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THE RELATIONSHIP BETWEEN THE APPRENTICESHIP CONTRACT AND THE EDUCATIONAL CONTRACT

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Introduction: *the paper analyzes the relationship of the educational contract and the apprenticeship contract in Russian law as the institutions (concepts) belonging to different fields of knowledge. At present, Russian legislation on education is dynamically developing, with a unified single conceptual terminology framework being established for all areas of law. Federal Law on Education introduced the concept of an educational contract as well as specified requirements for its content. However, the labor legislation of Russia does not always comply with the changes in the part concerning training and continuing professional education of employees. In particular, it is not clear what the apprenticeship contract is and if it is a kind of the educational contract. The paper also discusses the lack of a clear classification of contracts in labor law associated with the implementation of workers' right to training and continuing professional education. Employees enjoy the right not only when they enter their first profession and qualification working for a particular employer under an apprenticeship contract, but also when they study in an educational organization and improve their skills and retrain. It is not entirely clear what kind of a contract should be concluded: the apprenticeship contract or another one.* ***Purpose:*** *to prove the necessity of the harmonization of labor and education legislation and make appropriate changes in the Labor Code. Since education legislation is considered to have the leading role, the educational contract will be the generic term, and the apprenticeship contract will be the superordinate term.* ***Methods:*** *the main method of the research is the comparative and descriptive approach. Some specific scientific methods used include the legal-dogmatic and law of the court methods.* ***Results:*** *the analysis of the application of the Labor Code regulations on apprenticeship and of the scientific comment shows the need to change the title and content of Chapter 32 of that Code. Educational contracts concluded between an employee and an employer can be differentiated depending on the purposes and types of education.* ***Conclusions:*** *the scientific objective of labor law is to justify the necessity of changes in the Labor Code, and to provide further analysis of the application of the legal provisions on implementation of workers' rights to training and continuing professional education.*

Keywords: apprenticeship contract; educational contract; training and continuing professional education; worker's right to training and continuing professional education

Information in Russian

О СООТНОШЕНИИ УЧЕНИЧЕСКОГО ДОГОВОРА И ДОГОВОРА ОБ ОБРАЗОВАНИИ

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Введение: *статья посвящена анализу соотношения договора об образовании и ученического договора как институтов разной отраслевой принадлежности. В настоящее время российское законодательство об образовании динамично развивается, закрепляется для всех отраслей права единый понятийный аппарат. В федеральном законе об образовании введено понятие договора об образовании и установлены требования к его содержанию. Трудовое законодательство России в части подготовки и дополнительного профессионального образования работников не всегда соответствует этим изменениям. В частности, не совсем понятно, что понимается под ученическим договором и является ли он разновидностью договора об образовании. Поднимается также проблема отсутствия в трудовом праве четкой классификации договоров, связанных с реализацией права работников на подготовку и дополнительное профессиональное образование. Работник реализует это право не только тогда, когда впервые получает специальность, квалификацию у конкретного работодателя по ученическому договору. Но и тогда, когда учится в образовательной организации, повышает квалификацию, проходит переподготовку. При этом не совсем ясно, какой договор должен быть заключен: ученический или иной.* ***Цель:*** *доказать необходимость гармонизации трудового и образовательного законодательства, внести соответствующие изменения в ТК РФ. При этом ведущая роль остается за образовательным законодательством. В связи с этим родовым понятием будет являться договор об образовании, видовым – ученический договор.* ***Методы:*** *основным методом исследования являлся метод сравнения и описания. Применялись частнонаучные методы: юридико-догматический и метод толкования правовых норм.* ***Результаты:*** *анализ практики применения и научного комментирования положений ТК РФ об ученичестве показал необходимость изменения названия и содержания главы 32. Договоры об образовании, заключенные между работником и работодателем, могут делиться в зависимости от целей и видов обучения.* ***Выводы:*** *задача науки трудового права заключается в обосновании необходимости изменений в ТК РФ, дальнейшем анализе практики реализации положений законодательства о реализации работниками права на подготовку, дополнительное профессиональное образование.*

Ключевые слова: ученический договор; договор об образовании; подготовка и дополнительное профессиональное образование работника; право работника на подготовку и дополнительное профессиональное образование

Introduction

The development of contract theory has always taken the central place in the science of labor law, although the construction of contract is most widely used and studied by civil law [1, p. 13]. This line of research is related to such issues as the concept of the employment contract, its relationship with other labor contracts both within the branch (for example, collective bargaining agreements), and in other branches of the modern law doctrine (civil and administrative); the features and the legal nature of the apprenticeship contract, its relationship with the contract of advanced training and vocational retraining. The final monograph by professor L. Yu. Bugrov "Employment Contract in Russia and Abroad" became a certain type of generalization of the discussions about the contract. In the study, the scholar suggests dividing all of the labor contracts conditionally into two kinds: labor (service) contracts of the main series and adjacent contracts (collective bargaining agreements, apprenticeship contract, contracts providing for full material liability) [3, p. 157]. However, in the context of this article the greatest interest is caused by the scholar's attitude to the issue of the relationship between the apprenticeship contract and the employment contract, and also to its genus-species characteristics. In particular, the scholar notes that the apprenticeship contract can be assessed as a special class of employment contracts and that the relevant contracts should receive a special (but still adjacent to the employment contracts) legal regulation.

In addition, the monograph offers fundamental criticism of the broad interpretation of the apprenticeship contract when the corresponding concept is applied to any agreements based on Article 197 of the Labor Code of the Russian Federation: contracts on professional training, advanced training, occupational retraining, training new professions and specialties [3, p. 163].

The Definition of the Apprenticeship Contract

The concept of the apprenticeship contract has been debated in the area of labor law for many years. This discussion is caused primarily by the uncertainty of labor legislation regarding regulation of relations between employers and employees, including the future relations. It is connected with obtaining primary professional knowledge, skills and experience by an employee, as well as the relations on the advanced training, either on-the-job training or school-based training. All these relationships in doctrinal sources were called educational-labor, apprenticeship- labor because professional knowledge and experience were obtained in the process of labor activity. Scholars had no doubts that such relations were always of a contractual nature. However, there was no agreement of opinion on by what kind of contract they were regulated.

In the first years of the Soviet state, apprenticeship as an organizational model of training for the needs of the employer was not enshrined as a codified act. The Labor Code of the RSFSR adopted in 1918 did not regulate this kind of relationship, although there was a practice of compulsory training of all persons aged from 18 to 40 at factory evening courses to provide skilled personnel for enterprises in the conditions of civil war and the formation of the young state. Then government took measures on training of the youth with subsequent employment at the expense of work place reservation as a means of combating unemployment. In fact, at that time the system of planned training for the needs of the state began to develop. The Labor Code of 1922 included Chapter XII "On Apprenticeship". Apprentices were called the persons who studied in apprenticeship schools, training brigades and workshops, and also undergoing individual training in the production process under the guidance of qualified workers (Art.121 of the Labor Code of the RSFSR 1922). The concept of the apprenticeship contract in the law was absent. Starting approximately from the 1940's the two forms of the planned training for the needs of enterprises at training centers (schools) and directly at employers became clear. Perhaps, it was related to the guarantees for persons who combined work and learning. For example, the Labor Code of the RSFSR in 1971 excluded the rules about training, but provided a number of benefits for the workers and office employees who combine work-based learning and off-the-job training in schools. It can be assumed that both acts predetermined the appearance of the term " apprenticeship contract" first in the legal literature, and later in the labor legislation. A new milestone in the development of the concept became the Labor Code, which was introduced on February 1, 2002. In Section IX related to training, retraining and advanced training of workers, there appeared Chapter 32 "Apprenticeship Contract", which explained the content of the contract, but again there was no definition of it. In connection with that, both before and after the adoption of the Labor Code, there was no certainty concerning the apprenticeship contract. The science of labor law has tried to fill the gap based on the nature of apprenticeship relations, their branch affiliation, the content of current legislature, the practice in vocational training, retraining and advanced training.

An analysis of numerous doctrinal definitions of the apprenticeship contract that had existed in the domestic scientific literature before the Labor Code came into force allows us to conclude that all the definitions were similar. The differences were only in the scope of the concept that was expanded by the description of the duties of the employer and the student (employee) and for training purposes. For example, K. N. Gusov defined an apprenticeship contract as an agreement whereby the apprentice shall master the specialty (qualification) within the agreed period of time through work-based learning and theoretical studies. Upon successful completion of the training they should work for the enterprise. The enterprise is obliged to arrange apprenticeship and to provide the apprentice with a job according to their specialty (qualification) after the training. At the same time, the scholar differentiated between the apprenticeship contract, the contract of advanced training and retraining contract, since their training objectives are different. Yu. P. Orlovsky considered the apprenticeship contract as an agreement between the student and the company, according to which the apprentice had to master the specialty. V. N. Artemova determined the apprenticeship contract as an agreement by virtue of which the employee (student) should acquire additional skills and knowledge of the main or related specialty via on-the-job training or off-the-job training.

Since the adoption of the Labor Code there have been some attempts to define the apprenticeship contract. However, its broad interpretation began to dominate. For example, V. G. Glebov considers that apprenticeship contract is an agreement according to which the employer is obliged to organize the training, retraining and advanced training of the apprentice. E. R. Bryukhina analyzed the doctrinal definition, the rules of the Labor Code and the practice of the implementation of apprenticeship relations and proposed the following definition: "An apprenticeship contract is an agreement between the apprentice and the employer, according to which the apprentice shall master a new profession, specialty, qualification, to work under the labor contract at the company for the period established by the apprenticeship contract. In case of breach of the contract terms, the apprentice should be liable according to the norms of the labor legislation, collective bargaining agreements and local regulations. The employer is obliged to arrange vocational training (retraining) for the apprentice in accordance with labor law and terms of the collective bargaining agreement in a timely manner and in full, to pay the apprentice award which includes scholarships and remuneration of work performed by the apprentice on practical trainings as assigned by the employer" [7, pp. 135–137]. It is hardly ever possible to consider this definition of the apprenticeship contract to be a successful one because of its cumbersomeness. However, if we analyze the content of Chapter 32 about training as a part of the entire section on training and continuing professional education, it becomes clear that the author attempted to comprise a few types of education in such definition of the contract, in particular, training and retraining in connection with the common feature of novelty (primacy) in the obtained qualification or specialty. The line is not drawn in this matter and scholar lawyers should continue to develop the definition, since it affects the subsequent decision about the relationship between the apprenticeship contract and other contracts that mediate the relationship of obtaining education by the employee both at work and in schools.

Discussions about the Relationship between the Apprenticeship Contract and Other Contracts

Having entered an employment relationship, employees may receive vocational education, improve their level of education and professional qualification on on-the- job and off-the-job training (full-time, extramural, part-time and others). But it is possible to realize these opportunities only by concluding a contract with the employer. Due to this fact, scientists proposed to use one generic (general) concept of the "training contract".

The types of contract suggested were as follows: an apprenticeship contract, contract of advanced training and internship contract [7, p. 129]. At the same time, the apprenticeship contract, as a kind of an agreement on training was suggested to be divided into two types, depending on the training objectives: a contract with the purpose to acquire a new profession, specialty, qualification and a contract with the purpose to retrain while working or not. In case of the absence of the employer's own training center, it was also suggested to provide a trilateral apprenticeship contract (employee-employer-training school). All the more so because in practice there have been cases of concluding such contracts. However, the Labor Code does not provide for such concept as the apprenticeship contract. There is also the question of the branch affiliation of the trilateral contract and application of labor legislation to such relations. After changes were made to Article 198 of the Labor Code (as amended by Federal Law of 30.06.2006 No. 90-FZ and 02.07.2013 No. 185-FZ), E. R. Bryukhina noted that the title of Article 198 failed to reflect its content [2, p. 21]. It seems that this is indeed true, because initially Article 198 of the RF Labor Code was formulated as follows: "An employer has the right to conclude an apprenticeship contract for vocational training with a job applicant and an apprenticeship contract for on-the-job retraining with an employee. The apprenticeship contract with a person seeking employment is a civil contract and is regulated by civil legislation and other acts containing norms of civil law. The apprenticeship contract with an employee of this organization is an addition to the labor contract and is regulated by labor legislation and other acts containing norms of the labor contract". The scientific community denied the existence of the civil legal element in the regulation of labor relations and closely associated with them relations on training of potential employees, considering it necessary to amend this misconception in the Labor Code [3, p. 165]. The exclusion of individual entrepreneurs from the number of persons who have the right to conclude an apprenticeship contract with employees was not entirely

understandable for the practice of implementing apprenticeship relations. The question of what contract should govern the relationship on improving the skills of workers remained open providing in Article 198 of the Labor Code are mentioned only vocational training and retraining. Since 2001, Article 198 of the Labor Code has been amended three times, as a result of the scholars' criticisms of the types of training included in the apprenticeship contract, its reference to civil law in case the apprenticeship contract is signed with a job-seeker (potential worker); the relationship between the apprenticeship contract and the employment contract. The current version of Article 198 of the Labor Code is set out as follows: "An employer, a legal entity (organization) is entitled to conclude *an apprenticeship contract for education* with a job-seeker or an employee providing on-the-job training or off-the-job training. The apprenticeship contract with an employee of this organization is an addition to the labor contract". It is obvious that in this variant, when the terms "vocational training" and "retraining" are replaced by "education", the semantic meanings of the term "apprenticeship contract" have not been completely removed in the analysis of the content of all Part IX of the Labor Code of the Russian Federation on training and continuing professional education of employees.

Due to the fact that the legislators have changed the content of Article 198 of the Labor Code of the Russian Federation, but have not amended any other provisions on apprenticeship in connection with all the institute of training and continuing education, a number of additional questions arose as follows:

1) Is the apprenticeship contract, after these changes in the Labor Code, despite the criticism of L. Yu. Bugrov, the generic term (contract type), and other contracts on any form of education of employees are subordinate kinds (for example, a contract on vocational training, advanced training, retraining)?

2) Maybe the apprenticeship contract is an autonomous concept without division into any types?

3) Is the apprenticeship a kind of some other contract, perhaps even labor contract?

4) How does the labor contract relate to the contract referred in Part 2 of Article 197 of the Labor Code, which establishes that the right of an employee to training and continuing professional education is implemented by the conclusion of a contract between the employee and the employer?

Questions continue to multiply in a view of the fact that in Russia there was adopted the Federal Law No. 273-FZ dated 29.12.2012 "On Education in the Russian Federation" (hereinafter – the Federal Law "On Education")[1]. The law introduced the concept of levels and types of education, types of educational programs, and also included the term "educational contract" and established requirements for its content. In particular, education in accordance with paragraph 2 of Article 10 is divided into general education, vocational education, continuing education and vocational training, providing the feasibility of education throughout life (the Long Life Learning principle). The educational contract mediates all kinds of education, with the exception of education provided by the budget. At the same time, vocational education (secondary vocational, higher vocational and advanced training of higher school staff) can be only obtained in public or private educational organizations, whereas professional training and continuing professional education (advanced training and vocational retraining) are provided by professional training centers, organizations of continuing professional education and by the employers. Employers (legal entities of any organizational-legal form and individual entrepreneurs), as well as individual entrepreneurs in accordance with the Federal Law "On Education" are entitled to conduct training activities on certain types of programs provided they have a relevant license and specialized structural training department, as well as to establish private educational institutions. However, the Labor Code does not have such a term as "educational contract" and the Federal Law "On Education" law does not mention the apprenticeship contract. We believe that the absence of a definition of the apprenticeship contract in the Labor Code is a disadvantage which, following to the classification of S. Yu. Golovina, refers to a broad normative interpretation of the concepts [4, p. 20]. A broad normative interpretation of the concept of "apprenticeship contract" gives rise to the above mentioned discussions and questions, which have no simple answer.

[1] On Education in the Russian Federation: Federal Law of December 29, 2012 No. 273-FZ (as amended of 03.07.2016). *Rossiyskaya gazeta* – Russian Gazette. 2012. No. 303. 31.12.2012.

In our view, the marked theoretical problems of defining the apprenticeship contract and its relationship with other contracts are caused by the following reasons:

1) Making significant changes in legislation on education in connection with the adoption of the Federal Law "On Education", which are relevant for labor law with regard to the definition of the conceptual apparatus. In particular, such concepts as "education" and "training" are formulated and differentiated; levels of education and types of educational programs are classified; the term "educational contract" is introduced and mandatory requirements for its content are established; the subjects of educational activity are defined. Labor law must be based on this conceptual framework and use it exactly in the semantic meaning given by the Federal Law "On Education", and not vice versa.

2) The lack of synchronicity in changing the rules of different branches of law (in particular, labor and education legislation);

3) Different characteristics in the available scientific literature about genus-species relations between the institutions of the labor law that relate to the employee's right to training and continuing professional education. As it was already analyzed above, the apprenticeship contract was considered either a form of the employment contract, or a generic term in relation to training, advanced training and retraining contracts, or one of the kinds of training contracts. No characteristics of its relevance to educational legislation were considered. In this connection, we can see the fourth reason for the lack in the understanding of the apprenticeship contract.

4) The lack of scientific attention to the interdisciplinary approach to the study of apprenticeship training.

5) There is an unreasonable restraint in the upgrading of the conceptual apparatus of the training and additional vocational training system and its incomplete compliance with educational legislation.

Foreign Experience of the Apprenticeship Contract

It is necessary to note that in foreign publications devoted to training and vocational training at the employer, there are no clear boundaries between vocational education and the apprenticeship scheme. The apprenticeship contract is understood as the contract concluded with an apprentice for acquiring professional skills at a particular workplace with the assistance of a supervisor (tutor). The agreement (contract) sets out the objectives, content, training time and, possibly, the results assessment criteria. At the same time, the apprentice him/herself defines the training objectives and existing obstacles. Article 199 of the Labor Code formulates solely formal legal terms of the apprenticeship contract. Abroad an apprenticeship contract reflects the process of a person's professional development. The authors note that in this case, it increases the motivation of an apprentice, his / her academic progress and develops a higher level of personal responsibility for training outcomes [8; 9, p. 1048], the training process becomes more efficient, and qualification improves [10]. The experience of the American law firms is of interest here [11]. They offer the apprenticeship contract to students of the second and senior years of study for initial professional experience during holidays. This kind of professional test allows the student to determine what additional knowledge he/she needs to gain, what skills he needs if he / she stays in the profession. At the same time, it gives the employer an opportunity to choose a new employee, to whom permanent employment will be offered upon graduation from the university. Thus, the aim and content of the apprenticeship contract abroad is wider than in Russia, and there is no strict boundary between education and apprenticeship. It seems to be the right approach.

In neighboring countries, the situation with the apprenticeship contract is also uncertain. For example, in the Labor Code of the Republic of Belarus[1] there is a chapter "Combining work with education", which mainly includes guarantees for workers who enter extramural and evening forms of studying. Article 220/1, as well as in Russia, establishes the right of the employer (in Belarus – the hirer) to determine the necessity of training and retraining of the workers. The terms of training, retraining, professional development and internship are determined by law, collective agreement and the employment contract. The terms and conditions of the apprenticeship contract are not specified in Belarus.

[1] Labor Code of the Republic of Belarus: Code of the Republic of Belarus of July 26, 1999 No. 296-Z. Available at: http://www.pravo.by (accessed 25.01.2017).

The Labor Code of the Kyrgyz Republic[1] is almost identical to the Labor Code of the Russian Federation in its outdated edition. The relationship of training, retraining and advanced training at the employer are in the scope of labor law. These relationships are governed by labor legislation, collective agreements, contracts, labor contracts and additional agreements to labor contracts. The employer has the right to conclude an apprenticeship contract for vocational training with a job-seeker, and an apprenticeship contract for in-service retraining with its employee (Article 198).

In accordance with Article 1 of the Labor Code of the Republic of Kazakhstan[2], relationships of training, retraining and advanced training are in the scope of labor law, but in a broader sense, not only at the employer. The same way as in other countries under analysis, the necessity and the amount of training, retraining and advanced training for the operation and development of the organization are determined by the employer (par. 1 of Article 118). However, unlike Russia, Kyrgyzstan and Belarus, the employer organizes training, retraining and advanced training of workers or other persons who are not in the employment relationship (apprentices) as follows: directly at the workplace (at the employer); in educational organizations; in other organizations of vocational training, retraining and advanced training. (par. 2 of Article 118). Another essential difference between the Labor Code of the Republic of Kazakhstan and the Labor Code of the Russian Federation is specifying of the conceptual apparatus of the training, retraining and advanced training (par. 1 of Article 116):

vocational training is a form of professional education aimed at personal development for the acquisition of new or changing professional skills required to perform certain types of work;

retraining is a form of professional education which allows one to master another profession or specialty;

advanced training is a form of professional education that allows one to maintain, expand, deepen and improve previously acquired professional knowledge and skills;

dual training is a form of training that combines training in an educational organization with compulsory periods of training and practice at the enterprise with the provision of jobs and compensational payments to the apprentice with equal responsibility of the enterprise, educational organization and the apprentice;

an agreement on dual training is a written agreement between the apprentice, the organization that provides a working place (job) for undergoing industrial training and practice, and the educational organization which regulates conditions and procedures for practical training;

a training contract is a written agreement between the employer and the apprentice on the conditions of training, retraining and advanced training.

Thus, in the Republic of Kazakhstan there is no concept of the apprenticeship contract. The relevant relations are governed by the training contract, requirements for which are determined by par. 3 of Article 118 of the Labor Code. This design, in our opinion, is the most consistent with the practice of training, retraining and advanced training of employees in Russia. However, the Labor Code does not fully comply with this practice, as well as it does not regulate the relations in the case of training, continuing professional education in educational organizations.

The Interconnection between the Right to Education and the Right to Work

It seems that the further research analysis of the issues and indicated reasons for the theoretical and practical questions in defining the apprenticeship contract and its relationship with other agreements should be based on the recognition of the close relationship between the right to work and the right to education, therefore, on the balance of labor and education legislation.

At different stages of development of our state, the essence of the constitutional rights to work and education and manifestation of their relationship in the legislation changed under the influence of a variety of political and economic trends. The right to work was first proclaimed in the USSR Constitution of 1936. It was not just declared, but also guaranteed by the full employment policy. The Constitution of the Russian Federation approved by referendum on December 12, 1993 proclaimed freedom of labor instead of the direct textual

[1] Labor Code of the Kyrgyz Republic: Code of the Kyrgyz Republic of August 4, 2004 No. 106. Available at: http://cbd.minjust.gov.kg (accessed 31.01.2017).

[2] Labor Code of the Republic of Kazakhstan: Code of the Republic of Kazakhstan of November 23, 2015 No. 414-V. Available at: http://zakonrk.info (accessed 31.01.2017)

consolidation of the right to work, which made the fundamental difference. The right to education as well as the right to work is the most important element of a person's legal status. By exercising the right to education, a person receives the profession, specialty, updates the existing knowledge, enjoys the cultural and historical heritage and develops as a personality. The right to education must be provided to a person throughout his or her life. In accordance with Article 43 of the Russian Constitution, everyone has the right to education. The Federal Law "On Education" contains specific mechanisms and guarantees for the implementation of the constitutional right to education. The scientists in the area of labor law (Yu. P. Orlovsky, A. S. Pashkov, K. P. Urzhinsky, A. E. Pasherstnik) first paid attention to the connection of the right to work and the right to education. It was not accidental, since education is a prerequisite for the preparation of a person for productive labor. The flowering of research in this area occurred in the era of the planned economy in Russia. The government was, in fact, the only employer and was in need of qualified personnel, the entire system of professional education was focused on the manufacturing sector. At that time, there was a system of compulsory distribution of young professionals for jobs after graduation. Also, the guarantees and benefits for employees enrolled in extramural and evening classes were developed. There was created a model of the planned training and retraining of workers, specialists and managers. In parallel with those processes, the development of the system of apprenticeship directly at the employer was in progress. Since 1991 (after the change in the political and economic system in Russia), the relationship between the categories of the right to work and the right to education has changed to some extent. Firstly, the close link between the system of professional education and labor market was broken. Both systems existed for over 10 years independently. Labor, as mentioned above, became free, and the system of professional education was oriented not towards the manufacturing sector and interests of employers, but at the comprehensive development of a person. Education was based on state educational standards, in elaboration of which employers did not participate. Therefore, the results of professional education were evaluated exclusively by the state. Also, the system of planning the number of professionals with different levels of professional education for the labor market became a thing of the past. That is why there began to arise contradictions between the employers' expectations and needs in vocational training of their employees, employment guarantees for graduates, social obligations of the state to ensure the right to education and the right to work. In the market economy, the interconnection between the right to work and the right to education still exists. But it should be built on taking into account the economic interests of the employer and employee, as well as the two models of the implementation of the right to education as a prerequisite for the right to work: in educational organizations and at employers.

A. M. Lushnikov and M. V. Lushnikova underlined the importance of the right of workers to vocational training, in which they include training, retraining and advanced training. However, at the same time they distinguished the branch affiliation of the right to work and the right to education, arguing that the right to professional education is exercised in the relationship between students and educational organizations, and the right to vocational training is fulfilled in the employment relationship [6, p. 56]. This is difficult to accept because the right to education is a whole thing, as well as the right to work is. This statement could only be the case if a citizen exercises the right to education independently of the employer, i. e. he or she is not in labor relations with the employer or does not demand the guarantees and benefits provided by labor legislation, collective agreements, and agreements. But if the employee is in the employment relationship or seeks for a job with a particular employer, then he or she implements the right to education in the labor relations. The employer directly (by arranging an in-service training program) or indirectly (by sending an employee to a training school) becomes the subject of educational relations. It seems that these positions were also linked to the fact that the science of labor law tried to use its conceptual apparatus within the apprenticeship scheme with no account for educational legislation. That is why there was the distinction between the concepts "training" and "education". Education was considered in the area of administrative law. In the Federal Law "On Education" these concepts are also delineated, but only in the relationship of "the part – the whole". Training is a way, process of transferring knowledge to get a particular type of education. In this sense, the

concepts of "apprenticeship" and "training" are very close to each other. Should we then leave the two terms: one to use in the labor legislation, and the other in the education legislation? Since the right to work and the right to education are closely interconnected, we think that there should be used a single conceptual apparatus and a single mechanism for their implementation.

The Educational Contract

Analyzing the norms of labor legislation in Russia, some authors point out that it is necessary to distinguish between the in-company training contracts or agreements, regulated by labor law, and school-based contracts (external training), for example, when an enterprise arranges a placement at a vocational training school for its employee to get professional education or continuing professional education, or when an employee enters a school themselves. In such cases, the employee should sign a special contract in accordance with Part 2 of Article 197 of the Labor Code of the Russian Federation. The content of this contract is not regulated by the legislator. Based on the systemic analysis of Articles 53 and 54 of the Federal Law "On Education" and Article 197 of the Labor Code, we can conclude that we do are not dealing with different contracts but with one contract titled as an "educational contract". This conclusion follows from the analysis of sub-par. 2 par. 1 of Article 54 of the Federal Law "On Education". The parties to the educational contract are the school carrying out educational activity, the person enrolled, and an individual or a legal entity that is obliged to pay for education of the person enrolled. Educational activities can be carried out by educational organizations, organizations providing training (according to the law, these are any legal entities which conduct training alongside their main activity) and individual entrepreneurs (par. 1 of Article 21). Thus, if the training is carried out directly by the employer, then the educational contract will be bilateral. If an employee obtains education in an educational organization at the expense of the enterprise or at another employer who has the right to conduct educational process, the contract will be trilateral. The educational contract must contain the main characteristics of education, including the kind (form), level and (or) the focus of the educational program (part of the educational program of the specific level, type and (or) focus), the form of training, the period of acquisition of the educational program (training duration), the cost of training (par. 2 of Article 54). We think that such a subject of the contract in comparison to the subject of the apprenticeship contract mostly comply with the legislation on education. However, there is no clear legal nature of the educational contract. It is more likely that the contract is of a civil nature and is a kind of service contracts, but if at least one party to the contract is the subject of labor law, the contract becomes mixed. In our opinion, in the case the employee has an employment relationship and exercises his/her right to education in an educational organization (school-based, external training), and the educational contract is signed by the employee, the employer and the school (a trilateral structure) or between the employer and the educational organization in favor of the employee (a bilateral structure), then the contract will be included in the scope of labor law, but with predominance of the signs of a civil nature. If the employee implements the right to education through in-company training at the enterprise, then the educational contract will also be of a complex nature, but with the increased labor law component. In connection with this, we propose to change part 2 of Article 197 of the Labor Code and amend it as follows: "The given right is implemented by concluding the educational contract between the employee, the employer and the educational organization, and in the case of in-company training and continuing professional education – by signing the educational contract between the employee and the employer". If this proposal is accepted, it will be necessary to take the next step of changing the title and the content of Chapter 32 "Apprenticeship Contract", and possibly the entire section IX of the Labor Code. However, the basis for the changes should be the awareness of the need to harmonize labor and education legislation, understanding of the types of education and training programs and the purposes of their implementation.

The Apprenticeship Contract as a Type of the Educational Contract

The above-mentioned contradictions were partially resolved in 2012, when the Federal Law "On Education" was adopted. The law introduced the concepts of "education", "training" and "qualification" used in labor law, determined the types and levels of education and types of educational programs, set goals for each type of education, legalized the possibility of implementing educational

programs by organizations of various forms of ownership and individual entrepreneurs, and introduced the general concept of "organizations conducting training". However, the Federal Law "On Education" does not mention the apprenticeship contract but uses the term "educational contract" and establishes the requirements for it (Article 54). Can we, in this case, argue that the apprenticeship contract is a type of the educational contract? It seems that the answer is "yes", because, based on the analysis of part 1 of Article 198 of the Labor Code, the subject of the apprenticeship contract is obtaining education. However, it is not clear what type of education the employee can obtain at the enterprise. There is no answer to this question in Article 199 of the Labor Code of the Russian Federation, which is devoted to content of the apprenticeship contract. In this article, one of the required conditions of the apprenticeship contract is an indication of the qualifications which the apprentice acquires but not the kind of education he or she obtains. A qualification is understood as the level of knowledge, professional skills and experience of the employee (Article 195.1 of the Labor Code). But the qualification itself can be the subject of neither the apprenticeship contract nor educational contracts. A qualification is always the result of the acquisition of a particular educational program by the student (in our case – the employee). If we analyze the types of education contained in par. 2 of Article 10, as well as Chapters 8, 9, 10 of the Federal Law "On Education", it is likely that the subject of the apprenticeship contract is such a kind of education as vocational training.

Vocational training is a kind of education which is aimed at the acquisition of professional competences by persons of different ages. The competences can include use of particular equipment, technologies, hardware and software and other professional tools, obtaining of qualifying categories, classes and categories of the profession of the worker or office employee without changing the level of education (par. 1 of Article 73 of the Federal Law "On Education").

In accordance with par. 6 of Article 73 of the Federal Law "On Education", vocational training is carried out in organizations providing educational services, including training centers of professional qualification and in-company training, as well as in the form of self-education. Training centers of professional qualification may be established in various organizational-legal forms of legal entities provided for by civil legislation, or as structural units of legal entities. It follows therefore that employers (legal entities of any organizational-legal form, individual entrepreneurs) may create subdivisions (professional qualification training centers) and independently implement various kinds of training programs, concluding educational contracts with potential or existing employees. To do this, the employer must obtain a license (Article 91 of the Federal Law "On Education"). In the framework of vocational training, the following educational programs are implemented (par. 2, 3, 4 of Article 73 of the Federal Law "On Education"):

1) programs of vocational training for worker professions and positions of office employees.

The term refers to vocational training of persons who previously did not have a profession of a worker or an office employee;

2) advanced training programs for workers and employees.

This is professional training of persons who already have a profession of a worker, professions of workers or hold a position of an office employee, positions of office employees, with the purpose of continuous improvement of professional knowledge and skills in the existing worker profession or office employee position without increasing the educational level.

3) retraining programs for workers and office employees.

This is professional training of people who already have a profession of a worker, professions of workers or hold a position of an office employee, positions of office employees, in order to obtain a new profession of a worker or a new position of an office employee to meet the production needs or the type of professional activity.

The results of vocational training at the above educational programs are (par. 10 of Article 60 of the Federal Law "On Education"):

1) assignment of a rank or class, category, which is confirmed by a certificate of profession of worker or position of office employee;

2) improvement or assignment of qualification, which is confirmed by a certificate of advanced training or a diploma in vocational retraining.

Thus, in the construction offered by the current version of the Labor Code, the apprenticeship contract mediates the relations in vocational training. However, employers have the right to conduct educational activities not only on educational

programs of vocational training, but also continuing professional education according to par. 5 of Article 31 of the Federal Law "On Education". Legal entities may implement programs for both types of education, whereas individual entrepreneurs can only implement vocational training programs (par. 3 of Article 32 of the Federal Law "On Education"). Our conclusion is also based on the analysis of the title and content of the entire Section IX of the Labor Code of the Russian Federation. However, the section does not give the name of the contract which mediates the relationship on continuing professional education, nor the requirements to its terms. We believe that this is also a kind of educational contract – the continuing professional education contract.

Workers can only obtain professional education in professional educational organizations. Thus, if the employer pays for the employee's training, there should be concluded an educational contract, to which the requirements are defined in Article 54 of the Federal Law "On Education". For this case, the Labor Code does not provide any requirements yet and does not provide for such form of training for the needs of the enterprise at all, although the Labor Code includes in training not only vocational training but also professional education (par. 1 of Article 196 of the Labor Code).

Conclusions

If we recognize that education legislation defines the conceptual apparatus relevant to the labor law in terms of training and continuing professional education of workers and the "employment contract is being more and more transformed into the labor and training contract", as it is rightly pointed out by I. Ya. Kiselev [5, p. 170], then the term "apprenticeship contract" shall be deemed obsolete and not meeting the demands of the practice of implementing the relations of training for the needs of the employer and the employees' right to education.

We believe that within this logic of the relationship between the right to work and the right to education, and thus education and labor legislation, a generic term will be the "educational contract" and the apprenticeship contract should be considered a type of it. Yet in this case, we must clearly define the subject of such an agreement (the type of the education obtained by the employee), or reject the term "apprenticeship contract", replacing it with the "vocational training contract".

The purpose of labor law as a field of study is to justify the amendments to the Labor Code, provide further analysis of the practice of the implementation of legal provisions on the fulfillment of workers' rights to training and continuing professional education.

References

1. *Braginskiy M. I., Vitryanskiy V. V. Dogovornoye pravo. Kniga pervaya: Obschie polozheniya* [Contract Law. Book 1: General Provisions]. Moscow, 2008. 841 p. (In Russ.).
2. *Bryukhina E. R. K voprosu o problemakh pravovogo regulirovaniya uchenicheskogo dogovora* [To the Question of Legal Regulation of a Learning Contract]. Minsk, 2015. 270 p. (In Russ.).
3. *Bugrov L. Yu. Trudovoy dogovor v Rossii i za rubezhom* [Labor Contract in Russia and Abroad]. Perm, 2013. 642 p. (In Russ.).
4. *Golovina S. Yu. Ponyatiynyj apparat trudovogo prava: avtoref. dis. ... d-ra jurid. nauk* [Conceptual Framework of Labor Law: Synopsis of Dr. jurid. sci. diss.]. Ekaterinburg, 1998. 53 p. (In Russ.).
5. *Kiselev I. Ya. Sravnitel'noe trudovoe pravo* [Comparative Labor Law]. Moscow, 2005. 360 p. (In Russ.).
6. *Lushnikova M. V., Lushnikov A. M. Pravo na professional'noe obrazovanie i obuchenie: problemy realizatsii v sovremennykh usloviyakh* [The Right to Vocational Education and Training: Problems of Its Implementation Under Modern Conditions]. *Trudovoe Pravo* – Labor Law. 2007. Issue 4. Pp 55–60. (In Russ.).
7. *Khudyakova S., Bryukhina E., Novikova N., Pravo na trud i pravo na obrazovaniye v sovremennoy Rossii. Vzaimodeystvie yuridicheskikh garantiy* [Rights to Work and Education in Contemporary Russia. Interaction of Legal Guarantees]. Saarbrucken, Germany, 2011. 260 p. (In Russ.).
8. *Aiken J. H., Koplow D. A., Lerman L. G., Ogilvy J. P.* The Learning Contract in Legal Education. *Maryland Law Review.* 1985. Vol. 44. Issue 4. Pp. 1047–1095. Available at: http://digitalcommons.law.umaryland.edu/mlr/vol44/iss4/4 (accessed 31.01.2017). (In Eng.).
9. *Brecko D.* Learning Contract: A New Tool for Managing Knowledge. Available at: http://fm-kp.si/zalozba/ISBN/961-6486-39-X/257-271.pdf (accessed 31.01.2017). (In Eng.).
10. *Frank T., Scharff L. F. V.* Learning Contracts in Undergraduate Courses: Impacts on Student Behaviors and Academic Performance. *Journal of the Scholarship of Teaching and Learning.* October 2013.Vol. 13. Issue 4. Pp. 36–53.

Available at: http://files.eric.ed.gov/fulltext/EJ1017121.pdf. (accessed 31.01.2017). (In Eng.).

11. *Why* and When to Apply for Vacation Schemes in Law Firms. Available at: https://target-jobs.co.uk/career-sectors/law-solicitors/340002-why-and-when-to-apply-for-vacation-schemes-in-law-firms. (accessed 31.01.2017). (In Eng.).

References in Russian

1. *Брагинский М. И., Витрянский В. В.* Договорное право. Кн. 1: Общие положения. М.: Статут, 1999. 841 с.
2. *Брюхина Е. Р.* К вопросу о проблемах правового регулирования ученического договора // Парадигма трудового и социального права в эпоху построения постиндустриального общества: сб. науч. тр. по итогам III Междунар. науч.-практ. конф., 23–24 окт. 2015 г. / гл. ред. К. Л. Томашевсский и др. Минск: Междунар. ун-т «МИТСО», 2015. 270 с.
3. *Бугров Л. Ю.* Трудовой договор в России и за рубежом: монография / Перм. гос. нац. исслед. ун-т. Пермь, 2013. 642 с.
4. *Головина С. Ю.* Понятийный аппарат трудового права: автореф. дис. … д-ра юрид. наук. Екатеринбург, 1998. 53 с.
5. *Киселев И. Я.* Сравнительное трудовое право: учебник. М.: ТК Велби, Изд-во «Проспект», 2005. 360 с.
6. *Лушникова М. В., Лушников А. М.* Право на профессиональное образование и обучение: проблемы реализации в современных условиях // Трудовое право. 2007. № 4. С. 55–60.
7. *Худякова С., Брюхина Е., Новикова Н.* Право на труд и право на образование в современной России. Взаимодействие юридических гарантий: монография. Saarbrucken, Germany: LAP – Lambert Academik Publishing, 2011. 260 с.
8. *Aiken J. H., Koplow D. A., Lerman L. G., Ogilvy J. P.* The Learning Contract in Legal Education // Maryland Law Review. 1985. Vol. 44. Issue 4. P. 1047–1095. URL: http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2588&context=mlr (дата обращения: 31.01.2017).
9. *Brecko D.* Learning Contract: A New Tool for Managing Knowledge. URL: http://www.fm-kp.si/zalozba/ISBN/961-6486-39-X/257-271.pdf (дата обращения: 31.01.2017).
10. *Frank T., Scharff L. F. V.* Learning contracts in undergraduate courses: Impacts on student behaviors and academic performance // Journal of the Scholarship of Teaching and Learning. Vol. 13, № 4. October 2013. P. 36–53. URL: http://files.eric.ed.gov/fulltext/EJ1017121.pdf (дата обращения: 31.01.2017).
11. *Why* and when to apply for vacation schemes in law firms. URL: https:// targetjobs.co.uk/career-sectors/law-solicitors/340002-why-and-when-to-apply-for-vacation-schemes-in-law-firms (дата обращения: 31.01.2017).