated by labour legislation, collective contract and mutual agreement.

It is well known that the essence of any contract is the terms within it, for they show what the parties intended. A contract of employment, however, is unlike most other contracts. Although its parties will have negotiated the main terms, a large number of terms will be implied into the agreement from all sorts of different sources. This is what makes a contract of employment so different from others.

A contract of employment is concluded in accordance with the principle of **freedom of contract**. The basic notion of this principle (as concerns Labour Law) is described in **Art.2** of the Labour Code. Particularly, everyone has the right to work, freely choose or freely agree to labour, the right to dispose by own abilities to work, to choose profession and type of activity and also the right of protection from unemployment. Compulsory labour shall be forbidden. These provisions are based on **Art.37** of ***the Constitution*** of the RF.

It should be noted that Russian labour legislation has a very important limitation in the sphere of realisation of the above principle. According to **Art.5** of the Labour Code, the conditions of a contract of employment, worsening the position of employees in comparison with labour legislation, shall be invalid. Administration of enterprise together with employees' representatives only have the right to establish at own expense additional, besides legislative, labour and life *privileges* for all employees or some categories of employees.

The Labour Code of the RF contains the rules governing the **capacity** to a contract of employment. In accordance with **Art.173** of the Labour Code, the full capacity to a contract of employment is reached at the age of 15. But there are some limitation to employers in concluding labour contracts with minors between 15 (14) and 18.

Under Russian Labour Law, using of temporary contracts of employment is limited. According **Art.17** of the Labour Code, contracts of employment may be concluded for 1)an indefinite period; 2) a specified period of not more than five years; 3) the period for the fulfilment of a specified work. A fixed-term (temporary) contracts shall be concluded in cases when employment relations may not be established for an indefinite period taking into account the character of the forthcoming work, or the conditions of its fulfilling or the interests of worker, and also in cases directly provided by Law. Therefore the principle of freedom of a contract of employment is more limited in comparison with civil-law contracts aimed performing of works or providing of services.

It is prohibited to determine by mutual consent of the parties to a contract of employment such terms as its **ways of termination** (except prescribed by legislation); measures of **discipline** and **material responsibility** (e.g. the Labour Code in its **Art.135** contains the limited list of penalties for violations of labour discipline. Legislation on disciplinary responsibility and disciplinary rules and regulations can also stipulate for some categories of employees other disciplinary penalties. In particularly some of them are stated

by special Acts, concerning public service, education, and so on).

In accordance with legal theory there are several terms which shall be included into written form of a contract of employment as the terms agreed by the parties. These are the following:

•**a group of tasks belonging to a «type of job»** (so called **«labour function»)** as distinct from the definite work product or services undertaken by independent contractor. It is preferable when the parties stated the details of the job. This means that should an employee refuse to perform duties, the employer will have an action for apply disciplinary measures. From the other hand, Russian Labour Law points to the prohibition to require performance of works, not stipulated by a contract of employment. According to the **Art.24** of Labour Code, an employer shall not have the right to require of employee to carry out the work not stipulated by agreement (contract).

•**-working place** (the department of an enterprise and a definite place, Where the work will be undertaken)

•**date of beginning** of performance of labour duties (and the duration of a contract, if a fixed-term contract has been concluded)

•**-remuneration** (salary).

In legal theory the terms aforesaid are called as ***essential terms*** of a contract of employment. But it should be pointed out that current legislation does not indicate them precisely.

The scope of protection within employment relationships

Under Russian Law the contract of employment provides the certain scope of social protection as distinct from other legal forms of working performance which will be briefly analysed as follows.

The major guarantees of employees are followed from **Art.2** of Labour Code. In particular, every employee shall have the right to:

- labour conditions answering the safety rules and sanitary requirements (health and safety);

- compensation for damage caused by health injures connected with work;

- equal remuneration for equal work without any discrimination and at the rate of at least legal established minimum wage;

- the rest, ensured by stipulation of limited duration of working time, reduced working day for some professions and works, granting of weekly days off, holidays, and also paid annual vacations;

- joining together into trade unions;

- social security by age, by disability and in other legal established cases;

-judicial remedy.

An employee also enjoys such rights as the right not to be unfairly dismissed, the right to redundancy payment, etc.. The status of employee also defines the entitlement of the person to the majority of state social insurance schemes. Many other workers have no such scope of social protection.

A. As it was said previously, an employee has the right of labour conditions answering the safety rules and sanitary requirements (health and safety). The corresponding employer's duty is to provide a safe system of work.

The main appropriate employer's duties primary follows from the Labour Code. In particular, it prescribes that at all enterprises healthy and safe working conditions shall be provided (**Art.139**); industrial buildings, constructions, equipment, technological processes have to meet the requirements supplying healthy and safe working conditions (**Art.140**); put into operation of new and reconstructed objects of industrial purpose shall not be admitted without permission of bodies implementing the state sanitary-epidemiological and technical supervision, technical inspection of trade unions and appropriate elective trade union agency of enterprise, putting the object into operation (**Art.141**); an employer shall be obliged to provide appropriate technical equipment for all working places and set up the working conditions adequate with common interbranch and branch labour protection rules, sanitary rules and standards designed and approved in the legal established procedure (**Art.143**) and so on.

In turn employees shall be obliged to observe instructions on labour protection, establishing the rules for performance of works and behaviour in industrial premises and on construction sites. Such instructions shall be drawn up and approved by administration of an enterprise.

It should be noted that the basic right to work in the conditions which meets **the demands of health and safety** is proclaimed in ***The Constitution*** **(Art**.37). The right for work protection is also stipulated by recently enacted ***The Fundamentals On Protection of Labour*** in RF of 1999. The scope of this Act is mostly limited by standard employment relationship. Application of **disabled** persons' labour is regulated by special part of the LC and ***by The Act On Social Protection of Disabled*** of 1995.

B. The above guarantees correspond with the employees' right **to demand compensation for damage caused by health injures connected with work** (the protection in case of occupational accidents and professional diseases). According to ***The PROCEDURES for compensation by employers for the harm caused on employees by an injury, professional disease or another health damage connected with fulfilment by them of labour obligations*** (Approved by the Decree of the RF Supreme Soviet of 24 December 1992 with following amendments and addenda) **an employer** (the term covers enterprises and organisations of all forms of ownership) shall bear material responsibility for the harm inflicted on the health of employees by a labour injury occurred both on the employer's territory and outside, as well as on their way to the place of work or back by transport given by the employer (**Art.2** of the Procedure).

A labour injury shall be considered to have happened through the employer's fault, if it happened as a result of **unproviding** by him of **healthy and safe conditions** of labour (infringement of the rules of labour protection, safety engineering, industrial sanitary etc.). Compensation for the damage consists in payment to the victim of cash sums to the amount of the wage (or its respective part) subject to the degree of professional disability due to this labour injury; in compensation for additional expenses; in payments in certain cases of a lumps allowance; in compensation of moral damage (**Art. 8** of The Procedures).

An employer shall be obliged to compensate the victim who got a labour injury for moral damage (physical and moral sufferings). Moral damage shall be compensated for in cash or another material form, regardless of the material damage subject to compensation.

Every employer shall investigate and account every accidents. This duty follows from Clause 1 of ***The Regulation On investigation and Accounting Accidents at Work*** (approved by The Decision of Russian Government of 11.03.1999 N279).

C. Russian legislation also provides the **right to take part in managing and organising labour process.** This right in general is prescribed by the Labour Code (**Art.235-1**).

The above right includes the **right** of employees **for drawing up and conclusion a Collective Contract,** which is stated by Labour Code and concrete by The Act ***On Collective Contracts and Agreements***. According the latter one, **Collective contract** shall be the legal act, regulating the social-economic and professional relations between an **employer** and **employees** at the enterprise.

The parties to a collective contract are defined as «an employer» and «employees». The ***Act On Collective Contracts and Agreements*** makes no reference to other workers (self-employed, individuals) with respect of their right for drawing up and conclusion a Collective Contract. Therefore this right applies to employees only.

D. Prohibition of discrimination

According to the **Ar.16** of the Labour Code, ungrounded refuse in employment shall be prohibited. Any direct or indirect restriction of rights or setting up of direct or indirect privileges in the hiring entailed by the sex, race, nationality, language, social origin, property position, place of residence, religious, convictions, belonging to the public associations, and also other circumstances not related to business features of employee, shall be prohibited. The differences, exclusions, preferences and restrictions entailed by requirements appropriate to the given type of work or especial state care of persons who need the higher social and judicial protection, shall not be regarded as discrimination in hiring.

It should be noted that the principle of non-discrimination does not entirely apply to some cases of employment (for example, in the public (state) service, where the public authorities may refuse to hire non-nationals).

E. **Modification of a contract of employment**

On contractual principles, any changes in the terms of the contract must be mutually agreed. According to **Art.25** of the Labour Code, the modification of a contract of employment (transfer to another work at the same enterprise, and also transfer to another enterprise or in other district, even with enterprise), shall be allowed only with consent of an employee except cases stipulated by Labour Code. Such exceptions are stated by Articles 26 and 27 of this Code. The main of them are the following:

- In case of industrial necessity for enterprise an employer shall have the right to transfer the employees for under one month period to the work, not stipulated by a contract of agreement at the same enterprise or to another enterprise of the same district with remuneration of labour on work carried out at the rate of at least previous average wage.

Duration of transfer to another work for the replacement of absent employee may not exceed one month during calendar year.

•In case of downtime the employees shall be transferred with the view of their speciality and qualification to another work at the same enterprise for all period of downtime or to another enterprise of the same district for the period under one month.

Changes of the essential working conditions systems and amount of remuneration of labour, privileges, operating conditions, setting up and abolishment of part time, combining of jobs, change of categories and denomination of posts and others shall be announced to an employee at least two months before.

F. Guarantees of termination of a contract of employment

Russian Labour Law is based on the principle of closed list of grounds for termination of employment relationship. This means that the parties shall not formulate any ways for termination of their contract besides prescribed by the legislation. In this respect the **Art.29**, **Art.33** and **Art**.**254** of the Labour Code have to be taken into consideration. Besides the Labour Code, other Acts may states additional grounds for termination of a contract of employment (such as The Act ***On Fundamentals of State Service*** of 1995, The Act ***On Education*** of 1996, The Act ***On Joint-stock Companies*** of 1995, etc.).

There are exceptions of this principle: according to **Art.254** of Labour Code a contract of employment with certain categories of employees may be terminated in cases of provision by contract concluded with the director an enterprise. In particular it concerns top managers.

The main grounds for termination of a contract of employment contract are followed from Art.29 of Labour Code (agreement of parties; expiration of term, except cases that labour relations shall be continued and none of parties did not require stopping of them; termination of a contract by an employee (Ar.31, Art. 32), by an employer (Art. 33) or by the request of trade union agency (Art.37).

Russian labour legislation has a restriction of the right to terminate the fixed-term contracts by an employee. According to **Art.32** of Labour Code, such contracts should be terminated at the request of an employee in case of his sickness or disability, preventing execution of the contractual work, violations of legislation by an employer and by other good reasons.

Art.33 of the Labour Code includes the closed list of ways for termination of a contract of employment by an employer (such as liquidation of enterprise; reduction of quantity or staff of employees; revealed nonconformity of an employee to the post occupied or to the work carried out by him due to insufficient qualification or by the reason of health, preventing continuation of given work; regular non-performance by an employee, without good reasons, duties, entrusted by a contract or by other relevant acts, etc.).

Special guarantees for employees in the field of dismissals are stipulated by the Labour Code. (e.g. the articles, regulating the situations of liquidation of an enterprise, fulfilment of measures on decrease in number of employees or reduction of staff). In particular employees shall be informed on forthcoming dismissal personally on signature at least two months before; an employee shall have the right to choice the new working place by means of direct application to other enterprises or through employment service;

employees involved in some types of dismissals have the right of several pay, for reservation of continuous length of service in the event that interval in working after dismissal shall not exceed a definite period and others.

G . The Right to Create Trade-unions.

The Constitution of *the RF* in its **Art.30** states that every citizen has the right to create unions. This right includes the right to belong or not to belong to trade-unions.

One of the guarantees of workers' protection is the legal role of trade-unions in employment relationship. In particular, some kinds of dismissal shall be allowed, if an existing t-u organisation agrees (e.g., with previous consent of appropriate elective Trade Union Agency- **Art.35** of the Labour Code). The consent of appropriate elective trade union agency for the termination of a contract of employment under the grounds specified shall not be required in cases of dismissal from enterprise where the appropriate elective trade union agency is absent.

The legal status of trade-unions in Russia is also defined The Act ***On Trade Unions, Their Rights an Guarantees for Performance of their Activities*** of 1995. This Act regulates public relations arising in the exercise by citizens of their constitutional right to association, creation, activity, reorganisation and/or liquidation of trade unions, their amalgamations (associations), and primary trade union organisations. According to the **Art.2** of the Act, the trade union shall be a voluntary public entity of citizens linked by common producer and professional interests, according to the line of their activity, set up for the purposes of representation and protection of their social-and-labour rights and interests. Every person attaining the age of 14 years and engaged in labour (professional) activity shall have the right to set up, at his discretion, trade unions for the protection of his interests, to join these, to engage in trade-union activity and to withdraw from trade unions. Citizens of the Russian Federation with a permanent place of residence outside its territory may be members of RF trade unions. Foreign citizens and stateless persons resident in the territory of the Russian Federation may be members of RF trade unions, except in the cases established by Federal laws or international treaties of the Russian Federation. The Act covers all organisations (legal person), as represented by its senior executive (management), or a natural person with whom a worker has labour relations; in accordance with the terms using by the Act. It should be noted that in the context of the Act the term «employee» (who has the rights in the sphere of trade-union activity) means a natural person working in an organisation under a contract of employment, a person engaged in individual entrepreneurial activity, a person studying at an educational institution of primary, secondary or higher professional education.

H. Working Time

In accordance with Art 42 of Labour Code the maximum duration of employees' working time may not exceed 40 hours per week. Labour legislation states the reduced working time for certain categories of employees. In particular, for employees under eighteen years of age the duration of working time shall be as following:

1) from 15 to 18 years of age - no more than 36 hours per week;

2) from 14 to 16 years of age, and for pupils from 14 to 15 years of age, working during vacation, - no more than 24 hours per week.

The right to reduced working time is allowed for employees working at harmful

conditions, disabled and others (Art.Art.44-45 of Labour Code; The Act ***On Social Protection of Disabled***).

Labour Code contains some other restrictions as regards working time. Such restrictions concerns applying of night works, limitations of overtime works (in accordance Art.Art.53-55, an employer can apply overtime works only in exclusive events, stipulated by the legislation, and only under permission of appropriate elective trade union of an enterprise. Legislation also limits quantity of overtime works) and other aspects of employment relationship.

I. Leisure time

Special rules concerning the leisure time are also regarded as distinct features of Labour Law.

Occupation of some employees by work on the days off shall be allowed only in following exclusive cases (for prevention or elimination of social distress or natural catastrophe, industrial accident or immediate elimination of their consequences; for implementing of urgent, unforeseen works, from which promptness fulfilment the further normal operation of enterprise, institution, organisation as a whole or their separate subdivisions shall depend, and so on). The work on the day off shall be compensated by granting of other day off or, under agreement of parties, in monetary mode, but at least at twofold rate.

All employees shall be provided with annual vacations with reservation of place of work (post) and average wage. Under Russian Labour Law the duration of annual payable vacation shall be at least of 24 working days in view of six-days working week. To some categories of employees the obligatory duration employees annual payable vacation shall be longer. This provision may be proved not only by relevant articles of Labour Code, but also by other Acts (e.g. The Act concerning state Service, The Prosecution Act, and others).

Some categories of employees have the right to additional annual vacations (such as occupied with works with harmful working conditions; occupied in some branches of national economy and having the long record of service at one enterprise; employees with unlimited working day; employees, working in Far North regions and regions equated to them).

Non-granting of annual vacation for two years running shall be prohibited. Substitution of the vacation for money compensation shall not be admitted except cases of dismissal of an employee, which did not use the vacation.

J. Wage

According to **Art.37** of ***The Constitution*** of the RF, every citizen has the right for equal pay for equal labour without discrimination.

The employer’s duty to pay wages is fundamental to the bargain. Normally the contract itself will state the amount of pay the employee is entitled to receive. But this provision does not strictly stated by labour legislation.

The significant feature of employment relation is a specific method of establishing wages. Remuneration shall depend on employee’s personal labour contribution and quality of labour and shall not be limited by wage ceiling. Any decrease of wage depending on sex,

age, race and nationality, regard for religious, belonging to public associations, shall be prohibited.

Monthly wage of employee who has completely worked off prescribed for that period working time standard and performed his labour duties (labour rates), can not be lower than the minimum wage stipulated by Federal Law.(**Art.78** of the Labour Code).

It is very important that an employer shall be obliged to notify the employees on introduction of new conditions of labour remuneration or modification of previous ones at least two months before (**Art.85** of the Labour Code).

When performing the work in conditions deviating from normal (works of different qualification, combining of jobs, overtime working, night working, holiday working and others), an employer shall be obliged to implement appropriate reimbursements to employees. The rates of reimbursements and conditions of their payment shall be established by an employer in accordance with the legislation (such the rates can' not be lower those stipulated by legislation). In particular, when carrying out the works of different qualification the labour of timeworkers and also of employees shall be paid as a work of higher qualification. Employees performing at the same enterprise beside his own work, stipulated by a contract, an additional work of other profession (post) or substitute temporary absent employee without release of his main work, shall receive extra payment for combining of jobs (posts) or acting for absent employee. Overtime work shall be paid for the first two hours at least at one and a half rate, for the following hours - at least at twofold rate. Work on holiday shall be paid at least at double rate. The night work shall be paid at increased rate, stipulated by collective agreement of enterprise, but not lower than it stipulated by legislation. All the above obligations follow from Labour Code.

K. Tools and materials

One of the distinct features of employment relationship is that an employer usually provides tool and materials by which the work will be undertaken. Employees using their instruments for needs of enterprise, shall have the right to receive compensation for wear (amortisation) of the instruments (**Art.117** of the Labour Code). The amount of and procedure for payment of this compensation shall be stipulated by an employer as agreed with employee and appropriate elective trade union agency of an enterprise if the appropriate provisions shall not be established by legislation.

L. The employees' liability for damage caused to an employer

One of the features of employment relationship (as distinct from other forms of works performance) is the limitation of employees' liability for damage caused to an employer (so called «material liability»). According to **Art.118** of the Labour Code employees' material responsibility for at performance of working duties, as a rule, shall be **limited by certain part of employee's wage** and must not exceed the whole rate of caused damage except cases stipulated by legislation. From the other hand an employer shall be oblige to provide employees with conditions necessary for normal work and guarantee of complete safety of entrusted property.

Cases of full material responsibility of employees are limited by **Art.119** of the Labour Code. Employees shall bear material responsibility in compliance with legislation at full rate of damage entailed by their fault to enterprise in following cases: 1) the damage caused by criminal acts of employee ascertained by judicial sentence; 2) should, in

compliance with legislation, full material responsibility for the damage impaired to enterprise at performance of working duties, be placed on the employee; 3) should between an employee and enterprise, institution, organisation be concluded the written agreement on acceptance by employee of material responsibility for non-insuring of safety of the property and other values transferred for his keeping and on other purposes; 4) the damage was not impaired at performance of working duties; and so on.

M. Right to defence

Employees have certain guarantees in the sphere of defence of their labour rights. A special procedure of individual labour disputes resolving, more favourable as distinct from common civil procedure, is stipulated not only by the Labour Code, but also by the Civil Procedure Code. In particular, a special commission for consideration of individual labour disputes may be created in accordance with **Art.203** of Labour Code. Employees are free from courts' expenses if a labour dispute is considered in court.

Labour Law states a special procedure of collective labour disputes' resolving. In this respect The Act ***On the Procedure for Settlement of Industrial Disputes*** of 1995 may be indicated. This Act establishes the legal bases for settlement of collective industrial disputes, and also the procedure for realisation the right on strike in the Russian Federation during the settlement of collective industrial dispute and shall be applied to all workers, employers, to associations of the workers and employers and agencies empowered.

Under the above Act a collective industrial dispute means the unregulated differences between workers (in particular employees) and employers on the occasion of an establishment and change of labour conditions (including wage), conclusion, change and fulfilment of the collective contracts, agreements concerning the social-labour relations.

N Maternity protection and protection for employees with family duties. Entitlement into other schemes of state social insurance

An employee is entitled to all benefits and services within the system of ***state social insurance***. This primary follows from **Art. 236** of the Labour Code.

Within the Russian social security system a distinction can be made between **state social insurance schemes** on the one hand and **complementary social services** on the other hand. At the present time, all the benefits and services within the **state social insurance schemes** are financed almost entirely from the payment of contributions which are accumulated in special funds. There are four state federal social insurance funds in Russia: The Pension Fund of the RF, The Social Insurance Fund of the RF , The State Employment Fund of the RF, The Mandatory Medical Insurance Funds. An employer deducts insurance premiums (so called social taxes or social security contributions) at sources from the wages of employees. In accordance with **Art.237** of the Labour Code, the contributions to state social insurance shall be paid by enterprises and individual citizens, using the labour of hired persons in personal economy, and also employees from their wage. Non-payment of employers' of state social insurance premiums shall not deprive the employees of the right of security at the expense of resources of state social insurance.

Amounts of insurance premiums and the procedure for their payment shall be stipulated by law. The relevant Acts are annually adopted and usually called the Acts ***On Tariffs Of Insurance Premiums Payable to the Pension Fund of the RF, The Social Insurance Fund of the RF , The State Employment Fund of the RF, The Mandatory***

Medical Insurance Funds». According the current Act all employers shall to pay a definite percent of payments calculated in favour of employees on all grounds, irrespective of the source of financing.

As a consequence, state social insurance schemes are divided into four general insurance schemes and covered the risks of 1)old age, long-term disability, etc. (state pensions); 2) health care (medical insurance); 3) temporary disability, family expenses (mostly financed by The State Social Insurance Fund of the RF); 4)social insurance in the event of unemployment (from The State Employment Fund of the RF).

In this respect it should be noted that there are two main positions as concerns the term **«state social insurance**». The first one describes this term in a broad sense by including into state social insurance all existing benefits and services, which are financed from the above four Founds. The second one explains this term in a narrow way by including in it only entitlement in the social scheme providing from one of the above Funds - the State Social Insurance Fund. Current legislation mostly relevant to the topic of the present study uses the latter notion (but it is recognised that there is no a clear definition of this term in legislation[25]).

There is a presumption that only employees (as distinct from other types of workers) are entitled in all social insurance schemes. In particular, employees, and in appropriate cases their families, shall be provided at the following expenses:

- with benefits of temporary disability, and women, besides that, maternity benefits, and lump sum grant for registration at medical institutions on the earlier term of pregnancy;

- benefits for care of child under one and a half year of age (payable maternity leave);

- maternity benefits; pensions on age, disability, for loss of family provider,

- unemployment benefits.

Other workers are entitled in some of the above benefits. But the main distinction between employees and other workers is that only employees are covered by social insurance financed from **The State Social Insurance Fund** (entitlement into state social insurance in its narrow concept). Therefore there is presumption that an employee will be paid by his employer while he is sick. The statutory sick pay is prescribed by Labour Code and other relevant acts. In particular **Art.239** of the Labour Code states that temporary disability benefit shall be issued in case of disease, employment or other damage including household injury, when sicknursing after family's member, at quarantine or prosthetic. Temporary disability benefit due to employment damage or occupational disease shall be issued at the rate of full wage, and in other cases at a rate of 60 to 100 per cent of wage according to length of continuous record of service, number of minor children-dependent and other circumstances.

As distinct from other workers employees are also entitled in maternity protection. Labour Code provides some rights in relation to pregnancy - the right to maternity leave, the right to return to work after maternity leave, the right to maternity pay, etc. This provision

[25] For example, the recently enacted Act ***On Fundamentals of Obligatory Social Insurance*** of 1999 does not clarify the scope of social insurance. In particular it defines that such insurance covers workers, including self-employed (if they pay social insurance contributions), without any references to the appropriate notions.

are detailed by The ***Act «On State Family Benefits***» of 1995.

The level of unemployment protection is also caused by the employees' status. In accordance with ***The Employment Act*** of 1991 (with amendments), unemployment benefit is established percentage wise to the average labour remuneration calculated for the last three months at the last place of work if the citizens had **a payable work** for no less than 26 weeks under condition of full day (week) or under condition of part-time working day (week) recalculated into 26 weeks with full working day (week). In all other cases, including the citizens discharged from organisations in 12 months previous to the beginning of unemployment and who during this period had payable work for less than 26 weeks, the unemployment allowance is established in the amount of minimum labour remuneration. It is obvious that in the first case the level of unemployment benefits will be much higher. In fact the term «payable work» includes only one under conditions of a contract of employment.

The problems concerning entitlement into state social insurance schemes of other workers will be analysed in the following Chapters.

Problems which may arise as regards lack of protection within the employment relationship

The main problems which may exist within an employment relationship are the following:

1. The problem concerning guaranties of **remuneration**[26].

2 The absence of **written form** of employment contract in practice. Data received from the interviews with directors of small enterprises shows that more that 30% of workers are not formed in due manner[27]. Such situations cause definite difficulties, in particular, as concerns the identification of legal nature of real contracts by courts.

3. **The scope of guaranties of less-protected group.** Many developments in the labour market in Russia affect legislation which guarantied the protection of less-protected group of workers. For example, to increase the number of women on the labour market on a permanent basis it is necessary to adjust the social security system to the specific needs of workers with family responsibilities. In this respect there is a lot to be done.

At the same time the scope of guaranties of less protected people under current labour law should be changed. Some of them do not invite employers to hire people (e.g. it is forbidden to dismiss a woman during the period from the beginning of the pregnancy until definite period except in case of liquidation of an enterprise; the restrictions in applying such workers in some kinds of jobs (night's, overtime etc.). In some situations an employer is obliged to offer a suitable alternative vacancy. As a result all of these favourable guaranties cause situations which may be negative for such protected groups. For example there is the tendency of reducing of total number of women in this sphere, especially as concerns state service on the regional level. The higher position of a servant the more the degree of men in stuffs. Data available indicated the great degree of men among managers

[26] *Social Researches. 1997. No.8, p.118.*
[27] Russia's Shadow Economy: An Alteration Of Contours. V.Radaev./ *Pro&Contra . Winter 1999. P.9.*

(83% of men of the total number of servants as distinct from 16,7 % women[28].

4.Cases and trends of ambiguity or the disguised nature of the employment relationship. It is difficult to provide an objective picture on estimates of the situations of disguised employment (especially as concerns their quantitative and qualitative evolution), but if we take into consideration the existing trend of Russian labour market (e.g. informal sector, secondary employment, illegal migration and others mentioned in the previous Chapter), we can suppose that disguised employment has widespread in recent years. This point of view is proved by economical and sociological literature[29].

There are two main possibilities of disguising employment relationship in Russian labour market. The first one includes situations of concluding a contract of employment with elements, which may change the essence of employment relationship. Such practice may follows from the legislation (which is the object for critics by specialists of Labour Law) or from illegal practice of employer. The other possibility of disguising employment relationship is a concluding civil-law contract (the content of such contract may be very similar to a contract of employment) instead of an employment one.

The situations of concluding a contract of employment with elements, which may change the essence of employment relationship, mostly concerns including in contracts some civil or commercial arrangements. The scope of protection of such employees depends on the reasons for a changing of contractual terms. From the first place an employer may include some civil or commercial arrangements in the text of a contract of employment illegally. Such cases are solved by courts, which make reference to **Art.5** of the Labour Law, stated that the conditions of a contract of employment, worsening the position of employees in comparison with labour legislation, shall be invalid. As the existing courts practice indicates, such illegal term of a contract (e.g. a ground for full material liability of employee, which is not prescribed by legislation) will be recognised as invalid[30].

From the other place including in contracts some civil or commercial arrangements may be caused by peculiarities of a concrete work and followed from the legislation. In particular, in accordance with the general principle of Russian Labour Law, it is prohibited to determine by mutual consent of the parties of a contract of employment such terms as ways of termination, additional grounds for liability. But there are some exceptions. For example, additional grounds for termination may be stated by a contract with managers (e.g. the director of the enterprise). Additional grounds for termination of a contract of employment and the liability of a director of a joint-stock company may be stated by a contract (in accordance with The Act ***On Joint-stock Companies*** of 1995). The Board of Directors (or Supervisory Board) of a company has the right in sphere of formation of the executive body (a director) of the company and termination at an earlier date of its powers, the establishment of the amounts of remuneration and compensation to be paid to it if such has been relegated to its authority by the charter of the company.

---

[28] *Social Researches. 1999. No.2, p.26.*

[29] *See, for example,* Dudnikov S.V. The Minimization of Shadowed Unemployment as A Factor For Economical Growth.- Moscow, 1997.; Labour Market in Russia. - (Smirnov S.N., Kashepov A.V., etc.). -Moscow, 1998.; Doroshenko S.V. Social-economical Grounds and Peculiarities of Employment in Informal Sector. The Dissertation research for the Degree of a Candidate of Science of Economics. -S-P.1997.

[30] Stavtzeva A.I. The Settlement of Labour Disputes. -M., 1998. P.76.

Courts in their practice prove possibilities of increasing of obligations of employees-managers in employment contracts[31]. In fact such contracts acquire some features of civil-law contracts.

As it was indicated above, the other possibility of disguising employment relationship is a concluding of civil-law contract (the content of such contract may be very similar to a contract of employment) instead of an employment one. The major recent change in the field of labour using in the last ten years has been the development of **using civil-law contracts**. The reasons for such position followed by relevant legal grounds will be discussed in present research hereafter.

Until recently, the tendency to hire people under civil-law contracts was largely dependent on the enterprise's duty to deduct social contributions (to pay insurance premiums). Previously the relevant legislation of the Russian Federation gave some freedom from this duty in case of using civil-law contracts of performing works and providing services. Now the situation has been changed. Recent legislative provisions concerning the tariffs of social security contributions has made closer the relevant duties of user-enterprises to employers' duties.

The other reason for employing under civil-law contracts is an old Labour Law which does not have enough flexibility in order to regulate the supply of labour in a changing economy. And over the years it has become increasingly obvious that the formal structure of employment users with some difficulties. Companies were looking for means to reduce the level of protection of workers.

Concluding such civil-law contract, a worker acquire the status of self-employed person (except cases when a court recognises such a contract as a contract of employment). Therefore the scope of protection within such disguised employment relationships (as regards conditions of employment and remuneration, occupational safety and health conditions, social security, freedom of association, collective bargaining, access to justice) is changing. The degree of inadequate protection of such workers (as distinct from employees) will be in the Chapter concerning legal status of self-employed.

Machinery available to the worker or the labour inspectorate to ensure the application of labour legislation in the event of disguised employment relationship.

Russian legislation prescribes different measures of state control in the sphere of labour relations. In this respect some federal bodies may be noted.

According **Art.244** of the Labour Code, supervision and control over observance of labour legislation shall conduct by 1) the state supervisions bodies; 2) trade unions, and their technical and legal labour inspections.

State supervision over observance of safe working conditions in some industrial branches and on some objects shall be implemented (in addition to technical inspection of trade unions) by State Federal Bodies by sectors of economy (e.g. Gosgortechnadzor) and local agencies of that.

The State Migration Service has the rights in the field of control, especially as

[31] See, for example, *Bulleten of The Supreme Court of the RF. 1999. N4. P.4.*

concerns foreign labour force. Under Russian legislation (in particular in accordance with The RF President's Edict No. 2146 of 16 December 1993 ***«On Recruitment and Employment of Foreign Manpower in the RF»)***, with the object of pursuing an RF state policy on the recruitment of foreign manpower and assuring RF citizens of priority rights in filling vacant workplaces, employers taking out permits for the recruitment of foreign manpower shall pay a charge, for each recruited foreign working person, of one statutory minimum monthly wage, as fixed by RF legislation, with the finances so collected going into the revenue of the respective budgets. Confirmation of foreign citizens' right to perform work, as taken on by employers within the limits of the numbers of recruited foreign manpower under permit, shall be issued free of charge. Employers recruiting foreign manpower without due permit shall be held liable under RF law. In practice such violations are not rare ones. According to the official data, The Migration Service of Moscow applied sanctions (fees - 100% of official minimum wage for every illegal foreign worker) for employers, who hired foreign workers illegally, more than 3 000 times (in 1998)[32].

Possible solutions for dealing with the problem of disguised employment relationship

The following **measures of improving** the existing situation in the sphere of employees' protection are supposed by scholars and practical lawyers:

1. The starting point must be to find out who is bound by an employment contract, or in other words to ask «Who is an employee?». It is necessary to make clear the importance of distinguishing between an employee and his rival, the independent contractor. Therefore the legislation shall define terms «employer» and «employee» in a strictly manner in order to clarify the scope of protection and abolish rising contradictory interpretations and inhibits the development of adequate protection for employees.

2. It is also recognised that essential features of a contract of employment shall be strictly stipulated by Law (in particular - by the Labour Code)**.**

3. It is also necessary to apply some civil-law rules which regulates a recognition of a contract as invalid as concerns a contract of employment or its parts.

4. In order to minimise the violations in the sphere of so-called informal sector it would be important to establish an obligatory registration of employment contract (especially in cases of employers-individuals or in the field of small business) by State Employment Service (The Ministry of Labour and Social Development).

[32] Annual Report on Employment, provided by The Moscow Committee of Labour and Employment. 1999.

CHAPTER THREE

Self-employment

Sometimes it is difficult to make difference between employment relationships and relationships based on self-employment.

Under Russian Law the concept of self-employment covers the situations in which a worker is **a party to civil-law contract** of performing works or providing services (a self-employment with a small degree of dependency and without state registration) or in which a worker is **an individual entrepreneur** (which may be characterised as registered self-employment without any dependency). Protection of such workers and main problems concerning lack of adequate protection will be analysing in the present Chapter.

Current Russian Civil Code stipulates a list of contracts which regulate providing works and services and which may be close to a contract of employment and therefore may result in a need for additional measures of workers' protection. The most frequent are *Contract for Work* and *Contract of Services*. Some other contracts (such as commission contracts, agency) may be also taking into consideration in this respect.

The use of the above civil-law contracts has acquired more popularity in last decade, especially in private sector. Therefore nowadays it is difficult to determine the sectors of economy mostly using such form of work. As distinct from the private sector, the public one (such as central and local government, state health care, industry) mostly hires workers on standard contract of employment.

Features of legal status of contractors

Basically the legal system governing the main forms of self-employment consists of the Civil Code and other acts of civil legislation. In accordance with the **Art.702** of the Civil Code, *under the contract agreement (hereafter **contract for work**) , one party (contractor) shall undertake to fulfil specified work commissioned by the other party (customer), while the customer shall undertake to accept and pay the result of the work.*

In accordance with the **Art.779** of he Civil Code, *under the agreement for providing of services for compensation (hereafter **contract of services**), the contractor shall undertake at the customer's request to render a service (perform specified actions or a specified activity), while the customer shall undertake to pay for the service rendered.*

Distinction between a contract of employment and civil-law contracts

1. The main distinction between the above forms of working performance is based on the **subject of a contract**. If a contract of employment regulates both the working process and the result, civil-law contract regulates the RESULT of a definite work or service. This follows from the definitions of these contracts (Art.702, Art.779 of Civil Code) and other rules.
2. Under the above civil-law contracts a contractor shall independently define ways of fulfilling the customer's assignments, ***unless otherwise stipulated by agreement*** (e.g. Cl.2 of **Art.703** of the Civil Code).
3. Unless provided otherwise by the Civil Code, other laws or a concrete contract, the

risk of accidental loss of materials, equipment, thing handed over for processing or any other property used to fulfil the agreement shall be borne by the party to have provided those (**Art.705** of the Civil Code). The new Civil Code stipulated the distribution on risks between parties of the contract more carefully. Within employment relation such risks are covered by employer at any cases (with very small exceptions).

4. Tools and materials may be provided by a user in case if it is stipulated by a contract. The general rule is that the work shall be fulfilled at contractor's expense: from his materials, with his own means and resources (Cl.**1 of Art.704** of the Civil Code).

5. The control from a customer (user) is limited. But the Civil Code in its **Art.715** (Cl.1) prescribes that the customer shall have the right to check at any time the course and quality of the work being performed.

6.The above civil-law contract shall stipulated the opening and closing dates of work to be fulfilled (**Art.708** of the Civil Code). Therefore such relations may not be established on indefinite period.

It should be noted that under Civil Code general provisions on contract for work shall be applied to the contract for provision of services (with some exceptions, e.g. the main rule that the service shall be provided **personally -Art.780** of the Civil Code states, that the contractor shall be obliged to personally render the service (services) unless provided otherwise by the agreement).

The content of civil-law contracts

The principle of freedom of contract is one of the basic principles of civil legislation. This principle differs from such principle in Labour Law. As distinct from **Art.5** of the Labour Code, **Art.1** of the Civil Code states that *civil legislation proceeds from recognising the equality of participants in relations regulated thereby, inviolability of property, **freedom of contract**, inadmissibility of someone's intervention in private affairs, necessity for civil rights to be freely exercised, ensuring restoration of violated rights and their judicial protection. Citizens (individuals) and legal persons are **free to set their rights and responsibilities on a contractual basis** and to stipulate new contract terms and conditions unless these are contrary to legislation.*

The content of the principle of freedom of civil-law contract is detailed in Art. **421** of the Civil Code. In particular, the parties may conclude a contract which is either provided for or is not provided for by a law or other legal acts; they may conclude a contract which contains elements of various contracts provided for by a law or other legal acts (mixed contact); the rules on contracts whose elements are contained in a mixed contract shall apply in respective parts to the relations of the parties under a mixed contract unless it follows otherwise from the agreement of the parties or the essence of the mixed contract. The conditions of a contract shall be determined at discretion of the parties except for instances when the content of the respective condition has been prescribed by a law or other legal acts

The scope of protection

The workers as the parties to civil-law contracts (contractors) are not covered by the same protection as employees. As it has been indicated in previous Chapters, an employee enjoys a large number of employment and other social protection rights. These include the right not to be unfairly dismissed, the right to redundancy payment, the rights in the area of social insurance, protection on the right to belong or not to belong to a trade union and time-off rights. A brief survey of social protection of contractual workers is provided in the following materials.

A. **Health and Safety**

In general the legal rules concerned are not applied to contractual workers (contractors). The employees' rights for work protection are stipulated by the Labour Code and recently enacted ***The Fundamentals On Protection of Labour*** of 1999. The scope of both of them is mostly limited by standard employment relationship (this follows from the Art.2 of the above ***Fundamentals***).

But in some cases using of civil-law contracts for work or services assumes certain degree of responsibility for the **safety** of workers. According to the above mentioned ***PROCEDURES for compensation by employers for the harm caused on employees by an injury, professional disease or another health damage connected with fulfilment by them of labour obligations*** an employer (the term covers enterprises and organisations of all forms of ownership) shall bear material responsibility for the harm inflicted on the health of workers, employees, workers under civil-legal contracts for work or agency contracts by a labour injury occurred both on the employer's territory and outside, as well as on their way to the place of work or back by transport given by the employer (Art.2 of the Procedures). Consequently workers under some civil-law contracts (but the list of such contracts is limited and does not include, e.g., ***contracts for services***) are in frame of effect of The Procedures.

The Regulation On investigation and Accounting Accidents at states in its Clause 2 that accident which happens with all workers under civil-law contracts have to be investigated. The Regulation does not specify the type of such civil-law contracts. Therefore all persons (legal or physical) shall investigate and account accidents with workers under any civil-law contracts for performing work or providing service. The types of civil-law contracts are not indicated.

B. The concept of discrimination

The general principle of freedom of contract applies equally both to employment relations and civil-law contracts. Apart from the Labour Code, the legislation on commercial contracts does not prohibit ungrounded refusal of concluding the contract. But the relevant provisions came from international law (in particular from ***The Universal Declaration of Human Rights*** 1948 which states that everyone is entitled to all rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status). Such statements are reiterated by Russian Constitution. Therefore the provisions of **Art.37** of **The Constitution** concerning the main labour rights are applied to contractors.

C. Changing and Termination

Both the termination and changing of such contracts are more free as distinct from an employment contract. Russian Civil legislation contains a general rule in this respect. According to the **Art.450** of the Civil Code, *changing of a civil-law contract shall be possible by* ***agreement of the parties*** *unless otherwise provided for by this Code, other laws, or by contract.*. This means that its parties have more freedom in creation ground for changing and termination. This rule is proved by special Articles, concerning definite types of contracts analysed (**Art.717, 715-2, 782-1 2** of Civil Code).

D. Trade-Unions Rights

It is a general opinion that workers under civil-law contracts have no right to create trade-unions and other rights in the area of collective bargaining. But this right may follows from the Constitutional provisions. In accordance with **Art.30** of ***Russian Constitution***, every person has the right of association, which includes the right of creation of trade-unions, etc.

Most relevant to this subject The Act «***On Trade Unions, Their Rights an Guarantees for Performance of their Activities»*** of 1995 was enacted. The truth is that the attention of legislator was concentrated on employees only. The above Act does not contain any references to the concern Right of other workers.

But it should be noted that under the above Act the term «employee» may include other workers. According to its **Art.2**, *the trade union shall be a voluntary public entity of citizens linked by common producer and professional interests, according to the line of their activity, set up for the purposes of representation and protection of their social-and-labour rights and interests. Every person attaining the age of 14 years and* ***engaged in labour (professional) activity*** *shall have the right to set up, at his discretion, trade unions for the protection of his interests, to join these, to engage in trade-union activity and to withdraw from trade unions*. From this Article does not follow the notion of «labour (professional) activity». But **Art.3**, clarifying the basic terms used for the purposes of the Act, defines the term **«employee**» as *a natural person working in an organisation under a contract of employment, a person engaged in individual entrepreneurial activity, a person studying at an educational institution of primary, secondary or higher professional education.* Therefore it may be really assumed that different workers (not only employees as parties to employment contracts) has the mentioned above Right.

E. **Remuneration**

Remuneration of contractual workers shall include the compensation for the contractor's expenses and fee due to him (**Cl. 2of Art.709** of the Civil Code). The remuneration is determined by the parties, without restrictions, as distinct from the Labour Law (such as limitations by minimum, etc.). Unless the contract for work stipulates preliminary payments, the customer (user) shall be obliged to pay the contractor the stipulated price upon the final commissioning of the work results.

F. Liability

It should be noted that the principle of full liability is usually applied in connection with civil-law contracts' violations. This principle is stated by **Art.15** of the Civil Code. In particular, the person whose right has been violated can demand that **the losses** inflicted on him be compensated for, unless the law or contract stipulates a smaller recovery. Losses imply the expenses that the person whose right had been violated incurred or will have to incur in order to restore the violated right, the loss or damage of his property (**actual damage**), as well as lost revenues this person could have received under normal conditions of civil circulation, had his right not been violated (**lost profit**). The duty of a worker to compensate full loses is also followed from the **Art.393** of the Civil Code (*a debtor (probably a worker) shall be obliged to compensate the creditor for losses caused by the failure to perform or improper performance of an obligation.* Obviously such order differs from the material liability of employees.

As concern the rules, which are mostly relevant to the civil-law contracts engaged, the contractor shall be held liable for failure to keep safe the customer's materials, equipment or other property which came into contractor's possession in connection with execution of a contract (**Art. 714** of the Civil Code).

G. The Defence of Rights

As it was indicated before, employees have certain guarantees in the sphere of defence of their labour rights. A special procedure of labour disputes resolving, more favourable as distinct from common civil procedure, is stipulated not only by the Labour Code, but also by Civil Procedure Code. Labour Law also states a special procedure of collective labour disputes' resolving. Such procedures are not applied to workers as parties for civil-law

contracts.

H. Entitlement in State Social Insurance

As it follows from the above Charters, all employees are entitled into all benefits and services within the general system of state social insurance. By contrast an independent contractor (a party to a contract for work or services) being involved in the majority of social insurance schemes lacks of some benefits.

The **state pensions insurance scheme** is based on the Act of the RF ***On State Pensions*** (of 1990, with amendments). Under this Act the workers' right to pensions benefits depends on the duration of length of service. According to the **Art.89** of the above Act, any work, performed in the capacity of a worker, shall be included in the total length of service. An appropriate secondary legislation concretises the term «works»as any work, performed under **contract for work** or **contracts of agency** (therefore a contract of services is excluded).

Under other legal acts the term «work» means works' performance with a remuneration, from which social insurance premiums are paid to the State Pension Fund. In accordance with Federal Act of 1999 ***On Tariffs Of Insurance Premiums Payable to the Pension Fund of the RF, The Social Insurance Fund of the RF , The State Employment Fund of the RF, The Mandatory Medical Insurance Funds for 1999*** (hereafter - The Act On Social Insurance Premiums), organisations shall pay in the amount of 28 per cent (for organisations operating in the agricultural production area - in the amount of 20.6 per cent) of payments in cash and/or in kind accrued for the benefit of the workers on all grounds, whatever sources of funding are involved, including rewards payable under **civil-legal contracts which subject is the performance of works and provision of services, as well as under author's contracts.** Individual entrepreneurs, who employ individuals under contracts of employment, or those who pay rewards under **civil-legal contracts which subject is the performance of works and provision of services**, as well as under author's contracts, shall pay insurance premiums to the Pension Fund of the Russian Federation in the amount of 28 per cent of payments in cash and/or in kind, accrued for the benefit of the workers on all grounds, whatever sources of funding are involved.

Therefore it is assumed that some categories of independent contractors are covered by the State Pension Scheme. But it should be noted that this question is not clear because of some differences in the legislation (e.g. different types of civil-law contracts engaged, unclear concept of the term «work's activity», etc.).

In order to evaluate the protection of contractors in the sphere of **social insurance** in the event of **unemployment** the legal status of The State Employment Fund of the RF should be analysed. It is obvious that employees are entitled to unemployment benefit if they become unemployed. The above Act ***On Social Insurance Premiums*** in its **Art.3** establishes that for 1999 the tariff of insurance premiums payable to the State Employment Fund for organisations shall be 1.5 per cent of payments in cash and/or in kind accrued for the benefit of workers on all grounds, whatever sources of funding are involved, including rewards under **civil-legal contracts** which subject is the performance of works and provision of services. Therefore the entitlement in such type of social insurance does not depends on the particular status of worker.

But in this respect it should be pointed out that the absence of the status may influences the level of unemployment benefits. As it was indicated before, under ***The Employment Act*** of 1991 unemployment benefit is established percentage wise to the average labour remuneration calculated for the last three months at the last place of work if the citizens had **a payable work** for no less than 26 weeks under condition of full day (week) or under

condition of part-time working day (week) recalculated into 26 weeks with full working day (week). In all other cases the unemployment benefit is established in the amount of minimum labour remuneration. In fact the term «payable work» does not include working only under conditions of civil-law contracts. Therefore such category of workers may receive unemployment benefits which are established in the amount of minimum labour wage (in fact a very law amount of money).

The scope by the s**tate medical insurance** (financed by The Mandatory Medical Insurance Funds) does not depends on working status of a citizen. The general state medical insurance scheme, in principle, applicable to the whole population of the RF. As concerns the protection of independent contractors, the above Act ***On Social Insurance Premiums*** in its **Art.4** establishes that enterprises and individual entrepreneurs, who employ individuals under contracts of employment, or those who pay rewards under civil-legal contracts which subject is the performance of works and provision of services, as well as under author's contracts, shall pay insurance premiums to the Mandatory Medical Insurance Funds of the Russian Federation in the amount of 3,6 per cent of payments in cash and/or in kind, accrued for the benefit of the workers on all grounds, whatever sources of funding are involved.

The main difference between employees and independent contractors contracts arises in evaluating the scope of social benefits from the Social Insurance Fund of the Russian Federation. In accordance with the Act ***On Social Insurance Premiums*** **(Art.2**), insurance premiums are paid to the Social Insurance Fund of the RF only by employer organisations and individuals (natural persons) who employ workers under **contracts of employment**. This means that independent contractors are not covered by the benefits and services financed by the above Fund. In particular, a contractor do not have right to payment in cases of temporary disability (except accidents and professional diseases), maternity, etc.. They are also limited in the rights to child's benefits.

The other type of self-employment is an **entrepreneurs' activity** (working as an independent entrepreneur with state registration). Under Russian Law such category of workers enjoys a certain degree of social protection similar to employees.

The main aspects of legal status of entrepreneurs in Russia are regulated by the Civil Code and some special acts (concerning taxation, bankruptcy, etc.). The definition of **an entrepreneurial activity** is followed from Russian Civil Code: In particular this concept means an activity which is carried on independently and at one's own risk and is aimed at regular profit-making through using property, selling goods, performing jobs and providing services by persons registered in this quality according to the procedure established by the law. The citizen has the right to engage in such activity without creating a legal person beginning from the date of his official registration as an individual entrepreneur.

An entrepreneurial activity exercised without creating a legal person fall under the rules of the Civil Code which regulate activities of legal persons (commercial organisations) unless it follows differently from the legislation or the nature of legal relations. The court can apply to all deals concluded by an entrepreneur the rules of the Civil Code dealing with obligations associated with running business activities.

An entrepreneur is fully responsible for his obligations with all the property belonging to him, except for the property which can not be recovered according to the law (**Cl.1 of Art.24** of the Civil Code). An individual entrepreneur who is unable to meet his creditors' claims associated with his running a business may be declared by the court's decision to be

insolvent (bankrupt). Once such decision is made, his registration as an individual entrepreneur becomes invalid. The procedure of such declaration is basically described by the **Art.25** of the Civil Code and by the Act On Insolvency of 1998.

An entrepreneur is free in methods and ways in managing and performing the activity. Therefore it assumed that an entrepreneur has his own responsibility for the guarantees of social protection, in particular as concerns conditions of employment and remuneration, occupational . safety and health conditions. But the problem of workers' status of entrepreneurs is not described by legislation and by legal theory precisely. In practice it is very important to define the scope of protection of certain entrepreneurs (e.g. independent managers)[33].

It may be really assumed that entrepreneurs have some labour rights. In particular according to ***The Act On Trade Unions*** (which empowers every employee to create trade-unions and to have other appropriate rights) the term **«employee»** as *a natural person working in an organisation under a labour agreement (employment contract), a* ***person engaged in individual entrepreneurial activity.***

The possible problems of inadequate protection of such category of workers is ones of entitlement in **state social insurance**. In this respect such categories of workers are in state of lacking of protection in the sphere of industrial accidents and occupational diseases. According to the relevant legislation **an employer** (or user) shall bear material responsibility for the harm inflicted on the health of employees by a labour injury occurred both on the employer's territory and outside, as well as on their way to the place of work or back by transport given by the employer. Recent provisions concerning this problem are stated by The Act ***On Obligatory State Insurance in cases of industrial accidents and professional diseases*** of 1998 (it should be noted that the Act has not been enacted yet). In particular, **Art.5** of the Act names the persons subject to compulsory social insurance against industrial accidents and occupational illnesses as follows:

-natural persons carrying out work under a contract of employment;

-natural persons sentenced to deprivation of freedom and involved in work by the insurant.

Natural persons carrying out work on the basis of a civil law contracts are liable to compulsory social insurance against industrial accidents and occupational illnesses if under the agreement in question the insurant is obliged to pay insurance premiums to the insurer.

Therefore the legal status of entrepreneurs is not clearly determined in this sphere. It is proposed, that such benefits will be financed from the State Fund of Social Insurance of the RF in future. Therefore the entrepreneurs' rights to such benefits will depend on payment to the above Fund. As it was mentioned above, the tariffs for such payments (so called insurance premiums) are stated by the special act. As concerns the payments to the State Fund of Social Insurance of the RF, there is a voluntary order of such payments by entrepreneurs. This means that an individual entrepreneur is responsible for its own contributions and pays from the above Fund.

As concerns involvement to other state social insurance schemes, the scope of protection also depends on performing by entrepreneurs their duty to pay social contributions. According The Act ***On Tariffs Of Social Premiums,*** entrepreneurs shall be **obliged** to pay such contributions to the following Social Funds: 1) State Pension Fund of

[33] Tishanskaya O.V. The Fundamentals of Legal Regulations of Entrepreneurs Activity: Labour Law Aspect. - The research for the Degree of a Candidate Science of Economics. S-P.,1995.

the RF; 2) State Fund of Employment of the RF; 3) Mandatory Medical Insurance Funds.

As a consequence, entrepreneurs are involved in the following state social insurance schemes:

- State Pensions

The Act ***On Tariffs Of Insurance Premiums*** establishes for individual businessmen, including foreign citizens, stateless persons who reside on the territory of the Russian Federation, as well as for private detectives, privately practising notaries, tribal, family communes of indigenous small-size nationalities of the Far North who engage in traditional economic activities, peasant's (farmer's) households - in the amount of 20.6 per cent of incomes generated by such entrepreneurial or other types of activities less the expenses related to their production. Individual entrepreneurs who use the simplified taxation system shall pay the amount of 20.6 per cent of incomes calculated on the basis of the cost of their patent. Simplified taxation for entrepreneurs is stated by the appropriate Federal Act of 1995.

It should be noted that the entrepreneurs' activity is included into **the length of service**, which is necessary for state pension insurance (Art.89 of The Act ***On State Pensions).***

- State insurance in case of unemployment (in accordance with the above Act ***On Tariffs Of Insurance Premiums)***
- State medical insurance (in accordance with the same Act)

The above payments (as distinct the payments to the State Social Insurance Fund) is obligatory for entrepreneurs. This means that Russian legislation prescribes economical sanctions in cases of non-payments. Therefore entrepreneurs acquire social protection under the pressure of legislation.

CHAPTER FOUR

Self-employment with some dependency

Between employment relationship and self-employment there may be found a range of more or less intermediate situations involving the supply of labour where in may be difficult to identify the precise legal status of workers engaged. It should be noted that in Russia ambiguous or confused situations such as these mostly may derive from the desire of the interested parties not to be covered the relevant legislation (labour, social security or tax law. In particular, an increasing number of companies (or citizens) are expanding the use of civil-law contracts instead of a contracts of employment. Because the latter ones may be concluded under terms which follows the situation when such civil-law contract may be close to an employment contract. (The situations when parties make a quasi-employment contract by including certain commercial civil-law terms without appropriate protection were analysed before).

Civil legislation (in particular, Civil Code) may follow situations of concluding the civil-law contract which will be very close to an employment one. The parties can by mutual

agreement include into a civil-law contract such terms as:

- the ways of customer's control of working fulfilling (**Cl. 3 of Art. 703** of the Civil Code)

- fulfilling of work with the customer's tools and materials (**Cl.1 of Art.704, Cl. 1 of Art.779** of the Civil Code)

- prohibitions to involve other persons (sub-contractors) in the fulfilment of worker's obligation (**Cl.1 of Art.706** of the Civil Code)

- by agreement between the parties, contracts may also specify the deadlines for the completion of individual stages of work which will be payable separately (like wages under employment contracts) (**Cl.1 of Art.708 and Art.711** of the Civil Code)

As a consequence in practice **t**he main actual problem is to decide whether a particular contract is an employment one or a civil-law contract for works or services. This problem was viewed as a very actual one by scholars[34]. Current Labour Code does not determine not only the competence of courts in case of solving questions on legal nature of a contract, but also the legal machinery of such recognition and the relevant legal consequences.

It should be noted that in Russia the courts do not play a key role in defining the criteria for identification of a concrete contract. But in existing cases the qualification of a contract, when it comes before the court, as to whether it is an employment contract or contract for work (or services) depends not on its form or expressions used by the parties, but on the substantial elements of the relationship, notably whether or not they meet the above-mentioned criteria.

The judges recognise that they must look at all aspects of the relationship to see what its legal effect is - the type of work, the nature of the orders given, the method and frequency of payment -whether by price or lump sum or by wage, power to dismiss, and so on. Usually courts use several criteria in order to identify the legal nature of a contract. Sometimes it is difficult to use some criteria (e.g. instructions: where the employees are relatively unskilled so that an employer has to tell them how to do the job. But conversely where they are highly skilled and/or bring capital equipment with them, an employer is very unlikely to assume any such control over them. Therefore it is clear that the sole control test is inadequate).

The major practice and the prevailing theory shows that no one factor by itself is likely to be decisive. But in so far as we can find any basic criteria - are the **type of work** and the degree of employers' control (the duty of employee to obey an internal labour order). The basic proposition is quite straightforward- the more control A exercise over B's work, the more likely A is to be the employer and B his employee (like famous in western legal theory «what to do and how to do» test).

It should be noted that today such criteria as the type of work is not a very concrete one. The notion of labour function (type of work) has been changing, in particular by broadening the scope of duties within definite profession, qualification and speciality. Therefore the situations of disguising of employment and civil law contracts has become more frequent.

[34] Stavtseva A.I. Settlement of Individual Disputes. M., 1998. P.72.

Some try to use the criteria of paying social contributions (with the purpose of making differences between the contracts). It should be noted that payments of an employee's national insurance contributions does not of itself prove the relationship of employer and employee. This point of view was proved previously.

In general it appears that Russian legislation lacks precise definitions of the criteria of some concepts. The Labour Code has restricted only the definition of a contract of employment and general rights and obligations of its parties. Therefore some factors which are usually used by courts on order to define the status of a worker are following:

-whether the user expects a worker to be available at all times to accept new tasks;

-whether a worker is unable to refuse tasks offered by the enterprise (factor of obeying to internal labour order);

-whether a worker is to a certain extent integrated into the organisational structure of the enterprise; etc.

The above factors were combined in legal literature[35] and create appropriate courts' practice, which really is not enough. But some courts' decisions may be taken into consideration with this respect.

In the absence of any definite legal criteria of employment relation courts may change the nature of a contract by their decisions (such position is based on courts' practice)[36]. Although courts' decisions have no the binding force (as distinct from an official legal sources), they have great persuasive authority in practice and on the interpretation of Law. But such practice will be more effective if the legal status of a worker is determined more strictly.

In accordance with Art 5 of Labour Code the conditions of contracts of employment, worsening the position of employees in comparison with labour legislation, shall be invalid. But labour legislation does not contain any rules regulating the procedure of recognition of employment contracts' invalidity.

Some scholars suggests to apply in such cases the civil-law rules regulating the procedure of recognition of civil-law contracts as invalid. According to **Art.166** of Russian Civil Code, a contract may be by virtue of being deemed as such by a court (contested transaction), or irrespective of such deeming (null transaction). An invalid transaction (a civil-law contract) shall not entail legal consequences, except for those which are connected with its invalidity, and it shall be invalid from the moment of its conclusion. In the event a transaction is invalid, each of the parties shall be obliged to return to the other everything received under the transaction, and if it is impossible to return that received in kind (including when the received is expressed in the use of property, a job performed, or a service provided), to compensate its value in money, unless other consequences of the invalidity of the contract have been provided for by a law (**Art.167** of the Civil Code).

Therefore it is possible to apply the above rules in making courts' decisions concerning civil-law contracts for work and services which disguise relationships. Such contracts may be recognised as a contracts not conforming to law or other legal acts and shall be null unless the law establishes that such a contracts is contestable or provides for

[35] *See in*: Stavtseva A.I. Settlement of Individual Disputes. M., 1998.; Khohlov E.B. Economical Methods of Managing and Labour Law. S.-P., 1991.

[36] *The Bulleten of The Supreme Court of the RF. 1993, N4. P.5.; 1997, N8. P.19.*

other consequences for the violation (**Art.168** of the Civil Code). Such contract may be also recognised as a sham contract, i.e. a contract concluded for the purpose of covering up another transaction, and also shall be null. So there is a real possibility of applying labour legislation to such contracts. But there are no rules to transfer such a contract to an employment one in Labour Code and other acts of labour legislation. In such situations courts apply the above rules if a workers agrees[37].

A contract concluded under the influence of delusion having material significance may be deemed by a court to be invalid upon the suit of the party which acted under the influence of delusion. Delusion as to the nature of a transaction, the identity, or such qualities of its subject which considerably reduce the possibility of using it for its purpose shall have material significance. Delusion as to the motives of a transaction shall not have material significance. If a transaction is deemed to be invalid as concluded under the influence of delusion, the rules provided for by Article **167(2)** of the Civil Code shall apply respectively. In addition, the party upon whose suit the transaction was deemed to be invalid shall have the right to demand from the other party compensation for real damage caused to it if it is proved that the delusion arose through the fault of the other party. If it not proved, the party at whose suit the transaction was deemed to be invalid shall be obliged to compensate the other party at its demand for real damage caused to it even if the delusion arose through circumstances beyond the control of the deluded party (**Art.178** of the Civil Code).

It should be noted that the invalidity of part of a transaction shall not entail the invalidity of its other parts if it is possible to suppose that the transaction would have been well concluded without including the invalid part thereof.

Such suggestions may be very useful in order to include them into Labour legislation with taking into consideration peculiarities of labour relations.

CHAPTER FIVE

Triangular Relationships

Traditionally, the most common «triangular relationships» are probably those that may exist between a person who places an order for a piece of work or services, a person who independently undertakes to carry out the work or provide the service, and the latter workers. In Russia the most common **«triangular relationships**» occur with taking part of state or private employment agencies.

The creation of the job assistance system is regarded as one of the significant changes of labour market in the Russian Federation. As it was mentioned above, two types of intermediaries exist in Russian labour market: 1) the State Employment Service with its regional departments and 2) private employment (recruitment) agencies.

The legal status of the State Employment Service was determined at the beginning of 1990-s. In particular The Labour Code of the Russian Federation was added by the **Art.40-1,** which prescribes that the state shall guarantee citizens permanent living on the territory of the Russian Federation free assistance in selection of suitable work and employment from the side of federal employment service; compensation of material expenses entailed by assignment to work in other district by the proposal of an employment service; possibility to conclude time labour agreements (contracts) for the participation in payable community

[37] *See in:* The Bulleten of the Supreme Court of the RF. 1993, N4.; 1997, N8.

work, organised in view of age and other features of citizens, etc.

The relevant special legislation was created in 1991 (e.g. The Act ***On Employment of the Population*** was adopted.). It should be noted that workers which are acquired their work with assistance of State employment agencies seem in need of no more protection (in the context of the subject of the study).

Private employment (or recruitment) agencies came to the Russian Federation in the early 1990's (though there were several firms trying to work at the end of 1980's). Private employment agencies has evolved steadily. There are more than 250 private agencies in Russia. In big cities their activity is more widespread (e.g. the total number of private employment agencies has increased from 4 in 1990 to 60 in 1994 only in Moscow. By 1997 this figure has reached 120[38]).

The first private agencies (such as *«Ankor», «Moscow Personnel Centre», «Business Link»)* was oriented for the private sector of Russian economy. The most famous Russian employment agency *«Triza»* firstly was trying work only for the public sector. But now such division is recognised as non-effective by majority of employment agencies.

The lack of special literature on this subject and as a consequence the lack of objective information are the reasons for inadequate estimates of their practice in Russia. But what has become clear from reading and commenting interviews with servants of such agencies and from economic estimates[39], is that the most popular agencies are oriented on recruiting. It should be noted that from the beginning of the private agencies' activity main their task was to work with enterprises helping them recruit personnel.

In accordance with the existing literature, private employment agencies are usually classified into the following groups[40]:

I. So called <u>vertical classification</u>

A. Universal (are recruiting personnel for all levels with concentration on recruitment for the lower and medium levels)

B. Executive search (for top managers, etc.)

II. <u>Horizontal classification</u>

A. Specialised agencies (which are working in special and narrow fields, such as office personnel, finance, securities, marketing).

B. General agencies.

Previously special temporary employment agencies which was oriented only for recruiting on temporary works also existed in Russia.. In this sphere the triangular relationships (which are called «personnel leasing» in Russia) may arise.

Nowadays private employment agencies do not use such form of recruitment because of the absence of appropriate enterprises' demands in Russian labour market. Until recently Russian agencies were convinced that it was a hard and poorly paid task to find skilled workers for temporary jobs. So they were reluctant or even unwilling to work in this sector of the labour market. Some recruitment agencies admit that Russian labour legislation do not allow them to use western personnel leasing patterns. Still, two of the world's largest leasing operators have already come to the Russian market (*Manpower* and *Kelly Services)*

---

[38] Tyurina I.O. Russian Market of recruitment. /*Sociologilal Studies. 1997. N5.*

[39] See, for example, Gavrilova E., Litiagin A., Roshchin A. -Personnel Recruitment Services in Russia/ Reference Guidebook.-M.,1998.

[40] Gavrilova E., Litiagin A., Roshchin A. -Personnel Recruitment Services in Russia/ Reference Guidebook.-M.,1998.

from the USA. However, currently they are operating as regular recruitment companies.

So far Russia has failed to accept the idea of personnel leasing (triangular relationships with private agencies as intermediaries).

It should be noted that many experts believe personnel leasing to be a model of the future labour market in Russia. They mean that permanent employment will gradually recede into the past. As specialists of recruitment agencies said, it is sad fact that employers in Russia are still managing to keep labour remuneration expenses to the minimum, by passing norms and rules - for this they need no intermediaries[41]. Using of such practice was called as one of the methods of creating new jobs in order to solve the problem of unemployment (proposed by Russian Government.[42].

The above information explains the reasons for the absence of any relevant data and estimates of quantitative and qualitative evolution of applying of triangular relationships in the Russian Federation. There is no concept in Law and jurisprudence of the possible intermediary and the contractor. The legislation of The Russian Federation does not contain specific rules which states rights and duties of private employment agencies in this field. In the absence of a classical model of «triangular relationship» in the Russian Federation the scope of workers' protection may not be evaluated precisely. At the same time it should be taken into consideration that many recruitment agencies do believe that personnel leasing shall be developed in near future. Therefore Russia will possibly acquire appropriate problems as concerns worker' protection.

Some of possible variations of triangular relationships may be fond in cases of sub-contracting. It is knowing that the major change in the last twenty years has been in the development of sub-contracting. The lack of any estimates of sub-contracting in Russia may give he grounds to resume the absence of such forms in practice. But the problems are arising in the sphere of compensations for damage caused by health injures connected with work (the protection in case of occupational accidents and professional diseases). In this respect there is a general legal rule which stated that every enterprise shall bear material responsibility for the harm inflicted on the health of employees by a labour injury occurred on the its territory (in case if the status of a worker is not clear).

CONCLUSIONS

In connection with the aforesaid analyses there may be some recommended conclusions including a summary of the main practical problems and proposed measures which might be adopted to resolve such problems.

The violations and cases of lacking of adequate protection may be found within both an employment relations and other situations of labour performance. In order to protect labour market against such situations the arising problems should be solved by legislation (e.g. defining of criteria for employment relationship).

As concerns employment relationships, most violations are caused by the economical

[41] Gavrilova E., Litiagin A., Roshchin A. -Personnel Recruitment Services in Russia/ Reference Guidebook.-M.,1998. P.22.

[42] From The Report of The Chief of The Labour and Social Development Ministry. /Social Security, 1999. N6.

trends (such as informal sector, secondary employment, migration). In this respect some measures are suggested. In particular, moving of workers into informal sector and at the same time changes of formal employment, which has been acquired some informal features (real wages are not clear; there are a lot of violations of workers' guaranties, etc.) invoke a systemysing of the informal sector by adopt rules of obligatory state registration of any contracts. Such rules will be mostly actual for different types of a-typical working (e.g. home-work).

The analyses of features of labour market proved that disguised employment has widespread in recent years in Russia. There are two main possibilities of disguising employment relationship. The first one includes situations of concluding a contract of employment with elements, which may change the essence of employment relationship. Such practice may follows from the legislation (which is the object for critics by specialists of Labour Law) or from illegal practice of employer. The other possibility of disguising employment relationship is a concluding civil-law contract (the content of such contract may be very similar to a contract of employment) instead of an employment one.

In spite of that the appropriate legislative framework has moved in some aspects in the direction of applying some social-protection to independent contractors, there are a lot of gaps in this respect. The problems for strengthen of labour law protection to self-employed remain to be of vital importance in Russia.

In Russia the performing works and provision of services by workers (contractors) may imply the following situations:

-work under a contract of employment which includes some elements of independence allowing for an employer to decrease the scope of protection (as a rule the situation concerns violations);

-work under a contract of indefinite legal nature (which may be close to a civil-law contract) because of the lack of enough clarity in legislation (the scope of protection of such workers may be reduced in comparison with a standard employment relationship);

-work carried out by self-employed (not entrepreneurs) under civil-law contracts on performing works or providing of services which disguise real employment contracts;

-state registered entrepreneurs activity.

It should be noted that the above list may be uncompleted because of the lack of adequate appropriate legislation and the absence of objective economical and sociological estimates.

Summarising the main frequent violations in the sphere of labour applying in Russia, the following situations may be found: 1) when a contract of employment disguises a real civil-law relation; 2) when employment relations are hidden by civil-law contracts. In the absence of any definite legal criteria of employment relation courts may change the nature of a contract by their decisions (such position is based on courts' practice)[43]. Although courts' decisions have no the binding force (as distinct from an official legal sources), they have great persuasive authority in practice and on the interpretation of Law. But such practice will be more effective if the legal status of a worker is determined more strictly.

[43] *The Bulleten of The Supreme Court of the RF. 1993, N4. P.5.; 1997, N8. P.19.*

So-called dependent-independent situations mostly arise when disguising employment or self-employment occur. The degree of workers' protection depends on a concrete situation and may be evaluate by a court.

So-called triangular situations do not exist in Russia. Nowadays employment agencies do not use such form of recruitment because of the absence of appropriate enterprises' demands in Russian labour market. So far Russia has failed to accept the idea of personnel leasing (triangular relationships with private agencies as intermediaries). It should be noted that many experts believe personnel leasing to be a model of the future labour market in Russia.

In general the most urgent needs in Russian labour market are, from the one hand, a set of measures for responding to mass and complicated unemployment, from the other hand - protection against using of illegal forms of applying labour force. Therefore proposed instruments shall not limit the freedom of enterprises and individual entrepreneurs to hire workers under different legal conditions (not only by a contract of employment, but also by civil-law contracts and so on) in order to prevent the growth of unemployment in Russia.

This will be especially important because of the absence of effective partnership instrument in the subject. As it has been received from legal literature and from the interviews with specialists, the questions on the topic of the study (especially as concerns problems arising from using of commercial contracts for work and services instead of contracts of employment) was not the subject of social bargaining. Problems relevant to the present study are mostly the subject of sociological and economics literature. And the smaller part of theoretical researches are the legal researches.

Legal Acts

1.***The Constitution*** of the Russian Federation of 1993.

2. ***Labour Code*** the Russian Federation of 1971 with amendments and addenda.

3.The Act of the RF ***On State Pensions***, of 1990, with amendments and addenda.

4.The Federal Act of the RF ***On Social Protection of Disabled in Russia*** of 1995, with amendments and addenda.

5. The Federal Act of the RF ***«On State Family Benefits***» of 1995, with amendments and addenda.

6. The Act of the RF ***On Collective Contracts and Agreements*** of 1992, with amendments and addenda

7. The Act of the RF ***On Employment of Population***, of 1991, with amendments and addenda.

8. The Federal Act of the RF ***On Trade Unions, Their Rights and Guaranties of Performing the Activity*** of 1995.

9. The Federal Act of the RF ***On Fundamentals of State Service*** of 1995.

10.The Federal Act of the RF ***On Education*** of 1996.

11. The Federal Act of the RF ***On Joint-stock Companies*** of 1995, with amendments and addenda.

12.The Federal Act of the RF ***On Tariffs Of Insurance Premiums Payable to the Pension Fund of the RF, The Social Insurance Fund of the RF , The State Employment Fund of the RF, The Mandatory Medical Insurance Funds for 1999*** of 1999.

13. The Federal Act of the RF ***On Fundamentals of Obligatory Social Insurance*** of 1999.

14.The Federal Act of the RF ***On Fundamentals of Labour Protection in Russian Federation*** of 1999.

15. ***The PROCEDURES for compensation by employers for the harm caused on***

employees by an injury, professional disease or another health damage connected with fulfilment by them of labour obligations (APPROVED by the Decree of the RF Supreme Soviet of 24 December 1992 with following amendments and addenda).

16.The RF President's Edict No. 2146 of 16 December 1993 ***On Recruitment and Employment of Foreign Manpower in the RF***

17.***The Regulation of Investigation and Accounting of Accidents At Work***. The Decision of Russian Government of 11.03.1999 N279.

Selected bibliography

1. Alenina I.V. Integration of civil-law and employment contractual obligations /*Vestnik of Omskiy University, 1996-1. P.94-96.*

2. Andreyeva L.A., Medvedev O.M. Employment Contract in Russian Federation. - Reader, M., 1998.

3. Belov A. The State and Private Entreprenership./ *Law and Economy*. 1998. N2. P.12-19.

4. Braginskiy M.I. Contract agreement and quasi-contract agreements.// *Bulleten of The Supreme Arbitration Court. 1996. N7. P.108-111.*

5. Federal Employment Service: The Department of Labour Statistics. Labour Force in Labour Market in 1994. - M., 1995.

6. Gavrilova E., Litiagin A., Roshchin A. -Personnel Recruitment Services in Russia/ Reference Guidebook.-M.,1998.

7. Doroshenko S.V. Social-economical Grounds and Peculiarities of Employment in Informal Sector. The Dissertation research for the Degree of a Candidate of Science of Economics. -S-P.1997.

8. Dudnikov S.V. The Minimisation of Shadowed Unemployment as A Factor For Economical Growth.- Moscow, 1997.

9. Gros L. The Court's Protection of Labour Rights: employment and civil-law contracts. /*Russian Justice. 1996. N8. P.45-47.*

10.Ishin V.V. The Effect of Functioning of Employment Services in Small Cities (Moscow Region).-Research for Sc. Economy, Moscow. 1990.

11.Kabalkin A. An agreement for Provision of Services for Compensation /*Russian Justice. 1998. NN3-4.*

12.Khlebovitch D.I. Creation and Improving of Infrastructure of Employment Agencies on the Region. Research for Sc. Economy, Irkutsk. 1997.

13.Kilydeev A.H. Contracts on Labour under Russian Law. Research for Sc.Law, S-Petersburg, 1996.

14. Kossiakova T.I. Unemployment in Moscow Region./*Sociological Studies. 1998. N4.*

15.Kossov I.A. Labour Contract./*Labour Law. 1998. N1. P.11-16.*

16.Labour Market in Russia. - (Smirnov S.N., Kashepov A.V., etc.). -Moscow, 1998.

17.Labour Statistics for a Market Economy. - Ed. By I.Chernyshev, CEU. ILO.

18.Nikitinskiy V.I., Khokhryakova O.S. Invalidity of Employment Contracts. //*Soviet State and Law, 1979. N6.*

19.Russia's Shadow Economy: An Alteration Of Contours. V.Radaev./ *Pro&Contra . Winter 1999.*

20.Raikhlin E. The Fundamentals of Economic Theory. Unemployment and Inflation. - Moscow, 1998.

21.Secretariuk V.V. The social-economy aspects of creation of labour market in the conditions of marketing economy.-Research for Doctor of Sc. Economics, M. 1997.

22.Shirnova S.A. Non-standard forms of employment as a part of social reserves of economy. Research for Sc. Economy, S.-Petersburg. 1998.

23.G.Standing. Enterprise Restructuring in Russian Industry and Mass Unemployment. The RLFS, 4-th round, 1994..- ILO, Geneva.

24.Stavtzeva A.I. The Settlement of Labour Disputes. -M., 1998.

25.Syrovatskaya L.A. Labour Relations and Labour Law /*State and Law, 1996. N7. P.75-82.*

26. Temnitsky A.L., Bessokirnaya G.P. Secondary Employment and its Social Aftermath. /*Sociological Studies. 1999. N5.*

27. The Population of The Russian Federation: *The annual report prepared by The Institute of Economical Planning of Russian Academy of Science*. - M., 1999. P.6.

28.Tishanskaya O.V. The Fundamentals of Legal Regulations of Entrepreneurs Activity: Labour Law Aspect. - The research for the Degree of a Candidate Science of Economics. S-P.,1995.

29.Tyurina I.O. Russian Market of recruitment. /*Sociological Studies. 1997. N5.*

30.Vlasov V. Non-full employment: workers' protection. -M., 1996.

31.Voitova N.A. Temporary Employment in Conditions of Transformation to the Marketing Economy.-M.,1998.

32.Volkov V. Specialist by Lease. /Moscow News, 1996. ¹30 - 28.07-04.08.1996.

33.World Labour Market: new reality for Russia and CIS. -M, 1998.

List of Russian-Language Periodicals and Statistical Publications Used

1. Bulleten of The Supreme Court/ Monthly of The Supreme Court
2. Khozyastvo i Pravo/ Economy and Law
3. Law and Economy
4. Labour Law.
5. Moscow News.
6. *Pro&Contra*
7. Rossiyskaya Gazeta/ Russian Newspaper
8. Russian Justice
9. Social Protection
10. Social Security
11. Sociological Studies
12. State and Law
13. Tchelovek i Trud / Human and Labour
14. The World of Russia.
15. Trade-Unions and Economy
16. Vestnik of Omskiy University
17. Vestnik of The Supreme Arbitration Court / Monthly of The Supreme Arbitration Court