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# Principle of freedom of labor and its implementation in labor relations: ratio of public and private principles

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5.1.2. Public Law (State Law) Sciences

## GENERAL DESCRIPTION OF RESEARCH

**Relevance of the research topic.** Various economic and social factors, widespread technological advancements, and the evolving dynamics of social relations necessitate a closer examination of the principle of freedom of labor. The principles of law play a crucial role in determining the direction of legal regulation. In the realm of social relations concerning the disposal of abilities for work, one of such directing principles is the principle of freedom of labor. The current ratio of public and private principles in this area of legal regulation is expressed by this principle. The significance of the principle of freedom of labor is confirmed by its establishment in Article 37 of the Constitution of the Russian Federation (hereinafter referred to as the Constitution of the RF). Furthermore, this characteristic is not exclusive to domestic legal order. Many basic laws of other countries also frequently include provisions that establish the content and direction of legal regulation in the realm of social relations pertaining to the disposal of abilities for work. The regionalization of the Eurasian space has created conditions for analyzing the principle of labor freedom. This includes finding opportunities to strengthen economic cooperation and harmonize employment legislation within the regulatory legal framework of the Eurasian Economic Union (hereinafter referred to as the EAEU). Taking into account the fact that all the member states of the EAEU are also members of the Commonwealth of Independent States (hereinafter referred to as the CIS), and taking into account the common experience of legal regulation in the Soviet period, from which the legislation of the member states of the CIS originates, it seems useful not to limit ourselves to studying the experience of the member states of the EAEU in understanding and implementing freedom of labor, but to consider the legislation of all the member states of the CIS.

This principle can be implemented through civil law contracts or by entering into state or municipal service. However, it is most commonly used in employment law. Thus, the principle of freedom of labor is expressed in employment law through the principle of freedom of employment contract as confirmed by relevant statistics.

In practice, legal regulation of labor relations based on this principle protects the rights and interests of employees, including persons wishing to enter into an employment contract, to a greater extent. Despite the social orientation of labor law, the formal declaration of principles in practice leads to the creation of an excessively large and unreasonable number of opportunities are created for employees, which can lead to a disproportionate restriction of opportunities for employers. Legal regulation based on the principle of freedom of labor is often exercised without taking into account the necessary harmonious combination of public and private principles where the government shall establish state guarantees of labor rights and freedoms of citizens, protect the rights and interests of employees taking into account also needs of employers. However, according to Article 2 of the Labor Code of the Russian Federation[1] (hereinafter referred to as the LC RF), the combination of state and contractual regulation is one of the basic principles of regulating employment relations. In this situation, legal regulation of labor does not solve the tasks assigned to employment legislation, in particular, the creation of the necessary legal conditions for achieving optimal coordination of the interests of the parties to employment relations, the interests of the state (Part 2 of Article 1 of the LC RF). Therefore, the practical implementation of the principle of freedom of labor does not fully correspond to one of the main objectives of labor legislation, which leads to disharmony in the combination of public and private principles underlying it. In this regard, the study of the problem of implementation of the principle of freedom of labor within the framework of labor relations and the correlation of public and private principles in this process is important from the point of view of improving labor legislation, law enforcement activities, preserving social and economic stability.

At the same time, a comprehensive study is necessary due to changes in the employment market that require a reassessment of existing employment regulation. The practical implementation of the principle of freedom of labor is burdened with

[1] Rossiyskaya Gazeta, No. 256, 12/31/2001.

several non-traditional problems for law enforcement practice. Social and economic factors strongly influence employment relations. Therefore, it is necessary to analyze and adapt generally accepted principles to modern conditions. Modern ways of regulating employment relations require implementing employment law principles in new realities. Thus, it is relevant to assess new manifestations of the principle of freedom of labor. It is worth noting that significant changes were made to the regulation of employment relations with remote employees during this study. The practice of transboundary distant employment, which is not formally regulated by employment legislation, has become widespread. These phenomena challenge the fundamental principles of legal regulation of employment relations. In implementing the principle of freedom of labor throughout the stages of labor relations, there are unresolved problems or regulations that are not optimal for the parties involved in employment relations.

**The degree of scientific development of the research topic.** Various aspects of freedom of labor have been studied from the perspective of general law theory and related fields, such as constitutional and employment law.

In the field of constitutional law, it should be noted the dissertation research "Problems of realization of constitutional freedom of labor in the conditions of formation of market economy of Russia" by V.V. Kirikova[2]. She proposes adopting the Federal law "On the freedom of employment contract". It is also necessary to note the dissertation research of A.E. Kanakova "Freedom of labor and the right to work in a market economy (constitutional-legal study)"[3]. The study reveals the main features of the status, problems and directions for improving constitutional-legal regulation of guarantees of freedom of labor and the right to work as constitutional principles.

[2] V.V.Kirikova Problems of Realization of Constitutional Freedom of Labor in the conditions of formation of Market Economy of Russia. Dis . ...cand. legal _ Sci. Moscow, 2001. 167 p.
3 Kanakova A.E. Freedom of Labor and the Right to Work in Market Economy (Constitutional-legal Study). Dis . ...cand. legal _ Sci. Barnaul, 2016. 274 p.

Several studies have examined the current state of the principle of freedom of labor in regulating employment relations. For example, R.G. Umyarov's, in his dissertation titled “The Principle of Freedom of Labor in Russian Law (Theoretical and Practical Problems”[4], offers a classification of forms of implementation of the principle of freedom of labor in specific legal relations from the point of view of the general theory of law. It is necessary to note the dissertation of T.V. Russkikh “Freedom of the Parties to the Employment Contract at its Conclusion, Amendment, Termination and the Limits of its Restriction”[5], in which the author not only considered in detail the reflection of the principle of freedom of labor in the framework of employment law, but also significantly reinterpreted the idea of the representation of freedom of labor in employment relations, in particular, proposed to establish the principle of freedom of the parties to the employment contract, allowing to determine the range of subjects to whom it applies unambiguously.

One noteworthy foreign study is the monograph “The Idea of Freedom in Employment Law”[6] edited by K.L. Tomashevsky. This monograph explores the philosophical, theoretical and historical aspects of the idea of freedom of labor in the law and legislation of the Republic of Belarus, as well as the challenges associated with implementing freedom of labor.

Although there has been a consistent interest in the principle of freedom of labor from both general theoretical point of view and from the positions of certain branches of law, including constitutional and employment law, the questions that require scientific analysis have not been exhausted. Specifically, there is a lack of periodization regarding the development of the idea of freedom of labor. There is a lack of formulated arguments in favor of interbranch nature of the principle of freedom of labor, as well as a lack of disproving arguments in favor of branch nature of this principle. It is worth noting that the principle of freedom of employment

[4] Umyarov R.G. The Principle of Freedom of Labor in Russian Law (Theoretical and Practical Problems. Dis . ...cand. legal _ Sci. Nizhny Novgorod, 2007. 190 p.
[5] Russkikh T.V. Freedom of the Parties to the Employment Contract at its Conclusion, Amendment, Termination and the Limits of its Restriction. . Dis . ...cand. legal _ Sci. Izhevsk, 2011. 202 p.
[6] The Idea of Freedom in Employment Law: monograph / E.A. Volk (and others); ed. by K.L. Tomashevsky. Minsk: Amalfea, 2015. 208 p.

contract may be a branch “refraction” of a different composition of interbranch principles than currently accepted in science.

**Theoretical basis of research**. The basis of the conducted research was formed by theoretical papers of pre-revolutionary and Soviet scientists, modern Russian and foreign authors in the field of general theory of law and branch legal sciences (constitutional law, employment law), as well as representatives of other areas of scientific knowledge.

Among pre-revolutionary and Soviet scientists, in whose studies the issues of the principle of freedom of labor were raised, we should mention N.G. Aleksandrov, V.S. Andreev, K.M. Varshavsky, I.S. Voitinsky, Y.S. Gambarov, V.M. Dogadov, R.Z. Livshits, L.S. Tal and others.

In the field of general theory of law the principles of law were covered in the works of such researchers as A.L. Zakharov, R.L. Ivanov, S.A. Komarov, V.V. Lazarev, A.V. Malko, M.N. Marchenko, I.V. Ponkin, L.P. Rasskazov, A.S. Sidorkin, R.G. Umyarov and others.

The principle of freedom of labor in constitutional law was the subject of attention in the studies of S.A. Avakyan, Y.A. Vedeneyev, A.E. Kanakova, D.B. Katkov, V.V. Kirikova, E.V. Korchigo, B.S. Ebzeev and others.

Among the scholars of employment law, whose works, in whole or in part, touched upon the issues of legal regulation of freedom of labor within the framework of employment law, we should mention V.A. Abalduev, A.M. Babitsky, E.S. Batusova, L.Y. Bugrov, M.O. Buyanova, V.L. Geikhman, S.Y. Golovina, N.V. Demidov, I.K. Dmitrieva, V.V. Zhernakova, N.V. Zakalyuzhnaya, S.A. Ivanov, Y.V. Ivanchina, I.Y. Kiselev, A.M. Kurennoy, V.V. Lipkovskaya, L.A. Lomakina, A.M. Lushnikov, M.V. Lushnikova, N.L. Lyutov, S.P. Mavrin, O.I. Novikova, Y.P. Orlovsky, A.F. Nurtdinova, O.Y. Pavlovskaya, A.Y. Petrov, T.V. Russkikh, O.V. Smirnov, G.A. Trofimova, V.V. Fedin, E.B. Khokhlov, L.A. Chikanova, D.N. Yaroshenko and others.

In foreign literature, the issues of implementation of the principle of freedom of labor in employment relations were studied by M.N. Aliyev, K.Z. Alieva, E.A.

Volk, M.Y. Gasanov, A.M. Dinorshoyev, S.K. Zakharia, A. Y. Zakharyan, T.M. Kapsha, O.S. Kuryleva, A.T. Mamedova, E.N. Nurgalieva, N.A. Pazylov, K.S. Ramankulov, A.Yu. Sahakyan, G.S. Sapargaliev, I.Z. Sa'diev, E. Sokolov, K.L. Tomashevsky, Y. Tursunov, M.H. Hasenov and others.

For a detailed study of certain aspects of freedom of labor, attention was also paid to the works of authors from other fields of scientific knowledge, for example, history (S.Y. Abramova, P. Brizon, H. Wallon, A.Y. Gurevich), sociology (E. Fromm) and economics (A. Smith, M. Rothbard).

**The object of research** is the social relations arising in the process of disposal by individuals of abilities for work, where the principle of freedom of labor is manifested.

**The subject of research** is normative legal acts mediating the principle of freedom of labor and its separate elements, including international acts, Russian legislation and legislation of the CIS member states and a number of other states, materials of law enforcement practice, as well as previous scientific researches.

**The goal of research** is to clarify theoretical provisions on the constitutional principle of freedom of labor, to reveal the correlation of public and private principles, to identify the main trends related to the implementation of this principle in the framework of labor relations, as well as to develop recommendations for improving current legal regulation and revising existing approaches to law enforcement, including court practice.

Research has the following main **objectives** in order to achieve the stated goal:

1) conduct a historical and legal analysis of formation of idea of freedom of labor, highlight its main stages and assess the correlation of public and private principles in the realization of freedom of labor in various historical periods;

2) determine the role of freedom of labor as an interbranch principle in domestic legal doctrine and characterize the correlation between public and private principles depending on the branch of law within which this principle is implemented;

3) study the principle of freedom of labor at the level of international acts;

4) examine experience of establishing the principle of freedom of labor in constitutions and legislation, as well as approaches to understanding the principle of freedom of labor in the CIS member states, with special attention to the EAEU member states, determine the direction of development of the legislation of these states in terms of the correlation of public and private principles in the implementation of the principle of freedom of labor;

5) analyze the features of the implementation of the principle of freedom of labor in employment relations in the Soviet and modern periods, to characterize the expression of public and private principles in these periods in the context of the implementation of the principle of freedom of labor;

6) formulate practical problems of the implementation of the principle of freedom of labor in the existence of employment relations and after their termination, as well as to suggest possible options for their solution.

**Research methodology and methods**. Various scientific methods, including dialectical, logical, systematic, analysis, synthesis, deduction, and induction, were utilized to achieve the research goal in a structured approach.

Private scientific methods were also important part of the research methodology. Thus, the historical and legal method was used to study the stages of development of idea on freedom of labor. This allowed for the identification of the specifics of each stage and changes in the legal category over time. The use of the normative (logical) method was necessary in working with normative legal acts. This method helped to maintain the integrity of the legal category being studied and explore the correlation of the principle of freedom of labor with other legal categories. The principle of freedom of labor in the legislation of the CIS member states was comprehensively analyzed using the comparative legal method. The advantages and disadvantages of implementing this principle in these countries were determined in comparison with the Russian Federation. Additionally, a number of provisions that can be taken into account by the domestic legislator in the regulation of employment relations were identified.

The combination of general-scientific and private-scientific methods enabled a detailed analysis of the implementation of the principle of freedom of labor and the resolution of the formulated tasks.

**Empirical basis of research** consists of normative legal acts of the Russian Federation and other states, acts of international organizations, materials of court practice, explanations of state authorities, draft federal laws and scientific research on the problem the principle of freedom of labor.

**Scientific novelty of this research** lies in conducting a comprehensive analysis of freedom of labor as a legal category and determining its role in modern employment relations taking into account the current balance between public and private principles in the implementation of the considered principle. Within the dissertation for the first time the periodization of the development of the idea of freedom of labor is proposed and a comparative legal analysis of the status of the principle of freedom of labor in Russia and other CIS countries is carried out. As a result of the study, an original argumentation in favor of the status of freedom of labor as an inter-branch principle of law was formulated, as well as problems related to the implementation of freedom of labor were identified and ways to solve them were proposed. Therefore, a contribution to the comprehension of the implementation of the principle of freedom of labor in modern conditions has been made, which contributes to the further development of this legal category, as well as the formation of new approaches in its understanding.

**Key research findings and conclusions submitted for defense**:

1. The author's periodization of the evolution of the idea of freedom of work is developed:

1) the period of absence of freedom of labor, which corresponds to the period of existence of the states of the Ancient East;

2) the period of contempt for freedom of labor, typical of the period of Antiquity;

3) the period of corporate restriction of freedom of labor, which coincides with the period of the Middle Ages;

4) the period of absolute freedom of labor, which belongs to the late 18th and early 19th centuries;

5) the period of rationalized freedom of labor, which begins with the birth of labor law and continues until modern times;

6) the period of conscious freedom of labor, which is predicted by the existing trends in the sphere of legal regulation of employment relations.

2. It is determined that the principle of freedom of labor by its nature belongs to the category of interbranch principles of law. The dissertation presents arguments in favor of this position, as well as arguments proving the invalidity of the position on the interbranch nature of the studied principle. The interbranch nature of the principle of freedom of labor imposes its own peculiarities, in particular, the manifestation of certain elements of freedom of labor depending on the branch within which this principle is implemented. It is also related to the fact that the degree of expression of public and private principles and their correlation with each other depends on the branch within which the principle of freedom of labor is implemented. If in the implementation of the principle of freedom of labor in civil relations private principles prevail, and in relations concerning civil and municipal service - public ones, then due to the purpose and objectives of labor legislation the principle of freedom of labor in labor relations is characterized by a more balanced expression of public and private principles, which does not cancel the general orientation of regulation of labor relations towards public principles. However, this interbranch principle finds its fullest manifestation in the branch of employment law, where all the elements included in its composition are revealed. Such an element of the content of freedom of labor as the possibility (freedom) to realize (or not to realize) the ability to work has key importance, as the subsequent manifestation of other elements depends on it.

3. The position existing in the science of employment law that freedom of labor is one of the fundamental principles of international law is challenged. International acts, definitely, contribute to the realization of freedom of labor, but they do not establish this principle, but only some of its elements. To eliminate this

problem, it is proposed to supplement the Treaty on the Eurasian Economic Union signed by the Presidents of Belarus, Kazakhstan and Russia in Astana on May 29, 2014[7] (hereinafter referred to as the EAEU Treaty) with a provision stipulating that the disposal of abilities for work of workers of the EAEU member states, including employment, is based on the principle of freedom of labor. This provision can also be taken into account in the case of the development and adoption of a general framework of EAEU employment legislation.

4. As a result of the comparative legal analysis of normative legal acts in the field of regulation of employment relations of the CIS member states, the conclusion is formed that there is no uniform approach to the understanding and implementation of freedom of labor in these countries. While in some countries freedom of labor or its separate elements are explicitly defined at the constitutional level, and in some cases even the branch expression of the principle of freedom of labor (the freedom of employment contract), in other countries freedom of labor is not defined. Such diversity is also found at the level of the branch of employment law of each of these states and in the legislative acts devoted to the employment policy of such countries. CIS member states have also chosen different approaches to the correlation of public and private principles in the implementation of the principle of freedom of labor in labor relations. This is reflected in different degrees of state participation in the regulation of labor relations. Legal regulation in the CIS countries is adapted to the current socio-economic realities of the respective state, which is confirmed by relatively recent changes in the legislation regulating labor relations in these countries. From the point of view of the implementation of the principle of freedom of labor, these changes are complex, combining both provisions aimed at strengthening private principles in certain issues related to freedom of labor, and provisions that imply public principles through the important role of state regulation.

[7] EAEU Legal Portal // URL: https://docs.eaeunion.org (access date: 07/27/2023).

5. The possibility of taking into account for the domestic legislation certain provisions of the regulatory legal base of the CIS member states on the issue of consolidation and understanding of the principle of freedom of labor was justified:

1) fix the principle of freedom of employment contract in the LC RF taking into account the experience of such fixation in the Labor Codes of the CIS member states since at the moment the LC RF stipulates the interbranch principle of freedom of labor, despite the fact that its branch expression is usually recognized as the branch principle of freedom of employment contract;

2) define more clearer that the principle of freedom of employment contract takes into account the interests of both parties to the employment contract by establishing in the LC RF certain powers of employers in this area, for example, the right to free recruitment, the employer's right to freedom of choice in hiring. Current labor legislation does not contain such powers of the employer, and the elaboration of relevant provisions in law enforcement and law-explanatory practice does not allow to take them into account properly in the regulation of labor relations.

6. It is found that the principle of freedom of employment contract is not only a branch manifestation of the principle of freedom of labor or a combination of the principles of freedom of labor (on the part of an employee) and freedom of entrepreneurial (economic) activity (on the part of an employer), but a combination of the principles of freedom of labor, freedom of entrepreneurial (economic) activity and freedom of contract. Such an approach theoretically allows not only to take into account the interests of both parties to an employment contract, but also emphasizes the importance of the contractual method in the framework of legal regulation of employment relations as an expression of private principles in modern labor law.

7. It is proposed to legislate the possibility of transboundary distant work, where the employer is registered in the Russian Federation and the employee is located outside the territory of the Russian Federation. The absence of the possibility of such distant work is a violation of the principle of freedom of labor by limiting the employee's choice of territorial location. The expression of public principle in this matter may not be justified by the protection of the weaker party of labor

relations, since the recommendations of state authorities to switch from an employment contract to a civil law contract while the employee is abroad obviously puts the employee in an even more unprotected position. In this regard, it is necessary to establish a provision in Chapter 49.1 of the LC RF, according to which during the period of performing job duties remotely an employee may be located in the Russian Federation as well as outside it.

8. It is proved that it is necessary to expand the limits of freedom of employment contract when amending employment relations from the point of view of reconsidering the issue of the possibility of transformation of an employment contract concluded for an indefinite period into a fixed-term employment contract. The strengthening of private principles in this matter in the form of the possibility of transformation by additional agreement more fully meets the interests of the parties to labor relations. In this regard, it is necessary to amend employment legislation, in particular, to supplement Article 58 of the LC RF with Part 7, which establishes the possibility of transforming an employment contract concluded for an indefinite period into a fixed-term employment contract by concluding an addendum in case of occurrence of the grounds stipulated by Part 2 of Article 59 of the LC RF.

9. It is revealed that there is a negative trend in the settlement of employment disputes on reinstatement after termination of the employment contract at the employee's own will or by mutual agreement of the parties, which is expressed in incorrect interpretation of the principles of freedom of labor and freedom of employment contract, which does not fully take into account the interests of employers and creates unjustified negative consequences for them. From the point of view of the correlation between public and private principles in the implementation of the principle of freedom of labor in the termination of labor relations on the above-mentioned grounds, such a situation shows the negative impact of such an approach of the courts to the consideration of employment disputes, since the termination of labor relations based on private principles may be considered illegal if the employee later changes his or her mind. As a consequence, it is recommended to revise the approach of courts to the settlement of such

employment disputes on reinstatement, in particular, on the basis that the interests of employees and employers shall be fully taken into account in the implementation of the principle of freedom of labor within the framework of labor relations. In order to ensure uniform application of such an approach, it is proposed to clarify it in the Resolution of the Plenum of the Supreme Court of the Russian Federation.

10. It is argued that it is necessary to introduce the possibility for the parties to an employment contract to conclude non-competition agreements, which imply the employee's obligation not to conclude employment contracts for the performance of job duties that are wholly or partially similar to the job duties under the terminated employment contract with entities that are in competition with the employer, as well as the employer's obligation to pay compensation for the employee's performance of the above obligation. The introduction of such structures expands private principles in the regulation of labor relations and the implementation of the principle of freedom of labor, but the presence of public principles, which are expressed in the legislative establishment in the LC RF of certain requirements and guarantees at the conclusion of the considered agreements, will prevent abuse and protect the weaker side of labor relations. It is proposed to fix such possibility in a new article of the LC RF taking into account the best practices of foreign countries (the Republic of Belarus, the Republic of Kazakhstan, the Republic of Moldova).

**The theoretical and practical significance of research** is due to the scientific novelty of the presented research results. The conclusions formulated in the study clarify and develop the currently available in Russian legal science ideas and approaches to determining the role of the principle of freedom of labor in the disposal of abilities for work, ratio between public and private principles in the implementation of the principle in question. The obtained results can serve as a theoretical basis, contribute to the further development of the mentioned topics, as well as can be included in the educational material of the programs of academic disciplines on constitutional and employment law.

The proposals and recommendations described in the dissertation research may be useful in the development of draft federal laws, the preparation of

explanatory acts by state authorities, the formation of a legal position in the implementation of justice, the interaction of the parties of social partnership, as well as in the direct regulation of employment relations between a particular employee and employer. For example, recommendations on the interaction of the parties of employment relations in the termination of the employment contract at the initiative of the employee or by mutual agreement in order to maintain a balance of interests, comply with the requirements of employment legislation and take into account current court practice.

**Authenticity and validity of the results of the research results** are predetermined by the implementation of scientific work taking into account the provisions contained in various sources: regulatory legal bases of the Russian Federation and foreign states, law enforcement practice, explanations of various state authorities, scientific works of domestic and foreign specialists both in the field related to the topic of the study and in other related areas of scientific knowledge. The regularity of the derived results is due to the use of an optimally selected methodological complex within the research.

**Approbation of the results.** Certain conceptual provisions of research were reflected in the participation in the following scientific-practical conferences:

1. International Scientific and Practical Conference of Students and Young Scientists “Law on the Way to Sustainable Development”, Moscow, May 14, 2022. Presentation title: “Non-monetary (natural) form of payment for labor and freedom of employment contract”;

2. VII International Scientific and Practical Conference “Labor Law and Social Security Law in the Context of Great Challenges” (VII Gusov Readings), Moscow, June 3-4, 2022. Presentation title: “Manifestations of freedom of labor in the context of employment relations with distant employees”;

3. V International Scientific and Practical Conference “Social Partnership and Employment Policy” (V Smirnov Readings), Moscow, February 9, 2023. Presentation title: “Implementation of the principle of freedom of labor in the context of a new employment policy”.

**The structure of research** is determined by its goal and objectives. The dissertation consists of the introduction, three chapters structured into six paragraphs, the conclusion, the list of references.

## CONTENTS OF RESEARCH

The introduction argues the relevance of research, assesses the degree of scientific development of the raised topic, reveals the theoretical, research methodology and methods and empirical basis. There are defined the object and subject of the study, established the purpose and objectives that need to be solved to achieve it. It substantiates the scientific novelty of the work, its theoretical and practical significance, reliability of the results. The main scientific provisions submitted for defense are presented.

**Chapter 1 "Formation of the Principle of Freedom of Labor and its Role in Legal Regulation in the Sphere of Labor"** consists of two paragraphs and is devoted to the consideration of socio-economic prerequisites that contributed to the development of the idea of freedom of labor, as well as its current role in the system of principles of law.

*Paragraph 1.1 "The Formation of the Idea of Freedom of Labor"* examines freedom of labor within the generally accepted chronology of historical periods.

It should be noted that initially in the times of the states of the Ancient East (Babylon, Ancient Egypt) there was no freedom of labor, as the concept of individual freedom was absent. Due to strict regulation by the state, a person worked in the role and to the extent necessary to satisfy public interests. Certain rudiments of freedom of work were formed in the period of Antiquity. However, the labor of free persons was not widespread, as the main productive force was the labor of slaves. The hired labor of freemen was mostly perceived negatively, because in the eyes of the society of that time, such activity likened a free man to a slave. The Middle Ages were characterized by the spread of normative legal acts regulating relations related to the work of free men. At the same time, given the workshop organization of production,

which limited the ability of parties to agree on working conditions, contractual forms of employment, in which freedom of labor could be realized, did not find significant development. In the New Age period, economic liberalization and the development of the doctrine of natural rights transformed social relations in the sphere of labor, and freedom of labor became one of the basic principles. At the same time, the absolutization of individual freedom minimized the interference of corporations and the state. Because of this, despite the formal establishment of freedom of labor in practice, much depended on the discretion of the employer. This led to excessive exploitation of working population, increase in the number of working hours, decrease in remuneration and high level of unemployment even with significant economic growth, which became one of the reasons for the first active steps of the state to regulate relations on the use of labor. Legislative amendments aimed at limiting the freedom of contract while strengthening the protection of the weaker party in employment relations were the foundation on which factory legislation was first formed and employment legislation subsequently.

As a result, the following periodization of the development of the idea of freedom of labor is formulated: 1) the period of absence of freedom of labor, which corresponds to the period of existence of the states of the Ancient East; 2) the period of contempt for freedom of labor, typical of the period of Antiquity; 3) the period of corporate restriction of freedom of labor, which coincides with the period of the Middle Ages; 4) the period of absolute freedom of labor, which belongs to the late 18$^{th}$ and early 19$^{th}$ centuries; 5) the period of rationalized freedom of labor, which begins with the birth of labor law and continues until modern times. It is also important to acknowledge that the ratio of public and private principles in the implementation of freedom of labor has not remained consistent throughout history. It is the role of the state to determine and maintain the ratio of public and private principles, thereby providing a balance between the positions of employers and employees. This allows the principle of freedom of labor to be implemented in the most optimal way, taking into account the interests of both parties to such relations and the state.

*Paragraph 1.2 "Freedom of Labor as an Interbranch Principle in Domestic Legal Doctrine"* analyzes the current status of the principle of freedom of labor and what place this principle takes in modern Russian law.

Different approaches to the definition of the concepts of "principle" and "principle of law" are provided. The analysis of these approaches allows us to conclude that principles, including within the framework of law, have a special role, characterizing them as a basic element in the structure to which they belong. The paragraph highlights various approaches to the classification of principles of law (by type of law, by nature, by the presence or absence of enshrinement in normative legal acts, by scope, prevalence and influence in the system of law). According to the type of law, the principle of freedom of labor belongs to the principles of bourgeois or socialist law; by nature - to socio-economic principles; from the point of view of fixation in normative legal acts - to norm-principles; by the sphere of action - to interbranch principles.

There are the following arguments in favor of the fact that the principle of freedom of labor is interbranch: the constitutional establishment of this principle; the impossibility of taking into account by branch regulation all the diversity of forms of implementation of freedom of labor; the existence of the branch principle of freedom of employment contract, through which the interbranch principle of freedom of labor is manifested in the branch of employment law. It is described the counterarguments against the claims that the considered principle is a branch principle: the absence of studies of the principle of freedom of labor from the point of view of administrative and civil law does not deny the possibility of implementation of this principle in these branches of law; direct consolidation of the principle of freedom of labor in the LC RF does not indicate the branch nature of this principle, as it may manifest the significance of this principle for the regulation of labor relations; the lack of manifestation of certain elements inherent in the content of the principle of freedom of labor in the branch of employment law. Attention is drawn to the key importance of such an element of the content of the principle of freedom of labor as the opportunity (freedom) to realize (or not to

realize) abilities to work. In light of the interbranch nature of the principle of freedom of labor, it is evident that the degree of expression of public and private principles, and their correlation with one another, is contingent upon the branch within which the principle of freedom of labor is operationalised. In the implementation of the principle of freedom of labor in civil legal relations, where private principles prevail, and in relations concerning civil and municipal service, where public principles prevail, the principle of freedom of labor in labor relations is characterised by a more even expression of public and private principles. This is in accordance with the purpose and objectives of labor legislation, which is to regulate labor relations in a manner that is oriented towards public principles.

The interrelation of the principle of freedom of labor with the principle of prohibition of forced labor and the right to work is studied. The positions available in science on the correlation of these legal categories are analyzed. It is noted that the principles of freedom of labor and prohibition of forced labor operate within the framework of labor relations on the basis of special interaction and mutual influence. It is also justified that the principle of freedom of labor and the right to work are different in nature, scope and range of subjects to whom they apply, and cannot be considered as general and private.

**Chapter 2 "Freedom of Labor at the International Legal Level and the Level of the CIS Member States"** includes two paragraphs and is devoted to determination of what position the principle of freedom of labor occupies in the system of international legal acts, as well as in the legal systems of the CIS Member States.

*Paragraph 2.1 "Freedom of Labor in International Acts"* provides an overview of international legal acts that have contributed to the realization of the principle of freedom of labor, in the chronological sequence of their issuance. It is noted that initially the attention in such acts was paid to the development of freedom of labor by establishing provisions relating to the negative side of freedom of labor (struggle against slavery, prohibition of forced labor). However, in the future, with the development of international legal regulation and cooperation of states in

general, the provisions relating to the positive side of labor freedom (establishment of various rights and opportunities of individuals in the field of labor) were also implemented. Further analysis allows to conclude that international acts contribute to the realization of freedom of labor. They do not establish this principle, but only some of its elements. Therefore, the amendment or invalidation of one of the documents, which contains such an element, can narrow the content of the principle of freedom of labor. Therefore, taking into account the current trends towards further integration between the EAEU member states, it is proposed to consider the possibility of establishing the principle of freedom of labor in the EAEU Treaty or to take this principle into account in the development of the a general framework of EAEU employment legislation.

*Paragraph 2.2 "The Principle of Freedom of Labor in the Constitutions and Legislation of the Member States of the Commonwealth of Independent States"* examines approaches to fixing the principle of freedom of labor in the normative legal acts of various CIS member states from a comparative legal perspective. Such comparativistic analysis allows to state that among the mentioned states there is no unified approach to the issue of understanding and realization of freedom of labor. While in some countries freedom of labor or its separate manifestations are clearly enshrined at the constitutional level, and in some cases even the branch expression of the principle of freedom of labor - the freedom of employment contract, in other countries freedom of labor does not find its normative fixation. Such diversity is also found at the level of the branch of employment law of each of these countries and in the legislative acts devoted to the employment policy of such countries. The CIS member states have also chosen different approaches to the ratio of public and private principles in the implementation of the principle of freedom of labor in labor relations. This is reflected in different degrees of state intervention in the regulation of labor relations. Legal regulation in the CIS countries is adapted to the current socio-economic realities of the respective state, which is confirmed by relatively recent changes in the legislation regulating labor relations in these countries. From the point of view of the implementation of the principle of freedom of labor, these

changes are complex, combining both provisions aimed at strengthening private principles in certain issues related to freedom of labor and provisions that imply public principles through the important role of state regulation. Based on the results of the analysis of the normative legal basis of the CIS member states on the issue of consolidation and understanding of the principle of freedom of labor, it is proposed to take into account positive foreign experience in certain aspects, in particular, to fix in the Russian employment legislation the branch principle of freedom of employment contract, as well as to clearly define that this principle takes into account the interests of both parties to the labor contract by establishing in the LC RF certain powers of the employer in this area.

**Chapter 3 "Implementation of the Principle of Freedom of Labor in Employment Relations in the Russian Federation"** consists of two paragraphs and is devoted to the analysis of the role of the principle of freedom of labor in employment relations, the legislative establishment of this principle and the problems arising in practice related to this principle in the Russian Federation.

*Paragraph 3.1 "Freedom of Labor as a Fundamental Principle in the Science of Employment Law: Classical and Modern Approaches"* compares the approaches to the legislative establishment of the principle of freedom of labor in the Soviet and modern periods, as well as its understanding within the science of employment law in these periods.

Paragraph 3.1 "Freedom of Labor as a Fundamental Principle in the Science of Employment Law: Classical and Modern Approaches" compares the approaches to the legislative establishment of the principle of freedom of labor in the Soviet and modern periods, as well as its understanding within the science of employment law in these periods.

The study provides a detailed analysis of normative legal acts, as well as scientific research of the Soviet period, which allowed to conclude that modern research in the field of freedom of labor to a certain extent is based on the scientific results obtained by scientists in the field of labor law of the Soviet period. At the same time, the comparison of studies of the Soviet and modern periods leads to the

conclusion that in modern studies new meanings are put into the category of freedom of labor, and the freedom of labor itself begins to be considered from new perspectives. Therefore, it is concluded that the content of freedom of labor from the point of view of the Soviet and modern science of employment law seriously differs. The category of freedom of labor in the USSR was often viewed through the prism of confrontation between socialist and capitalist ideologies, which imposed a certain impact on the understanding of freedom of labor. From the perspective of the correlation between public and private principles, the changes that have occurred can be characterised as a transition from the implementation of freedom of labor on predominantly public principles, taking into account the infusion of those properties that were characteristic of the Soviet period, to the implementation of freedom of labor, taking into account the necessary combination of public and private principles. It would be erroneous, however, to claim that private principles currently exert the greatest influence on the implementation of the freedom of labor principle, given that the field of labor law has also incorporated numerous elements of Soviet labor law.

It is claimed that in the context of the modern definition of the role of freedom of labor in employment law it is impossible to agree with the position that the principle of freedom of employment contract is a branch manifestation only of the principle of freedom of labor or a combination of the principles of freedom of labor (on the part of the employee) and freedom of entrepreneurial (economic) activity (on the part of the employer). It is justified that the principle of freedom of employment contract should be considered as a combination of three interbranch principles at once: freedom of labor, freedom of entrepreneurial (economic) activity and freedom of contract.

*Paragraph 3.2 "Freedom of Labor and Modern Labor Market: Current Problems and Possible Solutions"* problematizes the issues faced by the parties to employment relations in the implementation of freedom of labor, taking into account global transformations in the economic sphere, and proposes potential options for responding to them. These issues are structured in terms of the stages of employment

relations: emergence, amendment and termination. Taking into account the existing problems, the period after the termination of employment relations is considered as well.

*Sub-paragraph 3.2.1 "Freedom of Labor at Emergence of Employment Relations"* is devoted to the difficulties associated with the principle of freedom of labor that arise at the stage of concluding an employment contract.

It is noted that the issue of transboundary distant work, in which an employee performs a job function remotely from outside the territory of the Russian Federation, remains unsettled. The positions of scientists, state authorities, as well as materials of court practice on this issue are analyzed. The public principle in the implementation of the principle of freedom of labor in the context of the issue raised is expressed in the fact that despite the absence of a statutory prohibition, the parties cannot agree on transboundary distant work. Such a situation may not be justified by the protection of the weaker party to labor relations, since the recommendations of state authorities to switch from an employment contract to a civil contract while the employee is abroad obviously puts the employee in an even more unprotected position. Thus, the expansion of private principles, providing an opportunity for the parties to labor relations to agree on the condition of performing labor activities outside the Russian Federation contributes to the optimal implementation of the principle of freedom of labor in distant labor relations. On the basis of this analysis, it is argued that the impossibility of transboundary distant work violates the principle of freedom of labor, as it restricts the employee's choice of place of activity. In addition, it is argued that it is necessary to legislate the possibility of transboundary distant work. This sub-paragraph also considers the issue of the potential discriminatory nature of concluding fixed-term employment contracts with an employee when other employees with a similar job position have indefinite-term employment contracts. Based on the results of the analysis of court practice on this issue, it was concluded that when considering such disputes, courts shall take into account that if the category of the employee and job is specified in the list provided for by Part 2 of Article 59 of the LC RF, which allows for the conclusion of fixed-

term employment contracts by mutual agreement of the parties. Conclusion of a fixed-term employment contract with such an employee is not discriminatory.

*Sub-paragraph 3.2.2 "Freedom of Labor at Amending Employment Relations"* includes research on the issue of implementing freedom of labor in amending existing employment relations, in particular, the possibility of transforming an employment contract concluded for an indefinite term into a fixed-term employment contract by concluding an addendum to the employment contract. It is stated that at present there is no possibility of such transformation in employment legislation. This is primarily related to the protection of the rights and interests of the employee, which expresses the public nature of the implementation of the principle of freedom of labor. At the same time, it is argued that the current alternative of such transformation in the form of termination of an indefinite-term employment contract and conclusion of a fixed-term employment contract is not optimal. It creates additional risks for the employee. Therefore, it is proposed to reconsider the issue of the possibility of transforming an employment contract concluded for an indefinite term into a fixed-term contract and to adopt appropriate amendments to employment legislation.

*Sub-paragraph 3.2.3 "Freedom of Labor at Termination of Employment Relations"* raises the problems of implementing the freedom of labor within the framework of the stage of termination of the employment contract. Such problems include the tendency in recent years to increase the number of cases of reinstatement of employees whose employment contracts have been terminated on their own initiative or by mutual agreement of the parties. On the basis of the analysis of materials of law enforcement practice, the arguments on which the court rulings on recognizing the termination of employment relations as unlawful are based are presented. A detailed analysis of these arguments leads to the conclusion that they are invalid. In this connection, it is recommended that courts reconsider the approach to the settlement of labor disputes on reinstatement after termination of the employment contract at the employee's own will or by mutual agreement and in particular, on the basis that the interests of employees and employers shall be fully

taken into account in the implementation of the principle of freedom of labor within the framework of labor relations. In order to ensure the uniform application of such an approach, it is proposed to clarify it within the framework of the Resolution of the Plenum of the Supreme Court of the Russian Federation.

*Sub-paragraph 3.2.4 "Freedom of Labor after Termination of Employment Relations"* is devoted to the consideration of the issues of freedom of labor after termination of employment relations, in particular, attention is paid to the issue of the possibility of application of non-competition agreements in employment relations. Research reveals the urgency of the problem of employees' transfer to competing companies and the absence of effective tools for its solution in the current legislation. It is characterized the non-competition agreements, and on the basis of the experience of foreign jurisdictions it is given the features of this contractual structure. The sub-paragraph includes a study of the positions of Russian state authorities and scientific doctrine on the possibility of using non-competition agreements in Russia. Despite the absence of legislative fixation of such a possibility, there are arguments in favor of the need to introduce such agreements in the Russian Federation. The introduction of such structures expands private principles in the regulation of labor relations and the implementation of the principle of freedom of labor, but the presence of public principles, which are expressed in the legislative establishment in the LC RF of certain requirements and guarantees at the conclusion of the considered agreements, will prevent abuse and protect the weaker side of labor relations. In this regard, it is proposed to consider the issue of development and adoption of the relevant draft law on introduction of the possibility to conclude non-competition agreements into the LC RF. The provisions that such a draft law could contain are also provided and its content is explained.

**The conclusion of the dissertation research** summarizes the results of the conducted work. It is generalized the conclusions of individual sections, outlines the prospects of further development of this topic in legal science and is offered recommendations for development of legislation and court practice.

## PUBLICATIONS ON RESEARCH TOPIC

*Publications in journals recommended by HSE University (list D):*

1. Akhmetyanov D.V. Non-Competition Agreements: Problems of Theory and Practice // Theoretical and Applied Law. 2022. No. 2. P. 39-49.

2. Akhmetyanov D.V. Understanding of Freedom of Labour in Soviet and Russian Labour Law Science // Russian Juridical Journal. 2022. No. 1. P. 94-107.

3. Akhmetyanov D.V. Freedom of Labor from Ancient Societies to Modern Times // Theoretical and Applied Law. 2023. No. 1(15). P. 87-98.

*Publications in other journals included in the list of peer-reviewed scientific journals recommended by the Higher Attestation Commission of the Ministry of Education and Science of Russian Federation:*

4. Akhmetyanov D.V. Discrimination in atypical employment in the context of fixed-term employment contracts // HR Manager. 2021. No. 11. P. 29-33.