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# Temporary Agency Work and Telework in Russia: Current Issues and Future Developments

Elena Radevich \*

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Concepts such as “non-standard employment” and “precarious work” are relatively new for Russia. During the Soviet period, research on these topics was practically non-existent, as in the socialist economy and the widespread notion of “general equality” any departure from standard employment was limited or even prohibited in law. This state of affairs changed in the early 1990s, following Russia’s transition towards a market economy, since a vast amount of literature – particularly on economic and then legal matters – pointed out the need to ensure flexibility in the employment relationship.

Adopted in 2001, the Labour Code of the Russian Federation (*Trudovoy Kodeks Rossiyskoy Federatsii*, hereafter: LC RF), which replaced the Code of Labour Acts of the Russian Federation 1971 (*Kodeks Zakonov o Trude Rossiyskoi Federatsii*), favoured such flexibility only to some extent. In spite of the fact that one of the main goals of the LC RF was to set the conditions for the effective functioning of the labour market, including the widening of coverage of non-standard employment, in reality it was passed as a compromise between different political parties and as a result included both provisions corresponding to the realities of a market economy and restrictions inherited from a planned economy.

Soon after, the need to review labour legislation considering recent socio-economic conditions and the increasingly complex nature of the

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employer-employee relationship became apparent, chiefly caused by the rapid pace of technological innovation and globalisation<sup>1</sup>.

This is particularly the case in some forms of non-standard employment<sup>2</sup> – viz. temporary agency work and telework – which, although becoming widespread in practice, are currently not fixed in LC RF, leading to both legal uncertainty and vulnerability of those so engaged.

Traditionally, temporary agency work is regarded as a triangular employment relationship in which the agency hires workers, who will provide their services for a third party (the user company) on a temporary basis. As already discussed, temporary agency work is not presently legalized in Russia, although it is argued – both in legal literature and judicial practice – that some provisions of civil and tax legislation de facto allow for employing workers under this contractual arrangement. Although attractive for user companies and employment agencies, this point of view seems to be controversial, so long as pursuant to Article 5 of LC RF, the employer-employee relationship and any other relations directly connected therewith should be governed by labour law provisions, and by LC RF in particular, which is a fundamental piece of legislation in this connection<sup>3</sup>.

Interestingly enough, triangular employment relations are not an absolutely new phenomenon for Russia. Unlike most western European countries, commercial agency in the sphere of employment carried out by natural persons and special bureaus was legitimized in the nineteenth

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<sup>1</sup> It is indisputable that labour law provisions should reflect laws of the creation, development and decline of certain systems of social relations (V. M. Lebedev, *Sociological School of Russian Employment Law (Sotsiologicheskaya Shkola Trudovogo Prava Rossii)*, in *Izvestiya Vysshibkh Uchebnykh Zavedeniy*, 2006, No. 4, 68–72).

<sup>2</sup> Despite its wide application all over the world, the expression “non-standard employment” is far from clear. In both Russian and foreign literature, there are many approaches to its conceptualization, the most common of which is to define non-standard employment as being the opposite of standard employment. In other words, non-standard employment is concerned with work falling outside the definition of standard employment, the latter being associated with full-time open-ended employment performed at the employer’s premises and under its supervision (see e.g., D. Tucker, *“Precarious” Non-Standard Employment: A Review of the Literature*, Labour Market Policy Group of Department of Labour, 2002, 17, (accessed 7 January 2013); D. Brown *et al.*, *Non-standard Employment in Russian Economy (Nestandartnaya Zanyatost’ v Rossiyskoy Ekonomike)*, V. E. Gimpel’son, R. I. Kapelyushnikov (eds.), Publishing House of Higher School of Economics (Izdatel’skiy Dom Vyshey Shkoly Ekonomiki), Moscow, 2006, 16).

<sup>3</sup> P. V. Bizyukov, E. S. Gerasimova, S. A. Saurin, *Temporary Agency Work: Consequences for Employees (Zaemnyy Trud: Posledstviya dlya Rabotnikov)*, Roliks, Moscow, 2012, pp. 16–17.

century. Although their role was not the same as today's agencies, they share some common features with agencies nowadays. Afterwards, triangular employment relations – at the time regulated by Article 534 of the Industrial Labour Regulations 1913 (*Ustav o Promyslennom Trude*) and Article 32 of Code of Labour Acts of the Russian Soviet Federative Socialist Republic 1922 (*Kodeks Zakonov o Trude Rossiyskoy Sovetskoy Federativnoi Sotsialisticheskoy Respubliki*) – lost their significance as a result of the curtailment of New Economic Policy (NEP) and the prevalence of state-owned property<sup>4</sup>. A revival of interest in such employment arrangements occurred in the post-Soviet period – most notably in the mid-2000s – when the process of modernization of the national economy called for other forms of employment that would balance the interests of employers and employees during the implementation of innovations. Yet one can say that Russian society for the most part was not ready for such a form of employment due to its association with the exploitation of employees, lowering of their employment rights and the absence of objective information on its probable effects<sup>5</sup>.

Consequently, Bill No. 451173-5, “On the amendments to some legislative acts of the Russian Federation” (*O Vnesenii Izmeneniy v Otdel'nye Zakonodatel'nye Akty Rossiyskoy Federatsii*)<sup>6</sup>, whose drafters suggested strict prohibition of temporary agency work, was submitted to the lower chamber of the Russian Parliament on 8 November 2010 and unanimously approved on first reading on 20 May 2011.

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<sup>4</sup> A. M. Lushnikov, M. V. Lushnikova, *The Course of Employment Law: Textbook 2, Collective Employment Law, Individual Employment Law, Procedural Employment Law* (Kurs Trudovogo Prava: Uchebnik. T. 2, Kollektivnoe Trudovoe Pravo, Individual'noe Trudovoe Pravo, Protssual'noe Trudovoe Pravo), Statut, Moscow, 2009, 386-387.

<sup>5</sup> The information provided on the impact of temporary agency work is very controversial. According to the results of a survey carried out in 2012 by the Centre of Social-Employment Rights (*Tsentr Sotsial'no-Trudovykh Prav*), temporary agency work is generally considered in negative terms by workers as producing unsatisfactory outcomes (for more details, see: P. V. Bizyukov, E. S. Gerasimova, S. A. Saurin, *op. cit.*, 69-170). However, in the same year, the Institute for Social Development Studies of the Higher School of Economics conducted research on the same topic and arrived at a different conclusion: 79 per cent of temporary workers who were interviewed argued that their job suited them (I. M. Kozina, *Temporary Workers: Social Structure and Job Characteristics* (*Lyudi Zaemnogo Truda: Sotsial'nyy Sostav i Kharakteristiki Raboty*), in *Economicheskaya Sotsiologiya*, 2012, 13, No. 5, 30, (last accessed 7 January 2013).

<sup>6</sup> [Official Website of the State Duma](#) (Gosudarstvennaya Duma), (last accessed 7 January 2013).

Such a radical legislative proposal did not meet with universal approval. Unsurprisingly, both the user companies and employment agencies were dissatisfied. Yet more unexpectedly, some prominent Russian scholars also opposed the draft law, on the assumption that imposing a ban on temporary agency work would not solve the problem, but avoid it. They took the view that the current labour market and higher unemployment rates call for the implementation of more flexible employment schemes other than traditional employment patterns<sup>7</sup>. Moreover, the way in which temporary agency work is regulated in other countries provides evidence that a legal ban has little effect if there is an objective need for such form of employment<sup>8</sup>. Laying down detailed regulation appears to be a more appropriate avenue to pursue, particularly if this is done from a comparative perspective.

Thus, some major features related to the recourse to temporary agency work in other countries might be of use also in Russia, most notably:

- for the purposes of reliability, the need on the part of agencies to operate only with a license issued by a relevant authority;
- the need to narrow the scope of application of agency work in order to prohibit its use for some occupations (e.g. those characterized by dangerous work conditions);
- the scope to resort to agency work on a temporary basis in the event of collective action, or to hire agency workers permanently to replace the core workforce operating at the user company.

In spite of the fact that the proposal was put into the pipeline and is in the process of being finalised, one can say that in general the foregoing provisions were eventually taken into account. Indeed, now the underlying principle of the draft law is not to veto temporary agency work, but instead to narrow its scope of application, by setting down some special regulations. It is difficult to foresee the structure of the final draft, particularly because a number of factors are at play, including political

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<sup>7</sup> *It is time to cross one's t's [An Interview with I. A. Kostyan] (Pora Uzhe Stavit' Tochki nad «i»)*, in *Trudovoe Pravo*, 2010, No. 1, 97-101; V. G. Soifer, *The Legal Regulation of Employer-Employee Relationships: The Tardy Response to Challenges of Reality (Pravovoe Regulirovanie Trudovykh Otnosheniy: Zapozdalyi Otvet na Vyzovy Real'nosti)*, in *Trudovoe Pravo*, 2010, No. 10, 89-99; Yu. P. Orlovskii, A. Goncharov, *The Alteration of Employment Legislation – A Matter of Time (Izmenenie Trudovogo Zakonodatel'stva – Vopros Vremeni)*, in *Trudovoe Pravo*, 2011, No. 11, 5-14.

<sup>8</sup> See e.g., E. R. Radevich, *The Legal Regulation of Temporary Agency Work in Italy (Pravovoe Regulirovanie Zaemnogo Truda v Italii)*, in *Journal of Foreign Legislation and Comparative Law (Zhurnal Zarubezhnogo Zakonodatel'stva i Sravnitel'nogo Pravovedeniya)*, 2012, No. 1, 19-22.

ones, which may have a say in terms of contents. In this sense, it is to be hoped that those involved in the passing of the provision will be able to balance competing interests eventually.

Telework is another form of non-standard employment the legal nature of which gave rise to a lively debate in Russia. Traditionally, telework is defined as work carried out away from the employer's premises and performed by means of information technology. Although widely practised in large urban areas, this form of employment is not regulated by a specific set of labour law provisions.

Telework is often associated with home work and drawing a distinction between these employment schemes is a complex task in both theoretical and practical terms. Generally speaking, two criteria are usually identified with regard to this correlation:

- telework is considered a form of home work<sup>9</sup>, and they share a common legal framework<sup>10</sup>;
- telework is seen as different from home work and therefore in need of special regulation<sup>11</sup>, because a number of features necessitate such distinction, namely:
  - a) the type of work, which is premised to be mainly intellectual;
  - b) the use of different technology devices (fax, phones, Internet access);

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<sup>9</sup> Thus, in order to stress the link between the current forms of telework and early industrial home work, the expression "electronic home work" was used widely to refer to telework in European literature during the 1970s and the 1980s (see L. Qvortrup *et al.*, *Teleworking: International Perspectives* / P. J. Jackson, J. M. van der Wielen (eds.), Routledge, London, 1998, 22). At present, its usage is less common, although sometimes can still be found in the legal literature of post-Soviet countries (see e. g., K. L. Tomashevskiy, *Computer Work from Home as One of the Flexible Forms of Employment in the XXI Century (Komp'yuternoe Nadomnichestvo (Telerabota) kak odna iz Gibkikh Form Zanyatosti v XXI v.)*, in *Trudovoe Pravo v Rossii i za Rubezhom*, 2011, No. 3, 32-35).

<sup>10</sup> This model is accepted by the ILO, which defines home work as work carried out by a person referred to as a home worker, (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer; (ii) for remuneration; (iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used (Art. 1 of 1996 ILO Home Work Convention (No. 177)). Evidently, such a loose definition makes it possible to consider telework as a form of home work. On provisions of international labour law devoted to home work and telework, see: K. N. Gusov, N. L. Lyutov, *International Labour Law: Textbook (Mezhdunarodnoe Trudovoe Pravo: Uchebnik)*, Prospekt, Moscow, 2013, 464-471.

<sup>11</sup> See e. g., European Framework Agreement on Telework, which was signed in 2002, [Official Website of the European Commission](#), (accessed 7 January 2013).



c) the workplace – which is not limited to one’s household as in traditional home work – but may be in different premises away from those of the employer<sup>12</sup>.

In this connection, Bill No. 88331-6 “On the amendments to the Labour Code of the Russian Federation and Article 1 of the Federal Law on the Digital Signature (*O Vnesenii Izmeneniy v Trudovoy Kodeks Rossiyskoy Federatsii i Stat’yu 1 Federal’nogo Zakona «Ob Elektronnoy Podpisi»*)”<sup>13</sup> is based on the assumption that telework and home work are two different employment arrangements. This draft law was debated and passed by the lower chamber of the Parliament on 16 October 2012. The proposed draft would amend LC RF by including a separate chapter (Chapter 49<sup>1</sup>) devoted to the regulation of telework, which presumably will follow chapter 49 of LC RF on home work.

Pursuant to the draft proposal, telework will only be regulated by four articles of the LC RF (Articles 312<sup>1</sup> to 312<sup>4</sup>)<sup>14</sup>. Most notably, Art. 312<sup>1</sup> of the LC RF provides the definition of teleworkers (*distantsionnye rabotniki*) as those who have entered into an employment contract and undertaken to perform work away from the employer’s premises by making use of the Internet and other IT tools. As for Art. 312<sup>2</sup>, it makes it possible to conclude an employment contract with teleworkers which can be issued in a digital format if accompanied by the electronic signature of both parties. The digital format is indeed an innovation as Article 67 of the LC RF specifies that in Russia an employment contract must only be concluded in writing. However, the draft provision determines that where an employment contract is entered into electronically the employer must

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<sup>12</sup> A.M. Lushnikov, *Legal Regulation of Telework and Home Work: Comparative Analysis (Pravovoe Regulirovanie Teleraboty i Nadomnogo Truda: Sravnitelnyy Analiz)*, Paper presented at the Second Perm’ Congress of Scholars-Lawyers, Perm’, Russia, October 2011.

<sup>13</sup> [Official Website of the State Duma](#) (Gosudarstvennaya Duma), (accessed 7 January 2013).

<sup>14</sup> Interestingly enough, Chapter 49, which is devoted to home work consists of just three articles, namely Articles 310 to 312. This makes it rather difficult to govern it properly, as those articles only make provision for 1) the legal definition of home workers as those who entered an employment contract to work at home using tools and devices provided by the employer or purchased by home workers at their own expense 2) giving an opportunity for home workers to perform their work with the assistance of family members 3) the employer’s duty to compensate deterioration of home workers’ tools and devices if used in the employment 4) requirements that the tasks assigned to home workers should not be detrimental to their health and should be carried out in compliance with safety rules; 5) allowing the termination of the employment contract with home workers on the basis of grounds specified therein.

provide teleworkers with a certified copy of the document to be sent by post within three days from the date of conclusion. Organisation of working time and time off is left to the discretion of the workers, unless otherwise provided by the employment contract (Article 312<sup>4</sup>). In addition, pursuant to the draft law, the termination of the employment contract can take place for reasons detailed in the contract itself, besides those specified in the LC RF (Article 312<sup>3</sup>). One might note that the new proposal does not touch upon all-important issues for teleworkers such as health and safety rules, data protection, their training and right to privacy. It is to be hoped that this legal vacuum will be filled on second reading.



# Adapt International Network



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