

Sergey Yu. Chucha

Institute of State and Law
of the Russian Academy of Sciences,
Moscow, Russia

E-mail: chuchaigpan@gmail.com

ORCID: 0000-0001-5771-6323

ResearcherID: AAB-6526-2021

SPIN-code: 6043-1045

Destructive Ideological Distortion of the Public Component in Traditional Russian Labour Law as a Private-Public Branch

Abstract. The aims of the article are to clarify the reasons for the distortion of the role of the public component in the traditional Russian model of labour law as a private-public branch, to substantiate their non-basic ideological character and their destructive prospective impact on the organisation of production and labour, as well as to determine a method for addressing the problem. For this purpose, reasons for the change in the subject of traditional industries and the grounds for the emergence of new industries in the context of changing technological paradigms were analysed on the example of civil law and the history of the development of labour law. The theory of labour relations as a private-public sector is explored. Assumptions are formulated about the future transformation of private and public law in the context of changing the economic paradigm underlying Russian society. The strengthening of the role of the public component in existing and emerging social branch of law is substantiated. In the absence of a basic economic need for changes in legal regulation in traditional sectors of the economy, the assertion of the inefficiency of regulating relations related to the use of personal labour is substantiated. The widespread use of the principle of differentiation in legal regulation of different contracts in labour law will allow for greater protection of the rights of parties in relations within new emerging methods of labour organisation characteristic of future technological systems, thus ensuring the public interest. However, in the ideological structure of scientific specialities that has developed in Russian scholarship, which is not based on basic economic needs, specialists in the field of labour law will tend to be scattered among different councils and thus subject to increasing influence from specialists in private or public law. As a result, the simplification of the nomenclature of scientific specialities

and the non-inclusion of private-public councils in it will lead to the disappearance of private-public branches to level their methodology with private law. At the same time, such legal regulation will come into conflict with the basic economic needs determined by the organisation of production and labour. In order to normalise the situation and prevent harm to the future organisation of the economy, a consolidation of the nomenclature of private-public specialities is recommended.

Keywords: private law; public law; civil law; history of labour law; social law; branch of law; historiography of labour relations; traditional model; ideology

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The global crisis of modernity (Savenkov 2018) and absence of a verified philosophical and legal model emerging from the transition period (Savenkov, Gorban 2023) increasingly forces a return to long-established Russian doctrines and practices that rely on intersectoral public or private methodology (Malikov 2024: 208-209; Chucha 2024b: 21-34). Among national branches, Soviet labour law was a doctrinal world leader; indeed, by the end of the 1970s, it also served as a practical model of legal regulation of labour for the legal systems of many countries around the world. However, Russia forfeited this status in its attempts to implement not always successful modern Western norms during the transition period of the 1990s (Chucha 2024a: 117). It became clear that the removal of the public component from labour law under any pretext will neither protect the rights of the parties to the employment contract nor ensure the public interest.

At the very beginning of its formation, labour law resembled a branch of public law with elements of private law (the Charter on Industrial Labour¹ is a normative act that generally relates to administrative or police law), but almost immediately began to be

¹ Code of Laws of the Russian Empire. T. XI. Part 2.

considered an institution of civil law, since the basis of labour relations was a civil contract of employment that very quickly became defined in terms of labour (Tal 1913: 9-12).

During the 19th century, labour in industrial enterprises was regulated by civil law on the basis of contracts for work and paid services (today these contracts are regulated by Chapters 37 (Articles 702-768), 39 (Articles 779-783.1) of the Civil Code of the Russian Federation), as well as personal hiring, and later labour hiring. Why did the employment contract begin to be discussed in Russia at the turn of the 19th and 20th centuries as an institution of civil law rather than administrative law? Factory (industrial) law included legislation limiting the employer's power (labour protection, limiting working hours), legislation on social insurance against industrial accidents, and legislation on normative (tariff) agreements. It was more comprehensive than the norms of the Civil Code that constituted the institution of hiring, in which discretion was reduced to a minimum: according to contemporary criteria, such agreements should rightfully be classified as administrative law. The third 'injection' into the body of the employment contract was trade union legislation for workers to defend their interests in relations with employers when concluding tariff agreements (what we today call social partnership, which has "distinctly pronounced public foundations" (Zaitseva 2024: 375) – since the main characteristic of public law norms is their orientation towards ensuring specific state or public interests (Alekseev 1999: 42)).

The historical process contributed to the formation of a new industry: already by 1918 the first Labour Code of the RSFSR² had been adopted; in 1922, it was followed by a new one³, which was changed and supplemented over decades, acquiring a mass of by-laws. The formation of labour law as an independent private-public branch of Soviet law was theoretically substantiated by N.G. Alexandrov on the basis of accumulated normative material (Alexandrov 1948).

² Collection of Laws and Orders of the Workers' and Peasants' Government of the RSFSR. 1918. No. 87/88. Art. 905.

³ Labour Code of the RSFSR, *Collection of Laws and Orders of the Workers' and Peasants' Government of the RSFSR*. 1922. Section 1. No. 70. Art. 903.

Indeed, the complex interweaving of elements of legal relations characteristic of both private and public law – necessarily involving parties who freely enter into employment relations on the basis of a contract but are compelled to fulfil contractual obligations exclusively through personal labour whilst subordinating themselves to the employer’s managerial will – must, in order to function with any degree of effectiveness, constitute an interconnected integrative totality possessing an anti-entropic character, i.e. a system from which the removal of certain elements leads to an imbalance of the system as a whole with possible subsequent destruction.

During the second half of the 20th century, Nikolai Alexandrov and Vladimir Skobelkin (Skobelkin 1982; Skobelkin 1999) managed to create independent universal theories of labour relations by studying the object from different angles. If the first created an abstract model of a single indivisible legal relationship, considering all exceptions as confirming the correctness of his theoretical model, then the second used both the rules and exceptions to them as equivalent material in his theoretical constructions. In other words, one jurist studied legal norms, while the other studied their implementation. The resulting theories can be conditionally called static and dynamic, respectively.

In his theoretical substantiation of the creation of the branch, Alexandrov “pulled” legal relations from adjacent branches of law into this unified legal relationship, anchoring them to labour law through the indivisibility of the legal relationship to form the subject matter of the branch. Currently, there is no discussion on any serious theoretical level about the problem of sectoral independence of labour law. This was indeed discussed against the backdrop of the reform of legal specialities (Zaitseva 2024); however, even when being torn apart in the nomenclature between private and public, labour law will not cease to exist as an independent branch with its own subject and method – at least, for as long as dependent labour exists. In our opinion, its disappearance can only be caused by a change in the technological structure that will entail such thoroughgoing changes in the organisation of production and society that dependent labour will no longer be fully in demand and industry standards will have nothing to regulate.

However, the presence of a public law component in labour law is not considered a sufficient sign of its delimitation from other civil

law branches, since to one degree or another they are also characterised by public law principles both in terms of the subject of legal regulation and its mechanism (Bublik 2000: 12; Mikhailova 2024).

Moreover, a counter process is also noted, involving the perception of a whole group of social relations associated with the legal regulation of personal non-property rights, which are not characteristic of civil law as a whole⁴ (Ivanov 2021). In the near future, civil law itself is likely to have to fight to preserve its current subject matter and attract to itself (in competition with fully or partially public branches) the as yet “ownerless”, emerging and likely to emerge before our eyes new social relations caused by technological changes (Chucha 2022).

Under contemporary conditions, it becomes necessary to develop the theory of Aleksandrov-Skobelkin that envisages a plurality of single labour legal relations arising on the basis of an open list of types of labour contracts and non-contractual grounds (for example, compulsory labour in the course of execution of a sentence), which assumes that the exclusion from a single labour legal relation of a certain type of individual legal ties can not only substitute the labour character of this legal relationship with a civil law counterpart, but also generally transform it into another labour legal contract from the long and open list enshrined in the amended Labour Code of the Russian Federation.

By taking such an approach, the process that began a century and a half ago will finally achieve completion to finally remove contracts that provide for the hiring of labour from the subject of civil law, leaving only the contract of personal employment between individuals, which presupposes the equality of the parties if this is independent labour not with a single employer.

It thus becomes necessary to modify the doctrine of labour law and theory of labour relations in such a way that the subject of labour law as a private-public branch extends to all relations involving the use of non-independent labour: platform relations, relations of the self-employed (individual entrepreneurs) providing services to one (single) employer, etc., whether currently existing

⁴Ivanov A. *New Social Law – 2*, 02.07.2020, available at: https://zakon.ru/blog/2020/07/02/novoe_socialnoe_pravo_-_2 (accessed January 9, 2024). (in Russ.).

or likely to appear in the future. For this purpose, labour law – currently targeted at one specific type of work organisation (with nuances and substantial differentiation) – the labour of worker collectives at industrial enterprises technologically attributed to the third and fourth technological orders – and having developed an optimal system for protecting the weaker party in employment relations, which is characterised by the stability of these relations, must through its individual institutions extend to other new and possible forms of work organisation that have emerged and will continue to emerge (Petrylaite 2006; Prassl, Risak 2017; Prassl 2018; Laptev, Fedin 2020; Chucha 2021) as most appropriate to the organisation of production using technologies of the fifth and sixth technological orders.

It seems that these institutions, as at the beginning of the century, should be labour protection, social insurance and social partnership. The demands of the first two already today, in one way or another, actually go beyond the classical subject of labour law to cover workers regardless of the method of organising production. All that remains is to extend the norms of the institution of social partnership to everyone, which – if only to avoid the automatic extension to them of the agreements of classical social partners reached at the federal and industry levels – will force the creation of social partnership structures in all new areas of application of non-independent labour.

The result of the spread of the institution of social partnership will be the gradual application to new relations of individual norms of other institutions of labour law and – over time – complete regulation by the norms of the Labour Code of the Russian Federation on a separate type of labour contract.

One possible development of events is the complete absorption over time by labour law of legal regulation having new forms of organisation. A second possibility is the emergence of new branches, as well as the entry into the arena of history of labour law at the beginning of the century as a complex branch that absorbed the institutions of civil and administrative law with the only difference that now labour law can also become a donor. In this case, it will probably be necessary to exclude personal non-property relations from the subject of civil law, transferring them instead to the subjects of other branches. Labour, family, housing, business law

and others have already received their own distinct legal identity and characteristics from civil law. In the labour law literature, it is sometimes proposed to adapt (without removing from the subject) other institutions and norms of civil law or to apply individual norms to labour relations on the basis of the subsidiarity principle (Baru 1963; Abramova 2013). Now it becomes necessary to form the subject of the “new social law”, which includes welfare spending, social protection and social network law, which, in the context of the possible introduction of an unconditional basic income (“bread”), will also play the role of “circuses”. Some groups of personal non-property relations may form other branches of law that also include elements of public law, which will be brought to life by changes in the technologies used to organise economic and social life. The alternative would be to inject into the civil law branch such a measure of public element (like the recipe for boiling a frog) that the private essence of the branch will not be visible – equality of the parties, freedom of contract, etc. – as set out in paragraph 6 of Chapter 30 of the Civil Code of the Russian Federation, including Part 2 of Article 548 of the Civil Code of the Russian Federation and the relevant legislation.

Anton Ivanov acknowledges the unfavourable consequences for the branch of civil law of the expansion of its subject matter sixty years ago by including non-property relations inextricably linked with the individual⁵. For this reason, maybe it is better for the branch to restore the *status quo (ante bellum)* than to lose its originality? The penetration of the public element into individual institutions will sooner or later change all the others. Moreover, the state will never allow the regulation of relations inextricably linked with the individual exclusively by private law methods, especially in the context of the transformation of economic and social models that has begun (whether considered positive or negative is irrelevant since this is an evaluative judgment based on the worldview formed by the subject).

What will a contract of carriage look like under the restrictive logic of QR codes? The brutal coding push was replaced at one time by a smart and quiet method of implementing state control through electronic passports, the use of which is convenient in itself and

⁵ Ivanov A. *New Social Law – 2*.

which consequently will be in demand by people. This document, which allows the state to interfere to a much greater extent in private law relations involving citizens, thus significantly influences freedom of contract (Andreev et al. 2020). Even greater opportunities for this will be provided by the widespread use of biometric data for identifying individuals, provided that they are combined with the relevant databases – those who have been vaccinated, convicted, in debt, suspicious, noisy, disloyal... Nevertheless, the use of biometrics and providing one's biometric data to the state turns out to be fairly popular⁶.

Of course, the final end to privacy could be instituted by the digital ruble (Muzyka 2024), which allows the issuer to set the duration, purpose, place of use and other parameters for each payment unit. This will allow for rigid control (prescribing to anyone and everyone) when, where and for what purposes to spend electronic money (and there will be no other kind) as a means of combating vices (one can purchase kefir, but not cigarettes), to ration consumption (one can and must purchase two litres of milk per week (the validity period of the corresponding rouble will expire), but zero grams of sugar, for sugar is white death) or populating numerous new Siberian cities (if the place of expenditure for all digital roubles received by a St Petersburg resident is Novokozhugetovskon-Kolyma) and so forth.

The task of jurists in this context is to create a legal model (simulate a set of legal relations) from elements (norms) often of different industry affiliations to ensure the functioning of a business model or approaches for managing social processes, etc. Based on the composition of the subjects and the nature of their activities, a jurist creates a model of legal regulation of a complex of legal relations, as if building a house out of blocks. Here, the more cubes there are, the more beautiful this house can become, the more comfortable it will be to live in it, the stronger and more durable it will be. Obviously, diversity can only be ensured by dispositive injunc-

⁶ *Sergey Sobyanyin names the launch date of the metro fare payment system based on facial recognition technology*, 01.09.2021, available at: <https://www.rbc.ru/society/01/09/2021/612f708c9a7947ca58c04b51> (accessed January 10, 2022) (in Russ.); Filonenko V. *Two-Faced Digitalisation*, 10.01.2022, *Parlamentskaya gazeta*, available at: <https://www.pnp.ru/politics/dvulikaya-cifrovizaciya.html> (accessed January 10, 2022) (in Russ.).

tions. Mandatory norms (do this or go to jail) will conversely allow us to model only the most primitive barracks.

Even today, ordinary civil law measures cannot ensure the observance of the rights of the parties to accession agreements. The proposal to use other mechanisms, such as blocking conditions imposed by a stronger party on the basis of Article 10 of the Civil Code of the Russian Federation (Tserkovnikov 2021), instead of the ineffective protection against unfair terms of such contracts provided for in Article 428 of the Civil Code of the Russian Federation, raises questions. The application of Article 10 of the Civil Code of the Russian Federation as anything other than an exceptional, emergency measure, in our opinion, indicates the unpreparedness of standard civil law methods of protecting the parties to the transaction. Perhaps it would be more correct (i.e., more effective from the point of view of protecting the rights of the parties) to regulate the relevant relations not by civil law, but, for example, by anti-trust law, which combines private and public features, with their transfer to the subject of the relevant industry. What actually happened at one time with labour relations based on a classic labour contract, which presupposes the inequality of the parties (the employer's mastery), on the one hand, and the exclusively personal fulfilment of obligations under the contract by the employee (to some extent, by the employer as well), on the other, seems likely to constitute one of the reasons for the ban on temporary labour in Russia.

The article by Ivanov leads to the conclusion that the idea of legal regulation of the "new social law" can be realised by establishing a list of prohibitions (which, in fact, is what the author himself proposes⁷), a list of permissions, or leaving everything as is and regulating it using contractual dispositive methods. However, then it will not be possible to do without the widespread application of Article 10 of the Civil Code of the Russian Federation, which is contagious and may become common for other civil law institutions. Why should civil law base the regulation of an entire block of relations on the assessment of moral categories? In each case, this will be carried out by the court. In what does the destructive influence of the ideological (not based on basic economic processes and needs)

⁷ Ivanov A. *New Social Law* – 2.

distortion of the role of the public component in the traditional Russian model of labour law as a private-public sector consist? It consists in the absence of a basic economic requirement to change legal regulation in traditional sectors of the economy, as well as in the dubious result of regulating relations associated with the use of personal labour (and even more broadly – all kinds of non-property relations inextricably linked with the individual) in promising ways of organising by means of civil law. Although we may be mistaken, the widespread use of the principle of differentiation in legal regulation of different contracts in labour law would seem to allow for greater protection of the rights of parties in relations within new emerging methods of labour organisation characteristic of future technological systems, thus ensuring the public interest. But our point of view will not interest anyone in the structure of scientific specialities that has developed in Russian jurisprudence, since the labour experts will be distributed among different councils and subject to increasing influence of specialists in either private, public, or international law. Before long they will be as far apart from each other in their essential understanding of the subject of research as specialists in labour law and social security law are today: having been initially an indivisible whole (social insurance became one of the reasons for distinguishing the employment contract) to form the economic foundation and superstructure of a unified system (labour underlies social security), they already today do not always understand each other.

As a result, the simplification of the nomenclature of jurisprudential specialities and exclusion of private-public councils from it will lead to the disappearance over time of private-public branches not in name, but in essence, levelling their methodology with private or public-law. At the same time, such legal regulation will come into conflict with the basic economic needs determined by the organisation of production and labour.

Thus, both a legally correct and fairly simple way to normalise the situation and prevent harm to the organisation of the economy in the future would be to consolidate the nomenclature of private-public specialities and councils.

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