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Gulzat Satybaldievna Omorova
Osh State Law Institute
Senior Lecturer, Department of Civil Law and Process
Kyrgyz Republic, Osh

Niyazbek Adylzhanovich Pazylov
Osh State Law Institute
PhD in Law, Associate Professor of
the Department of Civil Law and Procedure
Kyrgyz Republic, Osh

Ravil Yagsupovich Mazitov
Osh State Law Institute
PhD in Law, Associate Professor of
the Department of Civil Law and Procedure
Kyrgyz Republic, Osh

CURRENT ISSUES OF CONCLUDING CIVIL LAW CONTRACTS IN THE FIELD OF LABOR LAW

Abstract: *The author considers the peculiarities and problematic aspects of the recognition of the civil-law contract by the employment contract, and also identifies the criteria that differentiate these contracts and allow the re-qualification of the civil-law contract in the employment contract.*

Key words: *employee, employer, civil contract, employment contract, Labor Code, court.*
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Introduction

The dominant fundamental definition of an employment contract is given in the Labor Code in Art. 53, where it begins with the word “agreement”, which is concluded between the main subjects of the employment contract, these are the “employer” and “employee”, indicating the employer’s obligation to provide the employee with work according to the stipulated labor function, to ensure all working conditions provided for by labor law and local acts of the organization, and pay wages on time. And the employee, in turn, undertakes to personally perform the entire labor function stipulated by the agreement and adhere in strict accordance with the rules existing in this organization [1].

So, on the basis of Article 6 of the Labor Code [1], when it is established in court that a civil law contract actually regulates labor relations between an employer and an employee, the provisions of labor legislation apply to such relations. For example, in practice there are cases when new employees are hired, then such contracts are concluded with them, which are similar in their elements to civil law contracts and on the basis of these, labor relations are established. As for civil law, for example, under contracts for the provision of services or performance of work, the performer (contractor) is obliged to fulfill a specific task (tasks) of the customer, which is known even at the time of the conclusion of the contract (Articles 623, 697 of the Civil Code of the Kyrgyz Republic). According to the basics of a labor

agreement, a person hired must fulfill his obligation on the subject of the contract and in accordance with the job description, following the instructions of the employer (Article 53 of the Labor Code of the Kyrgyz Republic). It should be noted that the main feature is the process of labor activity of the employee, and how it will be implemented.

The practical justification of these provisions in this circumstance may lead to a violation of the rights of citizens (workers) to work, since they cannot acquire full legal status to be called "workers", and not a performer or contractor. At the same time, one loses hope for those guarantees that are provided for in Article 42 of the Constitution of the Kyrgyz Republic and the Labor Code of the Kyrgyz Republic [2]. Perhaps to eliminate these contradictions and legal consequences, the legislator in Art. 6 of the Labor Code of the Kyrgyz Republic provides for the possibility of transforming a civil law contract into an employment contract, or as a result of this procedure, labor law norms will be applied to relations recognized as labor. It should be noted that, despite its legislative consolidation o the possibility of recognizing such contracts as employment contracts, there are unresolved problems in the implementation of this procedure.

Russian scientists [3, p.142] pay attention to the following features:

- personal performance by the employee of his labor function (work in a certain position according to the state, in a certain profession, specialty and the implementation of all instructions of the management as they become available);
- the obligation to comply with the internal labor regulations and other local regulatory legal acts, provided that the employer creates the necessary conditions for their implementation;
- lack of definition of the concluded contract;
- fixed salary;
- extension to the person of the guarantees provided for by the labor law;
- responsibility of employees.

This distinction in practice can be replaced by civil law contracts on the basis of bypassing a number of guarantees both in legal and economic terms.

In this regard, the change of civil law contracts into labor contracts can be divided into two categories:

a) When the contractor (employee) and the customer (employer) trust each other and knowingly enter into a civil law contract, fully aware of the legal consequences of such an action. That is, the will of the parties is aimed at the emergence of civil law relations. In these cases, the plaintiffs are primarily the tax authorities, who have to prove that the employment contract was replaced by a civil law contract, which they do not always succeed.

b) When the customer (employer), when concluding a civil law contract, is not sure that the employee will suddenly decide to reclassify this contract into an employment contract. At the same time, both the performer (employee) and the tax authorities can present requirements for legalization. In addition, in these cases, the risk of retraining civil into labor increases significantly [4].

There is a growing number of cases in judicial practice when employers make unlawful attempts to disguise labor relations and replace them with civil law relations. Employers justify their preference for concluding such contracts by the fact that such contracts give them an alternative when terminating the contract without obligations, while the real employee actually does not receive any prescribed guarantees and compensation upon termination of the employment contract. As a result, it turns out that a civil law contract at its price for an “incompetent” employer can be considered almost “free”.

In the legal literature, there are supporters of those who assume the identity of an employment contract and civil law, and the current norms of civil law in labor [5], as well as ways to change an employment contract into a contract of employment under civil law. Such identity, in our opinion, is debatable.

When concluding a civil law contract, the employer, in fact, can be released from financial, social and economic obligations to the employee and, to the same extent, to the state. Under an employment contract, the rights and obligations of the parties to an employment contract are much wider than those of the subjects of a civil law contract [6, p. 104].

The more employers of employing citizens expand the scope of civil law contracts, in practice it can lead to worse consequences and the emergence of many questions about recognizing the concluded labor contract [8].

In civil circulation, civil law contracts are, to put it mildly, in great demand, which makes it practically in demand. But in practice, when applying an employment contract, taking into account market conditions for business entities, the conclusion of contracts of this kind is very difficult, due to the burden and the emergence of additional obligations to a citizen (employee). Therefore, in our opinion, it will be “more convenient” for all economic entities to settle existing relations for them to conclude civil law contracts rather than labor contracts [9].

There is a downside to this approach when “unscrupulous” employers, entering into civil law contracts with elements of an employment contract that the contractor (employee) can prove in the event of a dispute or identified by law enforcement agencies during an investigation, may be punished.

We also note that the courts, when deciding whether to classify a contract as labor or civil law, they can check the acts that could be issued by the employer, social payments, the subject of the contract and other documents received by the citizen during the

period of labor or other activities associated with the employer [10].

Summing up, it should be said that the problem we are considering attributing or identifying a civil law contract with a labor contract is currently imperfect, because it does not have significant features. According to Yu.P. Orlovsky, exploring this problem, proposes "to establish clear signs of labor relations, the existence of which is incompatible with the conclusion of civil law contracts" [7]. On this basis, in our opinion, it would be correct to accurately indicate all these signs that would be enshrined in the current labor code in order to minimize further contradictions and prevent violations of the rights of citizens participating in such public relations.

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