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APPRENTICESHIP AGREEMENT ON THE RUSSIAN LABOR LAWS

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ABSTRACT

The researched subject is important today because, first of all, each employer is interested in the skilled personnel. The required skills can be obtained through the studies at an educational institution, and through the training organized directly by the employer. With account taken of the said circumstances, the apprenticeship issues came to be regulated by the labor laws. At the same time, it is unclear how to define a notion of the apprenticeship agreement, its correlation with the labor agreement, availability of classification varieties of such an agreement. As a result, in practice, the questions often arise about a possibility of including some conditions in the apprenticeship agreement, determining the apprenticeship period, paying for this time, and which laws branch (the civil or labor laws) regulates this agreement. This paper is aimed at researching a historical aspect of the legal regulation of the apprenticeship by the Russian labor laws, which exerted a significant influence upon the modern state of this institution. The paper covers the legal and regulatory framework of the apprenticeship at a modern stage in terms of executing the apprenticeship agreement, its notion in order to exclude different interpretations. By using a comparative-legal method, the applicable labor laws were analyzed on regulating the apprenticeship of the Asia-Pacific region countires, as exemplified by the People's Republic of China.

INTRODUCTION

Each employer seeks to provide the production process with the high-skilled personnel. That's why the employers are interested in professional training of the potential employees and in the re-training and the advanced training of the existing employees. Thus, in the market economy environment, the employers,

when bearing expenses for the employees' education, ensure the achievement of the modern state tasks of training the highly-skilled personnel to implement the ideas about the innovation and digital economy[1].

While entering into a labor agreement, it is necessary to state the employee's labor function (the work in a position in accordance with the staff schedule, a profession, a specialty with the qualification statement). In order to acquire a certain profession or a specialty, it is necessary to obtain a relevant education or to undergo special training. In real life, it is often the case that a person wishes to get a job in a specific organization to fulfill a specific labor function, but he/she has only the general education. In such cases, it is necessary to primarily enter into the apprenticeship agreement with such a potential employee in order to teach him/her the skills that are required to fulfill a certain labor function.

Research of a legal nature of the apprentice agreement, in spite of the existing scientific papers in this sphere, continues to be important considering that a chapter of the applicable Labor Code of the Russian Federation, which covers the apprenticeship agreement, has an internal discrepancy even now, which indicates the shortcomings in legal regulation of the apprenticeship agreement at a legislative level, which, in their turn, influence the problems arising in the enforcement, including the labor disputes litigation. The foregoing stresses a special significance of modern state of a problem of the legal regulation of the apprenticeship agreement, and predetermines the selected subject importance.

The main **goal** of this paper is to research the existing problems related to the legal regulation of the apprenticeship agreement, to substantiate a necessity to improve the applicable labor laws regulating the apprenticeship issues, to state its proposals on such improvement in order to ensure a more complete exercise of the citizens' rights to acquire a relevant qualification to fulfill their labor function.

The goal, which the author has set, made it possible to receive certain results through solving such **tasks** as determining the notion of the apprenticeship agreement; considering the legal regulation of the apprenticeship agreement in its historical development and at a modern stage; systematizing the legal regulation problems of the apprenticeship agreement; revealing the prospects of further development of the legal regulation of the apprenticeship agreement.

Scientific novelty is that, as a result of the comprehensive research of historical heritage of the legal regulation of the apprenticeship and modern important theoretical and practical problems of the apprenticeship agreement institution, the author's proposals are set forward on changing the applicable

[1]**Novikova N.V. Problems of protecting the employer's investments in education of the employees and the job seekers by means of the labor law. // Lex russica. 2020. V. 73. No. 5. P. 158. [Новикова Н. В. Проблемы защиты инвестиций работодателя в образование работников и лиц, ищущих работу, средствами трудового права // Lex russica. 2020. Т. 73. № 5. С. 158.]**

labor laws of the Russian Federation, which are aimed at removing the existing problems in the legal regulation of the apprenticeship agreement.

Practical significance of this research is that conclusions and proposals concerning the proposed changes in the laws can be used to improve the applicable legal provisions regulating the apprenticeship agreement. The paper materials are of practical value for studying the labor law branch and for applying them in practice when considering the civil cases on labor disputes about the apprenticeship agreements.

The said parameters indicate an importance of the proposals set forward on making necessary changes in the applicable labor laws of Russia in the sphere of regulating the employees' rights for the training, the additional professional education, entering into the apprenticeship agreements and their corresponding obligations of the employer, and the rights of employers and the relevant obligations of employees under the apprenticeship agreements.

Conclusions: the tasks that face the labor law science coincide with those facing the labor laws, including a task of creating the necessary legal conditions to exercise the employees' right for the training and the additional professional education received directly at a specific employer.

Materials and methods

The methodological foundation of the research is a general scientific dialectical method implying the objectivity and the comprehensiveness of learning the phenomena researched. Special methods were also used: systemic and structural analyses, comparative, historical and sociological methods. The used methods made it possible to obtain the following **results**: the conducted research and an analysis of the Russian and foreign laws made it possible to reveal the available advantages and disadvantages of the Russian labor laws, allowed the author to set forward her proposals concerning the development prospects of the legal regulation of the apprenticeship agreement.

The applicable legal (legal and regulatory) framework, which regulates the issues related to the apprenticeship agreement institution, has many shortcomings and flaws leading to an ambiguous interpretation of some legislative provisions in the disputes arising in this field. As the practice and theory show, the existing legal concepts and mechanisms of the apprenticeship agreement institution often do not work in the existing economic reality.

In spite of the fact that a need for such legal relationshipб as the apprenticeship relationship, attracted and now attracts attention of many scientists-lawyers, this subject remains worked out insufficiently.

Issues of the legal regulation of the apprenticeship agreement were researched by such scientists as N.G. Aleksandrov, E.R. Bryukhina, K.M. Varshavsky,

S.Yu. Golovina, K.N. Gusov, V.M. Dogadov, A.M. Lushnikov, M.V. Lushnikova, P.D. Kaminskaya, Ю.P. Orlovsky, A.S. Pashkov, O.V. Smirnov, A.I. Stavtseva, N.N. Tarusina and others. The content and the meaning of the apprenticeship agreement were considered by the scientists E.M. Akopova, A.M. Kurennoi, S.P. Mavrin, M.V. Molodtsov and others.

Since recently, still more attention has been paid to the issues of legal regulation of the apprenticeship and the apprenticeship agreements. In particular, the Russian scientists research the issues of a legal nature of the apprenticeship agreement[2], the apprenticeship agreement content [3], the problems of legal regulation of the apprenticeship agreement [4], correlation between the apprenticeship agreement and the education agreement [5], the apprenticeship agreement liability [6], the employer's problems in connection with entering into the apprenticeship agreement [7]. The foreign scientists also research the apprenticeship agreements (teaching contracts)[8], issues of a strategy of the apprenticeship and the skill development [9] and others.

History of legal regulation of the apprenticeship agreement in the Soviet period

Study of problems of an issue implies consideration of its theoretical problems and law-application practice. In addition, one must analyze a place, a role and

[2] **Kisileva E.V. Legal nature of the apprenticeship agreement // Legal idea in education, science, practice. 2018. No. 3 (7). `URL: http://www.cyberleninka.ru (accessed date is 28.06.2020). [Киселева Е.В. Правовая природа ученического договора. // Правовая мысль в образовании, науке, практике. 2018. № 3 (7). `URL: http://www.cyberleninka.ru (дата обращения 28.06.2020).].**

[3] **Kossov I.A. On the content of the apprenticeship agreement in the Russian Federation. // Bulletin of Russian State University for the Humanities. Series "Economy, Management, Law. 2015. URL: http://www.cyberleninka.ru/ (accessed date is 28.06.2020).[Коссов И.А. К вопросу о содержании ученического договора в Российской Федерации. // Вестник РГГУ. Серия «Экономика. Управление. Право». 2015. URL: http://www.cyberleninka.ru/ (дата обращения 28.06.2020).]**

[4] **Bryukhina, E.R. On the problems of legal regulation of the apprenticeship agreement //Paradigm of the labor and social laws in the time of building the post-industrial society: Collection of scientific papers following the IIIrd International scientific and practical conference., October 23-24, 2015. Editors-in-chief is K. L. Tomashevsky and others. – Minsk: International University "MITSO", 2015. – P. 21–24. – URL: http://elib.grsu.by/katalog/516946pdf.pdf (accessed date: 05.02.2020). [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 октября 2015 года. гл. ред. К. Л. Томашевский и др. – Минск: Междунар. ун-т «МИТСО», 2015. – С. 21–24. – URL: http://elib.grsu.by/katalog/516946pdf.pdf (дата обращения: 05.02.2020).]**

[5] **Novikova N.V. On correlation of the apprenticeship agreement and the education agreement //Bulletin of Perm State University. Juridical sciences. 2017. No. 2. P. 210-221.[Новикова Н.В. О соотношении ученического договора и договора об образовании //Вестник Пермского университета. Юридические науки. 2017. № 2. С. 210-221.]**

[6] **Sokolov Ya.O. Calling up for military service and the apprenticeship agreement liability //Law in the Armed Forces. 2018. No. 2. P 79-83.[Соколов Я.О. Призыв на военную службу и ответственность по ученическому договору //Право в Вооруженных Силах. 2018. № 2. С. 79-83.]**

[7] **Dubitskaya S.A. On some problems of the employer in connection with entering into the apprenticeship agreement. //Vestnik of Omsk Law Academy. 2015. № 1 (12). URL: http://www.cyberleninka.ru/ (accessed date is 26.06.2020).[Дубицкая С.А. О некоторых проблемах, возникающих у работодателя в связи с заключением ученического договора. //Вестник Омского юридического института. 2015. № 1 (12). URL: http://www.cyberleninka.ru/ (дата обращения 26.06.2020).]**

[8] **Brecko D. Learning Contract: A New Tool for Managing Knowledge. URL: http://www.fmkp.si/zalozba/ISBN/961-6486-39-X/257-271.pdf (accessed date is 17.07.2020); 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 (accessed date is 17.07.2020).**

[9] **Marques, Israel, Training Strategies and Skill Development Amid Weak Institutions: Evidence from Russia (November 28, 2017). Research paper of Higher School of Economics No. WP BRP 52 / PS / 2017, available at the address SSRN: https://ssrn.com/abstract=3078502 (access date is 17.07.2020)**

history of the issue arising in the context of the development stages of the Russian state and society. M.N. Marchenko believes that "… this makes it possible to understand a social nature of the state and law, their peculiarities and traits more deeply. This makes it possible to analyze the reasons and conditions of their appearance and development" [10].

The questions what relations appear between the teacher and the apprentice, if they are labor relations, were discussed by the scientists permanently. N.G. Aleksandrov said that relations between the teacher and the apprentice were the labor relationship in terms of relations between the subjects of law on using the labor force of one of them[11].

In order to study the issue of formation and development of the apprenticeship in the Russian labor laws completely and in detail, it is necessary to turn to the regulatory sources that were efficient in the Soviet period of the Russian history.

The Soviet period in Russia is determined since the 2017 October Revolution. The regulatory enactments in the sphere of the labor laws, which were passed when the Soviet state was in the making, serviced as a foundation for creating the legal and regulatory framework. That's why it is important and necessary to research the historical past for any investigation.

A characteristic of the labor law, which was formed as one of the most important branches of the laws in the Soviet period, is reflected in the papers by E.A. Andrushkin, L.V. Borisova, I.Ya. Kiselev and others[12] and rises no doubts.

One should agree that formation of the Soviet type of apprenticeship was not related to the production requirements, but it was related to the military necessity and economic difficulties of the Civil war with addition of sufficient ideological constituent[13].

Analysis of the first Soviet codified act in the labor sphere – the 1918 RSFSR Labor Code [14] shows that the apprenticeship issues were not reflected there. The educational vocational conscription was introduced in the country, according to which all the persons of from 18 to 40 years old, was obliged to attend the factory evening short-term courses. These events had nothing to do

[10] Marchenko M.N. Theory of state and law: textbook. M.: Prospect, 2015. P. 97. [Марченко М.Н. Теория государства и права: учебник. М.: Проспект, 2015. С. 97]

[11] Aleksandrov N.G. Labor legal relationships (on edition of 1948) / N.G. Akeksandrov. M.: Prospect, 2008. P. 25–26. [Александров Н.Г. Трудовое правоотношение (по изд. 1948 года) / Н.Г. Александров. М.: Проспект, 2008. С. 25–26.]

[12] Andrushin E.A. History of the USSR labor education and policy pursued by the Soviet government in the sphere of labor resources. M., 2012; Borisova L.V. Labor relations in the Soviet Russia (1918-1924). M., 2006; Kisilev I.Ya. Labor law of Russia. Historical-legal research. M., 2001 and others [Андрюшкин Е.А. История трудового законодательства СССР и политика советского правительства в области трудовых ресурсов. М., 2012; Борисова Л.В. Трудовые отношения в Советской России (1918-1924 гг.). М., 2006; Киселев И.Я. Трудовое право России. Историко-правовое исследование. М., 2001 и др.]

[13] Tarusina N.N., Lushnikoa A.M., Lushnikova M.V. Social agreements in the law: monograph. M.: Prospect, 2017. //SPS Consultant Plus.[Тарусина Н.Н., Лушников А.М., Лушникова М.В. Социальные договоры в праве: монография. М.: Проспект, 2017. //СПС КонсультантПлюс.]

[14] Code of Justice of the RSFSR. 1918. No. 86-87. Article 905.

with the apprenticeship agreement, but they meant an unprecedented type of compulsory vocational teaching outside of the main working time[15].

In this period, a vison of the apprenticeship as a source of the schedule training and the labor force distribution was established. Thus, P.D. Kaminskaya wrote about the teenagers as "the labor force reserve" from which the "government must supply its demands for skilled labor personnel. Thus, they called to deliberately distribute the teenagers by separate branches in accordance with demands for the skilled labor force"[16]. At the same time, P.D.Kaminskaya singled out three kinds of apprenticeship: "1) factory-and-works apprenticeship in schools of the factory-and-works teaching and teams; 2) individual apprenticeship – under the leadership of separate workers; 3) domestic and handicraft apprenticeship – apprenticeship from the artisans and the handicraftsmen"[17].

In addition, a legal nature of the apprenticeship agreement in the Soviet literature of the 1920s-1940s has never been clear-cut. The regulatory enactments of that time ignored this problem and the notion of an agreement in the labor law.

The new economic policy pursued by the government required a change of the applicable labor laws, in particular, development and passing of the new RSFSR Labor Code of 1922[18]. This Code firstly introduced the legal regulation of the apprenticeship and gave the notion "apprentices in the workplace". The apprentices implied the persons who were in the apprenticeships schools, the training brigades and the workshops, and who were trained individually during the production under the leadership of skilled workers. The powers on establishing the standards of the apprentices' number were granted to the People's Labor commissariat of the RSFSR, which was to coordinate its actions in this field with the All-Russian Central Trade Union Council and the central economic bodies of specific branches of the industry. The enterprises and organizations were granted a right to determine a necessary number of apprentices in entering into a collective agreement and in the absence of such an agreement, but the number must not be lower that it was established by the People's Labor commissariat[19].

Availability of a separate chapter gave grounds to some scientists for attributing the apprenticeship agreement to an independent agreement type [20].

[15] Tarusina N.N., Lushnikov A.M., Lushnikova M.V. Social agreements in the law: monograph. M.: Prospect, 2017 //SPS Consultant Plus.[Тарусина Н.Н., Лушников А.М., Лушникова М.В. Социальные договоры в праве: монография. М.: Проспект, 2017 //СПС КонсультантПлюс.]

[16] Kaminskaya P.D. Labor of minors and apprentiseship /P.D. Kaminskaya. M.: Issues of Labor, 1925. P. 4-6.[Каминская П.Д. Труд несовершеннолетних и ученичество /П.Д. Каминская. М.: Вопросы Труда, 1925. С. 4-6.]

[17] Ibidem. P. 35.

[18] Code of Justice of the RSFSR. 1992. No.70 Article 903

[19] See: Glebov V.G. Apprenticeship agreement: monograph. M.: Lawyer, 2006 //SPS Consultant Plus[См.: Глебов В.Г. Ученический договор: монография. М.: Юрист, 2006 //СПС КонсультантПлюс]

[20] Izbienova T. Pseudo-apprenticeship // Kadrovik. 2013. No. 8. P. 23. URL: https://elibrary.ru/item.asp?id= 20519659 (accessed date: 30.06.2020).[Избиенова Т. Псевдоученичество // Кадровик. 2013. № 8. С. 23. URL: https://elibrary.ru/item.asp?id= 20519659 (дата обращения: 30.06.2020).]

But an opinion was expressed that the employer's position can be interpreted from a point of view according to which a ground of creation of the legal relationship on the industrial training can be only a labor agreement entered into with an apprentice with observing special conditions[21] determined by Chapter XII of the 1922 Labor Code. K.M. Varshavsky considered the apprenticeship as a component of the labor agreement, when noting that during the apprenticeship "the main obligations of the parties to the labor agreement, giving the labor force and payment of the fee, are complicated with the employer's obligation to train the employees a certain profession"[22].
It should be noted that the 1922 Labor Code did not define the notion "apprenticeship agreement", did not secure the order of its conclusion, did not open the rights and obligations of the parties to such an agreement. For all that, the said Code was the first to regulate the apprenticeship issues, which, of course, can be considered as a positive progressive advantage of this regulatory enactment.

An utilitarian approach to the apprenticeship is noted in the majority of the research carried out in that period, and the apprentices' rights were discussed mainly in the context of their relations with private businessmen and handicraftsmen[23].

A necessity to ensure the forced formation of the economy left its mark on solving the apprenticeship issues.

Since the beginning of the 1930s, a center of training the labor force was the factory apprenticeship schools and work schools laying the groundwork for the Soviet system of vocational education. They existed up to 1963.

These schools, like the vocational schools, which were established later, belonged to the vocational education system. At the middle of the 1980-s, various vocational educational institutions were reorganized into a single type of the educational institution – the secondary vocational school. Entering such schools did not give rise the labor relations, and the educational process in these schools was not regulated by the labor law[24].

[21] Lushnikov A.M. Development of teaching and the laws on professional education: historical and legal excursus // Bulletin of P.G. Demidov Yaroslavl State University. The series "the humanities". 2008. No. 5. P. 74. URL: https://elibrary.ru/item.asp?id=12864754 (accessed date: 30.06.2020).
[Лушников А.М. Развитие учения и законодательства о профессиональном обучении: историко-правовой экскурс // Вестник Ярославского государственного университета им. П.Г. Демидова. Серия гуманитарные науки. 2008. № 5. С. 74. URL: https://elibrary.ru/item.asp?id=12864754 (дата обращения: 30.06.2020).]
[22] [13]Varshavsky K.M. Practical dictionary on labor law / K.M. varshavsky. M.: labor issues, 1927. P. 141.[Варшавский К.М. Практический словарь по трудовому праву / К.М. Варшавский. М.: Вопросы Труда, 1927. С. 141.]

[23] Dogadov V.M. Labor rights of the handicraftsmen's apprentices / V.M. Dogadov. M.: Priboi, 1930. P. 34. URL: http://lawlibrary.ru/izdanie10076.html (accessed date: 30.06.2020). [Догадов В.М. Трудовые права учеников у кустарей / В.М. Догадов. М.: Прибой, 1930. С. 34. URL: http://lawlibrary.ru/izdanie10076.html (дата обращения: 30.06.2020).]
[24] Lushnikov A.M. Development of teaching and laws on professional training: historical-legal excursus // Bulletin of P.G. Demidov Yaroslavl State University. Series "The Humanities". 2008. No. 5. P. 74. URL: https://elibrary.ru/item.asp?id=12864754 (accessed date is 30.06.2020).[Лушников А.М. Развитие учения и законодательства о профессиональном обучении: историко-правовой экскурс // Вестник Ярославского государственного университета им. П.Г. Демидова. Серия гуманитарные науки. 2008. № 5. С. 74. URL: https://elibrary.ru/item.asp?id=12864754 (дата обращения: 30.06.2020).]

Since the beginning of the 1950s, the labor laws has been liberalized, which entailed making some changes in some institutions of the labor laws. However, the sphere of regulating the apprenticeship was not changed. A system of training and advanced training of the workers, which was built on a centralized planned basis, was in force.

Thus, the laws vagueness favored the fact that the scientists expressed two points of view about a legal nature of the apprenticeship agreement: 1) the apprenticeship agreement is a variety of the labor agreement under which the worker, along with the labor obligations, assumes an additional obligation to master a specialty during the work for a certain period; 2) the apprenticeship agreement is an independent kind of agreement, while the apprenticeship relations are a special group of social relations regulated by the labor law[25].

At the same time, the opinions were expressed that it is necessary to enshrine in law a specific definition of the apprenticeship agreement and various options of this definition were proposed. In particular, at the beginning of the 1960s K.P. Urzhinsky formulated a definition of the apprenticeship agreement as an agreement, by virtue of which one party (the apprentice) undertakes, for a period of time, to study the specialty by means of the labor activities and theoretical lessons, and the other party (the enterprise) undertakes to organize the teaching, to create the conditions necessary for the teaching, to pay the fee, and, after the training is completed, to grant the apprentice a job that would correspond to the acquired specialty. This definition conformed to the apprenticeship laws that were applicable in those years[26].

The first All-Union codified act on labor – Fundamentals of the USSR and Soviet Republics laws on Labor of 1970 (hereinafter referred to as the Fundamentals)[27] – laid the foundation for the whole subsequent system of the Soviet labor laws and was a standard for the subsequent codifications of the labor laws at a republican level of the USSR.

These Fundamentals changed the approach to regulating the apprenticeship. In particular, the notion "apprenticeship" disappeared, new terms "professional on-the-job training", "professional training", "combining work and study", "advanced training" were introduced, forms of professional teaching were established: individual, team, course teaching and other forms of the professional on-the-job training through the enterprise's funds, and the Fundamentals established the employer's obligations to create necessary conditions for combining work and study for industrial and office workers

[25] Tarusina N.N., Lushnikov A.M, Lushnikova M.V. Social agreements in the law: monograph. M.: Prospect, 2017//SPS COnsultantPlus.[Тарусина Н.Н., Лушников А.М., Лушникова М.В. Социальные договоры в праве: монография. М.: Проспект, 2017//СПС КонсультантПлюс.

[26] Urzhinsky K.P. Apprenticeship Agreement // Science of law. 1961. No. 3. P. 67.[Уржинский К.П. Договор об ученичестве // Правоведение. 1961. №3. С. 67.]

[27] The USSR Law dated 15.07.1970 No. 2-VIII "On approval of Legislation Fundamentals of the USSR and Soviet Republics on labor" //Vedomosti of the USSR Supreme Soviet, 1970, No. 29. S. 265.

who undergo the professional on-the-job training or who study at educational institutions without discontinuing work.

Provisions of the Fundamentals were reproduced in the RSFSR (then the RF) Labor Code of 1971[28], including the name of Chapter XIII, which sets forth the issue of training – "Benefits for industrial and office workers combining work and study" and the general provisions, which were set forth in the Fundamentals earlier, on regulating the on-the-job training.

More detailed relations in a system of the production technical training, which was carried out at the enterprises during training new workers and during their retraining, teaching them the second professions, and their advanced training, along with the RSFSR Labor Code provisions, were regulated by special regulatory enactments, whose necessity was indicated by the government of the day.

When implementing the set tasks, by the Decree of the USSR State Committee on labor and social affairs, the USSR State Committee on vocational education and the Secretariat of All-Union Central Council of Trade Unions dated March 4, 1980 No. 50/4/4-85 the Model Regulations "On professional on-the-job training of the workers" (hereinafter referred to as "Model Regulations") were approved[29], on the basis of which the government ministries and agencies were to work out their branch regulations on the professional on-the-job training of workers.

When the economic situation in the country changed, there were new questions on improving the personnel training.

By the Decree of the Russian Federation Government dated July 06 1994, the Primary areas of assistance to enterprises in the on-the-job personal training were approved[30], which mapped out a complex of measures ensuring the receiving by the workers of knowledge and skills that are necessary during transition to the market economy mechanisms and subsequent building, on this basis, of the continuous on-the-job personnel training.

Thus, the apprenticeship issues were determined by the subordinate regulatory acts. The scientists researched the above-mentioned regulatory frameworks regulating the apprenticeship issues. Thus, they expressed their points of view concerning a legal nature and content of the apprenticeship agreement[31].

On February 1, 2002, the RF Labor Code of 1970 ceased to be in force and effect, since the new Labor Code of the Russian Federation came into force [32].

[28] Vedomosti of the RSFSR Supreme Soviet, 1971, No. 50. Article 1007.
[29] Bulletin of the regulatory enactments of the USSR government ministries and agencies, 1980, No. 9, p. 16.
[30] RF Official gazette. 1994. No. 12. Article 1392.
[31] Urzhunski K.P. Apprenticeship agreement // Science of law. 1961. No.3. P. 67 [Уржинский К.П. Договор об ученичестве // Правоведение. 1961. №3. С. 67]
[32] Labor Code of the RF dated 30.12.2001 No. 197-FZ (revised on 01.04.2019) // Official gazette of the Russian Federation. – 2002. – No. 1, Article 3.

Summarizing the brief historical excursus to the Russian labor laws on regulating the apprenticeship, it is possible to come to the following conclusions:

- apprenticeship as an independent kind of the legal relationship in the sphere of the labor law was not set forth completely in the fundamental codified acts of the Soviet period since 1918 to the 1990s; the legislative provisions were itemized by such subordinate regulatory acts as the Model Regulations "On professional on-the-job training of the workers", the Model Regulations on continuous professional and economic training of the national economy personnel;

- the primary notion "apprentice", which is applied to those being trained on the job in order to obtain a certain specialty and profession, was modified when the Fundamentals of the USSR and Soviet Republic laws on labor were passed; the stress was laid on receiving the professional training and the granted benefits in connection with the study combined with work;

- absence, at the legislative level, of a legal definition of the apprenticeship agreement can be attributed to shortcomings of the Soviet labor laws giving rise to discussions about a legal nature of the apprenticeship agreement;

- the codified acts of the labor laws and the subordinate regulatory acts, which were passed in the Soviet period, laid the groundwork for forming the current legal regulation of the apprenticeship, the basic notions, rules and conditions on entering into the apprenticeship agreements.

RESULTS AND DISCUSSION

Modern period of legal regulation of the apprenticeship

The current Labor Code of the Russian Federation (hereinafter referred to as "RF Labor Code") contains a separate Chapter 32 "Apprenticeship agreement", which is an indisputable novel for the labor laws[33]. When legalizing the apprenticeship agreement as a legal form of relations on the professional training and retraining, which arise between the employer and the employee, or the employer and the job seeker, the lawmakers stressed a growing significance of issues of the apprenticeship, the personnel retraining, their advanced training, which have certain differences.

[33] See: Kurennoi A.M. Labor Code of the Russian Federation: legal succession and novelty //Laws. 2002. No. 2. P. 54; Commentary to the Labor Code of the Russian Federation /Edited by A.M. Kurennoi, S.P. Mavrin, E.B. Khokhlov. M., 2005. P. 673.[Куренной А.М. Трудовой кодекс Российской Федерации: правопреемственность и новизна //Законодательство. 2002. № 2. С. 54; Комментарий к Трудовому кодексу Российской Федерации /Под ред. А.М. Куренного, С.П. Маврина, Е.Б. Хохлова. М., 2005. С. 673.]

In spite of the fact that in the 1960s the scientists singled out, as one of the specific signs of the apprenticeship, the fact that the apprentice must master a new specialty, which implies a subsequent change of the labor function rather than the advanced training in order to extend his/her knowledge[34], the lawmakers have never given a legal definition of the apprenticeship agreement in the new RF Labor Code, which is one of its shortcomings even now. This favored the expression of various opinions about a legal nature of the apprenticeship agreement. Before the scientists made changes in Article 198 of the RF Labor Code in 2006, proceeding from the literal interpretation of the contents of the said article, different opinions had been expressed about the branch profile of the apprenticeship agreement. Some scientists said that such an agreement belongs to a category of the civil law agreements, other scientists objected to that in a well-argued manner and spoke about a labor-legal nature of the apprenticeship agreement[35]. The changes, which were made in 2006, removed doubts about the branch profile of such an agreement.

The apprenticeship agreement is entered into for receiving by the apprentice of necessary skills and knowledge that will favor the further fulfillment of the labor function, which is stipulated in the labor agreement, by the employee in the organization (the employer). This agreement tasks are direct undergoing by an apprentice of the training and his/her acquiring the required skills. The agreement content includes the parties' rights and obligations.

Some scientists acknowledge the apprenticeship agreement as a variety of the agreement between the employee and the employer, when the employer pays for the employee's training partially or fully, while the employee guarantees his/her subsequent job placement and job for a certain period[36].

Particular emphasis should be given to the expressed proposals that one of the areas of improving the labor laws must be individual regulation of the labor conditions, which is related to possession by the employee of an ability to be trained without discontinuing work, which allows the employee to be needed

[34] Pashkov A.S. Essence of the production apprenticeship agreement // Science of Law. 1964. No. 4. P. 69.[Пашков А.С. Сущность договора производственного ученичества // Правоведение. 1964. №4. С. 69.]

[35] [35] See: Akopova E.M. Labor agreement: formation, development and modern state (theoretical and practical problems of legal regulation of labor relations): Thesis in the form of a scientific report for a Doctor degree in juridical sciences. M., 2003. P. 5, 52; Bondarenko E.N. On branch profile of legal relationship connected with the labor //Journal of Russian Law. 2000. No. 11. P. 33; Minkina N.K. Legal analysis of the apprenticeship agreement //labor law. 2002. No. 10. P. 81; Syrovatskaya L.A. Labor relations and labor law //State and law. 1996. No. 7. P. 82; Feofilaktov A.S. Apprenticeship agreement: peculiarities of the content and practice of the dispute settlement //Labor law. 2011. No. 4 //Legal reference system "Garant". URL: http: //www.garant.ru (accessed date: 30.06.2020.).[См.: Акопова Е.М. Трудовой договор: становление, развитие и современное состояние (теоретические и практические проблемы правового регулирования трудовых отношений): Дис. в виде науч. доклада…докт. юрид. Наук. М., 2003. С. 5, 52; Бондаренко Э.Н. Об отраслевой принадлежности правоотношений, связанных с трудом //Журнал российского права. 2000. № 11. С. 33; Минкина Н.К. Правовой анализ ученического договора //Трудовое право. 2002. № 10. С. 81; Сыроватская Л.А. Трудовые отношения и трудовое право //Государство и право. 1996. № 7. С. 82; Феофилактов А.С. Ученический договор: особенности содержания и практика разрешения споров //Трудовое право. 2011. № 4 //Справочно-правовая система Гарант. URL: http: //www.garant.ru (дата обращения: 30.06.2020г.).]

[36] Grigoriev V. A. Apprenticeship agreement as an alternative to the labor agreement // International Academic Bulletin. 2014. No. 5 (5). P. 28–29.[Григорьев В. А. Ученический договор как альтернатива трудового договора // Международный академический вестник. 2014. № 5 (5). С. 28–29.]

in the labor market, to carry out an adequate dialogue with the employer and to assert his/her rights[37].

Unfortunately, the lawmakers did not pay attention to the proposals, which were put forward as yearly as in 2008, on improving the RF Labor Code in terms of regulating the apprenticeship agreement.

In particular, it was proposed, on the analogy of Article 56 of the RF Labor Code "the Notion of the Labor Agreement. Parties to the Labor Agreement", to change the name of Article 198 of the RF Labor Code from the "Apprenticeship Agreement" to "the Notion of the Apprenticeship Agreement. Parties to the Apprenticeship Agreement". It was also proposed, in accordance with that, to change the contents of Article 198 of the RF Labor Code, with setting forth in it the notion of the apprenticeship agreement, as an agreement between the employer and the apprentice, with stating the specific rights and obligations in accordance with which the employer undertakes to organize the professional training (retraining) of the apprentice within the specified profession, specialty, qualification and, in the event of its successful completion, to give the apprentice a job within his/her received profession, specialty, qualification; in proper time and to the full extent, to pay the apprentice the grant, and to pay for the work that the apprentice performs at practical lessons according to the employer's assignment, to provide the apprentice the guarantees established by the labor laws and other laws and regulations containing the labor law provisions, the collective contract, agreements, the local regulatory enactments, the apprenticeship agreement, while the apprentice undertakes to observe the conditions of the apprenticeship agreement in good faith, for a period, which is stipulated by the parties, to personally undergo the training (retaining) and, in accordance with the received profession, specialty, qualification, to enter into, at the time specified in this agreement, the labor agreement and/or to work at the employer over the period established by the apprenticeship agreement[38].

The author believes that the version of a definition of the apprenticeship agreement, which D.I. Fedotov offered, is the most complete and shows all the legally valid signs of the apprenticeship agreement.

The apprenticeship agreement has its own independent subject, constitutes grounds for arising of other relations that belong to the legal law and that are regulated by the labor laws, belongs to a category of relations preceding (for job seekers) and accompanying the labor relationship (with the availability of the labor agreement), has its parties to such an agreement, which have relevant

[37] See: Lebedev V.M. Primary areas of improving the labor laws //Legal problems of strengthening the Russian statehood: Collected papers /Edited by B.L. Khakselberg. Tomsk. 2001. P. 6-7.[См.: Лебедев В.М. Основные направления совершенствования законодательства о труде //Правовые проблемы укрепления российской государственности: Сб. статей /Под ред. Б.Л. Хаксельберга. Томск. 2001. С. 6-7.]

[38] Fedotov D. I. Apprenticeship agreement: problems of legal regulation : Thesis for a Candidate degree in juridical sciences : 12.00.05.URL: http://www.dslib.net/trud-pravo/uchenicheskij-dogovor-problemy-pravovogo-regulirovanija.html (20.05.2019).[Федотов Д. И. Ученический договор: проблемы правового регулирования : диссертация … кандидата юридических наук : 12.00.05.URL: http://www.dslib.net/trud-pravo/uchenicheskij-dogovor-problemy-pravovogo-regulirovanija.html (20.05.2019).]

rights and obligations. In order to exclude any discussions about a legal nature of the apprenticeship agreement, the lawmakers must legalize its notion at a legislative level.

At the same time, it is necessary to specify which areas of training are covered by the apprenticeship agreement: not only the professional training (retraining), as D.I. Fedotov offers, but it is necessary to directly indicate that the apprenticeship agreement is an agreement entered into by the employer and the apprentice, in accordance with which the employer undertakes to organize the professional training, the retraining and (or) the advanced training of the apprentice directly on the job or the professional training, the retraining and (or) the advanced training of the apprentice outside of the place of production within the stipulated profession, specialty, qualification.

The absence of a legislative definition of the apprenticeship agreement gives rise to an ambiguous interpretation of its notion by the judicial bodies when settling specific labor disputes. In particular, while settling a legal action brought by OJSC "Surgutneftegaz" against O.V. Petrova for reimbursement of expenses connected with her training, the first instance court, while refusing to meet the claims, concluded that, as a matter of fact, O.V. Petrova was sent to the advanced training courses, while the apprenticeship agreement, which was represented by the claimant, is not essentially an apprenticeship agreement, since it does not content an obligatory condition on paying for the apprenticeship in the form of a grant, after the training completion O.V. Petrova was not expected to receive a different qualification and to change her activities. The court of appeal, in its turn, while reversing the decision of the first instance court, proceeded from the fact that the employer and the employee can enter into the apprenticeship agreement as well as other training agreements, in other words, the apprenticeship agreement is not the only kind of training agreements entered into by the employee and the employer. Training of the employees and their additional professional education are implemented by the employer, among other things, on conditions determined by the labor agreement. One of the additional conditions, which, in accordance with the law, can be included in the labor agreement and which do not worsen the employee's position in comparison with the applicable labor laws, is the employee's obligation to work, after the training, for a period, which is not less than determined by the agreement, if the employee was trained through the employer's funds[39].

The cited example indicates that the legal practitioners (in this case – the courts) have different approaches to a characteristic of the training agreements, among other things, through determining the obligatory conditions of such an agreement as well as through a characteristic of additional conditions in the labor agreement. But the example stresses once more that upon the availability of a legal notion of the apprenticeship

[39] **Determination of the Judicial board on civil affairs of the RF Supreme Court dated 02.07.2018 No. 69-KG18-7 //SPS ConsultantPlus**

agreement in the codified legislative act, the disagreements would be removed in interpreting the appearing relations on training the employee.

One should pay attention to such a restrictive condition, which is established by Part 1 of Article 198 of the RF Labor Code, as entering into the apprenticeship agreement by only the employer – legal entity (the organization). However, according to the provisions of Article 20 of the RF Labor Code, the individuals, who are registered in the established manner as self-employed businessmen and who conduct the business activities without forming a legal entity, can act as employers. The employers – self-employed businessmen, who act as employers in relation to their employees, have the same employer's obligations as the employer – legal entity, which are provided for by Article 22 of the RF Labor Code. Other lawyers-scientists share this point of view[40].

The stated circumstances indicate a restriction of labor rights of the employers – self-employed businessmen, who can organize the training of the employees, whom they need, by their own forces and pay for such training using their own funds. Such restriction of labor rights is inadmissible, since this category of employers are also fully subjected to the basic principles of legal regulation of the labor relations and other connected relations, which are enshrined by Article 2 of the RF Labor Code, among which the principle of ensuring the equality of possibilities of the employees without any discrimination for the training and the additional professional education is enshrined. In addition, this principle covers the employees working at the employers – legal entities as well as at other employers including the employers – self-employed businessmen. The employees of such employers are entitled to pretend to the training for a profession as well as their advanced training and even a drastic change of specialization.

Thus, the current wording of Article 198 of the RF Labor Code "Apprenticeship Agreement" must be changed, since the name of the article does not correspond to its contents, and the current content of the said article of the RF Labor Code has inadmissible contradictions with other fundamental provisions of the RF Labor Code.

As it is known from a traditional characteristic of the agreement content in the sphere of the labor law, it includes the aggregate of all conditions that are divided into obligatory and additional (optional) conditions.

Article 199 of the RF Labor Code established that the apprenticeship agreement must contain the following: names of the parties to the apprenticeship agreement; statement of a specific qualification that the apprentice acquires; the employer's obligation to make it possible for the employee to be trained in accordance with the apprenticeship agreement; the

[40] Golovina S. Yu. Defects of the Labor Code of Russia and ways of their removal // Lawyer. 2008. No. 4. P. 23-26. [Головина С. Ю. Дефекты Трудового кодекса России и способы их устранения // Юрист. 2008. № 4. С. 23-26.]

employee's obligation to undergo the training and, in accordance with the qualification received, to work on the labor agreement with the employer for a period established in the apprenticeship agreement; the apprenticeship time; amount of payment during the apprenticeship. The second part of this article sets forth the right of the parties to the apprenticeship agreement to include other conditions in it, which are determined by their agreement.

Thus, unlike Article 57 of the RF Labor Code, which enshrines the labor agreement content, there is no clear differentiation into obligatory and additional conditions of the apprenticeship agreement. Although some authors believe that it is the first part of Article199 of the RF Labor Code that contains obligatory conditions, while the second part contains the additional conditions, which, after their inclusion in the apprenticeship agreement by agreement between the parties, automatically become obligatory for both parties.

In this case, the author share E R. Brukhina's opinion that it is necessary to make changes in Article 199 of the RF Labor Code on differentiation of the listed conditions of the apprenticeship agreement into obligatory and additional conditions[41].

The scientists also discuss the issues of duration of the period, for which the employee must work at the employer after the training completion. Proceeding from the content of the applicable legal regulatory provisions, such a work period must be set forth in the apprenticeship agreement. As the lawmakers did not state their position about this period duration, it is supposed that this period is established by mutual agreement between the employer and the apprentice. The majority of lawyers stick to this approach. At the same time, it is also proposed that it is necessary to legislatively enchrine the maximum period of work in the apprenticeship agreement, for instance, not more than five years by analogy with the fixed-term labor agreement[42]. The proposals to legislatively enshrine the maximum work period are important, since they make it possible, in a greater degree, to protect the apprentice's rights on fulfilling the obligation of work after the training completion. However, the proposed time of "not more than five years" cannot be recognized as right and correct too. The proposed time is rather long and does not favor the protection of rights of the employee – the former apprentice if he/she comes to have any life circumstances during the work period, which entail an early breaking of labor relations, which will give the employer a right to demand the employee to offset the expenses incurred for the training.

While characterizing each of conditions of the apprenticeship agreement, which are set forth in Article 199 of the RF Labor Code, it is necessary to

[41] Bryukhina E.R. Content of the apprenticeship agreement for professional retraining //Important problems of the Russian law. 2007. No. 1. P. 277. [Брюхина Е.Р. Содержание ученического договора о профессиональной переподготовке //Актуальные проблемы российского права. 2007. № 1. С. 277.]

[42] Brilliantova N.A, Arkhipov V.V. Apprentice – by status, by essence and … by cost. // Kadrovik. Labor law for the personnel officer. 2008. No. 11. P. 29-30.[Бриллиантова Н.А, Архипов В.В. Ученик – по статусу, по сути и … по стоимости. // Кадровик. Трудовое право для кадровика. 2008. № 11. С. 29-30.]

note that the qualification must be stated in each specific apprenticeship agreement with the apprentice in accordance with the job evaluation manuals established by the Russian Federation Government, or the provisions of certain professional standards[43]. The employer's obligation to make it possible for the employee to be trained, according to the apprenticeship agreement, must be concretized by specific conditions on ensuring the mastering by the apprentice of the educational program in full and performing the practical assignments, undergoing the final evaluation or taking the qualification exam, etc.

The condition on the employee's obligation to be trained and, in accordance with the qualification received, to work, under the labor agreement, with the employer for the time established in the apprenticeship agreement, must be supplemented by the employee's obligation to offset the costs for the training not only in the event of non-fulfillment by the apprentice of his/her obligation, without good reasons, to work for a period after the training, which is determined by the agreement, and but also the obligation to offset the costs in the event of breaking of the training by the apprentice without good reasons. The said condition, while being included in the apprenticeship agreement content, will correspond to the content of the second part of Article 207 of the RF Labor Code, which enshrines the apprentice's obligation to offset the expenses, which the employer incurred for his/her training.

It is necessary, at a legislative level, to stipulate the reasons that must be recognized as inadequate in early termination of the labor agreement after the training without working for the period that is stipulated in the apprenticeship agreement, and early cessation by the apprentice of the training, in order to exclude different interpretations of the notion of such reasons inadequateness. Practice shows that the apprenticeship agreement, by agreement between the employer and the employee, lists the reasons recognized as inadequate. Lists of such reasons are different in different agreements. But such a list is prominent in settling the disputes on recovering the costs, which the employer incurred on the apprentice's training in the case of his/her resignation without good reasons before the expiration of the period stipulated by the agreement, when the apprentice must reimburse for the expenses for his/her training.

Thus, the labor laws do not attribute the labor agreement termination for such reasons as the agreement of the parties (Paragraph 1 of Part 1 of Article 77 of the RF Labor Code), on "one's own volition", or on the employee's initiative (Paragraph 3 of Part 1 of Article 77 of the RF Labor Code), to a category of reasons that, by their nature, are inadequate unambiguously. At the same time, the labor laws do not contain a prohibition on the employee's resignation on his/her own volition or the resignation by agreement of the parties after the training.

[43] Commentary to the Labor Code of the Russian Federation (article-by-article)/8th revised and corrected edition (executive editor is Yu.P. Orlovsky. – M.: Contract, 2019. //SPS Consultant Plus.

Thus, the apprenticeship agreement must list specific reasons for early termination of the labor agreement without working for the stipulated period after the training, which can be attributed to a category of inadequate reasons including such reasons as the resignation by agreement of the parties and on own volition of the employee with specifying the cases entailing termination of the labor agreement for these reasons. For instance, the inadequate reasons must not include a reason caused by the necessity to resign on one's own volition because it is impossible to continue to work (acceptance to an educational organization, retirement, care of a seriously ill immediate relative, movement with the family to another locality in connection with transfer of a spouse to another job, etc). In such cases, the employee's resignation, without working for the stipulated period, is not just a whim of the employee, but a pressing necessity that cannot be interpreted in terms of inadequacy. At the same time, the resignation on one's own volition or by agreement of the parties, without any obvious reasons, which exclude a possibility to work in cases, which do not depend on the employee, can be attributed to inadequate resignation reasons that can be included in the above-mentioned list in the apprenticeship agreement.

At present, the court practice shows that if the apprenticeship agreement does not state the above-mentioned grounds as inadequate resignation reasons, they are nor recognized as inadequate.

Thus, absence in the apprenticeship agreement, within the inadequate reasons list, of such a reason for resignation as the resignation on volition of the employee, who did not work for a period, which was stipulated by the apprenticeship agreement, after the training, was taken by the court as substantiation of a refusal to meet the employer's claims on recovering the expenses for the employee's training with reasoning that the list contains, as inadequate reasons, only those related to disciplinary offenses, while such a reason, as resignation on one's own volition, does not belong to these reasons[44].

At the same time, the courts meet the employers' claims on recovering the expenses incurred for the employee's training, if the apprenticeship agreement or an additional agreement to the apprenticeship agreement or to the labor agreement stipulate that early termination of the labor agreement, for the above-mentioned reasons, belongs to the inadequate reasons of non-working for the stipulated period after the training and entrusts the employee with an obligation to recover the expenses incurred by the employer for this employee's training[45].

[44] Appellate determination of the court of Yamal –Nenets Autonomous area dated 02.07.2015 on case No. 33-1598/2015 // SPS Consultant Plus.

[45] See: Determination of the Judicial board on civil cases of the RF Supreme Court dated 17.04.2017 No. 16-KG17-3; Determination of the Judicial board on civil cases of the RF Supreme Court dated 04.02.2019 No. 46-KG18-65 //SPS Consultant Plus; determination of Ulan-Ude Octyabrsky District Court dated 29.10.2018 on case on the legal action of PJSC "Aeroflot" to N.O. Plekhanova on recovering the expenses for the employee's training //Civil case No. 2-4986/2018, Records of Ulan-Ude Octyabrsky District Court.

Issues of prolonging the training period must be explained too: how such prolongation must be implemented. In cases when the apprenticeship agreement itself is an additional agreement to the labor agreement, prolongation of the apprenticeship agreement duration for the period of an illness, undergoing the military training and in connection with other cases, must by formalized by entering into a new additional agreement in writing, but to the apprenticeship agreement that must state a reason for the training prolongation and a new end date of the apprenticeship agreement. This additional agreement is an integral part of the apprenticeship agreement.

Contents of Article 202 of the RF Labor Code indicate the continuity of regulating the apprenticeship legal relationship, since, as a matter of fact, they reproduce the researched basic regulations on the apprenticeship forms, which were established by the Soviet laws and regulations: individual, team, course forms of training, which confirms once more that it is necessary to research a studied issue in its historical aspect. At the same time, the lawmakers in the said legal form said that it is possible to use other training forms. Such forms can be provided for by a collective contract and agreement with account taken of the training goals and the employer's technical possibilities.

According to the provisions of Articles 203, 204 and 205 of the RF Civil Code, the apprentices are fully covered by the labor laws provisions with some peculiarities concerning a prohibition to get the apprentices involved in the overtime work or to send them to the business trips that are not related to the training; payment to the apprentice a grant of not less than the minimum wage; payment for the work performed by the apprentice at practical lessons in accordance with the established prices. The said regulations confirm once more that it is necessary to accept, at a legislative level, the above-mentioned proposal on legal definition of the notion of the apprenticeship agreement, and they remove differences in an approach to regulating the apprenticeship attitudes, which the employer come to have with a person, who works with him/her, and with a job seeker, since both categories of the apprentices are covered by the labor laws.

The name of Article 207 of the RF Labor Code must be changed in the form of excluding the words "Rights and" from its name, since this article does not list all the rights conferred to the people, who finished the training, but the article says only that the employer is obliged not to establish an approbation period for such persons. To leave the article name: "The apprentices' obligations upon completion of the apprenticeship", the article shall be amended as follows: "An apprentice, who ceased the training without good reasons or who fails to fulfill his/her obligations under the apprenticeship agreement after the apprenticeship completion, including if the apprentice does not start the work, at the employer's request, shall offset the employer the expenses incurred for his/her training".

Attention should be paid to the terms applied by the lawmakers. It is necessary to share N.V. Novikova's opinion about different approaches of the lawmakers to the usage of necessary terms: Article 207 of the RF Labor Code mentions a grant and other training expenses, while Article 249 of the RF Labor Code uses the term "expenses" without showing its content[46].

In this connection, it is proposed that Article 249 of the RF Labor Code shall be amended as follows: "In case of cessation by the apprentice, without good reasons, of the training process, which is stipulated by the apprenticeship agreement, through the employer's funds, and in case of resignation of the employee without good reasons before expiration of the period stipulated by the labor agreement or the agreement on training through the employer's funds, the apprentice is obliged to offset the expenses incurred by the employer for his/her training for the whole training period till the moment of the training completion, the employee is obliged to offset the expenses incurred by the employer for his/her training, which are calculated in proportion to the time, for which the employee did not work after the training completion, unless otherwise provided for by the labor agreement or the training agreement".

As previously noted, when entering into an training agreement through the employer's funds, the employee shall voluntarily take over an obligation to work for not less than a certain period at the employer, who paid for the training, and in case of his/her resignation without good reasons before expiration of this period – to offset the expenses incurred by the employer for his/her training. The RF Constitutional Court noted that such legal regulation is aimed at ensuring the balance of rights and interests of the employee and the employer, favors the employee's professional development and the acquisition by him/her of additional advantages in the labor market, and is aimed at offsetting the expenses incurred by the employer for training the employee, who early broke the labor relations with this employer without good reasons. Recovery from the employee of the expenses incurred by the employer for his/her training, which is based on voluntary and coordinated will of the employee and the employer, is permitted only in accordance with general rules of compensating the damage caused by the employee to the employer, and deductions from his/her salary[47].

Unfortunately, the RF Labor Code provisions did not establish a specific list of such expenses, in light of this, in practice, a lot of questions arise about their compositions. In particular, it is necessary to exclude the grant, which is paid to the apprentice during the training, from the expenses list, since the

[46] Novikova N. V. Problems of protecting the employer's investments in education of the employees and the job seekers, by means of the labor law // Lex russica. 2020. V. 73. No. 5. P. 162.[Новикова Н. В. Проблемы защиты инвестиций работодателя в образование работников и лиц, ищущих работу, средствами трудового права // Lex russica. 2020. Т. 73. № 5. С. 162.].

[47] See: Determination of the Constitutional Court of the Russian Federation dated 15.07.2010 No. 1005-O-O; Determination of the Constitutional Court of the Russian Federation dated 24.03.2015 No. 498-O //SPS Consultant Plus

grant is actually paid instead of the salary during the training period, and the grant is means of subsistence[48].

A necessity to establish the actual size of the employer's expenses for training a specific employee, which are to be recovered by this employee, follows from the contents of sub-Paragraph 2 of Paragraph 2 of Recommendation No. 85 of the International Labor Organization "On Protection of the Salary" (1949) providing for that an amount of deductions from the employee's salary in the procedure of compensating the losses or damage caused by the employee to the employer, must be moderate and must not exceed the actual cost of losses or damage[49].

In practice, the questions arise if the labor agreement termination entails the apprenticeship agreement rescission. As it was noted above, the apprenticeship agreement is executed with the employee as an additional agreement to the labor agreement. But the apprenticeship agreement is an independent transaction. In this connection, termination of the labor agreement with the employee must not entail the automatic apprenticeship agreement rescission, unless this is directly provided for by agreement of the parties. Thus, it is necessary to set forth in the apprenticeship agreement the issues about the employer's right to a unilateral refusal to fulfill the commitments under this agreement, and its termination in connection with the employee's resignation and consequences of the apprenticeship agreement termination for this reason.

Thus, the above-expressed ideas that it is necessary to improve the applicable labor laws in the sphere of regulating the apprenticeship agreements confirm once more that three is a need not only to make relevant changes in the applicable Labor Code of the Russian Federation, but also to work out an approximate form of the apprenticeship agreement, which would be advisory in nature. A proposal to work out such a form at a level of Ministry of Labor and Social Development of the Russian Federation was put forward by E.R. Brukhina in 2007[50].

Experience of the People's Republic of China in legal regulation of apprenticeship

In foreign publications about the apprenticeship, the apprenticeship agreement implies an agreement entered into by the apprentice in order to receive the professional skills on a specific job with assistance of a teacher, which reflects a process of the apprentice's professional development. This agreement sets

Novikova N. V. Problems of protecting the employer's investments in education of the employees and the job seekers, by the labor law // Lex russica. 2020. T. 73. № 5. C. 163. [Новикова Н. В. Проблемы защиты инвестиций работодателя в образование работников и лиц, ищущих работу, средствами трудового права // Lex russica. 2020. Т. 73. № 5. С. 163.]

[49] International Labor Organization. Conventions and recommendations. Geneva. 1966. P. 954-956.

[50] Brukhina E.R. Contents of the apprenticeship agreement about professional retraining // Important problems of the Russian law. 2007. No. 1. P. 282. [Брюхина Е.Р. Содержание ученического договора о профессиональной переподготовке // Актуальные проблемы российского права. 2007. № 1. С. 282]

forth the contents; goals of training that are determined by the apprentice; a period of such training, and the criteria of assessing the training results can be established. The scientists say that all these circumstances influence the rising of the apprentice's incentive, his/her progress in studies, and they make it possible to strengthen the apprentice's personal responsibility for the training results[51] .

The People's Republic of China has a different approach to legal regulation of the apprenticeship. The Chinese lawyers-scientists, in their publications, write about "a specific character" of the applicable laws of the People's Republic of China including the labor laws[52].

The basic laws regulating the labor relations in the People's Republic of China are the Chinese law "On Labor" (as revised in 2009)[53] and the Chinese law "On Labor Agreement" (as revised in 2012)[54].

The Chinese labor market experiences a lot of difficulties that are related, in the first place, to demographic position of the country. China belongs to the countries with the aging population and, according to the scientists' forecasts, a number of elderly people will have grown up to 22.6% by 2050. A portion of the able-bodied population reached a peak in 2011 (72%) and then started lowering. Thus, the issues of professional training (retraining, advanced training) take on greater and greater importance in the course of time[55].

At a legislative level, the government's obligation is enshrined to develop the professional training in every possible way, to encourage and to support the enterprises, organizations, non-governmental associations and separate persons in implementing the professional training in various kinds and forms. The employee and the employer can include, among the necessary conditions, a condition about agreement on training (retraining, advanced training) in the labor agreement content at the time the agreement is entered into. At the same time, the lawmakers do not rule out the possibility to enter into the training agreement within a term of the labor agreement, which was entered into with the employee earlier. The employer is entitled to enter into the apprenticeship agreement with the employee and to establish the apprenticeship period and the work period after the apprenticeship on condition that expenses for the targeted training (retraining, advance training) of the employee or vocational training (retraining, advanced training) were carried out by the employer

[51] 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 (accessed date is 17.07.2020); Brecko D. Learning Contract: A New Tool for Managing Knowledge. URL: http://www.fmkp.si/zalozba/ISBN/961-6486-39-X/257-271.pdf (accessed date is17.07.2020).

[52] Collection of materials of the 1st Forum of the Chinese-Russian comparative science of law (April of 2019). China. Kayfun. 2019. P. 148-350.

[53] URL: https: //cnlegal.ru/china_labour/labour_laws_translation/ (access date is 04.06.2019).

[54] URL: https: //chinalaw.center/labour_law/china_labour_contract_law_revised_2012_russian/ (access date is 04.06.2019).

[55] Tszi Ts. State regulation in the labor market of Russia and China for the young people's employment and a tendency of their employment //The humanities, socio-economical and social sciences. 2013. No. 5. S. 108-114.[Цзи Ц. Государственное регулирование на рынке труда России и Китая для занятости молодежи и тенденция их занятости //Гуманитарные, социально-экономические и общественные науки. 2013. № 5. С. 108-114.]

through his/her funds. In case of violating by the employee of an agreement on the apprenticeship period (including the work period), he/she is obliged to pay the employer a penalty in the amount stipulated in the training agreement that they entered into[56].

The Chinese lawmaker also said that the penalty cannot exceed the employer's expenses for training (retraining, advanced training) of the employee. Apart from that, in case when the employee does not work for the stipulated period after the training, the penalty must not exceed the part of expenses for the training (retraining, advanced training), which falls on the period for which the employee did not work. The stated legal provisions show that the employer, in agreement with the employee, stipulates the time of such training and consequences of non-fulfillment by the employee of his/her obligations on the training period in the concluded training agreement.

Model Regulations on professional training of the company employees is in force in the country, on the basis of which the Chief Executive Officer issues his/her regulations after its discussion and approval by the company board[57].

The Model Regulations sets forth the training methods that are divided into training of the company employees (such training is divided into two types: regular and non-regular training), schedule training and off-schedule training.

Apart from the above-mentioned Model regulations, the companies are offered a draft Regulations on training the employees and management methods of education, on the basis of which the apprenticeship agreements are expected to be entered into[58].

Analysis of legal regulatory provisions of the fundamental laws of the People's Republic of China in the sphere of the labor law shows that the Chinese lawmakers' approach to regulating the apprenticeship legal relationship in the sphere of the labor law, which does not differ from the Russian analogue, has its positive advantages and distinctive features that can be taken into consideration by the Russian lawmakers in order to improve the applicable labor laws on the researched issue.

CONCLUSION

The research showed that, in spite of available discussions in the scientific literature of different periods on the notion and a legal nature of the apprenticeship agreement, the basic parameters, which are typical of such an agreement, do not differ from each other and they consist in the following:

[56] URL: http: //chinawindow.ru/china/legal-information-china/labour-code/ (access date is 04.06.2019).
[57] Laws and regulations on labor contract / Responsible editor is Tao Ui Sya. Bejing: Publishing house of legal literature, 2018. C. 286-287.
[58] Laws and regulations on labor contract / Responsible editor is Tao Ui Sya. Bejing: Publishing house of legal literature, 2018 P. 287-289.

— parties to the apprenticeship agreement are the employer and the apprentice – an individual who works with this employer or who seeks a job;

— the employer undertakes to organize the apprentice's training and to pay him/her a fee during the training;

— the apprentice undertakes to undergo the training and to work a certain period with the employer.

It is beyond argument that at present the apprenticeship relations are relations that are directly connected with the labor relations, while the apprenticeship agreement has a labor-legal nature.
The current Russian labor laws in the sphere of regulating the apprenticeship legal relationship between the employee (the job seeker) and the employer continue to need the improvement.

In confirmation of a necessity to enshrine in law the apprenticeship agreement notion in order to exclude any misunderstandings or ambiguous interpretations in settling the arising disputes in the sphere of regulating the apprenticeship relations, an opinion was expressed once more about signs, which are typical of the apprenticeship agreement, and which must be reflected in the legislatively enshrined definition of the notion of such an agreement; necessity to include the employers – legal entities (organizations) and the individuals – self-employed businessmen, which are registered in the manner established by law, in a number of the parties to such agreements; about specifying the apprenticeship agreement content.

The author strongly disagrees with N.V. Novikova's opinion that the name "apprenticeship agreement" must be recognized as outdated, that it is necessary to turn down the term "apprenticeship agreement" while replacing it with the "professional education agreement"[59].

In practice, the apprenticeship agreement became widespread, the employers and the employees or the potential employees are interested in such training. However, at present some provisions of the labor laws need the improvement and the creation of favorable conditions for further development of the apprenticeship relations.

The lawmakers must pay attention to the scientifically expressed substantiations of necessary changes in the applicable RF Labor Code in the sphere of regulating the apprenticeship agreements.

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