

## PREVENTIVE RESOLUTION OF LABOR DISPUTES

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### **Abstract**

The paper covers the contradictions in industrial relations and the modern ways of resolving them in Russia. Particular attention is paid to preventive resolution as the least controversial, allowing reducing or eliminating the possibility of a conflict within the labor sphere, as a fair and effective method that reduces the burden on civil courts in conditions of limited budget spending. It is advisable to give priority to out-of-court methods for resolving labor disputes, to direct efforts to prevent the emergence of labor conflicts. Implementation of this strategy should be carried out at the macro– and micro levels. The study shows that in order to increase the efficiency of labor inspection in the Russian Federation in the context of limited budgetary sources of funding, there is a need to expand the scope of activities of the Office of State Supervision in the Sphere of Labor. It is also advisable to adjust the priority activities of the labor inspections, mainly in the direction of the implementation of preventive activities. This will lead to the prevention of conflict situations in the organizations, to ensure the improvement of the enforcement of legislation, contracts and labor agreements. In order to work out effective directions, the article summarizes international experience, best practices in the preventive activities of labor inspections in developed countries and in emerging markets.

***Keywords:*** *Resolution; Labor; Mediation; Labor Inspection.*

***JEL codes:*** E24, F66.

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## **Introduction**

The concept of preventiveness in the social and labor sphere is not reflected in labor legislation or in relevant standards. Nevertheless, the position on the need to prevent collective and individual conflicts and strikes is widespread in many countries. In some countries, prevention in industrial relations is considered as a combination of legislative, economic, social, technological and psychological mechanisms that contribute to the identification, avoidance and resolution of individual and collective conflicts in social and labor relations. Preventiveness therefore, encompasses a set of actions aimed at establishing social partnership before conflict situations arise through maintaining positive social and labor relations, as well as resolving these conflicts. Preventive measures can reduce or eliminate the risk of labor conflicts.

Preventive labor policies are measures of a long-term structural policy. The main goal of regulating social and labor relations is the establishment of social partnership and the formation of more productive relations. This is achieved by improving awareness, consultation, clarification of employees and their representatives.

Since conflicts have serious consequences not only for employers and workers, but also for the economy and society, in many countries, all possibilities are created to promote understanding between the parties at all levels: national, sectoral, local and enterprise. In the event of a conflict in many countries, out-of-court resolution takes place with the possible participation of intermediaries or consultants.

In many countries, in the social and labor sphere, strategic changes are taking place for the development of preventive activities. This is reflected in the reform of labor legislation, in the appointment of mediation bodies, in the promotion of preventive activities, in the introduction of a new system of protection of workers' representatives.

The different nature of the economic interests of employers and hired workers at all stages of the reproductive process leads to the emergence of contradictions in the field of labor relations. The consequence is an aggravation of tension within the work collective, significant time and material costs, a decrease in the efficiency and competitiveness of production. The problem of resolving contradictions in the field of labor relations is interdisciplinary, requiring consideration in the economic, legal and other spheres. In this area, the law enforcement system is represented by institutions for resolving labor

conflicts – courts with general jurisdiction and supervisory bodies and control over compliance with labor laws.

The rest of the paper is organized as follows. Section 1 introduces theoretical framework, while Section 2 presents results and discussion. Finally, we conclude the paper in “Conclusion.”

## **Theoretical framework**

### ***Trends and problems of preventive activity in the labor market***

Due to the limited budgetary sources of funding for labor inspections, as well as the need to improve performance, in both developed and developing countries, there is a tendency, if not a change in priorities in the inspection of labor relations, then at least to adjust them (World Bank, 2003; Benadon, 1999). Innovations consist in encouraging enterprises to develop their own plans and programs in the implementation of commitments to staff. In some countries, there is a requirement for all medium-sized and large enterprises with a certain number to develop an annual plan for improving working conditions by submitting to the labor inspection a report on the work done (Hammer and Ville, 1998). Labor inspectors can judge the work of the enterprise in this field based on a review of its own plan.

New approaches do not exclude the imposition of sanctions, since their use has the function of preventing violations. Effective administration and on-site inspections remain important elements of this system, but the role of inspections changes with the transition from sanctions to counseling, cooperation and technical assistance. Inspectors implement a service-oriented approach and work with enterprises to solve problems and agree on an action plan (Hammer and Ville, 1998). Through this, a more efficient use of budgetary funds occurs and, at the same time, the likelihood of employers' fulfillment of obligations to implement their own social and labor strategy increases.

As part of the traditional activities of labor inspections, the solution to the problem of limited budgetary resources that all countries face is finding priority activities. Some analysts believe that working with large employers and malicious violators is a priority (Hammer and Ville, 1998). In addition, for a more comprehensive coverage of enterprises in individual countries, a number of alternatives are used: attracting other organizations (chambers of commerce, trade unions), using the media to conduct educational campaigns, conducting targeted audits, organizing consulting services or accrediting private firms that

provide these services. In some countries, small and medium-sized enterprises engaged in preventive work are provided with subsidies or tax incentives (World Bank, 2003).

Thus, to improve the performance of state bodies in the social and labor sphere, it is necessary to focus on preventive measures, as well as adjusting the priorities of labor inspections in the direction of conflict prevention in industrial relations, more technical assistance and advice. Consider the main directions of the preventive activities of labor inspection in developed, developing countries and countries with transitional economies.

### ***Directions of the preventive activities of labor inspections***

In some countries, they deny the competence of labor inspections in the sphere of industrial relations (Denmark, Germany, Hungary, Poland). However, in many countries, labor inspections are allowed to intervene in production relationships either with a third party, or as part of the standard functions of labor inspections. Labor inspections have broad powers in regulating social and labor relations (France, Canada, Chile, Spain, Côte d'Ivoire, Kenya and Zimbabwe). At the same time, the functions of labor inspections include explaining labor laws, preventing conflicts, or mediating their resolution. Such activity is often considered as the main one not only for the labor inspection, but also for the social partners and the Government (Hammer and Ville, 1998).

In some countries, attention is drawn to the advantage of the dual nature of labor inspection activities, on the one hand, in the preparation of standards, and on the other, in monitoring compliance with these standards. Development of standards may include participation in the development of new labor standards officially assigned to other bodies (Government, Parliament, social partners); and the preparation of standards of production and customs in industrial relations.

### ***Types of preventive activities of labor inspections***

In practice, there are two main types of preventive activities: the development of the necessary regulations, requirements, standards for the implementation of preventive policies (France, Spain, Chile). For this purpose, information is collected and the necessary research is carried out. In the future, employees of the labor inspection participate in the formulation of these documents; clarification of this legislation, participation in the triparty commissions (Australia, Canada).

In some countries (Côte d'Ivoire, Thailand, Zimbabwe) to prevent conflicts they seek to increase the level of competence of its parties. In many countries, it is common to promote the formation of so-called collective autonomy, i.e. the right of workers, employers and their representatives to resolve conflicts without seeking the assistance of a third party – the Government, labor inspections and other state bodies. Resolving individual conflicts eliminate legal and moral costs.

The work of labor inspections *per se* can contribute to the definition and formulation of preventive policies. This is the case, for example, in Canada.

Elements of preventive activities also include information gathering, case studies, selection of regulations, and material support for user assistance centers (Chile, Zimbabwe). In some countries, experiments are being carried out in the field of social partnership. This is explained by the fact that the effectiveness of the policy in this area increases if all parties are involved in the process. As part of the implementation of the concept of prevention in some countries, it was decided to increase the number of staff of labor inspections.

## **Findings**

### ***Resolution of labor disputes: the case of Russia***

The aggravation of contradictions is manifested in the form of a labor dispute. There are individual and collective labor disputes. Individual labor disputes are understood as unresolved conflicts between the employer and the employee concerning the application of normative acts, collective agreements, agreements, labor contracts, which are declared within the body for the consideration of individual labor disputes.

Collective labor dispute is the unresolved contradictions between employees and employers (or their representatives) about the establishment of working conditions, the conclusion and implementation of collective agreements, agreements, and in connection with the refusal of the employer to take into account the opinion of employees when developing labor documents (Labor Code, 2001; Orlovsky, 2017). The collective character of the labor dispute is manifested in the fact that one of the parties in the dispute is employees who are bound by a certain organizational unity and common professional interests, for example, members of the trade of employees of the organization.

The resolution of labor disputes is carried out both in judicial and extrajudicial order. When resolving individual disputes, labor dispute commissions (LDCs) may be set up. LDCs are pre-judicial in nature. LDCs resolve labor disputes about compliance with the terms of the employment contract, about granting annual paid vacations, about salary, about paying overtime, about the reasonableness of disciplinary measures, about the illegality of suspension from work.

The resolution of collective labor disputes is carried out through an extrajudicial conciliation procedure and includes: the consideration of a collective labor dispute by a conciliation commission, with the participation of an intermediary and (or) in labor arbitration (Article 401 of the LC RF) (Labor Code, 2001). A reconciliatory commission is created from the representatives from the parties. The parties participate in the selection of the mediator, in the creation of labor arbitration, hold negotiations on the determination of the minimum required work.

Fundamental principles for the management of labor contradictions are contained in the international labor standards – the 1981 International Labor Organization (ILO) Collective Bargaining Convention, 1981 (No. 154) and Collective Bargaining Recommendation, 1981 (No. 163) (C154, 1981; R163, 1981). The basic document is ILO Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92) (R092, 1951). This document provides for carrying out procedures for voluntary reconciliation among the parties on the initiative of one of the parties. The ILO is assisting in the development of a voluntary negotiating mechanism, consisting of consultations, technical cooperation programs, research and knowledge sharing, education and training courses.

ILO identifies the basic principles of resolving labor disputes: a) preventing the emergence of labor disputes; b) in the case of the inevitability of a labor dispute – orientation to its internal resolution; c) in case of need – the involvement of a third party (Heron and Vandenaabee, 1999; ILO, 2013).

The foundations of the activity of the conciliatory bodies proposed by the ILO were developed in Chapter 61 of the Labor Code of the Russian Federation, which provides for the three stages of resolving the collective labor dispute and the relevant institutions: the conciliation commission, the mediators and labor arbitration (Labor Code, 2001).

A number of measures are implemented in international practice to prevent contradictions: a) provision of information on systems and the

procedure for collective bargaining; b) promoting the adoption of an ethical code; c) training of employers and trade unions in ways of collective bargaining; d) promotion of information exchange and consultation at work, for example, through joint committees of management and production personnel; e) use of intermediary services.

Preventive resolution of contradictions in the labor sphere should be understood as an aggregate of economic, managerial, legislative, social, psychological and technological mechanisms aimed at identifying, preventing and resolving conflicts in labor relations (Author, 2007).

Preventive resolution of contradictions in the labor sphere between employees and employers implies: assistance by the person acting as an intermediary in the negotiation process in determining alternatives in order to reach a mutually acceptable solution; the use of an independent third party without the right to adjudicate; voluntary initiative of one of the sides of contradictions, to which the other party should join; extrajudicial, closed and confidential status; efficiency, informality, flexibility; acceptance by the parties of the final decision.

Preventive resolution of contradictions in the labor sphere occurs through the prevention of a dispute, and in case of its occurrence, resolution through conciliation, mediation and voluntary arbitration. The mediator on preventive resolution clarifies controversial issues, provides an exchange of views, formulates proposals, approaches, actions, alternatives, develops proposals and recommendations (Collective bargaining, 2015).

In the international practice of preventive resolution of labor contradictions, the best practices of functioning of a number of independent bodies are known. For example, the Chilean Center for Mediation and Reconciliation, the Tanzanian Commission for Reconciliation and Arbitration, the Commission for Conciliation, Mediation and Arbitration (South Africa), the Australian Labor Arbitration, reconciliation and arbitration (UK), the Federal Mediation and Conciliation Service (FMCS) (USA) (Collective bargaining, 2015).

Intermediaries can act as employees of state bodies for labor, as well as independent specialists. In international practice, compulsory and voluntary mediation is distinguished. Forced mediation involves participation in negotiations, in the mediation procedure itself. With voluntary mediation, the parties only consider the proposals of the mediator. Thus, the Moscow Public Relations Committee, the Moscow Federation of Trade Unions, the Moscow Confederation of Industrialists

and Entrepreneurs (Employers), the Inyurcollegia Bar Association established the Labor Arbitration Court to resolve collective labor disputes, the main activities of which are: information work, work on resolving collective labor disputes, interaction with the regions of the Russian Federation, training of labor arbiters and social partners, work on creating a legal framework, interaction with the countries of the European Union. In 2017, the Labor Arbitration Court to resolve collective labor disputes conducted 21 training seminars with the participation of more than 600 people, not aimed at making decisions provided by state coercion, but resolving collective labor disputes by assisting employees and employers in creating and maintaining labor arbitration for consideration of specific collective labor disputes, in particular, the provision of premises for meetings, regulatory frameworks.

In 2017, 37 organizations appealed to the Labor Arbitration Court, contradictions in which are related to staffing reductions, dismissals of employees (27% of appeals), violations of a collective agreement (19%), adoption of local regulations without taking into account the views of the trade union organization (19%), with salary delays (13%).

Extrajudicial resolution of contradictions has a number of advantages, as it is less controversial and allows to maintain a favorable atmosphere and relationships between employees and employers. It does not have a public character and allows you to keep information confidential. Out-of-court settlement of disputes allows for quick, informal and simple procedures without involving expensive technical expertise; it ensures the parties control the reconciliation process. The shortcomings of extrajudicial resolution of contradictions include the lack of transparency, the influence of legal elements (the right to representation, the right to appeal) (World Bank, 2003).

Participation of representatives of employees and employers in pre-trial resolution of labor disputes is one of the forms of social partnership. In Russian legislation, pre-trial resolution of disputes is regulated by the Labor Code. In addition, only individual labor disputes can be settled in courts. In the consideration of collective labor disputes, the courts do not take part, except for questions about the recognition of a strike as illegal, about the postponement of a planned strike and the suspension of a strike that has already begun. Further, the practice of the strike movement has shown that even if the strike is declared invalid by

the court, the collective labor dispute remains unresolved (Soloviev, 2003; Khustov, 2011).

In OECD countries, the most important elements of labor market regulation are effective mechanisms for implementing labor laws and resolving labor disputes. Much attention is paid to the availability of means for resolving disputes; minimization of financial and time costs; wide application of extrajudicial procedures involving the active participation of specialists in the field of industrial relations; effective reward policy (The minimum wage boundaries, 2016).

In the United States, Japan, Canada, there are administrative bodies that perform judicial functions and are aimed at developing law enforcement practices, consolidation, and coherence of the parties. These bodies, entitled to resolve certain types of labor disputes, are engaged in quasi-judicial activities.

The preventive resolution of contradictions is facilitated by the creation of non-profit centers. For example, the creation on the initiative of the Japanese government of the center for measuring labor productivity, guided in its work by the principles: increased employment, interaction between workers and enterprise management, an equitable distribution of productivity growth results. To regulate the controversy in the wage sector, Uruguay has set up wage councils (Collective bargaining, 2015).

Preventive resolution of the labor contradictions is facilitated using the experience of developed countries through the application of extrajudicial regulation by labor inspectors on legality of dismissal, payment of wages, severance pay.

In recent years, in the developed and developing countries, innovations have been introduced into the labor sphere, which consist in stimulating enterprises to develop their own plans and programs to fulfill their obligations to personnel, which is consistent with the concept of preventive measures and prevention of labor contradictions. Developing an annual plan to improve the working conditions by the enterprises and presenting it to the labor inspection makes it possible to improve the efficiency of the regulation of labor relations. To prevent contradictions in the labor sphere, counseling and technical assistance from the labor inspections are directed.

Given the Russian characteristics of labor market development, it is advisable to use the "investigation" approach, rather than "adversarial"

in resolving labor disputes (Clarke, 1999, 2005). It consists in active involvement of administrative bodies of justice and other intermediaries in the investigation and hearing of cases; and in recruiting labor relations professionals instead of lawyers.

### **Mediation of state bodies**

An important role in the preventive resolution of contradictions is given to the mediation of state bodies. In the process of extrajudicial settlement of disputes, a special role belongs to regional and local authorities.

To facilitate the resolution of collective labor disputes, a federal executive body has been established that performs functions to provide state services in the settling collective labor disputes and executive authorities of the regions involved in the settlement of collective labor disputes (Article 407 of the Labor Code of the Russian Federation) (Labor Code, 2001).

A significant role in regulating and resolving conflicts in the form of revealing violations of labor legislation belongs to the Federal Service for Labor and Employment and its territorial bodies (Resolution, 2004). The most common types of violations of labor laws leading towards the emergence of individual labor disputes are the failure to pay severance pay; delay in payment of wages; non-compliance by the employer of the procedure for dismissal due to the reduction of staff; unreasonable attraction of workers to the material liability; non-observance by the employer of the order of bringing to disciplinary responsibility.

Consider the oversight and compliance inspections in Table 1.

**Table 1:** Oversight and compliance inspections, 2014–2017

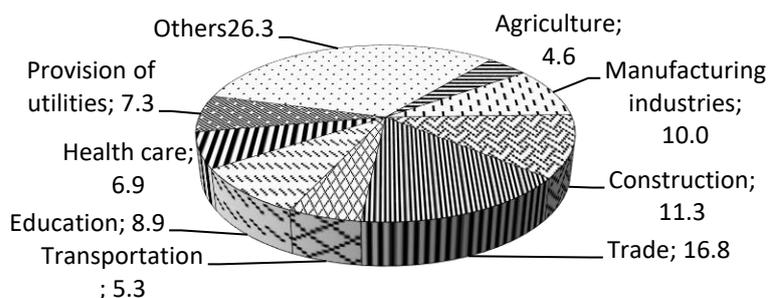
Indicators	2014		2015		2016		2017		2017 to 2014
	Number of inspections	%							
The total number of inspections carried out for legal entities, individual entrepreneurs	132557	100	138475	100	134568	100	149014	100	1.12
of which: violations were found	102536	77.4	107740	77.8	100803	74.9	105881	71.1	1.03

Indicators	2014		2015		2016		2017		2017 to 2014
	Number of inspections	%							
Total number of scheduled inspections	28027	–	27679	–	18123	–	14187	–	0.51
of which: effective inspections	26309	93.9	25852	93.3	18691	103	13374	94.3	0.51
Total number of unscheduled inspections	104530	–	110796	–	116445	–	134827	–	1.29
of which: effective inspections	76227	72.9	81888	73.9	82112	70.5	92502	68.6	1.21

Source: Calculated from the data of Rostrud (Report, 2018).

There is an increase in the effectiveness of inspections, the identification of offenses during them (for the period 2014–2017 by 103%), and, consequently, an increase beyond the possibility of regulating labor contradictions by extrajudicial forms. The increase the effectiveness of unscheduled inspections (for the years 2014–2017 by 121%) indicates the increased activity of citizens in protecting their rights.

The number of inspections by types of economic activity according to the data of Rostrud is shown in Figure 1.



**Figure 1:** The number of inspections by types of economic activity, 2017, %

The largest number of inspections aimed at preventing violations in trade, construction, manufacturing, a comprehensive category of economic activities "other types." According to Rostrud, there were no

significant changes in inspections by types of economic activity in 2014–2017. The relative increase is in the provision of public services, in trade, in agriculture, in manufacturing industries; decrease – in construction. The dynamics of indicators of state control and supervision over compliance with labor legislation is presented in Table 2.

**Table 2:** Indicators of the Federal Service for Labor and Employment

Indicators	2014	2015	2016	2017	2017 to 2014
Number of employers for whom violations were identified	92893	100025	90080	93733	1.01
The amount of fines imposed on the employer for violation of labor legislation,					
million rubles	2097.9	3284.7	3808.8	3554.4	1.69
million USD	64.2	58.4	52.2	58.6	0.91
The amount of fines paid,					
million rubles	1655.5	2803.3	3296.6	3189.9	1.93
million USD	50.7	49.8	45.2	52.6	1.04
The number of officials and entrepreneurs brought to administrative responsibility on the basis of the protocols of state labor inspectors, units.	7777	7419	8454	8453	1.09
The number of decisions taken by the court to bring to justice the perpetrators	12534	12187	15141	14627	1.17
Number of inspections conducted in conjunction with other state control (supervision), municipal control, units.	4219	3457	2496	2393	0.57

Source: Calculated from the data of Rostrud (FSLE, 2018).

The increase in unscheduled inspections of violation of labor rights of workers (119%) indicates both the violation of labor rights, and increased activity of workers in resolving the contradictions in the field of labor relations. In 2017, the number of employers with respect to which violations were found has not changed significantly, but the amount of fines imposed on them for violations in the field of labor relations increased by more than 1.7 times, as did the number of officials brought to administrative punishment (1.09). Provided insufficient mechanisms for out-of-court settlement are used, the court form is used: the number of decisions taken by the court to bring the guilty persons to justice has increased almost 1.2 times from 2014 to 2017. The reduction on the number of joint inspections with other state control bodies by 43%

in four years indicates a missed opportunity to resolve labor contradictions.

In the pre-trial order, workers' complaints on labor disputes are considered. A large number of individual labor disputes have been identified regarding the recruitment of employees to disciplinary liability not provided for in the Labor Code of the Russian Federation (severe reprimand, transfer for one month to lower-paid work).

### **Conclusion**

Preventive resolution of labor contradictions allows to reduce or even eliminate the possibility of conflicts. Given the limited budgetary resources allocated to the functioning of the judicial system and the growth of social tension, it is advisable to give priority to out-of-court methods for resolving labor disputes, to direct efforts to prevent the emergence of labor conflicts. Implementation of this strategy should be carried out at macro– and micro levels. The role of the state in its implementation is to encourage employers and employees to strengthen social partnership, to develop the negotiation process; in the activation of social policy; in financing its implementation on the principle of priority.

Extrajudicial settlement of labor disputes is facilitated by the activation of the work of the tripartite commissions on regulating social and labor relations, as well as the activities of sectoral trade unions. For the resolution of labor disputes at enterprises, there are mediation and arbitration commissions. However, in the modern Russian practice, neither employers nor workers consider the labor dispute resolution committee and the trade union committee as an effective mechanism for resolving labor disputes.

Thus, the strategy of out-of-court settlement of labor disputes is a fair and effective method for resolving contradictions in the field of labor relations, leading to a reduction in the burden on civil courts in conditions of limited budget financing.

Due to the limited budgetary sources of the financing labor inspection, as well as the need to improve performance, it is advisable to expand possible inspection methods aimed mainly at preventing violations of the law and law enforcement practices in the field of labor relations, changing priorities in labor inspection activities. It is necessary to focus on the implementation of preventive measures, to adjust the priority activities of labor inspections in the direction of conflict prevention in the field of labor relations, to provide more technical

assistance, counseling, to ensure improved enforcement of legislation, contracts and agreements in the labor sphere.

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