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ADAPTATION OF THE LEGAL REGULATION OF LABOR, CIVIL, TAX RELATIONS TO THE GIG ECONOMY**

Svetlana M. Mironova, Dmitry V. Kozhemyakin, Anatasia E. Ponomarchenko
Volgograd Institute of Management – branch of the Russian Presidential Academy of National Economy and Public Administration (RANEPA), Volgograd, Russia

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The subject of the article is impact the gig economy to the legal regulation of labor, civil, tax relations.

The purpose of the article is to identify the problems of legal regulation of relations between gig workers and digital platforms in the gig economy and suggest ways to improve it.

The methodology includes systematic approach, comparative method, formal-logical method, formal-legal method, analysis, synthesis.

The main results of the research. The transition from a "classic" industrial employment relationship between an employer and an employee to one based on the gig economy, using digital platforms to link the employee to their job, has created problems in classifying employment arrangements in labor law. In the current situation, the state needs to do a lot of work: (1) the sphere of the gig economy requires the compilation of clear terminology, as well as the analysis and identification of the functions of digital platforms and gig workers, then it requires amendments to labor legislation; (2) it is necessary to develop criteria for gig workers or independent contractors, one of the criteria can be proposed: the performance of work by a gig worker without the control of the hiring firm. The hiring firm's control should be limited to accepting or rejecting the results a gig worker achieves, not how they achieve them; (3) It is necessary to delimit the sphere of regulation of hired labor from the sphere of regulation of gig-employment, to withdraw gig-employment from the regulation of labor legislation.

An analysis of the current legislation and law enforcement practice shows that the cornerstone of legal regulation in the field of the gig economy is the issue of legal registration of relations between digital platforms and their partners. Thus, with a rigid approach that identifies these relations with labor relations, the gig economy loses its specificity, digital platforms lose their competitive advantages in many ways, and in some cases, their ability to function. At the same time, the current relations in the field of employment of individuals on digital platforms allow us to speak about the presence of certain differences between such relations and labor relations, which are manifested mainly in greater freedom on the side of the "employee" and less control on the part of the employer – the digital platform, and also the unstable nature of this form of employment and its subsidiarity to more traditional forms. The specificity of the relationship between platforms and its counterparties also raises the question of the need to reform the provisions on civil liability, aimed at formulating special grounds for the responsibility of digital platforms, the distribution of this responsibility between them and their partners. Such provisions may be based on the existing norms on the liability of the employer for harm caused by his employee.

Conclusions. The change of labor relations between employees and the employer to the relationship between the digital platform and gig workers predetermines the transformation of tax legal relations, in terms of the following aspects: what taxes should a gig worker pay, should there be any special tax regime; how the issue of paying insurance premiums should be resolved, whether they should be mandatory or voluntary; what role digital platforms will play in tax relations, whether they should act as tax agents or data providers; what requirements for gig workers, as taxpayers, should be imposed by tax legislation in terms of record keeping and reporting; how tax control should be exercised over gig workers and digital platforms.

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1. Introduction

Global and national processes of socio-economic, technological and other changes lead to a significant transformation in the structure of employment, social and local organization of labor, as well as the characteristics of interaction in the use of labor. The ongoing processes are associated with a change in technological structures and lead to a change in the factors of development of the economic system of society, including in the social and labor sphere. All this is aimed at changing the approach to the regulation of labor relations, since they are objective in nature and require legal regulation based on an integrated approach, taking into account foreign experience.

At the present stage, the processes of spreading atypical employment and changing the local organization of labor are gaining momentum, which is the result of the transformation of the needs of the subjects of labor application, as well as the formation of new parameters for the development of international competitiveness and growth of the national economy, maintaining and increasing the level of employment and labor productivity. The pandemic has set up an almost perfect experiment. It has changed the way we socially interact with each other, shop, consume and use technology. The need for social distancing has pushed us to rely more on digital platforms. In the context of the pandemic, there has been a rapid transition to fundamentally new labor relations and ways of organizing work processes everywhere, and digital skills have become the most in demand [1, p. 88].

Following the change in labor relations, it became necessary to adapt legal regulation in civil and tax legal relations, since the specifics of the interaction between persons performing work and digital platforms necessitates the regulation of their legal status.

2. Adaptation of the legal regulation of labor relations to the conditions of the gig economy

Labor relations between the employee and the employer have undergone a kind of transformation from the "classical" industrial to a completely different type of relationship between new social actors. A distinctive feature of the "classic" industrial labor relations was their stability. Stability implied the conclusion of an employment contract for an indefinite period, i.e. there was an indefinite contract; 40-hour work week; the employee was provided with a set of social guarantees fixed both at the legislative level and at the local level through collective agreements, which were guaranteed to him by the employer and the state. The employee performed work at his workplace under the strict supervision and direction of the employer. Further, multilateral labor relations, which became widespread in the 90s of the last century, marked not only the transition of labor relations to the civil law plane, but the beginning of their release from excessive social “burden”, which became the most important mechanism for reducing costs and increasing competitiveness [2, p. 40]. A new term appears in relation to the subjects of labor relations - the precariat [3, p. 35].

Gradually, labor relations began to acquire a project character, i.e. a team of workers began to unite for a certain time in order to implement their business project. A distinctive feature of such labor relations was that employees were often not located in one place; the labor collective could include persons from different regions or countries. This stage in the development of labor relations between the employee and the employer has taken the first step towards the individualization of such relations.

The next stage in the transformation of labor relations can be characterized as the transformation of hired labor into self-employment of individuals, such a step in the development of labor relations has deprived employers and the state of their responsibility for the social well-being of workers in the event of difficult life situations.

The development of a digital, platform economy “on demand”, a sharing economy, continuing the process of a radical transformation of employment, at the same time initiated deeper transformations of the entire social structure of modern society, blurring the lines between workers and employers, between producers and consumers, making the entire social fabric of modern society

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more changeable and fragile [2, p. 41]. In the literature, this new business model has been called the “gig economy” or “offline crowd work” [4, p. 194]. Gigonomics, or gig economy, is a new format of relationships between an employer and an employee, based on the temporary attraction and use of economic resources (labor, material, information, etc.) and is the most important trend of the digital economy [5, p. 109]. The entire labor process is structured using certain algorithms that determine the nature, order and limits of possible actions of gig workers. The consequence of the use of algorithms in building relationships between the digital platform and gig workers is dehumanization, i.e. the management of existing relationships is carried out not by a person, but by an algorithm. Thus, traditional labor relations do not fit into the new structures of local labor organization, employment through digital platforms actually goes beyond the scope of labor law regulation.

Digital platforms are a new type of firm; they are characterized by providing an infrastructure to bridge between different user groups, displaying monopolistic trends driven by network effects, using cross-subsidization to attract different user groups, and developing a basic architecture that manages interoperability. Let's consider the main types of platforms: 1) a platform that provides work on demand; 2) a platform that provides freelancing. The regulation of the activities of these platforms in full is not subject to labor legislation, the definition by the state of signs of labor relations (in fact, the qualification of certain relations as labor relations) determines the characteristics of the interaction of subjects in the use of labor and influences the formation of a particular employment structure (including the ratio of the proportions of typical and atypical forms as its components). Therefore, if we talk about the platform on demand, then we can assume that the signs of labor relations arise precisely with the platform, since the consumer of personal labor acts as a consumer of the services of the platform itself. In this case, counterparties (employees and consumers) lose control over the key parameters of interaction: matching (selection of employees and consumers) and price determination are carried out by the platform itself. Employees do not act on their own behalf (as on the marketplace), but on behalf of the platform (which, for example, is expressed in the uniform of couriers and car branding). The main goal of such platforms is not to provide an infrastructure for user interaction (as in the case of a marketplace), but to organize an uninterrupted flow of standardized services, the quality of which is also set and guaranteed by the platform [6, p. 42]. In the case of work on demand, one of the main problems is the issue of qualifying the relationship of a digital platform with gig workers as labor, which, given the characteristics of such interaction (for example, control of a digital platform over the actions of a gig worker), has significant grounds.

If we talk about a platform that provides freelancing, then signs of an employment relationship may be present between the consumer and the performer of personal labor, since the intervention of digital platforms in this case will be insignificant. Remote work platforms for freelancers (programmers, designers, consultants, etc.), as well as platforms for personal and domestic services (cleaning, repairs, gardening, etc.), are most often organized in the form of marketplaces [6, p. 42].

The concept of "freelancing" is not officially enshrined in Russian legislation today, but freelancers exist. In Russia, both individuals and self-employed or individual entrepreneurs can act as a freelancer, with whom, as a rule, they conclude a work contract, a service contract or an author's contract.

The question is brewing; can employment contracts be concluded with freelancers for remote work? According to Art. 212.1 of the Labor Code of the Russian Federation dated December 30, 2001 No. 197-FZ (as amended on February 25, 2022) (hereinafter referred to as the Labor Code of the Russian Federation), remote work is the performance of a labor function defined by an employment contract outside the location of the employer, its branch, representative office, other separate structural units, outside a stationary workplace, territory or facility directly or indirectly under the control of the employer, provided that information and telecommunication networks are used to perform this labor function and to interact between the employer and the employee on issues

related to its implementation, including the Internet and public communication networks.

From the definition, two main conditions for the implementation of work remotely can be distinguished: 1) work outside the location of the employer; 2) and the use of information and telecommunications networks to perform the labor function. At first glance, it is possible to admit the possibility of formalizing labor relations, however, guided by Art. 15 of the Labor Code of the Russian Federation, the existence of labor relations between the parties implies that the employee performs his labor function under the management and control of the employer. In this regard, at present, freelancers (gig workers) cannot act as a party to labor relations, since in the gig economy aggregators and digital platforms only represent a platform in order to bring the buyer of a product or service to the seller, the platforms are not empowered to control of the labor process as an employer, i.e. the actions of digital platforms do not fall under the signs of an employment relationship.

Interestingly, however, Proposition 22[1] was approved in California in November 2020, allowing companies operating in the gig economy to classify ordering drivers and app-based couriers as independent contractors when certain criteria are met. But on August 20 of the same year, Alameda County Superior Court Judge Frank Resh said the law was unconstitutional and unenforceable. In this regard, the provision that the self-employed working for the aggregators are in fact its employees remains valid. However, under California law (AB 5)[2], an employee is only considered an independent contractor if they pass the "ABC test". Under this test, an employee is an IC (Independent Contractor) only if they:

(A) is free from the control and direction of the employing organization in the course of the performance of its work;

(B) performs work outside the normal course of business of the employing organization;

(C) engages in business activities of the same nature as the work performed.

In order for workers to be independent contractors, all three items of the ABC test must be met. However, under the new law, it is difficult for most workers to qualify as independent contractors under the ABC test.

Another high-profile case is Uber BV v. Aslam and others (defendants). The decision of the Supreme Court of Great Britain found that Uber taxi drivers are recognized as employees of the company, and not independent contractors. UK Uber drivers are eligible for benefits such as paid holidays, minimum wages and pensions as the popular taxi-calling platform assigns their fares and rides and disciplines drivers based on ratings[3].

In the Russian Federation, the courts took a similar position in the case of Grashchenkova E.A. to Yandex.Taxi. The decision in the case established that the driver of Yandex.Taxi committed a traffic accident: hitting a curb, which led to a collision with a tree, a city lighting pole. As a result of an accident Grashchenkova E.A. suffered serious bodily injury. The court pointed out that in this case, not only the driver himself, but also the aggregator company was responsible for the life and health of the passenger[4]. From this we can conclude that the court actually recognized the existence of an employment relationship between the driver and the taxi aggregator, however, there is no official recognition of gig workers as employees of the company in Russia, as in a number of other countries.

Russian judicial practice knows several cases of lawsuits against taxi aggregators by drivers who asked to recognize their relationship as labor.

[1] California Proposition 22 // https://vig.cdn.sos.ca.gov/2020/general/pdf/topl-prop22.pdf (date of the application: 28.04.2022)

[2] California State Legislature, "Assembly Bill 5," accessed May 22, 2020 // https://ballotpedia.org/California_Assembly_Bill_5_(2019)#:~:text=California%20State%20Legislature%2C%20%22Assembly%20Bill%205%2C%22%20accessed%20May%2022%2C%202020 (date of the application: 28.04.2022)

[3] Uber BV & Ors v Aslam & Ors [2021] UKSC 5 (19 February 2021) // http://www.bailii.org/uk/cases/UKSC/2021/5.html (date of the application: 28.04.2022)

[4] Appeal ruling of the Judicial Collegium for Civil Cases of the Moscow City Court dated April 4, 2019 in the case № 33-4939/19 // https://www.mos-gorsud.ru/rs/tushinskij/cases/docs/content/ff6edc8a-65f8-4870-bd2c-a2465e0f6070 (date of the application: 28.04.2022)

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However, the courts do not yet accept the parties of citizens, and motivating their refusals on the basis of how the parties documented their relationship, nevertheless, they did not investigate a number of circumstances indicating the qualification of relations related to labor [7, p. 155].

Thus, the time has come to revise some provisions of labor legislation and create a more flexible model of relationships between aggregators, digital platforms and independent contractors, since in the new realities, employers are increasingly moving to a local labor organization structure based not on labor relations with employees, but on interaction through civil law relations with freelancers (“freelancers”) through the use of digital platforms (such as “pik.pro”, “Professionaly 4.0”, “Uber”, “Yandex Taxi”, “Yandex Search”, “Golama” , "Atlas Delivery", "Delivery Club", etc.).

The described processes entail a violation of the system of redistribution of public goods established in society and a decrease in the level of standard employment. In other words, the new structures of labor organization are not based on labor relations, therefore, a layer of employed persons is being formed who are not subject to the rights and guarantees provided for by labor and social legislation.

Also, the emergence of new types of employment changes the usual organizational forms of work. So, Kraus I. notes that the gig economy has contributed to changes in the content of labor activity, now the result of labor is the creation of knowledge (new knowledge), and the main requirements for employees are the ability to use digital technologies [8, p. 54]. In his works, Gian L. explores the activities of people of different levels of education who realize their business in the format of digital labor within the gig economy [9]. Thus, “... in the platform economy, work becomes more meaningful and filled with new meanings” [10, p. 900].

Employment within the gig economy, in particular through digital platforms, has its advantages and disadvantages for both workers and employers. Gig workers (independent contractors) work on their own schedule, independently determine the degree of intensity of their work, they can work from anywhere where there is Internet access, they are not tied to any company on a permanent basis, they can work with several organizations. But the lack of benefits, the need to constantly look for new jobs to maintain income, the existence of risks of long-term unemployment, the risks of workers being exposed to new forms of employment, and the administrative burden placed on what are called independent contractors are serious drawbacks. Another disadvantage of gig-employment is its instability. Precarious employment is usually defined as the involuntary loss by an employee of standard labor relations based on an employment contract with an indefinite period and full working time [11, p. 103]. Employers also enjoy the flexibility of this type of workforce, and they have a strong financial incentive to classify employees as independent contractors to avoid burdens that come with the employer, such as personal income taxes, insurance premiums, etc. groups of employees can be characterized as unstable, due to the absence, firstly, of a traditional open-ended labor contract, and, secondly, of traditional mechanisms for providing social guarantees [12, p. 70]. However, there is currently a large increase in gig workers in many cases, people working under an employment contract take on additional work using the services of digital platforms. But many workers view their gig job as a full-time job [16].

3. Civil legal registration of relations between the digital platform operator and partners

As you can see, the formalization of relations between platform operators and their partners in most cases occurs through civil law tools, rather than the provisions of labor law. At the same time, at the moment, there is a departure from the idea that platforms disguise labor relations as civil law in order to minimize the guarantees provided to the platform partner, thus freeing up the economic and organizational resources necessary for the growth and development of innovative business, although in the literature one can also find other points of view [13, p. 47].

We have to admit that the relationship between platforms and partners is still significantly different from the traditional forms of interaction

between the employer and the employee, which requires a different approach to legal regulation and registration of legal relations between them. In particular, within the framework of the gig economy, the "worker" gets more freedom of action and opportunities to organize their time and work. It is not tied to working time and rest time determined by the employer, and the activity on the platform itself is often not the main form of employment and is considered as a part-time job.

An analysis of in-depth interviews conducted by the Higher School of Economics among representatives of the platforms, as well as public authorities, led to the conclusion that the respondents agree that "it is impossible to turn those employed through platforms into employees, since this kills the innovative economy" [14, p. 63].

Meanwhile, in our opinion, it is also impossible to conclude that the current civil law is sufficient to regulate the legal relations that arise between the platforms and their partners. Thus, civil legal relations are regulated on the basis of the principles of equality, autonomy of will and freedom of contract (Article 1 of the Civil Code of the Russian Federation), which in some cases leads to abuse by economically stronger subjects, since formal legal equality does not yet mean actual equality of negotiating opportunities.

Currently, the owners of digital platforms have gained significant control over the markets for goods and services, due to the fact that the digital platform is the entry point to these markets for both consumers and suppliers. At the same time, since the platform itself is a communication service that allows the consumer to find a supplier and vice versa, the platform copyright holder controls not only the market for its own services, but also all other markets where communication between counterparties occurs through the use of the platform [15, p. 38].

Of course, this kind of control becomes achievable only in the absence of a sufficiently large number of competing platforms in the market and the concentration of the overwhelming number of consumers and suppliers around the monopoly platform. However, this is exactly the situation in most digital markets.

Two factors contribute to the emergence of monopoly platforms. The first is related to the fact that the development, implementation and promotion of digital platforms require significant economic and organizational resources. Which, as a rule, are absent from young technology companies, but are available in abundance from technology giants. Thus, the emergence of a large number of competing digital platforms is hindered by the high price of entry into the market of the services they provide. The situation is also aggravated by the fact that a significant number of services provided by the platform owner are provided free of charge, which excludes the possibility of a quick return on investment.

The second factor preventing the emergence of a large number of platforms is the so-called network effects. As a communication service that connects counterparties in the market, digital platforms acquire value and significance only if they have a significant number of users. At the same time, the more users the platform has, the more valuable it becomes for them and the more it attracts a new audience. Naturally, those market participants who already have a loyal audience using their other products are more likely to take advantage of the network effect than new market participants.

The network effect is also enhanced by barriers to leaving the platform. Such obstacles are usually associated with the user getting used to certain interfaces and features and, accordingly, the need to master the tools provided by a competing platform.

Thus, the emergence and dominance of a small number of digital platforms in digital markets can be considered a natural consequence of the process of their development and operation.

Such dominance makes it virtually impossible for contractors to receive any individual terms of cooperation, forcing them to agree to the terms offered by the platform without any changes. As a result, the basic mechanism of civil law, aimed at eliminating abuses when concluding a contract, in the form of autonomy of will and formal legal equality of counterparties, is turned off. Probably, due to the monopoly position of the platforms, the currently existing mechanisms for protecting the weak party, such as changing the terms of the

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accession agreement in court (clause 2, article 428 of the Civil Code of the Russian Federation), will also be powerless.

This state of affairs requires intervention by the state in the form of establishing fair guarantees for the weak side by adopting imperative norms. Such guarantees could include extending to digital platform partners who are individuals some of the guarantees provided by labor laws, in particular the minimum wage and social security guarantees in the event that working with the platform is their only form of employment and the corresponding guarantees are not provided within the framework of traditional labor relations.

It should be noted that in a number of countries there is experience in extending social guarantees to persons working under civil law contracts. Thus, in Canada, the category of "dependent counterparty" was introduced, which included persons who were not considered as employees under labor law [16, p. 651]. A similar practice exists in the Republic of Korea and India [14, p. 25-27].

4. Distribution of responsibility between the digital platform and its partners

Along with social guarantees and protection of the weak side when formalizing the relationship between the platform and its partner, within the framework of the gig economy, the issue of distribution of responsibility between them in the event of a tort or violation of a contractual obligation is also very controversial.

Based on the general provisions on the emergence of obligations from causing harm, harm is subject to compensation directly by the person who caused it (clause 1, article 1064 of the Civil Code of the Russian Federation). Taking into account that the digital platform provides mainly information services, and the work, service or product is directly provided to the counterparty by the platform partner, it is obvious that the current legislation places liability for harm caused as a result of their lack on the partner of the digital platform, and not on its owner.

The situation is similar with contractual liability, since the person responsible for the execution of the contract concluded through the mediation of the digital platform is again not the owner of the digital platform, but his partner.

Meanwhile, this approach does not fully correlate with the real content of the relationship that arises between the platform, its partners and users.

Thus, a digital platform, acting as an intermediary in concluding a transaction, unlike a classical intermediary, often defines certain frameworks and standards for offering a product, service or work, forcing sellers and performers to adapt to their own requirements. Thus, taxi aggregators, such as Uber or Yandex, determine the price of a trip, make demands on the car and driver, and set the rules for interaction between the driver and the passenger. These requirements are supported by sanctions for their non-compliance, up to the complete exclusion of the offending performer's access to the platform. Similar mechanisms are used by other aggregators, whether it be hotel services, freelance exchanges, or the selection of domestic staff. A common feature of aggregator platforms is the presence of control over sellers and performers.

In relation to the interaction of platforms with users, a different pattern is observed. The aggregator platform, as a rule, strives to maximally mediate the communication and agreements of its users with the direct performers, locking all their communication to itself, and in some cases minimizing information about the performer himself and the nature of his relationship with the platform. As a result, in the eyes of the user, the figures of the aggregator platform and the performer, the seller practically merge together, the latter dissolve into the identity of the platform.

The above strategy of digital platforms is fully justified from the point of view of business and economy. It allows you to bind users, sellers and performers to yourself as much as possible, which prevents settlements between them from going into the shadows, and therefore protects the income of the aggregator, which can be formed from the percentage received from the transaction or from the sale of advertising (in this case, the platform does not benefit from the formation of constant, long-term relationships between users and

performers of works and services). But the same strategy casts doubt on the fairness of applying the standard approach to liability to digital platforms.

This imbalance is most clearly manifested in the field of consumer protection, in which the departure of the platform from responsibility means the removal from it of the most economically strong subject that determines the nature of the market and the rules of interaction on it.

In fact, the application of the standard model of liability for digital platforms in the consumer market means that both the consumer and the partner of the digital platform, being economically weak subjects, are at the mercy of the arbitrariness or goodwill of the digital monopolist, which differs sharply from the guarantees usually provided to states as consumers, and employees in the context of labor relations.

It is not surprising that, at least in terms of consumer protection, the courts are looking for legal approaches to bring to justice not the direct performer or seller, but the digital platform.

At the moment, there are two main approaches to justifying the responsibility of a digital platform in case of violation of consumer rights: objective and subjective [17, p. 13].

As part of an objective approach, the law enforcer focuses on the nature of the legal relationship that arises between the platform and the consumer, and carefully analyzes the role of the platform in the provision of a service, work or sale of goods. If there is a significant influence of the platform on the performer or seller in terms of fulfilling the obligation to the consumer, the platform may be regarded by the court as a direct performer or seller and held liable.

This approach is reflected in the practice of US courts. So in Oberdorf v. Amazon.com Inc.[5] The plaintiff sued Amazon for damages resulting from the use of a low-quality dog collar she purchased through an online platform.

In qualifying Amazon as a seller, the court stated that “Although Amazon does not directly influence the design and manufacture of the product, it exercises significant control over suppliers. Suppliers have signed the Amazon Agreement, which grants Amazon “the sole discretion to suspend, prohibit or remove any item, “suspend any payments” to suppliers, “impose transaction limits”, and “terminate or suspend any Service for any reason at any time.” As such, Amazon has full discretion to remove unsafe products from its website. Placing blameless responsibility on Amazon would be an incentive to do so.”[6].

In addition, the court indicated that Amazon "is the only participant in the marketing chain available to the injured plaintiff for damages."

A similar approach was taken by the Court of Appeal in Angela Bolger v. Amazon.com LLC, in which the plaintiff sued for damages caused by a faulty replacement laptop battery purchased on the platform[7].

Along with an objective approach, a subjective approach is developing in a number of jurisdictions, which involves an analysis by the court not so much of the nature of the activities of the platform itself, but rather the perception of such activities by the consumer.

An example is the case law in Denmark in the context of two cases concerning the liability of the operators of the GoLeif.dk platforms. and Booking.com [18].

Platform GoLeif.dk. offered its users services for buying air tickets, comparing prices and routes. In a dispute between the operator of this platform and a consumer, the court considered a situation in which the consumer purchased air tickets from Copenhagen to Nice and back through the platform. The consumer was able to fly to Nice, but the return flight did not take place because the airline went bankrupt. The court concluded that the platform was liable to the plaintiff, since the consumer, when purchasing tickets, could assume that he was dealing directly with GoLeif.dk, and not with the airline, since it was not clearly indicated on the GoLeif.dk website that the performer services is precisely the

[5] Oberdorf v. Amazon.com Inc, No. 18-1041 (3d Cir. 2019) // JustiaJustia US Law. URL: https://law.justia.com/cases/federal/appellate-courts/ca3/18-1041/18-1041-2019-07-03.html

[6] Ibid

[7] Bolger v. Amazon.com, LLC // JustiaJustia US Law. URL: https://law.justia.com/cases/california/court-of-appeal/2020/d075738.html

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airline.

At the same time, in the Booking.com case, the court came to the opposite conclusion, considering that the platform cannot be held responsible for the violation on the part of the hotel, since it was sufficiently obvious to the consumer that the applicant should have understood that temporary accommodation services were provided to him the hotel, and not Booking.com, which acts only as an intermediary in the transaction.

In the Russian Federation, there has not been a unified approach to resolving the issue of platform liability to the consumer, however, a subjective approach is also applied pointwise. So in the case of taxi aggregator platforms, this issue is resolved in accordance with the clarification of the Supreme Court of the Russian Federation adopted in 2018, given in the Decree of the Plenum No. 26 of 06/26/2018.

In accordance with the approach chosen by the Supreme Court, "A person contacted by a client to conclude a contract for the carriage of passengers and baggage is liable to the passenger for damage caused during the carriage if he entered into a contract of carriage on his own behalf or from the circumstances of the conclusion of the contract (for example, advertising signs, information on the website on the Internet, correspondence of the parties when concluding the contract, etc.) a conscientious citizen-consumer could have the opinion that the contract of carriage is concluded directly with this person, and the actual carrier is his employee or a third party involved in the performance of transportation obligations.

Despite the fact that the explanations of the Supreme Court regarding the liability of taxi aggregators as a whole fit into the general subjective approach to the liability of digital platform operators, they are formulated as highly specialized and can be directly applied only in relation to taxi aggregators. For operators of other digital platforms, these clarifications can be applied by way of analogy, however, Russian courts, as a rule, are reluctant to use this legal instrument, preferring the literal application of the provisions of the law to it.

Analyzing the justification and effectiveness of the objective and subjective approaches to the responsibility of digital platform operators to consumers, it should be noted that both approaches have a common drawback. Within them, the question of the responsibility of the operator is resolved by actually merging his role with the role of the seller of goods or the performer of the service. The very possibility of bringing him to justice is made dependent on such a substitution of roles, which, firstly, in our opinion, unreasonably ignores the differences between the activities of the seller and the contractor and the activities of the operator, and, secondly, opens up scope for a fairly wide discretion of the court or other law enforcer, which reduces the guarantee of legal certainty.

It should be noted that the use of a subjective approach carries certain risks of legal uncertainty, conflicting with the principle of legitimate expectations, which implies that legislation should be quite clear and applied in a predictable manner.

In addition, while solving the problem of compensation for harm to the consumer, both of these approaches do not answer the question of the limits of liability of the direct executor and the seller, to whom the owner of the digital platform can apply with a recourse claim. Thus, the current Russian legislation provides for compensation for damage to the platform in full in the event of such a recourse claim, including, in contrast to the provisions of labor law, if the employee would be the direct tortfeasor. The issue of limits and delimitation of responsibility between the digital platform and its partners, in our opinion, also needs to be worked out in the context of the provisions on the protection of the weak side of the contract.

The approaches to the responsibility of digital platforms developed within the framework of consumer relations also do not resolve the issue of distribution of responsibility if the injured person is not the consumer. What puts in unequal conditions in the matter of compensation for harm, for example, a taxi passenger and a downed pedestrian. If the first damage is compensated by the digital platform, then the responsibility for the second, as a general rule, will be borne by the direct executor - the partner of the digital platform.

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The foregoing clearly indicates the need to develop independent grounds for the responsibility of digital platforms, taking into account the specifics of their activities in order to distribute the burden of such responsibility in accordance with the real economic content of emerging legal relations and the principle of justice.

It should be noted that such provisions can be based on the grounds of the employer's liability for harm caused by his employee (Article 1068 of the Civil Code of the Russian Federation), as probably the closest in their legal nature.

5. Adaptation of the legal regulation of tax legal relations to the conditions of the gig economy

The departure from traditional labor relations between a gig worker and a digital platform, the transition to a kind of hybrid model, also predetermines a change in tax legal relations with the participation of these persons. There are a number of questions that need to be addressed:

- what taxes should a gig worker pay, should there be any special tax regime;

- how should the issue of paying insurance premiums be resolved, should they be mandatory or voluntary;

- what role will digital platforms play in tax relations, whether they should act as tax agents or persons providing information;

- what requirements for gig workers, as taxpayers, should tax legislation impose in terms of record keeping and reporting;

- how tax control over gig workers and digital platforms should be carried out.

In Russia, they have taken the path of introducing a special tax regime for self-employed persons - a tax on professional income, which was introduced on an experimental basis for 10 years until the end of 2028[8]. At the same time, the very concept of self-employed is not disclosed in the law, which predetermines the study of the self-employed both from the point of view of tax legislation [19; 20; 21; 22] and their legal status in other respects [23].

As of March 31, 2022, there are 4,546,691 professional income tax payers registered in Russia, of which 4,290,581 are individuals who do not have the status of an individual entrepreneur, 256,110 are individual entrepreneurs[9].

The most acute issue is the payment of insurance premiums by the self-employed, since under Russian law the payment of insurance premiums for pension insurance and social insurance is not mandatory (as for health insurance, part of the tax paid in the amount of 37% goes to the Federal Compulsory Medical Insurance Fund). Citizens can voluntarily make contributions to the Pension Fund of the Russian Federation and the Social Insurance Fund of the Russian Federation by concluding contracts, but this is not popular with self-employed persons. According to the Federal Tax Service, “only 0.3% of the self-employed registered in the “my tax” system as professional income tax payers exercised the right to buy insurance pension contributions” [25]. It is the lack of insurance premiums from self-employed people that makes it so attractive for organizations to use their “labor” instead of concluding labor contracts with citizens. Often, in cases where it is possible not to hire employees, but to conclude an agreement with a self-employed person for the performance of work (provision of services), organizations do just that. In this regard, the tax authorities pay attention to signs of the substitution of labor relations by civil law ones (Letters of the Federal Tax Service of Russia dated September 16, 2021 No. AB-4-20/13183@; dated April 15, 2022 No. EA-4-15/4674 @) and actively exercise control over such organizations. At the same time, it should be noted that in relation to digital platforms, which often use the work of the self-employed, the attention of the tax authorities is not so close. Moreover, some of them have the official status of operators of electronic platforms through which the self-employed work.

In connection with the growing number of self-employed people and the need to assess the

[8] Federal Law No. 422-FZ dated November 27, 2018 "On conducting an experiment to establish a special tax regime "Tax on professional income" // Collection of Legislation of the Russian Federation. 2018. No. 49 (Part I). Art. 7494.

[9] Information on the number of self-employed citizens who have fixed their status and apply the special tax regime "Tax on professional income" // https://rmsp.nalog.ru/statistics2.html (accessed 28.04.2022).

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long-term impact of their non-payment of insurance premiums, it seems appropriate to study foreign experience in terms of imposing on the self-employed themselves or, for example, digital platforms, the obligation to pay insurance premiums [24; 25; 26]. For example, in Kazakhstan, the Unified Cumulative Payment also includes social payments to off-budget funds [27, p. 125].

Various options for resolving the issue are possible: imposing the obligation to pay insurance premiums on the self-employed; imposing the obligation to pay insurance premiums on digital platforms; joint payment of insurance premiums by both parties; stimulating the voluntary payment of insurance premiums by the self-employed; establishing differentiated rates for the payment of insurance premiums for the self-employed based on various criteria.

Another issue that needs to be addressed is the definition of the role of digital platforms. Federal Law No. 422-FZ of November 27, 2018 "On conducting an experiment to establish a special tax regime "Tax on professional income" introduces a special entity - an operator of an electronic platform, which is an intermediary between performers and customers. The provision on granting such a person the status of a tax agent in order to calculate and withhold tax from self-employed income. the status of a tax agent [28]. At the same time, the very concept of "electronic platform operator" requires further study, since the concept used in tax legislation does not quite coincide with other terms, for example, "the owner of an aggregator of information about goods (services)", which are applies to consumer protection.

This issue is also relevant in general from the point of view of consideration, and who exactly and in what order should calculate and pay tax on self-employed persons. As noted in the literature, soon “models of digital interaction carried out within the framework of tax relations with the participation of the self-employed can be transferred to other taxes and special tax regimes” [21, p. 81]. Indeed, at present, the professional income tax is the most progressive in terms of exempting the taxpayer from tax registration, tax calculation, tax payment, since it minimized the taxpayer's obligations, simplifying all procedures as much as possible, which makes tax payment not burdensome for the self-employed. It should be recognized that in this case, too, not all self-employed can fully cope with the payment of tax, which makes it necessary to further improve such procedures, including by automating the very function of paying the tax.

The Russian experience of taxing the self-employed should be recognized as one of the most successful in world practice, since such simplified procedures are not always created for taxpayers. For example, in the United States, tax law considers gig workers to be “business owners,” which imposes burdensome accounting and reporting requirements on them [29].

On the one hand, the self-employed in Russia receive obvious advantages from the procedure for calculating and paying tax on professional income. On the other hand, new models of tax control are emerging that are implemented within the framework of the administration of the tax on professional income, which in the literature was called “one of the first effective mechanisms for permanent non-verification tax control” [30, p. 83]. Thus, there is a need to continue the development of such tax control, both for the self-employed themselves and for the organizations with which they work.

6. Conclusions

Based on the foregoing, we can see that the transition from the “classic” industrial employment relationship between employer and employee to a relationship based on the gig economy using digital platforms to connect the worker with his job has created problems in classifying employment arrangements in labor law. In the current situation, the state needs to do a lot of work: 1) the sphere of the gig economy requires the compilation of clear terminology, as well as the analysis and identification of the functions of digital platforms and gig workers, then it requires amendments to labor legislation; 2) based on the experience of California, we propose to develop criteria for gig workers or independent contractors, one of the criteria can be proposed: the performance of work by a gig worker without the control of the hiring company. The hiring firm's control should be limited

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to accepting or rejecting the results a gig worker achieves, not how they achieve them. 3) It is necessary to delimit the sphere of regulation of hired labor from the sphere of regulation of gig-employment, remove gig-employment from the regulation of labor legislation in order to develop, and not slow down the gig economy as a whole. The development of labor legislation should go in line with maintaining the competitiveness of the local labor organization based on labor relations as an effective form of interaction in the use of labor.

An analysis of the current legislation and law enforcement practice shows that the cornerstone of legal regulation in the field of the gig economy is the issue of legal registration of relations between digital platforms and their partners. Thus, with a rigid approach that identifies these relations with labor, the gig economy loses its specificity, digital platforms lose their competitive advantages in many ways, and in some cases, the possibility of functioning. At the same time, the current relations in the field of employment of individuals on digital platforms allow us to speak about the presence of certain differences between such relations and labor relations, which are manifested mainly in greater freedom on the side of the "employee" and less control on the part of the employer - the digital platform, and also the unstable nature of this form of employment and its subsidiarity to more traditional forms.

Meanwhile, the presence of a certain percentage of people who consider this form of employment as the main one makes it necessary to develop certain provisions in the law that allow them to be provided with social guarantees similar to those that an employee receives in the framework of labor relations. Such guarantees can be provided by establishing direct requirements for their provision in civil law as measures aimed at protecting the weak side of the contract.

The specificity of the relationship between platforms and its counterparties also raises the question of the need to reform the provisions on civil liability, aimed at formulating special grounds for the responsibility of digital platforms, the distribution of this responsibility between them and their partners. Such provisions may be based on the existing norms on the liability of the employer for harm caused by his employee.

The change of labor relations between employees and the employer to the relationship between the digital platform and gig workers predetermines the transformation of tax legal relations, in terms of the following aspects: what taxes should a gig worker pay, should there be any special tax regime; how the issue of paying insurance premiums should be resolved, whether they should be mandatory or voluntary; what role digital platforms will play in tax relations, whether they should act as tax agents or data providers; what requirements for gig workers, as taxpayers, should be imposed by tax legislation in terms of record keeping and reporting; how tax control should be exercised over gig workers and digital platforms.

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INFORMATION ABOUT AUTHORS

Svetlana M. Mironova – Doctor of Law, Associate Professor; Associate Professor, Department of Financial and Business Law

Volgograd Institute of Management – branch of the Russian Presidential Academy of National Economy and Public Administration (RANEPA)
8, Gagarina ul., Volgograd, 400066, Russia
E-mail: smironova2017@gmail.com
ORCID: 0000-0001-5288-2568

Dmitry V. Kozhemyakin – PhD in Law, Associate Professor, Department of Financial and Business Law
Volgograd Institute of Management – branch of the Russian Presidential Academy of National Economy and Public Administration (RANEPA)
8, Gagarina ul., Volgograd, 400066, Russia
E-mail: zerosu05@gmail.com
ORCID: 0000-0002-9722-4136

Anastasia E. Ponomarchenko – Senior Lecturer, Department of Financial and Business Law
Volgograd Institute of Management – branch of the Russian Presidential Academy of National Economy and Public Administration (RANEPA)
8, Gagarina ul., Volgograd, 400066, Russia
E-mail: ponomarchenko.anasatsiya@mail.ru
RSCI SPIN-code: 7096-4218; AuthorID: 990355

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