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Research Article

FUNCTIONS OF LEGAL POSITIONS OF SUPREME FEDERAL COURTS IN LABOR LAW

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Legal positions of supreme federal courts in the Russian Federation have a direct effect on the labor legislation, law enforcement practices, as well as the subject and method of labor law. Certain forms of this influence have not been studied by the science of labor law until recently that results in unlocked theoretical and practical potential for judicial legal positions on labor disputes. To discover the influence of these legal positions on the industry in general, their main functions shall be identified. Through philosophical, general-theoretical and special juridical analysis of academic literature, labor legislation, law enforcement practices, and international legal acts the attributes of the functions of legal positions of supreme federal courts have been identified, the relevant definition has been articulated, the structure of functions has been shown, and specific types of these functions have been discovered. The theoretical structures worked out during the research can be applied in practice as well. On the national level – to solve the problems of platform employment, to ensure a balance in unity and differentiation in labor law, and to improve the mechanism for social partnership. On the international level – for the Eurasian Economic Union member states to solve the problems associated with human resources mobility, protection of working migrants, social partnership, introduction of international labor standards.

Key words: *legal position of the court, Supreme Federal Courts in the Russian Federation, function of law, law enforcement practices, implementation, Court of the Eurasian Economic Union*

Introduction

Many authors have opined about the functions of legal positions, but few have focused on judicial legal positions. Identifying the functions of legal positions of supreme federal courts in the Russian Federation is a relevant problem both for general theory of law and labor law. The legal significance of these functions manifests itself in the subject and method of labor law, labor legislation and law enforcement practices for labor disputes. The international level of the functional impact manifests itself in the fact that the identified functions of legal positions of supreme federal courts in the Russian Federation are models for similar functions fulfilled by the Court of the Eurasian Economic Union in respect to the relations within the Eurasian Economic Union (the relations associated with human resources mobility, protection of working migrants' rights, social partnership, introduction of international labor standards, etc.).

V. M. Baranov and V. G. Stepankov, the scholars representing the science of the theory of state and law, were among the first to present the system and discover the content of functions of the legal positions. Based on the results of the conducted social and legal analysis of the functions of legal positions,

the researchers suggest the following list of them depending on their designated purpose: reflective (or reflecting) – a general state of society’s legal system is displayed with legal positions; cognitive (or informational) – knowledge about the law is accumulated and arranged through legal positions; evaluation – it is the legal positions that, being a part of legal consciousness, express the individual’s attitude towards the law and legal phenomena in social life; legislative – a legal position serves as a primary source through which all known sources of law are shaped; ideological – legal positions shape the legal culture of society; methodological – the methodological support for law-making and law-enforcement processes is improved with the help of legal positions; the function of legal system federalization – the inconsistencies between federal and regional legislations are eliminated through uniform legal positions and unification of court practices led by the acts of supreme courts is ensured (Baranov & Stepankov, 2003: 47).

More detailed classifications of functions that can be tracked within sectoral sciences are also of interest.

For example, L. V. Vlasenko was one of the first to systematize the functions of legal positions in respect to tax law. In the monograph, the author names the following functions: transformative that is essentially about translating the legislator’s will innate to the legal provision regarding the activities of subjects this law-enforcement act is addressed to; the unification function to ensure the uniformity of law-enforcement practices; the function of a source – to fill the gaps in the law; the law-making function due to which a legal position turns into the signal for required amendments (supplements) to the provision and also serves as the primary model for the future provision; law expository – interpretation and explanation of the existing legal provisions (including those to overcome conflicts) (Vlasenko, 2011: 24–36).

O. A. Lukyanova designed a system of legal positions’ functions based on their role in the judicial process: ‘transmissive: a legal position is a means to transmit the will of subjects; unification: legal positions from acts of law interpretation are aimed at developing uniform enforcement practices; source: legal positions replace the sources of law in case of gaps and conflicts; coordination: organization of activities of subordinate bodies and officials; law-making: a legal position serves as the model for the future legal rule (the function is typical for rule-making legal positions); law expository: legal positions contain explanations for legal provisions’ (Luk’yanova, 2013: 102–103).

The problematics of functions of legal positions, including judicial, has never been studied in the science of labor law on a monographic level. However, some attempts have been made to define the functions of court practice.

For example, in one of the first studies dedicated to the role of a court practice in developing labor law conducted by A. K. Bezina (1989), the function of encouraging labor legislation implementation and the informational function were identified. The latter, more specifically, is about ‘generation and communication of diverse legal and other social information’ (Bezina, 1989: 194–198).

O. S. Kurylyova’s 1989 research features the following ‘functions of court practices in labor cases: individual sub-statutory regulation of labor relations; a legal directing function; an educational function; a signal and correction function’ (Kurylyova, 1989: 63–65).

S. Yu. Golovina addresses the subject of the functional purpose of court practice in respect to establishing a conceptual framework for labor law. For example, the author analyzes the particular impacts of court practices by the Supreme Court in the Russian Federation and the Constitutional Court of the Russian Federation on the conceptual framework of labor law. Ultimately, a conclusion is drawn about the significant role of court practice in generating the conceptual framework of labor law. In particular, the gaps are bridged (lack of a definition or its specific attributes), the terms are specified (estimated specifically), and some definitive provisions are recognized as non-constitutional that characterizes the supervisory function significantly (Golovina, 1997: 102–103).

The ‘legally compensative’ function of the Supreme Court in the Russian Federation for labor legislation has been examined by V. I. Mironov. In the scholar’s opinion, in accordance with this function, the court ‘creates new regulatory provisions in the labor law, eliminating the existing gaps’ (Mironov, 2006:106).

B. A. Gorokhov, S. P. Mavrin and E. B. Khokhlov in their 2003 research took quite a controversial position in terms of labor law source analysis. For example, the scholars apply the regulating function to all the sources of labor law, classifying court practice as one of them. As the main criterium for classifying a legal act as the source of labor law, the authors name ‘a documentary form of judicial legitimization of legal arrangements’ (Gorokhov & Mavrin & Khokhlov, 2003: 36–37).

However, the concept of ‘documentary form’ appears to vary greatly. Specifically, if the case in hand is the comparison of court practice in the context of the Romano-Germanic legal system, to which the Russian legal system belongs. Therefore, a regulating function is typical rather for labor law, while the role of court practice in labor disputes constitutes relaying the legislator’s will, law-enforcement and legal direction, but not regulating public relations.

While on the subject of regulating the impact of the court practice on labor relations, the opinion of E. E. Polukhina from her 2010 paper should be mentioned, since she emphasized the ‘secondary’ and ‘derivative’ nature of court practice compared to the law. However, as an exclusion, she names the practice of the Constitutional Court of the Russian Federation with its generally binding provisions that allow concluding that it has a regulating function and classifying this practice as a source of labor law (Polukhina, 2010: 49).

Describing the subjects coping with the defects in labor law, M. A. Zhiltsov in his 2010 research allots a significant role to the Constitutional Court in the Russian Federation which, first, recognizes the regulatory provisions as non-constitutional; second, reveals the provisions specifying the content of abstract rules and eliminates antinomies (contradictions); and, third, stating the legal positions and provisions, the Constitutional Court in the Russian Federation eliminates the existing gaps in labor law (Zhil’tsov, 2010: 176).

O. S. Khokhryakova pays especial attention to the structural-functional analysis of decisions of the Constitutional Court in the Russian Federation, naming the legal correction function as fundamental for court practice. The author proves that it is the practices of the Constitutional Court in the Russian Federation that ensure uniform understanding and application of most current provisions of labor legislation (Hohryakova, 2006: 19).

The reflections of T. P. Vedeshkina on the meaning of acts of supreme judicial authorities for labor legislation is also a testimony to at least three functions of legal positions contained in these acts. For example, the scientists note that ‘the positions of supreme judicial authorities often eliminate contradictions, bridge the arising gaps to establish a uniform approach to applying and interpreting regulatory provisions’ (Vedeshkina, 2022: 49).

In other words, legal positions from the acts of supreme courts, first, correct the meaning of provisions; second, bridge the gaps; third specify the meaning of provisions.

Introduction to the classifications of functions of legal positions and court practice covered by the research of authors representing various branches of law allows several conclusions.

First, even if scholars make an attempt to name the functions of legal positions, they are listed in isolation from the basis of division and without differentiation by the types of legal positions. As a result, the functions of court legal positions as such are not fully covered.

Second, for the same reason, the subject affected by these functions is confused. Eventually, judicial research presents the conclusion that legal positions have an effect on the economic, social and cultural areas of social life, which brings some confusion into the concept of the functions of legal positions.

Third, when the functions are described, the emphasis is not always on the judicial subject of the impact: legislation, law enforcement practices, relations associated with exercising rights and fulfilling obligations, etc.

Fourth, without prejudice against the conducted research, it should be noted that representatives of labor law science have almost never addressed the functions of judicial and legal positions in this area.

Therefore, the **goal** of this research is to identify the main functions of legal positions by the supreme federal courts in the Russian Federation regarding labor law. To achieve this goal, the following **objectives** shall be accomplished:

- 1) to phrase a definition of the concept ‘functions of legal positions by supreme federal courts’,
- 2) to define the structure of these functions,
- 3) to identify the subject they affect,
- 4) to name specific functions,
- 5) to discover the judicial nature of the functions, their theoretical and practical value for the branch.

Based on the results of accomplishing the objective, the following **hypotheses** have been confirmed: legal positions of supreme federal courts in the Russian Federation have an effect on the subject and method of labor law, labor legislation, law enforcement practices in respect to labor disputes;

legal positions of supreme federal courts in the Russian Federation fulfil five main functions in respect to the subject and method of labor law: an objectification function, a transmissive function, a law enforcement function, a law application function and an interpretative function;

the identified functions of legal positions of supreme federal courts in the Russian Federation are models for similar functions fulfilled by the Court of the Eurasian Economic Union in respect to relations within the Eurasian Economic Union.

Materials and Methods

In the process of confirming the hypothesis, the following **materials and methods** were used.

The main **materials** in the process of research were: administrative enactments of the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation; labor legislation; results of empirical studies of scholars on similar subjects; conventions of the International Labor Organization; the Treaty on the Eurasian Economic Union; administrative and interpretative enactments by the Court of the Eurasian Economic Union and the European Court of Human Rights; labor legislation of the Eurasian Economic Union member states.

Among the **general methods** the following shall be singled out: analysis (when criticizing the functions of legal positions identified in science); synthesis (when composing an authorial definition of 'functions of legal positions of supreme federal courts' based on identified attributes); deduction (when choosing a general research strategy – examination of attributes with a broader scope of concepts with subsequent transition to narrower: function – function of a legal position of a supreme federal court on labor disputes); induction (when extending the analysis results of administrative enactments of supreme federal courts to other acts of these courts); analogies (when studying specific forms the functions judicial and legal positions take to manifest themselves on labor disputes based on the functions of court practice within labor law doctrine); comparison (when comparing the labor legislation of the Russian Federation with the labor legislation of the Republic of Kazakhstan); abstraction (when examining the functional purpose of legal positions of supreme federal courts on labor disputes in isolation from the attributes of the functional purpose of broader categories: legal position, judicial and legal position to avoid the mistakes of other authors); generalization (when summarizing judicial acts on certain problematic law enforcement issues); dialectic method (when substantiating the mechanism for introducing legal positions of supreme federal courts into labor legislation).

Special Methods: a logical method (when comprehending the form of a legal position's existence as syllogisms in judicial acts); a linguistic method (when analyzing the more general category of a 'function' in comparison with the concept of 'a legal position function'); a classification method (when looking for the grounds to divide legal positions into types and to identify these types); a comprehensive approach (when identifying the impact areas of legal positions of supreme federal courts); a structural-functional method (when discovering the structure of a legal position function and when considering the influence of legal positions on the subject and method of labor law); a special juridical method (when identifying defects in labor legislation that could be eliminated by introducing legal positions of supreme federal courts on labor disputes into law); a diachronic approach (with consistent study of the authors' doctrinal views on the court practice function in labor law).

Results

A definition of the concept 'functions of legal positions of supreme federal courts' has been phrased.

The structure of the function of legal positions is established to include three main elements:

- 1) the legal position contained in an administrative enactment;
- 2) the impact area (subject) in the form of a subject/method of labor law, labor legislation, law enforcement practices on labor disputes;
- 3) the result of this impact in the form of dispute settlement, a new regulation, legal provision, or interpretation.

Five functions of supreme federal courts in respect to the subject and method of labor law have been identified.

The judicial nature of these functions has been discovered, so have been their theoretical and practical value for the branch, including for settlement of problems within the Eurasian Economic Union.

Discussion

The discussion on the impact of legal positions of supreme federal courts in the Russian Federation on the labor law should start with analysis of the most general – a philosophical definition of the ‘function’ concept. Function (*Lat. functio* – performance, fulfillment). In philosophy, function means: ‘1) activity, responsibility or job; external manifestations of some object’s properties in this system of relations; 2) assignment, the role fulfilled by a certain part of the system in relation to the whole’ (Prohorov, 1991: 914).

In other words, the functions of a certain phenomenon express the meaning this phenomenon has, its role in the established system. As for the functions, it is necessary to define, on the one hand, the studied phenomenon and to analyze its functions; on the other hand – the subject of the impact of these functions. The subject of the current research addresses:

- 1) first, the judicial (not economic, social or political) aspect of the issue exclusively;
- 2) second, the judicial and legal positions (neither law-making nor doctrinal) the functions of which are under consideration;
- 3) third, the legal system (the field of labor legislation) as the subject of the impact from the identifiable functions (therefore, the impact of the functions extends to every element in the legal system);
- 4) fourth, the impact of legal positions on all elements of the legal system is reflected upon the subject and method of labor law as a whole.

The first thesis does not require an additional explanation: the legal aspect of the issue is implied when the research addresses the legal position specifically, i.e., the position on law, legal phenomena in social life.

There seems to be so many types of legal positions and judicial legal positions. To conduct the research effectively, it is necessary to outline the framework of the phenomenon the functions of which will be studied. Judicial legal positions are a kind of law enforcement legal positions (along with such legal positions as managerial and administrative). The suggested classification of law enforcement legal positions originates from the division of law enforcement itself into three types – ‘judicial, administrative and managerial’ (Cherdancev, 2003: 232–233).

The law enforcement legal positions are one of three most global types of legal positions identified by N. A. Vlasenko in accordance with the structure of the legal system. According to a theory by S. S. Alekseev, the structure of a legal system consists of written law (a system of regulatory provisions), legal practice and the legal ideology’ (Alekseev, 1995: 83). Therefore, N. A. Vlasenko divided legal positions into law making (a basis of the ‘written law’), law enforcement (the basis for ‘legal practice’) and doctrinal (the basis for ‘legal ideology’) (Vlasenko, 2008: 80–86).

After separating judicial legal positions from law enforcement and doctrinal positions, the previously presented thesis should be amended since the judicial legal positions themselves can be divided into multiple categories based on certain criteria. One of them is the subject of legal position generation. This paper is dedicated to the legal positions of the supreme federal courts in the Russian Federation. Therefore, the subjects of generation of the legal positions under study are the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation. Legal positions of the Supreme Court of Arbitration of the Russian Federation that have previously been in force are not a part of the research, since its generic exclusive jurisdiction has never extended to labor disputes.

Based on the results of the research conducted by the authors mentioned in the introduction of this paper, having conducted a structural-functional analysis of the local legal positions by the supreme federal courts in the legal system of society, the functions of the legal positions in question on labor law specifically should be phrased and revealed.

To start with, the definition of the term ‘functions of legal positions of supreme federal courts’ shall be phrased – it includes the main areas of their impact on labor and other directly associated relations, labor legislation and law enforcement practices. They also serve to display the place and role of legal positions in the process of law making and legal regulation.

Three main areas of impact ensue from the definition:

- 1) labor and other directly associated relations;
- 2) labor legislation;
- 3) law enforcement practices;

A separate research paper can be written about the impact of judicial legal positions on each identified area. The first area is the subject of labor law. Considering the uniformity of labor law subject and method, the legal positions by the supreme federal courts make a joint impact on them. How exactly?

First, the most obvious function is objectification. Through the judicial legal positions, the subjective needs, interests and attitudes turn into objective, externally expressed activity. The will plays a great role in arranging this activity. Committing an act of will and turning to the court, the subjects of labor law often do not have accurate information on the regulatory provisions their needs, interests and attitudes are based on. Following the provisions of labor law, the court (including the supreme federal court) generates a legal position underlying the judicial decision. Based on this legal position, the decision will be executed, i.e., subjective needs, interests and attitudes of an employee (employer) will be objectified through the externally expressed actions of the individuals to whom this decision is addressed.

The second (transmissive) function directly results from the first one, since generation of a judicial legal position always involves the will of three parties – the legislator, the court and the party to the case. The legislator's will undoubtedly dominates, since both the court and the disputing parties abide precisely by the law. Even in rare cases when a regulatory provision is deemed unconstitutional, most activities of the court and the individuals engaged in the case are built on the current (interrelated material and procedural) statutory provisions, excluding the one considered contradictory to the Russian Federation Constitution. Thus, in the absolute majority of cases, legal positions 'transmit' the legislator's will for its further implementation into the activities of the subjects of labor law. Therefore, the transmissive function of judicial legal positions emerges.

The third function has been already mentioned in the descriptions of the first two. Both objectification and will transmission are tied directly to the exercise of rights. Given that the most critical attribute of a legal position is the direct connection with the legal provisions, the subjects of legal and directly associated relations can abide by the legal positions of the supreme federal courts when exercising their rights on a par with the statutory provisions.

For example, due to the adoption of Ruling No. 32-P of the Constitutional Court of the Russian Federation 'On the Case of Constitutionality Check, P. 1 and 8, Art. 332 of the Labor Code of the Russian Federation Concerning the Claim of Citizen A. A. Podakov' dated July 15, 2022¹, currently (until introduction of amendments into labor legislation), teaching employees belonging to the higher-education teaching personnel and other subjects of law shall be obliged to abide by the legal position from this Ruling when exercising their rights and fulfilling their duties.

Special attention should be paid to the fourth function. Despite all the obviousness of the law enforcement function, it is this one where special impact on the subject and method of labor law manifests itself.

The law in general and labor law in particular are dynamic systems. The changes in the world determine the changes in labor law: its subject and method. One of challenges in today's labor law is expansion of its subject.

Specifically, nowadays, the science of labor law addresses the problem typical for post-industrial society: expanding the area of sectoral standards, extending the labor law area to new public relations (Chucha, 2022: 118).

For example, the problem of so-called 'platform employment'. It is worth specifying for better understanding that platform employment is the interaction between the organization receiving orders, the subcontractor and the customer through a special network aggregator (platform). Examples of such platforms are SberMarket, Yandex.Eda, Taxi Gett, etc.

The problem is that the existing definition of labor relations secured in Art. 15 of the Russian Federation Labor Code does not consider these forms of employment, the very trilateral structure of relations, as

¹ Decision of the Constitutional Court of the Russian Federation of 15.07.2022 No. 32-P On the case of checking the constitutionality of parts of the first and eighth articles 332 of the Labor Code of the Russian Federation in connection with the complaint of citizen A. A. Podakov.

well as the procedure of interaction between parties, including manifestations of the ‘employer’s’ power via network aggregators. This implies the actual lack of proper regulation of the relations close to labor, but without property, social and other guarantees for the ‘employees’ (subcontractors).

The law enforcement function of legal positions of supreme federal courts in this case acquires a strictly practical direction, since in the absence of legal regulation of the aforementioned relations, the legal position of a supreme federal court may turn into that example that will be applied in practice until the relevant legislative defects are eliminated.

For example, the powers of the Russian Federation Constitutional Court set forth in Art. 125 of the Russian Federation Labor Code, as well as in Art. 79 of the Federal Constitutional Law ‘On the Constitutional Court of the Russian Federation’ allow a broad interpretation of Art. 15 of the LC of RF: to determine that several individuals may mean ‘employer’; that management and supervision may be performed via artificial intelligence, rating algorithms, etc.; that a specific type of work may be assigned by the third party (consumer); that compliance with the internal regulations does not mean abiding by a certain local act, but can manifest itself through the shift schedules in an electronic app instead, etc.

Additionally, the Russian Federation Constitutional Court should specify that the subcontractor’s registration as a self-employed worker paying taxes on the received income may not serve as a factor excluding emergence of labor relations, since currently the platforms use this legal conflict to avoid the signs of labor relations.

In other words, setting up the broadest interpretation of the definition from Art. 15 in the Russian Federation Labor Code currently in effect, the Russian Federation Constitutional Court can create a disputable presumption of existing labor relations with a transfer of the burden of proof to the customer organization (platform), which, on the one hand, shall help many citizens protect their rights and, on the other hand, shall encourage the legislator to prepare the long-awaited changes.

There is also another possible way to solve the problem of platform employment – also through the law enforcement function of legal positions by supreme federal courts. Specifically, the Russian Federation Constitutional Court can extend the validity of provisions in Chapter 53.1 of the Russian Federation Labor Code on private agencies to platform employment relations. In this model of legal relations, the platform serves as a private employment agency. And management and supervision (using artificial intelligence and rating algorithms as well) are performed by the host party (consumer) in whose interests the subcontractor provides the service (does the work).

The impact of the law enforcement function of legal positions on the method of labor law is also undoubted. For example, one of specific features of the labor law method is unity and differentiation of the established rights and responsibilities of subjects in labor relations (Skachkova, 2003: 242). The aforementioned unity and differentiation are established by statutory provisions, but they can be also specified by the legal positions of the supreme federal courts. A similar thought is mentioned in the research of some scholars (Diveeva, 2008: 17; Shtivel’berg, 2004: 9).

Examples of acts containing these legal positions are:

Resolution of the Plenum of the Russian Federation Supreme Court No. 1 dated January 28, 2014² – in respect to the issues of applying legislation regulating the labor of women, individuals with family obligations and minors;

Resolution of the Plenum of the Russian Federation Supreme Court No. 21 dated June 2, 2015³ – in respect to the issues of applying the legislation regulating the labor of the head of an organization and members of the collective executive body;

Resolution of the Plenum of the Russian Federation Supreme Court No. 52 dated November 24, 2015⁴ – in respect to the issues of applying the legislation regulating the labor of athletes and coaches.

A similar influence confirmed by examples of legal positions can be found in respect to such a specific method of labor law as social partnership in the field of labor. The existence of this method has not yet

² Resolution of the Plenum of the Supreme Court of the Russian Federation of 28.01.2014 No. 1 ‘On the Application of Legislation Regulating the Work of Women, Persons with Family Duties and Minors.’

³ Resolution of the Plenum of the Supreme Court of the Russian Federation of 02.06.2015 No. 21 ‘On Certain Issues Arising from the Courts in the Application of Legislation Regulating the Work of the Head of the Organization and Members of the Collegial Executive Body of the Organization’.

⁴ Resolution of the Plenum of the Supreme Court of the Russian Federation of 24.11.2015 No. 52 ‘On the application by the courts of legislation regulating the work of athletes and coaches’.

been recognized on the level of the labor law doctrine, but it has been confirmed in the papers of many eminent representatives of the academic community (Lushnikov, 2004: 11, 23; Lushnikova, 1997: 245).

The viewpoints of the aforementioned authors are confirmed, among other things, by the legal positions contained in:

Resolution No. 38-P of the Russian Federation Constitutional Court dated December 7, 2017⁵ (on the issue of legal regulation of a regional minimum wage agreement, specifically: the validity of the agreement in respect to the workers of the organizations financed from the federal budget);

Resolution No. 26-P of the Russian Federation Constitutional Court dated June 3, 2021⁶ (on the issue of dismissing the head of the elected collective body of the primary trade union organization without discharging from the main employment based on the grounds provided for by cl. 2, P. 1, Art. 81 of the Russian Federation Labor Code regardless of the decision by a superior elected trade union body on the disagreement with this dismissal before the judicial decision made on the basis of the employer's application comes into effect to recognize the aforementioned decision by the superior elected trade union as unjustified);

Judgment No. 37-KG14-4 by the Judicial Chamber for Civil Cases of the Russian Federation Supreme Court dated September 5, 2014⁷ (on the issue of a pregnant woman exercising the right to reject the previously achieved dismissal agreement per cl. 1, P. 1. Art. 77 of the Russian Federation Labor Code).

The fifth function is interpretative. The impact of legal positions by the supreme federal courts on the subject of labor law through law enforcement is inextricably intertwined with interpretative activity. Interpretation takes place both parallel to the application of law and separately from the latter (in the acts of the Russian Federation Constitutional Court). Examples of the interpretative function of the legal positions under study are all the acts of supreme federal courts. For example, only in Resolution No. 2 of Plenum of the Russian Federation Supreme Court dated March 17, 2004,⁸ can one find examples of legal positions with literal interpretation of provisions (the absolute majority of legal provisions); broad interpretation (cl. 25 of the Resolution) and restrictive interpretation (cl. 15 of the Resolution).

Due to the interpretation, labor relations are either specified or, vice versa, are generalized. The issue of labor law provision interpretation and its respective impact on the subject may require several studies. All the more so since there are even some statements in science about special 'labor law hermeneutics' (Amel'chenko, 2010; Tishkovich, 2015).

The identified functions have their potential not only on the national level, but on the level of international associations as well. In particular, the examined functions of legal positions very well may manifest themselves in the activities of the Court of the Eurasian Economic Union.

Due to historical, socio-economic, political and other reasons, the dominant legal tradition of the Eurasian Economic Union (hereinafter – EAEU) member states is legal positivism. Therefore, practical issues arising during social development can be regulated exclusively by introducing the relevant amendments into the legislation, which implies a legislative process comprising several stages, the first of which is the legislative initiative. Among all the legal grounds for amending the current legislation, the following shall be identified: standards of international law contained in international treaties; standards of domestic law in the country – member state of a certain international organization taken as a model by another country; legal positions of international judicial authorities.

The first group of standards is usually put into effect through ratification. Examples here are conventions of the International Labor Organization ratified by all the EAEU member states (On Freedom of Association

⁵ Decision of the Constitutional Court of the Russian Federation of 07.12.2017 No. 38-P 'On the case of checking the constitutionality of the provisions of Article 129, parts of the first and third articles 133, parts of the first, second, third, fourth and eleventh articles 133.1 of the Labor Code of the Russian Federation in connection with the complaints of citizens V. S. Grigorieva, O. L. Deidey, N. A. Kapurina and I. Ya. Kurash'.

⁶ Decision of the Constitutional Court of the Russian Federation of 03.06.2021 No. 26-P 'On the case of checking the constitutionality of part three of article 374 of the Labor Code of the Russian Federation in connection with the complaint of citizen E. K. Sergeeva'.

⁷ Determination of the Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation dated 05.09.2014 No. 37-KG14-4.

⁸ Resolution of the Plenum of the Supreme Court of the Russian Federation of 17.03.2004 No. 2 'On the Application of the Labor Code of the Russian Federation by the Courts of the Russian Federation'.

and Protection of the Right to Organize – No. 87; On Rural Workers’ Organizations and Their Role in Economic and Social Development – No. 141; On Tripartite Consultation (International Labor Standards) – No. 144, etc.) (Golovina & Lutov, 2016: 64).

The second group of standards does not have a definite mechanism for ‘borrowing’ legal structures from the domestic legislation of another country. However, there is no prohibition on such use of standards as the model, as confirmed by the relevant examples. Specifically, the Law of the Republic of Kazakhstan ‘On Introducing Amendments and Supplements into Certain Legal Acts of the Republic of Kazakhstan on Labor Issues’ dated May 4, 2020⁹, according to which employers shall be obliged to create conciliatory commissions the legal status and functional purpose of which are similar to the status and purpose of the commissions on regulating social and labor relations from Art. 35 of the Russian Federation Labor Code. Moreover, based on a systematic interpretation of Art. 3 and Art. 5 of the Treaty on the Eurasian Economic Union (on principles of cooperation, equality, transparency; on mutually approved and well-coordinated policy) such a form of legislative material exchange is a priority.

The third group includes the legal positions that become statutory provisions resulting from the introduction procedure, although no longer of international law, but of legal positions. It is difficult to find any examples of integration of the legal positions of international courts into the Russian labor legislation. The closest examples are the Resolution of the European Court of Human Rights dated March 22, 2012 that was never implemented by Resolution No. 27-P of the Russian Federation Constitutional Court dated December 6, 2013. Similarly, there are no implemented legal positions of the EAEU Court.

That said, analysis of law enforcement and interpretative acts of the EAEU Court (resolutions, decisions, advisory proceedings) have shown the high potential for the mechanism for introducing its legal positions into Russian legislation. The introduced legal positions will be able to perform all five aforementioned functions. It appears reasonable for EAEU member states to work out stated legal positions and to introduce them into legislation on the most problematic issues related to human resources mobility, protection of working migrants’ rights, social partnership, introduction of international labor standards, etc. The development of the procedure for introducing legal positions of the EAEU Court with their subsequent ratification by the Russian Federation Constitutional Court is a promising mechanism for improving Russian labor legislation.

Conclusion

Based on the results of the conducted research, the issue of the functional purpose of legal positions of supreme federal courts in the Russian Federation on labor disputes has been examined comprehensively for the first time. First, the impact areas of the legal positions under study have been identified: labor and other directly associated relations; labor legislation; law enforcement practices on labor disputes. Second, the signs of functions of legal positions have been identified and revealed and a definition of the concept ‘functions of legal positions of supreme federal courts’ has been phrased on their basis. Third, five functions of legal positions of supreme federal courts in the Russian Federation in respect to the subject and method of labor law have been identified and revealed: an objectification function, a transmissive function, a law enforcement function, a law application function and an interpretative function. To exemplify the impact of legal positions of supreme federal courts on labor and other directly associated relations in respect to labor disputes, the variants of the legal positions’ impact on the platform employment for settling practical problems have been modeled. Also, from the view of practical purposes, it was proven that the functions of judicial legal positions are applicable not only on the national level, but on the international as well (as exemplified by EAEU Court activity).

References

- Alekseev, S. S. (1995) *Teoriya prava* [Theory of law]. Moscow: BEK. (in Russian)
 Amel’chenko, M. N. (2010) *Germenevtika trudovogo prava Rossii i Germanii* [Hermeneutics of labor law of Russia and Germany]. Saint Petersburg: Saint Petersburg State University. (in Russian)

⁹ Law of the Republic of Kazakhstan of May 04, 2020 No. 321-VI ZRK ‘On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Labor Issues’.

- Baranov, V. M. & Stepankov, V. G. (2003) *Pravovaya pozitsiya kak obshcheteoreticheskiy fenomen* [Legal position as a general theoretical phenomenon]. Nizhny Novgorod: Nauka. (in Russian)
- Bezina, A. K. (1989) *Sudebnaya praktika v mekhanizme pravovogo regulirovaniya trudovykh otnoshenii* [Judicial practice in the mechanism of legal regulation of labor relations]. Kazan: Izdatel'stvo Kazanskogo universiteta. (in Russian)
- Cherdancev, A. F. (2003) *Teoriya gosudarstva i prava* [Theory of State and Law]. Moscow: Yurait. (in Russian)
- Chucha, S. Yu. (2022) Predmet trudovogo prava v postindustrial'nom informatsionnom obshchestve i doktrina trudovykh pravootnoshenii [Subject of labor law in the post-industrial information society and the doctrine of labor legal relations]. *Vestnik Omskogo universiteta* [Herald of Omsk University], 2, 117–120. (in Russian)
- Diveeva, N. I. (2008) *Teoreticheskie problemy individual'nogo pravovogo regulirovaniya trudovykh otnoshenii* [Theoretical problems of individual legal regulation of labor relations]. Saint Petersburg: Saint Petersburg State University. (in Russian)
- Golovina, S. Yu. (1997) Rol' sudebnoi praktiki v formirovani ponyatiinogo apparata trudovogo prava [The role of judicial practice in the formation of the conceptual apparatus of labor law]. *Vestnik Omskogo universiteta* [Herald of Omsk University], 3, 100–103. (in Russian)
- Golovina, S. Yu., & Lyutov, N. L. (2016) *Mezhdunarodnye trudovye standarty i rossiiskoe trudovoe pravo: perspektivy koordinatsii* [International labor standards and Russian labor law: prospects for coordination]. Moscow: Norma. (in Russian)
- Gorohov, B. A. & Mavrin, S. P. & Hohlov, E. B. (2003) Istochniki trudovogo prava i istochniki pravovogo regulirovaniya obshchestvenno-trudovykh otnoshenii [Sources of labor law and sources of legal regulation of social and labor relations]. *Pravovedenie* [Jurisprudence], 6, 30–47. (in Russian)
- Hohryakova, O. S. (2006) Pravovye pozitsii Konstitutsionnogo suda RF i ikh znachenie dlya primeneniya trudovogo zakonodatel'stva i zakonodatel'stva sotsial'nogo obespecheniya [Legal positions of the Constitutional Court of the Russian Federation and their significance for the application of labor and social security legislation]. *Voprosy trudovogo prava* [Labor Law Issues], 9, 19. (in Russian)
- Kurylyova, O. S. (1989) *Sudebnaya praktika i sovershenstvovanie trudovogo zakonodatel'stva* [Judicial practice and improvement of labor legislation]. Minsk: Nauka i Tekhnika. (in Russian)
- Luk'yanova, O. A. (2013) Funktsii i rol' pravovykh pozitsii v yuridicheskom protsesse [Functions and role of legal positions in the legal process]. *Aktual'nye problemy pravovedeniya*, 39, 102–103. (in Russian)
- Lushnikova, M. V. (1997) *Pravovoi mekhanizm sotsial'nogo partnerstva v regulirovanii trudovykh i sotsial'no-obespechitel'nykh otnoshenii: sravnitel'no-pravovoe issledovanie* [Legal mechanism of social partnership in the regulation of labor and social security relations: comparative and legal study]. Moscow: Lomonosov Moscow State University. (in Russian)
- Lushnikov, A. M. (2004) *Teoreticheskie problemy individual'nogo pravovogo regulirovaniya trudovykh otnoshenii* [Theoretical problems of individual legal regulation of labor relations]. Moscow: Moscow State Legal Academy. (in Russian)
- Mironov, V. I. (2006) *Praktika noveishego trudovogo zakonodatel'stva* [Practice of the latest labor legislation]. Moscow: Delo. (in Russian)
- Poluhina, E. E. (2010) *Effektivnost' pravovogo regulirovaniya trudovykh i inykh neposredstvenno svyazannykh s nimi otnoshenii i sudebnaya praktika* [Effectiveness of legal regulation of labor and other relations directly related to them and judicial practice]. Moscow: Ekoonis. (in Russian)
- Prohorov, A. M. (ed.) (1991) *Bol'shoi entsiklopedicheskii slovar'* [Great Encyclopedic Dictionary]. Moscow: Norint. (in Russian)
- Shtivel'berg, F. B. (2004) *Osnovaniya i predely differentsiatsii trudovogo prava Rossii* [Grounds and Limits of Differentiation of Russian Labor Law]. Yekaterinburg: Ural State Law University. (in Russian)
- Skachkova, G. S. (2003) *Rasshirenie sfery deistviya trudovogo prava i differentsiatsii ego norm* [Expansion of the scope of labor law and differentiation of its norms]. Moscow: MGIU. (in Russian)
- Tishkovich, K. S. (2015) Mekhanizm tolkovaniya norm trudovogo prava [Mechanism of interpretation of labor law]. *Herald of Omsk University*, 43 2, 14–21. (in Russian)



Vedeshkina, T. P. (2022) Unconventional labor law sources: a concept and types. *Russian juridical journal*. 1, 47–55. (in Russian)

Vlasenko, N. A. (2008) Pravovye pozitsii: ponyatie i vidy [Legal positions: concept and types]. *Journal of Russian Law*. 12, 80–86. (in Russian)

Vlasenko, L. V. (2011) *Nalogovye pravovye pozitsii sudov: teoriya i praktika* [Tax legal positions of the courts: theory and practice]. Moscow: Norma. (in Russian)

Zhil'cov, M. A. (2010) *Defekty trudovogo prava* [Defects of labor law]. Ekaterinburg: Izd-vo UGTU-UI. (in Russian)

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