

## LEGAL SUPPORT OF SOCIAL GUARANTEES FOR PERSONS EMPLOYED IN THE GIG ECONOMY: RUSSIAN AND FOREIGN EXPERIENCE\*\*

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### **Article info**

Received –

2023 December 20

Accepted –

2024 June 20

Available online –

2024 September 20

### **Keywords**

Social guarantees, gig workers, self-employed, platform workers, social security, pension provision, insurance premiums, unions

The subject. Legal support of social guarantees for persons employed in the gig economy: russian and foreign experience

The purpose of the article is to reveal the features of providing social guarantees to gig workers, as well as protecting their rights through the institution of trade unions, to give the concept of “guarantees of gig workers”, “social guarantees of gig workers”

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

The main results of the research.

The situation of gig workers appears to be less protected in terms of their rights and the guarantees provided to them. In this regard, there is a need to determine what social guarantees should be provided to which categories of gig workers, as well as possible measures of social protection for such persons. There is a need to once again ensure the rights of workers employed in self-employment or platform employment. A definition of guarantees for gig workers is proposed: guarantees are the means, methods and conditions by which the implementation of the rights granted to gig workers in the field of employment and their social security is ensured. Social guarantees for gig workers can be defined as a set of social and legal obligations of the state to workers employed in the gig economy (self-employment, platform employment), aimed at creating the necessary conditions for them to perform their work and meet their social needs and professional interests.

In cases where a gig worker is, in some respects, close in his legal status to an employee under an employment contract (full-time work, etc.), his pension and social insurance should give him the maximum opportunity for social guarantees in case of temporary disability and in connection with retirement.

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\*\* The study was supported by the grant of the Russian Science Foundation No. 22-28-00914, <https://rscf.ru/project/22-28-00914/>.

## 1. Introduction

One of the recent phenomena is the spread of the gig economy in the world, in the context of which the labor and employment market is changing: in some cases, traditional employment under an employment contract is being replaced by freelancing, self-employment, temporary employment, independent contracting and other forms in which the rights of such workers are less protected in terms of social and labor guarantees. Such employees are also called gig workers or independent contractors [1]. The term "precarious employment" is also emerging, which characterizes the unstable socio-economic situation of people compared to traditional employment [2], and the precariat is becoming a new social class with reduced guarantees [1]. Certain categories of workers employed in the gig economy, such as migrants, are particularly unprotected [4].

According to the Federal Tax Service of Russia, as of the end of November 2023, there are already 9 million registered payers of professional income tax<sup>1</sup>. An increase in the number of self-employed people is also observed abroad. As noted in the literature, "their numbers are growing by more than a quarter of a million people every year, and they account for more than 50 percent of new jobs created" [5].

The number of people engaged in platform employment, i.e. performing work or providing services using digital platforms, is also growing. At the same time, such people may have different types of employment - traditional employment through an employment contract, self-employment, and even registration as an individual entrepreneur. At the same time, both individual entrepreneurs and self-employed persons may have signs of labor relations in their relationships with platforms, which leads to increased attention

from tax authorities to such contracts and possible reclassification of civil law relations into labor relations, which entails additional accrual of insurance premiums. It is the latter fact that is often fundamental for such reclassification, since tax authorities, by administering insurance premiums, implement the fiscal interest of the state in filling the budget of the Social Fund of the Russian Federation, from the funds of which pensions and social insurance benefits are paid.

According to the Higher School of Economics, the number of people employed in the platform economy in Russia is about 15.5 million [6], and this is comparable to the growing number of registered self-employed people, given that some of them have other forms of employment. In the European Union, the number of people employed on platforms also continues to increase: more than 28 million people in Europe work using digital work platforms, and by 2025 such employment is expected to grow to 43 million people<sup>2</sup>.

Such self-employed and platform employees can be conditionally divided into three groups:

1) those most closely resembling labor relations, which in some cases leads to the substitution of labor relations for civil law relations. In the literature, one can find the term "false self-employed", when a person actually has an employer [7], and economically dependent self-employed people, who usually work with one company [8]<sup>3</sup>. Such persons include, for example, couriers, order pickers and other citizens who work entirely with the participation of the platform.

2) persons combining self-employment / platform employment with work under an employment contract, or considering such

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<sup>1</sup> The number of self-employed people has reached 9 million people // Website of the Federal Tax Service of Russia [https://www.nalog.gov.ru/rn77/news/activities\\_fts/14056407/](https://www.nalog.gov.ru/rn77/news/activities_fts/14056407/) (date of access 28.11.2023).

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<sup>2</sup> Directive of the European Parliament and of the Council on improving working conditions in platform work // [https://ec.europa.eu/commission/presscorner/detail/de/qanda\\_21\\_6606](https://ec.europa.eu/commission/presscorner/detail/de/qanda_21_6606) (date of access 10.10.2023).

<sup>3</sup> For example, in Spain, different types of self-employed people are distinguished, calling them "pure self-employed", "false self-employed" and "subordinate self-employed". See: Unionisation of the self-employed // <https://www.eurofound.europa.eu/en/resources/article/2000/unionisation-self-employed> (date of access 10.11.2023).

employment as temporary part-time work for a short period of time. When combining different types of employment, a citizen can, as a self-employed person, receive additional income, including through the use of digital platforms on which they can offer their work / services.

3) employment is close to entrepreneurial activity. Often, starting a business as a self-employed person - registering as a payer of professional income tax, a citizen, developing his business, then registers as an individual entrepreneur, switching to another tax regime. Thus, initially such employment is close to entrepreneurial activity, although the person may not officially have the status of an individual entrepreneur.

The flexibility and convenience offered by gig work attracts both workers and employers, leading to its steady growth [9]. As the gig economy grows, more attention is being paid to the rights and protections of gig workers. Governments around the world are exploring ways to ensure fair compensation, benefits, and labor rights for gig workers [9].

At the same time, there is a general decrease in social guarantees for such persons compared to citizens working under an employment contract. For example, in the EU, about 55% of people working on platforms earn less than the minimum hourly wage in the country. At the same time, in addition to doing the work itself, people also spend time on unpaid tasks (searching for work, waiting for work), due to which the overall level of their wages decreases.

Independent contractors lack a guaranteed minimum wage, overtime pay, unemployment insurance, sick leave, worker's compensation, family leave, union rights, and poorer health and safety protections.

In general, workers in the United States are entitled to a long list of legally prescribed benefits and guarantees under federal and state laws. The literature notes that the issue of providing social guarantees and legal protection for independent workers remains more of a political than a legal issue [10].

However, the question of whether independent workers should be given the legal

protections that enforce the American social contract in the workplace is fundamentally a policy question, not a legal one. Policymakers must decide whether these workers lack bargaining power, so that they are likely to suffer a host of bad economic and social consequences in the absence of government intervention.

Local governments and courts have begun to consider amending labor laws or taking on related cases to protect the rights and interests of self-employed workers. For example, New York City has enacted a minimum wage for self-employed drivers, despite their failure to convert their self-employed status to permanent employee status [11].

It is obvious that three different categories of such employed persons have different status and need different social guarantees. For example, if the second category of employed persons can receive such social guarantees at their place of work - for example, sick leave, vacation, etc., and when doing part-time work this will not be so relevant, then for the first category of employed persons, which is as close as possible to labor relations, such social guarantees, on the one hand, are a necessary element of their employment, and on the other hand, it is the absence of such guarantees for attracted workers that gives an economic effect to organizations and businesses that work with such persons, reduces their costs, which predetermines the growth in the number of such workers.

Many scientific studies are devoted to the limits of the extension of labor law to such categories of workers and the application of social and labor guarantees to them [12-15]. At the same time, one can find the opinion about the inevitability of including the self-employed in the scope of labor legislation, given the growth of their share among the total number of employed [16]. The need to extend labor rights to all workers is also noted in foreign literature [15].

Currently, for Russia and many other countries where self-employment and platform employment are developing, it is becoming relevant to determine the level of social guarantees for individuals with such employment conditions. A European concept of a worker is being developed abroad, which will be adapted to new forms of employment, namely to the self-employed, who

need protection to the same extent as traditional employees [17]. In this regard, it becomes necessary to determine what social guarantees should be provided to which categories of gig workers, as well as possible measures of social protection for such individuals, including through the use of trade unions.

## **2. The concept of social guarantees and their application to gig workers**

The term "guarantees", "social guarantees" is applied to different categories of persons in different circumstances. Thus, in accordance with the legislation, one can find:

- guarantees of social protection of certain categories of citizens (Federal Law of 08.06.2015 No. 139-FZ "On guarantees of social protection of certain categories of citizens");
- additional guarantees for social support of orphans (Federal Law of 21.12.1996 No. 159-FZ "On additional guarantees for social support of orphans and children left without parental care");
- social guarantees for employees of internal affairs bodies (Federal Law of 19.07.2011 No. 247-FZ "On social guarantees for employees of internal affairs bodies of the Russian Federation and amendments to certain legislative acts of the Russian Federation");
- social guarantees for Heroes of Socialist Labor (Federal Law of 09.01.1997 No. 5-FZ "On the Provision of Social Guarantees to Heroes of Socialist Labor, Heroes of Labor of the Russian Federation and Full Cavaliers of the Order of Labor Glory");
- social guarantees for citizens exposed to radiation (Federal Law of 10.01.2002 No. 2-FZ "On Social Guarantees for Citizens Exposed to Radiation as a Result of Nuclear Tests at the Semipalatinsk Test Site");
- social guarantees for employees of certain federal executive bodies (Federal Law of 30.12.2012 No. 283-FZ "On Social Guarantees for Employees of Certain Federal Executive Bodies and Amendments to Certain Legislative Acts of the Russian Federation"), etc.

As can be seen from the presented list, social guarantees can be provided both to certain categories of workers (for example, military personnel) and to individuals who have the

opportunity for social support due to certain circumstances (for example, heroes of labor).

In relation to the employment of gig workers, we can first of all talk about guarantees of social and labor relations in the broad sense of the word. In accordance with Article 164 of the Labor Code of the Russian Federation, guarantees are "means, methods and conditions by which the exercise of rights granted to employees in the field of social and labor relations is ensured."

Such guarantees are provided for employees under labor legislation in connection with being sent on a business trip, when moving to work in another location, when work is terminated through no fault of the employee, when providing leave, in case of temporary disability, in case of an accident at work, and in a number of other cases.

In addition to the general guarantees provided for all employees under an employment contract, special agreements may be adopted for certain categories of persons employed in certain areas, determining the working conditions and guarantees for them.

Thus, the Federal Industry Agreement on Automobile and Urban Ground Passenger Transport for 2008-2010, which is no longer in effect, regulated social and labor relations, determined the terms of payment, labor protection, work and rest schedules, and other guarantees and conditions for workers in the industry<sup>4</sup>.

The Law of the RSFSR of 19.04.1991 No. 1028-1 "On increasing social guarantees for workers", which was in effect before the entry into force of the Labor Code of the Russian Federation, established such social guarantees as the minimum wage, the minimum amount of temporary disability benefits, working hours of no more than forty hours per week, and annual paid leave of no less than twenty-four working days<sup>5</sup>.

Thus, it becomes important to develop a system of social guarantees for people employed in the gig economy on a systematic basis and

<sup>4</sup> Federal industry agreement on automobile and urban ground passenger transport for 2008-2010 // Labor and Insurance, No. 5, 2008.

<sup>5</sup> Law of the RSFSR of 19.04.1991 No. 1028-1 "On increasing social guarantees for workers" // Vedomosti SND and VS RSFSR. 1991. No. 17, art. 506.

considering this form of employment as their main one.

Based on the above, the following definition of guarantees for gig workers can be proposed: guarantees are the means, methods and conditions by which the implementation of the rights granted to gig workers in the area of employment and their social security is ensured.

Social guarantees are part of a broader concept, such as state guarantees, which are essentially intended to ensure that a person feels protected from various external negative manifestations. The rights to work, social and pension security, protection of their professional interests through trade unions, enshrined in the Constitution of the Russian Federation, social guarantees can be manifested in various forms as socio-political, socio-economic, socio-cultural and other social guarantees.

With regard to gig workers, whose legal status is often very similar to the legal status of workers employed under an employment contract, we should first of all talk about socio-economic guarantees that are designed to provide the gig worker with working and resting conditions, the right to health protection, medical care, protection from accidents at work, and pension provision.

When considering legal disputes, courts find it difficult to characterize relations with gig workers as labor relations, which is predetermined by an insufficiently developed regulatory framework and is unable to guarantee the basic social rights of workers [18]. There is a need for a new approach to such workers and the platforms they work with, in terms of determining the dependence of such relations, affecting the level of social guarantees [19]. For example, the issue of providing drivers with social and labor rights and guarantees is proposed to be enshrined at the level of labor legislation [20].

At the same time, gig workers employed on platforms are often willing to give up possible social guarantees in exchange for higher “salaries” and a more flexible work schedule. Nevertheless, the state must also provide its citizens who do not work under labor relations with a minimum set of social guarantees.

Thus, social guarantees for gig workers can

be defined as a set of social and legal obligations of the state to workers employed in the gig economy (on the terms of self-employment, platform employment), aimed at creating the necessary conditions for them to perform their work, satisfy their social needs and professional interests.

### **3. Pension and social security for gig workers**

In the Russian Federation, self-employed individuals who pay the professional income tax are exempt from paying insurance premiums, which means that of the three components - pension, social and medical insurance, they are entitled to count only on medical insurance, since part of the professional income tax (according to the standard of 37%), in accordance with the Budget Code of the Russian Federation, goes to the Federal Compulsory Medical Insurance Fund. Payment of pension and social insurance to the Social Fund of Russia is not mandatory and can be made on the basis of a voluntary insurance agreement. Based on this, it can be assumed that the payment of medical insurance by gig workers is of greater importance for the state, otherwise an additional burden would fall on the budget, since medical care is guaranteed by the Constitution of the Russian Federation regardless of whether a citizen works or not. But the payment of a pension and payment of a sick leave is already the responsibility of the gig worker himself. According to statistics, the self-employed do not exercise their right very often - according to the Ministry of Labor and Social Protection of the Russian Federation, only 3% of all self-employed people make voluntary contributions to their pension, and taking into account those self-employed people for whom income under this tax regime is the main source of income, their share increases to 7%<sup>6</sup>. Considering that the number of self-employed people has already exceeded 9 million people, this is not a significant share of gig workers. This means that most of them will not be able to count on a pension in the future.

As for temporary disability benefits, a voluntary social insurance mechanism was proposed

<sup>6</sup> For 42% of the self-employed, working for themselves is just a part-time job // <https://rg.ru/2023/11/09/dlia-42-samozaniatyh-rabota-na-sebia-iavliaetsia-tolko-podrabotkoj.html> (date of access 30.11.2023).

in 2022, which makes it possible to voluntarily pay insurance premiums and receive insurance payments.

Based on the total number of self-employed individuals in Russia and the small percentage of them who make voluntary pension contributions, a mechanism should be developed to provide pensions for those self-employed individuals for whom income from such activities is the only source of income.

Of interest is Germany's experience with social insurance for self-employed artists and publicists.

For "self-employed artists and publicists", the Artists' Social Insurance Act (KSVG) has introduced a procedure similar to that applicable to employees<sup>7</sup>. If such a person works full-time in the field of publicity or art, he or she receives a 50 percent "employer's share" of the basic contributions for compulsory social security. This is paid through the Artists' Social Insurance Fund (KSK).

The social insurance for artists works as follows: insured persons, like ordinary employees, pay 50 percent of the basic contribution to the statutory health insurance, long-term care insurance and pension insurance to the KSK. The KSK partly receives the corresponding "employer's share" from "processors", who, according to the KSVG, must deduct a certain percentage of the fees they pay as social tax for artists; 20 percent comes as a subsidy from the federal government.

The contributions to the compulsory pension insurance paid through the KSK are included in the same amount as the contributions that the person may have paid earlier in the employment relationship. So no new pension account is created here. At the same time, self-employed persons who are not employed are subject to compulsory pension insurance. Currently, the Social Code 6 in Section 2 prescribes compulsory pension insurance for certain specific professions. Self-employed persons who are already subject to compulsory insurance today are:

caregivers who do not employ workers who pay for the insurance; sea pilots; home business operators; craftsmen, as well as self-employed persons working only for one principal who do not regularly employ workers who are paid for by the insurance.

The compulsory pension insurance applies to incomes of more than 520 euros per month (or 325 euros respectively when working at KSK) and to part-time employment: those who tutor in addition to their main job and thus earn more than 6,240 euros (3,900 euros per year) in income must pay contributions to the statutory pension insurance system. How income is calculated and verified is described in detail in the text on the cost of compulsory pension insurance<sup>8</sup>.

Craftsmen who run a licensed craft business (so-called trade union A) can leave the compulsory insurance system after 18 years of paying contributions, everyone else can remain self-employed in the specified professions or get insurance once they have passed the point of insignificance in this process.

Thus, payment of contributions for pension and social insurance depends on a number of factors: income level (there is a minimum non-taxable income), working hours (full or part-time). Obviously, in cases where a gig worker is close in his legal status to an employee under an employment contract (full-time employment, etc.), his pension and social insurance should maximally provide him with social guarantees in case of temporary disability and in connection with retirement.

#### **4. Protecting the rights of gig workers through the institution of trade unions**

Since the self-employed and other gig workers make up a significant share of employed citizens in different countries, there is a need to create conditions for protecting their rights, which can be done through trade unions, which play an important social function in protecting workers' rights [21]. In the literature, the protection of gig workers' rights with the participation of trade unions is currently given insufficient attention [5, 22].

One of the problems facing the self-

<sup>7</sup> Law on social insurance of self-employed artists and publicists // <https://www.gesetze-im-internet.de/ksvg/BJNR007050981.html#BJNR007050981BJNG000100311> (date of access 01.11.2023).

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<sup>8</sup> <https://selbststaendigen.info/suche-im-ratgeber/?lnk=d40ec1ec38f912> (date of access 13.11.2023).

employed is how to organize to protect their interests and goals in relation to the state, large companies and other groups. In European countries, there is now some experience in the protection of the rights of self-employed and platform workers by trade unions.

In Germany, the status of a self-employed worker also leads to a more legally vulnerable position, which predetermined the possibility of self-employed people in Germany to join a trade union back in 2001. The Ver.di trade union, created in 2001 as a result of the merger of five separate trade unions, is the largest membership organization in Europe for individual self-employed persons and has more than 30,000 members. Self-employed people can count on a variety of support not only within the framework of their direct employment, but also on many additional issues related to housing, social, and pension legislation [21].

In Spain, the two major trade union groups in Spain, the General Workers' Union (UGT) and the Workers' Commissions Union CC.OO, have promoted the organisation of self-employed workers. In January 2000, the Union of Professionals and Self-Employed Workers (UPTA<sup>9</sup>) was created within the UGT. The Union of Professionals and Self-Employed Workers of Spain, UPTA Spain, is a national and cross-sectoral Confederation made up of territorial organisations and sectoral associations of self-employed persons registered under the Special Regime for Self-Employed Workers (RETA). The UPTA Confederation is made up of 34 territorials and sectoral organizations, represented in all 17 autonomous communities, as well as in Ceuta and Melilla<sup>10</sup>.

In the UK, self-employed workers have also attempted to protect their rights through trade unions and collective bargaining with union-affiliated platforms. Of interest is the 2017 case between the International Workers' Union (IWGB) and Deliveroo. The Central Adjudication Committee, a quasi-judicial body in the UK, ruled that couriers are self-employed and are not classified as "workers" under UK employment law,

and therefore trade unions cannot represent couriers<sup>11</sup>. On 21 November 2023, the UK Supreme Court handed down a judgment that addressed the issue of whether the couriers' actions fell under Article 11 of the European Convention on Human Rights, which covers the right to join trade unions. The Supreme Court said there was nothing in UK law that prevented drivers from forming or joining trade unions, and nothing that prevented Deliveroo from bargaining collectively with them. But the ruling added: the question is whether Article 11 requires the United Kingdom to go beyond this current position and enact legislation giving Article 11 workers the right to require their reluctant employer to recognize and bargain with the trade union of their choice<sup>12</sup>.

In Russia, the issue of protecting the rights of the self-employed and platform workers is also being raised, including through the creation of trade unions for citizens with this form of employment. The Federation of Independent Trade Unions of Russia (FNPR) has repeatedly included in its agenda issues of extending social partnership to workers in non-standard forms of employment, including those employed through digital platforms and the self-employed [21], including, for example, proposals to establish labor and legal guarantees for platform employees: remuneration no lower than the minimum wage in the event of working at least 160 hours per calendar month; working conditions that meet safety and hygiene requirements; rest, including limiting the duration of working hours, providing and paying for daily and inter-shift rest, breaks during the working day for meals, days off; compensation for harm to health caused to a platform employee by the operator of the digital platform, the customer and (or) a third party in connection with the performance of work (provision of services); mandatory medical examinations carried out at the expense of digital platform

<sup>11</sup> UK Supreme Court rules Deliveroo riders cannot collectively bargain as a union // <https://www.jurist.org/news/2023/11/uk-supreme-court-rules-deliveroo-riders-cannot-collectively-bargain-as-a-union/> (date of access 22.11.2023).

<sup>12</sup> Independent Workers Union of Great Britain v Central Arbitration Committee and another // <https://caselaw.nationalarchives.gov.uk/uksc/2023/43> (date of access 22.11.2023).

<sup>9</sup> UPTA // <https://upta.es/> (date of access 21.11.2023).

<sup>10</sup> ibid

operators<sup>13</sup>.

Since the law on platform employment is still under development, it seems necessary to provide for such guarantees for platform workers. Just like in other countries, in Russia, a trade union has been created to protect the rights of self-employed workers, platform workers and entrepreneurs who do not hire workers - the interregional trade union of platform economy workers "Independent Trade Union New Labor". The trade union was registered by the Ministry of Justice of the Russian Federation on November 1, 2023. The data presented show that the rights of the self-employed and platform workers can be protected through trade unions, both through trade unions uniting different workers and specially created trade unions for the self-employed. At the same time, the position on whether the self-employed can generally protect their rights through trade unions has not yet been fully resolved, as shown by the judicial practice of Great Britain. Since the self-employed have different legal status, the protection of their rights by trade unions can be carried out to varying degrees. It is obvious that the first category of self-employed persons we named, who are closest to hired workers in their status, need protection of their rights to a greater extent. Also, protection of rights through trade unions can be carried out in cases where such status of an employed person is used for temporary additional work, at the same time, the rights of such persons must be protected regardless of their working hours.

## 5. Conclusions

Based on the above, the following conclusions can be drawn.

The position of gig workers is less protected in terms of their rights and the guarantees provided to them. In this regard, there is a need to determine what social guarantees should be provided to which categories of gig

workers, as well as possible measures of social protection for such persons. There is a need to once again ensure the rights of workers employed on the terms of self-employment or platform employment.

A definition of guarantees for gig workers is proposed: guarantees are the means, methods and conditions by which the exercise of the rights granted to gig workers in the field of employment and their social security is ensured.

Social guarantees for gig workers can be defined as a set of social and legal obligations of the state to workers employed in the gig economy (on the terms of self-employment, platform employment), aimed at creating the necessary conditions for them to perform their work, satisfy their social needs and professional interests.

Payment of contributions for pension and social insurance depends on a number of factors: income level (there is a minimum non-taxable income), working hours (full-time or part-time). Obviously, in cases where a gig worker is similar in legal status to an employee under an employment contract (full-time employment, etc.), his pension and social insurance should provide him with the maximum opportunity for social guarantees in case of temporary disability and in connection with retirement.

Depending on the category of gig workers, they may need to a greater or lesser extent to protect their rights with the participation of trade unions: the weaker the party, the more often they are forced to agree to the working conditions imposed on them, the more opportunities they should have to protect their rights. Currently, foreign experience shows that the self-employed can seek help both from trade unions created specifically for them and from those that protect the rights of other categories of workers. In the Russian Federation, they have chosen to create a specialized trade union for the self-employed and platform workers.

At the same time, the experience of Great Britain shows that not all countries are yet ready to grant such workers the right to negotiate with the participation of trade unions, which predetermines further discussion about such a possibility, as well as the need to enshrine such a possibility at the legislative level.

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<sup>13</sup> Resolution of the General Council of the FNPR dated 20.04.2022 No. 11-5 On the progress of the implementation of the Plan of practical actions for the implementation of the decisions of the X, XI Congresses of the FNPR // <https://fnpr.ru/documents/dokumenty-federatsii/postanovlenie-gensoвета-fnpr-ot-20-04-2022-11-5.html> (date of access 12.11.2023).

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