

CIVIL AND LABOR LAW

ГРАЖДАНСКОЕ И ТРУДОВОЕ ПРАВО

<https://doi.org/10.22363/2313-2337-2023-27-3-715-730>


EDN: HXLNМК

Research Article / Научная статья

Forms of legal regulatory framework in the labor law of Russia

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Abstract. The study is devoted to the legal regulatory framework and its forms of manifestation. The material is based on the analysis of certain provisions of labor legislation. Labor legislation is the joint jurisdiction of the Russian Federation and its constituent entities and combines simultaneously several levels of legal regulation, namely federal, regional, local and others. Further research of the theory of framework legal regulation involves an analysis of the forms of its manifestation in particular branches of law. Legal regulatory framework is built on the legal norms that set certain limits of legal regulation, while their specification depends on the discretion of the law enforcer. In labor legislation, there are norms of different degrees of certainty. The logical constructions of individual legal norms of labor legislation are characterized by certain uncertainty. Legal uncertainty provides for the right to the subjects of legal relationship or the law enforcer to act at their own discretion. It seems relevant to investigate the properties of relatively determinate norms of labor legislation, and to analyze the specifics of the legal regulatory framework mechanism, based on the analysis of judicial practice.

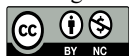
Key words: legal regulation, framework legislation, uncertainty, relatively determinate norms, concretization, labor relations, Labor Code of the Russian Federation

Conflict of interest. The author declares no conflict of interest.

Received: 18th March 2023

Accepted: 15th July 2023

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For citation:

Dovgan, X.E. (2023) Forms of legal regulatory framework in the labor law of Russia. *RUDN Journal of Law*. 27 (3), 715–730. <https://doi.org/10.22363/2313-2337-2023-27-3-715-730>

Формы рамочного правового регулирования в трудовом законодательстве России

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Аннотация. Исследуются формы проявления рамочного правового регулирования. Материал основан на анализе отдельных положений трудового законодательства. Трудовое законодательство находится в области совместного ведения Российской Федерации и субъектов Российской Федерации, сочетает в себе одновременно несколько уровней правового регулирования: федеральный, региональный, местный, локальный и другие. Дальнейшие исследования теории рамочного правового регулирования предполагают анализ форм его проявления в отдельных отраслях права. Рамочное правовое регулирование строится на основе юридических норм, которые устанавливают определенные пределы правового регулирования, конкретизация которых зависит от усмотрения правоприменителя. В трудовом законодательстве имеются разные по степени определенности нормы. Логические конструкции отдельных правовых норм трудового законодательства допускают неопределенность. Наличие правовой неопределенности предоставляет право субъектам правоотношения либо правоприменителю действовать по собственному усмотрению. Представляется актуальным рассмотреть свойства относительно определенных норм трудового законодательства, а также на основе анализа судебной практики, проанализировать особенности механизма рамочного правового регулирования.

Ключевые слова: юридическая техника, рамочное законодательство, неопределенность, относительно-определенные нормы, конкретизация, трудовое законодательство, Трудовой кодекс РФ

Конфликт интересов. Автор заявляет об отсутствии конфликта интересов.

Поступила в редакцию: 18 марта 2023 г.

Принята к печати: 15 июля 2023 г.

Для цитирования:

Довгань К.Е. Формы рамочного правового регулирования в трудовом законодательстве России // *RUDN Journal of Law*. 2023. Т. 27. № 3. С. 715–730. <https://doi.org/10.22363/2313-2337-2023-27-3-715-730>

Introduction

The theory of legal regulation is traditionally one of the central issues in jurisprudence. The study of the framework legal regulation and its properties allows to understand and explain the specifics of implementation of the legal regulation functions.

Among the existing types of legal regulation in the legal doctrine, the main place is given to normative and individual. In this regard, labor law is a branch of law that is

complicated to study, since it simultaneously combines several types of legal regulation. Scholars identify the following levels of legal regulation: federal, regional, municipal and local. Depending on the subject composition, scholars distinguish individual and collective types of legal regulation. Also, the legal doctrine differentiates between decentralized and centralized legal regulation in labor law. Within the individual legal regulatory framework, *autonomous* regulation is also singled out. Contractual regulation is also in the focus.

The issues of normative and individual legal regulation were looked at in the works of S.S. Alekseeva, L.S. Yavicha, T.V. Kashanina, N.I. Matuzova, Yu.S. Reshetova, A.F. Cherdantsev and many others.

This work applies general scientific and special methods for studying the material. The methodology of legal drafting technique is also used to analyze the legislation for the presence of such means of legal regulation as uncertainty and relatively determinate norms. A special research method is the method of system analysis allowing to identify and analyze the features of individual articles of the Labor Code of the Russian Federation (hereinafter referred to as the LCRF). Formal-legal and comparative-legal methods contribute to identifying and investigating the provisions of the normative legal acts.

Legal regulatory framework in the system of legal regulation

In his 1962 article *On Normative Regulation in a Communist Society*, S.S. Alekseev commented on the emergence of public self-governing bodies' norms besides the normative legal regulation. He argues that trade unions played a significant role in this process. In fact, there was a tendency to amend the normative regulation in accordance with various branches of law, especially in the field of labor law. Differentiation, as a means of legal regulation, created the prerequisites for revising normative regulation by combining with individualization. The state, represented by authorized bodies, delegated legislative powers to trade unions. Thus, S.S. Alekseev asserts that legal regulation "is built in such a way as to introduce into a certain framework the activities of public organizations on the independent regulation of social relations" (Alekseev, 1972:196).

Traditionally, the legal doctrine distinguishes the levels of legal regulation depending on the source of their consolidation, the subject of regulation, goals, methods of regulation, etc. However, one can find certain common features among a large number of legal regulation types. Such features are manifested in the methods of legal regulation as well as the tools that are used to regulate both labor and other relations directly related to them.

A.F. Cherdantsev referred the general nature and extension "to all specific relations of a certain kind or type" (Cherdantsev, 2002:345) to the features of normative legal regulation. Thus, an element of normative legal regulation is a legal regulatory framework, which is also of a general nature but is limited to a certain set of legal means. Normative legal regulation is supplemented by individual legal regulation. In this regard, it seems important to consider the forms of manifestation of regulatory framework in individual legal regulation.

The limits of individual and legal regulatory framework are restricted by specific subjects, certain circumstances, and the period of legal regulation. If, under normative legal regulation, the norm applies to an unlimited circle of persons, then under individual regulation, the authorized subject specifies it in relation to a specific case. Individual legal regulation aims to concretize and individualize legal relations within the specific conditions. N.I. Diveeva singles out law enforcement, autonomous (contractual) within the framework of individual regulation. The “discretionary possibilities of subjects” are expanded with law enforcement regulation (Diveeva, 2008:72–73).

Each legal regulation has its own characteristics. Actually, the subject and method of legal regulation may form them. Methods of power and subordination are characteristic for public sectors, where legal relations are regulated with public authorities’ participation. Private law, on the contrary, is characterized by discretion. However, there are different points of view on this matter. V.V. Kozhevnikov believes that discretionary rules are present in both private and public law through evaluative concepts (Kozhevnikov, 2017). Most likely, such a conclusion is justified by the properties of evaluative concepts in law enforcement practice. “Evaluative concepts create conditions for the internal conviction and discretion of the subject applying the relevant rules of law. The subject of law enforcement becomes independent (within the law) in choosing a solution” (Vlasenko, 2001:44–45; Vlasenko (ed.), 2001).

S.S. Alekseev argues that “in modern conditions, for certain groups of relations, the very “quality” of legal regulation is changing” (Alekseev, 1972:196). Such a conclusion seems also connected with the choice of certain tools. The expansion of the subject of legal regulation becomes possible with a relatively certain way of regulating legal relations. This mechanism is typical for the legal regulatory framework, which allows considering various circumstances for further specification.

Legal regulatory framework is a specific element of legal regulation used to streamline a certain area of activity in order to further specify the rights and obligations of subjects of legal relations. Specification, as an element of legal regulatory framework, contributes to harmonious and consistent regulation of public relations, reduces the risks of spontaneous and unsystematic regulation, contributes to the development of lexical and semantic unity, assumes the cohesion of the logical text content during its interpretation, and reduces the possibility of legislative uncertainty, which can lead to arbitrariness of law enforcement officers.

Normative legal acts are an integral part of the legal regulatory mechanism. Their significance is assessed through legal norms. S.S. Alekseev notes the special role of legal norms, which act as the “normative basis” of the legal regulatory mechanism. This is “the legal basis of legal regulation giving rise to the legal impact” (Alekseev, 1972:158). The dynamics of public relations dictates the need to apply special legal norms that would allow “covering” the maximum possible homogeneous social relations to legislator. In this regard, application of relatively determinate legal norms is justified. In terms of legal drafting technique, these norms allow to formulate the content in an abstract way. S.S. Alekseev singles out “relatively determinate” and “absolutely determinate legal norms”, depending on the nature of relationship with individual regulation. He noted that relatively determinate norms “do not contain sufficiently complete indications of the

conditions for norm operation” and require considering specific circumstances (Alekseev, 1972:244–245).

The mechanism of legal regulatory framework is an interconnected and coordinated system of special legal means aimed at expanding the subject of legal regulation and establishing its limits for the purpose of subsequent concretization of legal relations. V.Yu. Panchenko believes that the legal norms created as a result of the legal regulatory framework are “a “reservoir” for law enforcement decisions in specific situations” (Panchenko, 2012:35). Relatively determinate norms, as elements of the mechanism of legal regulatory framework, allow to establish the boundaries of regulated legal relations. In this regard, they should be distinguished from so called *rubber norms* and evaluative concepts. Even in the year 1917 I.A. Pokrovskii defined *rubber provisions* as evaluative provisions without specific content; they include *justice*, *gross negligence*, etc. (Pokrovskii, 1917).

Uncertainty and abstractness of the content as well as ambiguity expand the boundaries of regulated legal relations. In fact, the accuracy and clarity of the normative legal text is violated, which can lead to law enforcement errors. In the legal doctrine, it has been repeatedly noted (K.P. Ermakova, A.V. Demin and others) that relatively determinate norms depend on the discretion of the law enforcer (Ermakova, 2010; Demin, 2016).

Based on the research of T.A. Zatolokina, A.K. Bezina, A.A. Bikeev, D.A. Safina, such scholars as V.A. Korobkina, A.S. Shaburov note the connection of several levels of legal regulation that exist in labor law, namely centralized, local (autonomous), and individually contractual (Korobkina & Shaburov, 2010; Zatolokina, 2005; Bezina, Bikeev & Safina, 1984).

V.K. Samigullin notes that local regulation is aimed at the development of legal relations, and one should not confuse the concepts of *local norm regulation* and *legal regulation by municipalities* (Samigullin, 2015). Local norms that have special features form a peculiarity of local regulation. To such features V.K. Samigullin attributes the content as “the degree of correlation between the abstract and the concrete”, in other words, “they are more abstract than individual legal decisions (acts), but more specific than general norms” (Samigullin, 2015:75).

R.I. Kondratiev also believes that the local norm is smaller in scope than the general norm (Kondratiev, 1979). N.P. Shaykhutdinova singles out the concretizing function of local norms, which implies regulation of the labor function, working conditions, based on certain features of labor relations with the employer (Shaykhutdinova, 2014). N.P. Shaykhutdinova and T.S. Iskhuzhin also note that local norms supplement and specify general norms (Shaykhutdinova, 2014; Iskhuzhin, 1999). It is believed that norms’ specification created as a result of the legal regulatory framework is carried out at the local level of legal regulation: relatively determinate norms, norms that include an open list of conditions (circumstances), norms with evaluative concepts and other norms with the element of legal uncertainty.

G.A. Mustafina puts a reasonable question concerning the limits of local regulation. (Mustafina, 2022). T.V. Kashanina argues that it is limited only by the interests of a particular organization (Kashanina, 2010). A.M. Lushnikov believes that the limits of local regulation are limited, firstly, by the collective agreement, and secondly, by the

current legislation in terms of preventing deterioration of the employee's legal status (Lushnikov, 2014). V.A. Korobkina, A.S. Shaburov note that local acts, on the one hand, are based on the issuance of new norms or amendments in existing legal norms, and on the other hand, the legislator's delegation of authority to regulate in-house relations (considering the general direction, rules and/or procedure, etc.) (Korobkina & Shaburov, 2010: 35–40). Differentiated local regulation exists at the level of the employment contract (Korobkina & Shaburov, 2010: 35–40).

Legal regulatory framework at the local level establishes the boundaries for further legal regulation with the help of its special means. Their types and nature are determined by the legislator depending on the goal of legal regulation that is to be achieved. The recent tendency includes such a means of legal regulation as indeterminacy in the text of normative acts by fixing it in relatively determinate norms, or conditional norms (Vlasenko, 2023). Evidently, indeterminacy creates difficulties in law enforcement, which reasonably suggests its concretization.

Moreover, at the level of contractual regulation, elements of legal regulatory framework can also be traced. In this regard, it is worth talking, for example, about the framework rules in the contract, allowing for indeterminacy and suggesting conclusion of supplementary agreement in the future.

Thus, the elements of legal regulatory framework can be found at different levels of legal regulation. Abstractness, legal uncertainty, as forms of manifestation of legal regulatory framework, are found both at the level of normative and at the level of individual, including local regulation.

Elements of legal regulatory framework in labor legislation

There are certain branches of law where coexistence of both normative and individual legal regulation is allowed. L.T. Bakulina, A.A. Bikeev postulate a close connection between public law and private law principles in the field of labor relations, which is directly related to Article 2 of the Labor Code of the Russian Federation; in this regard, they single out contractual or decentralized types of regulation (Bakulina & Bikeev, 2018). K. V. Shundikov also notes the existence of a legal regulatory framework in the field of “regulation of the contract institution” (Shundikov, 2019).

In fact, certain elements of the legal regulatory framework can also be traced in the Labor Code of 1918¹. It is an act of sectoral codification due to the content of the sectoral substantive legal context, which includes codifying institutes of substantive and procedural law in the field of labor relations. It has a framework character due to the following:

Firstly, the document states the fundamentals of legal regulation of labor and other associated relations.

Secondly, metaphor, as a property of polysemy, presented in the content, expands the scope of the object and subject of legal regulation with the help of certain words and

¹ Labor Code of 1918 on Collection of Laws and Orders of the Workers' and Peasants' Government of the RSFSR. 1918. No. 87/88. Art. 905 Available at: https://www.hist.msu.ru/Labour/Law/kodex_18.htm [Accessed 30th August 2022].

phrases, for example, *proper labor productivity, other people's work, normal productivity and internal regulations, a normal working day and under normal conditions, organized cooperation, another locality* and others. The inclusion of metaphors in this normative legal act, relatively determinate norms, general norms of an abstract nature create opportunities for interpreting numerous provisions, concretizing other levels of legal regulation in normative acts, for example, regional, municipal and/or local.

Specification of the Labor Code of 1918 can be traced in the 1922 Labor Code of the RSFSR²; for example, the law specifies persons who are not subject to “public works”, and issues related to the conclusion of an employment contract in more detail.

I.N. Vasev notes that 1922 Code of Labor Laws of the RSFSR includes a “collection of statutes” in its title, which means a set, i.e., a codified normative act, “combining equal-level legislative acts of the same nature” (Vasev, 2020:76). S.E. Baikееva, A.L. Bredikhin, E.D. Protsenko believe that the structure and basic concepts of the Labor Code of 1918 were subsequently reproduced and specified, both in the 1922 Labor Code of the RSFSR and in subsequent acts, including the Labor Code of the Russian Federation (Baikееva, Bredikhin, Protsenko, 2022).

Federal legislation has attributed labor law to the competence of the joint jurisdiction of the Russian Federation and its subjects in the Constitution (Article 72)³. In a federal state, regulatory framework is often used to expand the subject of legal regulation by defining issues of joint jurisdiction. Such a provision presupposes further clarification and concretization of separating powers in other normative acts. In this regard, the Labor Code of the Russian Federation addresses these questions. For example, Article 6 of the Labor Code of the Russian Federation stipulates “delimitation of powers between federal state authorities and state authorities of the constituent entities of the Russian Federation in the field of labor relations and other relations directly related to them”⁴. It has been determined that the main directions of state policy, the basics of legal regulation, fundamental rights, freedoms and guarantees are regulated at the federal level.

From the point of view of technical and legal means, it seems relevant to consider those elements of the legal regulatory framework in labor law, which were not touched on by the above-mentioned authors. Some aspects of the legal regulatory framework are mentioned by A. M. Lushnikov, M. V. Lushnikova. They are analyzing the Russian labor law in the post-Soviet period. The authors refer Article 53 of the Labor Code to the framework norms. In their opinion, the concept of “the labor collective and its participation in the organization management” in this article, was replaced with a relatively determinate norm by the legislator, such as “participation of employees in the organization management” (Lushnikov & Lushnikova, 2017); this requires additional specification and clarification regarding employees’ categories. The authors

² Labor Code of the RSFSR of 1922 on Collection of Laws and Orders of the Workers' and Peasants' Government of the RSFSR. 1922. No. 70. Art. 903. Available at: https://www.hist.msu.ru/Labour/Law/kodex_22.htm [Accessed 30th August 2022].

³ Constitution of the Russian Federation adopted by referendum on December 12, 1993 (as amended on March 14, 2020)

⁴ Labor Code of the Russian Federation: Federal Law No. 197-FZ of December 30, 2001.

also note that “a number of sections of the Labor Code are of a framework nature; the legal mechanism for implementation of the rights and obligations of the parties laid down in these sections shall be established by local acts” (Lushnikov & Lushnikova, 2009: 616).

Further, it is worth dwelling on the analysis of specific norms of the Labor Code, analyzing them from the point of view of legal drafting technique. Obviously, judicial practice and legal doctrine fill in the gaps in legislation and specify certain provisions, however, the aspect of analysis is interesting from the point of view of the theory of legal regulation and reasoning of the legislator.

It seems important to single out the legal norms, describe the content of the term *indeterminacy* and analyze the relatively determinate norms that exist in the field of labor legislation. The scope of the legal norm is changeable, since it does not contain specifically defined actions or conditions, which require clarification and concretization of its content. For example, Article 81 of the Labor Code is devoted to termination of employment contract at employer’s initiative. Paragraph 14 states that the employment contract may be terminated by the employer “in other cases established by this Code and other federal laws”⁵. Uncertainty is also present in the title of other articles; for example, Article 84 of the Labor Code is devoted to termination of “employment contract due to violation of the rules concerning concluding an employment contract established by this Code or another federal law”⁶. Since the Russian Federation has not yet adopted the relevant law On Normative Legal Acts, their classification creates uncertainty, including uncertainty in law enforcement practice.

Article 22 of the Labor Code establishes that “the employer shall comply with labor legislation and other normative legal acts...”⁷. In practice, questions often arise on which normative legal acts are classified as “other”. Part 2 of Article 22 of the Labor Code describing obligations of the employer whose list is open, also contains a relatively determinate disposition: it does not indicate what other obligations provided for by “labor legislation, including provisions on a special assessment of labor conditions, and other normative legal acts...”⁸ the employer shall perform. Article 62 of the Labor Code is devoted to the issuance of work-related documents and their copies. However, this list is not exhaustive, which creates uncertainty in practice and questions concerning obligation of the employer to issue the relevant work-related document.

The forms of manifestation of the legal regulatory framework in the field of labor law include relatively determinate legal norms, which include an open list of conditions requiring further specification. This involves the following examples:

“The salary of an employee is established by an employment contract in accordance with remuneration systems in force for this employer” (Article 135 of the Labor Code). This norm does not contain information interpretation concerning the amount, formula, rate or other characteristics of payment, but determines its specification at the departmental, local and contractual levels of regulation, including incentive payments

⁵ Labor Code of the Russian Federation: Federal Law No. 197-FZ of December 30, 2001.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

(allowances, additional payments, incentive bonuses) that may also be established in the regulation on remuneration provision⁹.

These norms may also contain evaluative concepts, for example, “the employer rewards employees who conscientiously perform labor duties (commends, issues a bonus, awards a valuable gift, grants a certificate of honor, nominates them to the title of the best in the profession)”¹⁰. At the same time, the legislator retains uncertainty in this norm, however, some specification with reference to legislative forms is also contained in this article: “Other types of incentives for employees are determined by a collective agreement or internal labor regulations, as well as charters and regulations on discipline. For special labor services to society and the state, employees may be nominated for state awards”¹¹.

“At the written request of the employee, unused vacations can be granted to the employee with subsequent dismissal” (Article 127 of the Labor Code)¹². This article also assumes further specification, including timing and procedure for granting such a leave. Also, an open list of conditions is contained in Article 22, Paragraph 12, Part 1, Articles 59, 70, 76, 77, Paragraph 14 Part 1 81.84, 122, 128, 165, 168, 362 of the Labor Code and some others.

“Framework” norms are contained in the Articles that require specification in acts of local legal regulation, an employment contract, etc.: the system of remuneration and the system of incentives and bonuses (Articles 41, 45, 131,135 of the Labor Code); additional paid leaves for employees (Articles 41, 45, 116, 117, 118, 119 of the Labor Code); order of granting paid leaves (Article 123 of the Labor Code); content of the employment contract (Article 57 of the Labor Code); term of the employment contract (Article 58 of the Labor Code); entry into force of the employment contract (Article 61 of the Labor Code); combination of posts; expansion of service areas, increase in the scope of work; fulfillment of the duties of a temporarily absent employee without exemption from work stipulated by an employment contract (Article 60.2 of the Labor Code); pre-employment testing (Article 70 of the Labor Code)¹³.

Also, Articles 56, 57, 58, 59, 60, 60.1, 60.2, 61, 67, 72, 77, 78, 79, 312.4 and some others of the Labor Code require specification in the employment contract. For example, Part 1 and Part 2 of Article 57 of the Labor Code include a list of conditions that should be outlined in an employment contract, including mandatory conditions. At the same time, it is possible to conclude an employment contract that includes only general conditions; it means that it is of a framework nature. In fact, Part 3 of Article 57 of the Labor Code establishes obligation to supplement such a contract with “missing information and/or conditions” by reissuing an employment contract, or drawing up an annex, or supplementary agreement. In this case, these additional changes and documents will have a restorative function, supplementing and concretizing the provisions of the original “framework” employment contract.

⁹ Labor Code of the Russian Federation: Federal Law No. 197-FZ of December 30, 2001.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

Article 57 of the Labor Code also mentions “additional conditions” that the parties have the right to include into the employment contract. Additional conditions that do not deteriorate the position of the employee are evaluative concepts. In this regard, the legislator establishes them but leaves this norm “open”.

Thus, Article 57 of the Labor Code is of a framework nature. The uncertainty that was expressed in the evaluative concept of “additional conditions” may be further specified, for example, in an employment contract.

A concretizing function is also performed by the acts of the Ministry of Labor and Social Protection of the Russian Federation (hereinafter referred to as the Ministry of Labor). Yu. G. Arzamasov notes that departmental regulations “complement the existing norms” (Arzamasov, 2006: 30).

Judicial practice analysis

R.O. Khalfina argues that “while studying public relations that have been already regulated by a legal norm, an important and necessary stage is examining the norm effectiveness in its dynamics or, in other words, “tracking” the norm in operation” (Khalfina, 1981:94). Let us analyze some of the above-mentioned norms of labor legislation.

We will focus on a few examples on the inclusion of additional working conditions in an employment contract from judicial practice. Despite their open list, such conditions “should not worsen the position of the employee in comparison with the established labor legislation and other regulatory legal acts...”¹⁴.

Decision of the Kirovsky District Court of the city of Rostov-on-Don (case No. 2a-2757/2020) dated August 13, 2020 is an appellate ruling of the Rostov Regional Court (case No. 33a-13153/2020) dated November 16, 2020. As part of the case, the employer issued the order “to put the employees on remote working on a part-time basis”, sending supplementary contracts by e-mail and “inviting them to give their feedback in a response letter”¹⁵. The employee agreed to this condition but later addressed the State Labor Inspectorate, which revealed violations in the actions of the employer. The change in working conditions, namely, the transfer to remote work, was improperly executed. The court considered that the employee's response in an e-mail does not imply mutual consent to the continuation of the labor function in the new conditions. The Letter of the Ministry of Labor and Social Protection of the Russian Federation No. 14-4/10/P-2741 of March 27, 2020, establishes that transition “to a remote mode of work may be formalized by exchanging electronic documents, if necessary, with their subsequent execution in the prescribed manner”¹⁶. Since these conditions were not met and the corresponding local regulatory act was non-existent, the actions of the employer were recognized as illegal.

¹⁴ Labor Code of the Russian Federation: Federal Law No. 197-FZ of December 30, 2001.

¹⁵ Chief accountant. Remote work, refusal to go back to the office, absenteeism and masks: how the courts resolved labor disputes during the pandemic. Dated 04.22.2021. Available at: <https://www.glavbukh.ru/art/101466-udalenska-otkaz-vyiti-v-ofis-proguly-i-maski-kak-sudy-razreshali-trudovye-spory-v-pandemiyu> [Accessed 30th August 2022].

¹⁶ Letter from the Ministry of Labor and Social Protection of the Russian Federation No. 14-4/10/П-2741 of March 27, 2020.

This case from judicial practice demonstrates normative uncertainty of the Labor Code and local acts (employer's order) concerning the procedure and deadline for amending employment contract, transferring an employee to remote work, and timing of processing the relevant documentation that are partly specified in the Letter of the Ministry of Labor and Social Protection of the Russian Federation No. 14-4/10/P-2741 of March 27, 2020. In this situation, the specific deadlines for the employer to perform the necessary actions are determined by the discretion of the court. In other words, uncertainty, set out in relatively determinate norms, is concretized by the court.

Another case under study is the judgment of the Lyubertsy City Court of the Moscow Region No. 2-4060/2020 of July 30, 2020.¹⁷ The employee carried out labor activities based on a fixed-term employment contract, which set up the procedure for exercising the labor function remotely, including additional grounds for terminating the employment contract. In fact, the employment contract allowed for a termination clause in case of a “reduction in the scope of services provided under the Service Agreement”¹⁸. According to this clause, the employee was dismissed; he later disagreed and took the case to court. The Labor Code as amended of May 25, 2020 (the Code text No. 102), allows the employer to include additional conditions for terminating an employment contract (Article 312.5). Based on this Article, on July 30, 2020, the court issued a decision to refuse reinstatement¹⁹.

Article 312.5 of the Labor Code (as amended on May 25, 2020) is of a “framework” nature and does not specify the list of additional grounds for terminating an employment contract with remote workers; in this connection the allowable grounds that do not worsen the position of a remote worker were taken into account by the parties of the labor relations, as well as the court²⁰.

Still another judgement by the Frunzensky District Court of Vladivostok, Primorsky Krai of July 3, 2019 (case No. 2-3606/2019)²¹, satisfied the claims of the employee against the joint-stock company for recognition of illegal amendments to the employment contract. Apart from the open-ended employment contract, a supplementary contract was added; under it the employment contract included information on compensation payment by the employer in case of employment contract termination. The employee refused to change the employment contract on the grounds of Article 74 of the Labor Code, whereupon he was fired. Yet, the legislator has established an open list of reasons why a change in “organizational or technological working conditions” is possible, which creates a conflict in practice. According to court opinion, in this situation the employer reduces its costs, and does not change the organizational or technological working conditions²². The uncertainty of the “organizational or technological working conditions” category and

¹⁷ Judgment of the Lyubertsy City Court of the Moscow Region No. 2-4060/2020 of July 30, 2020. Available at: <https://sudact.ru/regular/doc/GM623z0DzgdQ/> [Accessed 30th August 2022].

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Judgment of the Frunzensky District Court of Vladivostok (case No. 2-3606/2019) of July 3, 2019. Available at: https://sudact.ru/regular/doc/2oaReBFo54mv/?regular-txt=®ular-case_doc=2-3606%2F2019®ular-lawchunkinfo=®ular-date_from=®ular-date_to=®ular-workflow_stage=®ular-area=®ular-court [Accessed 30th August 2022].

²² *Ibid.*

the open list of its conditions allow to interpret this norm at the discretion of the law enforcer, and in this case, the court.

In the last case under study, the Zheleznodorozhny District Court of Voronezh, Voronezh Region (case No. 2-2785/2016) satisfied the employee's claims, including acknowledging a clause of an employment contract invalid²³. According to clause 8.1. of an employment contract concluded between the plaintiff and the defendant, the disputes between the parties arising during the employment contract performance are heard by the Zamoskvoretsky District Court of Moscow, at the location of the employer. However, the employee lived and worked in the city of Voronezh, and the corresponding provision of the employment contract "significantly violates the rights of the employee, as a party less protected in relation to the employer"²⁴, affording him no opportunity for attending the hearing in person. The plaintiff, in support of his arguments, cited the following facts: the employer, i.e., organization, was always located in Moscow, "it is extremely beneficial for the employer that any dispute is settled territorially remotely from employees"²⁵. Moreover, the employee was dismissed of his own free will, but he was not fully remunerated.

Part 2 of Article 9 of the Labor Code determines that "employment contracts may not contain conditions that restrict the rights or reduce the level of guarantees for employees in comparison with those established by labor legislation and other regulatory legal acts containing labor law norms" which sounds as a "framework". Having interpreted Article 29 of the Civil Procedure Code of the Russian Federation²⁶ systemically, the court arrived at the decision that the above clause of the employment contract was invalid. Similarly, as in previous cases, the uncertainty of individual relatively determinate norms of labor legislation is specified depending on the discretion of the subjects of legal relations, as well as the court.

Conclusion

Examination of the legal regulatory framework theory and the forms of its manifestation is not limited to branch studies. On the one hand, legal regulatory framework allows to expand the subject of legal regulation, and on the other hand, it creates opportunity for concretization of legal norms in other acts, based on the specifics of legal relations. The subject of legal regulatory framework is determined by relatively uncertain social relations, whose regulation is necessary to ensure the rights and freedoms of citizens in order to maintain the state unity.

Legal uncertainty gives the right to the subjects of legal relations and the law enforcer to act at their own discretion. In private law, including labor law, there are norms of different degrees of certainty, containing determinate, indeterminate, and relatively determinate norms. Relatively determinate norms assume the freedom of discretion of

²³ Judgment of the Zheleznodorozhny District Court of Voronezh No. 2-2785/2016 of February 6, 2017. Available at: https://sudact.ru/regular/doc/IQ6cNRP2t3x/?regular-txt=®ular-case_doc=2-2785%2F2016®ular-lawchunkinfo=®ular-date_from=®ular-date_to=®ular-workflow_stage=®ular-area=®ular-court [Accessed 30th August 2022].

²⁴ Ibid.

²⁵ Ibid.

²⁶ Civil Procedure Code of the Russian Federation N 138-FZ of November 14, 2002.

the subjects of the legal relationship, as well as the law enforcer in establishing conditions of specific cases and circumstances.

Judicial practice shows that in labor legislation the uncertainty of legal norms implies their further specification, based on the discretion of the law enforcer. In general, the courts take the side of the employer while interpreting certain norms. Although the highest judicial instances' acts clarify certain issues of applying labor laws, including establishing the boundaries within which the court is to navigate when making judgements, for example, the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 2 of March 17, 2004.

Thus, the forms of manifestation of legal regulatory framework in labor legislation include relatively determinate norms, norms with an open list of conditions (circumstances), which allows to specify their content in other regulatory legal acts (acts of executive authorities, collective contract/agreement, acts of local regulation, labor contract, etc.). The norms created as a result of legal regulatory framework establish the limits of legal regulation. In the future, operation (application) of such legal norms depends on the discretion of the subjects of legal relations, or the law enforcer, who specifies them, depending on the specific circumstances.

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