Comparative legal analysis of the employment of graduate production personnel in relation to the labor law of Russia and Germany

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Abstract. The article deals with the problem of employing young technical professionals as an important part of a more general problem of providing quality training for professional production personnel. The lack of practical experience is cited as the main reason for the impossibility of employment. Interpretation of such concepts as "business qualities of the worker", "young specialist" is given. Comparative legal analysis of the employment of graduate engineers is made in relation to the labor law of Russia and Germany. There is a clearer structuring of the concept of experience in employment and a more developed system of practices during training in German labor law. Possible ways of solving the problem of presence/absence of experience are proposed when employing graduates (young professionals) in relation to the Russian labor law. An effective way to improve the efficiency of professional production personnel in the Russian education system is professional practice/training during university studying in the framework of production capabilities of the regions.

1. Introduction

High-quality training of professional production personnel, meeting the requirements of the time, has been and remains an urgent issue for modern society. This problem should be considered not only in relation to the training of future specialists but primarily within the framework of the dichotomy "college/university – technical division/production department". It is how close the relationship is between college/university – production (in a broad sense – both in terms of technical specialties and humanitarian activity) which influences the effectiveness of training professional production personnel.

One of the most acute issues in this area is the problem of employment because some issues in the field of employment remain not fully resolved despite the fairly complete regulation of labor relations within the legislation. In particular, we are talking about such a concept as "experience" in relation to a certain field of activity.

The materials of the relevant Internet sites offering various vacancies in the field of employment contain a number of requirements for applicants. One of them is the experience in this field of activity or (which is much less common) almost any practical experience in general. Moreover, this pattern is typical for both the Russian and foreign labor markets [1].

Accordingly, the lack of work experience can become the reason and sometimes the main one for refusal in employment. This problem is particularly relevant for young professionals who have just graduated from an educational institution and have not yet worked in the chosen field of activity.

We find it interesting to present a comparative description of this problem on the example of Russia and Germany, since approaches to its solution in labor law are different taking into account a more global problem of training professional production personnel in these countries, especially since this problem has not received proper coverage in the works of legal scholars.

According to the research conducted by the center for economic research of the University "Synergy", 73.7% of employers in Russia pay attention to the presence of practical experience but not to the name and prestige of the university when hiring graduates [2].
Surveys conducted by the portal for young professionals Career.ru showed that Russian companies are reluctant to hire specialists (graduates) without experience. In particular, every fourth company said that it does not accept young professionals without experience. Possible ignorance of the relevant production (possible errors in work), unwillingness to attract additional costs for professional training within the company, etc. [3] are indicated as the reasons.

2. Materials and research

Let us turn to the other side of the dichotomy "college/university – production" which is related to graduates (young professionals). Research centre Superjob cites a survey of graduates in 2015-2017. The difficulty of employing graduates is estimated 7.1 points out of 10. The most important reason for arising difficulties is the lack of work experience which was indicated by 67% of respondents [4].

Let us consider the materials of Internet sites containing information about vacancies for job seekers and forming the empirical base of the study. For Volgograd as an example, such well-known in the labor market sites offering employment are sites "Superjob" (https://volgograd.superjob.ru/) and "Avito" (https://www.avito.ru/volgograd). An analysis of about 2000 vacancy announcements in various fields of activity showed that the requirement of work experience is 87%. Moreover, the time range of available experience ranges from "more than 1 year" to "more than 3 years". In some cases, the time characteristics of the experience are not given at all. Here is an example:

Manager on dealing with corporate clients (VTB Leasing Volgograd), experience of more than 1 year; Senior cook ("Carousel", Volgograd), experience in leadership positions; Law Counsel (LLC "Zirax", Volgograd), experience at a manufacturing plant is required; Regional representative ("Simple financial solutions North", Uryupinsk), experience in sales/insurance/NPF is compulsory; Expert at managing services for fixed business in the mass market ("Mobilnyetelesistemy", Volgograd), experience in marketing/sales/management of at least 2 years is required; Seller in hypermarket/stationary merchandiser ("Health", Voroshilovsky district, Volgograd), experience in food sales and/or as a merchandiser (https://volgograd.superjob.ru/).

Based on the examples of advertisements in which experience is often accompanied by the imperative "necessary/required/obligatory", it can be said that lack of experience is one of the main reasons for refusal in employment.

In the Russian labor legislation there is no official regulation on the need for work experience in employment. Article 64 of the Labour Code states the following: "Any direct or indirect restriction of rights or establishment of direct or indirect advantages at the conclusion of the labour contract depending on sex, race, colour, nationality, language, origin, property, family, social and official position, age, place of residence (including the presence or absence of registration at the place of residence or stay), attitude to religion, convictions, belonging or not belonging to public associations or any social groups, as well as other circumstances unrelated to business qualities of workers, are not allowed with the exception of cases in which the right or obligation to impose such restrictions or benefits is provided by Federal laws" [5].

In this case, only "business qualities of employees" are mentioned in the list as the reason for refusal (we do not take the given exceptions). Let us dwell on this concept. The labour Code does not explain what is meant under business qualities. But Resolution of Supreme Court Plenum of the Russian Federation of 17.03.2004 N 2 (ed. 24.11.2015) "On application of the Labor Code of the Russian Federation by courts of the Russian Federation" provides the following interpretation in the section "Conclusion of the employment contract" paragraph 10: "Under the business qualities of the employee should, in particular, be understood the ability of an individual to perform a certain job function, taking into account his professional qualifications (for example, the presence of a certain
profession, specialty, qualification), personal qualities of the employee (for example, health, the presence of a certain level of education, experience in this specialty, in this industry)

And here we find that the concept of "work experience" is one of the personal qualities of the employee. In this case, in our opinion, there is a certain conceptual inaccuracy: on what basis is professional experience related to personal qualities? The meaning of the linguistic unit "personal" is defined in the explanatory dictionaries as "characteristic of the personality" [7]. The concept of personality, in turn, includes the stable properties of human individuality, which are significant for society [8].

Based on these definitions, in relation to personal qualities, it can concern, for example, the discipline, ability to contact people, emotional lability, etc. As for the phenomenon of "work experience", its presence can be included in professional qualities, but not personal. In connection with the above, we believe that the concept "business qualities of the employee" needs significant clarification.

Since we are talking about the problem of employment of graduates, the concept of "young specialist" requires a separate consideration. There is no definition of this concept in the Russian legislation. However, guided by various programs, grants, competitions offered by the state within the framework of both the university (for university employees) and production company, we can make the following conclusion: a young specialist is a professionally trained personnel under the age of 35 years (in some areas – up to 30 years or up to 39 years) having acquired secondary vocational or higher education. A young specialist has the same rights and duties as other employees. As a special condition, a kind of limiting the employment of young professionals, it is possible to introduce a trial period proposed in some areas and industries (for example, some jobs presented on these websites contained this condition), which usually takes a time period of three months.

However, article 70 of the Labor Code of the Russian Federation states that the trial period is not set for "persons who have received secondary vocational education or higher education on state-accredited educational programs and for the first time coming to work in their specialty within one year from the date of receipt of vocational education of the appropriate level" [9], i.e. in this case certain benefits are stipulated for graduates (young professionals).

As for young professionals (graduates of colleges) under 18, the Labor legislation provides a number of benefits (Chapter 42, Labor Code) for them: benefits for employment or dismissal both during production activities and rest.

In the Russian state at the present time, there is also targeted support for young professionals in some separate industries to attract professional personnel (when lacking them). For example, in order to attract young specialists to rural areas, the RF Government Decree No. 598 of 15.07.2013 "On the Federal target program "Sustainable development of rural areas for 2014-2017 and for the period up to 2020" maintains the provision of social payments for the construction (purchase) of housing to Russian citizens living in rural areas, including young families and young professionals living and working in rural areas or who have expressed a desire to move to rural areas and work there [10]. At the level of subjects, certain privileges may also be established for individual categories of young professionals. For example, according to the Law of Moscow of 20.06.2001 N 25 "On the development of education in Moscow" young teachers of Moscow public educational institutions are provided with additional payments of 40% to the salary for being a young specialist and about 50% for having a diploma with honors during the first three years of work [11].

All of the above facts concerning graduates (young professionals) are the so-called "de jure", but "de facto" graduates face the actual problem of employment.

Let us turn to the representation of this issue in the labor law of Germany. Here the presence of experience at employment is also rather an important condition. According to statistics, 67% of surveyed employers prefer their employees to have professional experience (https://www.absolventa.de/karrieregguide/berufseinsteiger-wissen/berufserfahrung-fundierte-einschlaegige). However, if we compare the Russian and German practices of employment, we find that the problem of presence/absence of experience is developed in the latter in more detail. In
particular, the types of experience meaningful for the employer are distinguished and, accordingly, it is possible to distinguish a kind of level of having certain experience: 1) erste Praxiserfahrung (primary practical experience – hereafter we give our translation); 2) einschlägige Berufserfahrung (relevant professional experience); 3) fundierte Berufserfahrung (profound professional experience) [12].

The first and thus the lowest level – erste Praxiserfahrung - assumes the presence of so-called primary experience, usually obtained during a professional practice or university training. This experience is in demand primarily for graduates and other young professionals who just start working in the profession. As such experience the candidate can mention a certain type of practice, some part-time work, and it is not necessarily important that the experience is obtained in the field of activity where the candidate is going to work.

The second or intermediate stage – einschlägige Berufserfahrung - means that there is already some relevant experience obtained, i.e. practical skills in the field of professional activity. Moreover, a young specialist may have such experience since similar practices can be carried out for a shorter or longer time or even permanently while studying (Werkstudentätigkeit) in the chosen field.

The third or the highest stage - fundierte Berufserfahrung - indicates a profound professional experience. In this case, the employer is looking for an employee with long-term, extensive professional experience in the very field of activity. It is no longer possible to indicate practice as a source for obtaining experience.

Thus, in German employment practice, the above-mentioned levels of professional experience are generally accepted. This specification of the volumetric concept of "professional experience" allows you to organize the problem of employment for some categories including young professionals.

There is no Labour code in German law. Labour law is regulated by various legal acts, including those at the level of Land law, which is very well developed in Germany. The most complete employment relationship is reflected in the Social Code (Sozialgesetzbuch) as well as in the jurisprudence of the Federal Labour Tribunal (Bundesarbeitsgericht). As in the Russian labor legislation, in German one there is no definition of a young specialist. However, the graduates' categories of secondary and higher educational institutions are more clearly structured. In particular, the "Statistics" section of the official website of the Federal Labour Agency of Germany mentions the following qualifications of graduates: Fachkräfte - workers, Experten - experts, Spezialisten - specialists. Workers are those who have studied for at least two years and have a degree and a relevant qualification; experts are graduates having studied at university for at least four years and they also have the above-mentioned; specialists graduated from magistracy in a higher educational institution or have higher technical education with the appropriate qualification [13]. This structure allows employers to be more clearly oriented towards young professionals.

Let us turn to the well-known German Internet sites that publish information about vacancies. A similar number of vacancy announcements (about 200) in various fields of activity were analysed. As a result, it was noted that work experience is required in 91%. In contrast to the actual indication of the number of years in relation to the experience on Russian websites, here are the qualitative characteristics of the experience (primary, thorough, etc.), or an indefinite amount of time (long-term). Quite rarely we can find that the time characteristics of the experience are not given at all. Here is an example:

Pädagogen, Praxixiserfahrung erste in der Gestaltung von Integrationskursen und der Begleitung von Flüchtlingen und Migranten – Teacher, primary practical experience (preferably, but not obligatory – in the development of integration courses and support for refugees and migrants); Pädagogen mit einschlägigen beruflichen Erfahrungen im Bereich frühkindlicher sprachlicher Bildung und Bildungsarbeit - Teacher, appropriate professional experience in the field of training early-aged children in language teaching and learning (https://www.stellenanzeigen.de/job/); Dipl. Pflegefachperson HF (Demenzabteilung), fundierte Erfahrung im Langzeitbereich – Certified specialist in providing care for those who suffer from dementia, thorough many years of experience (in this area); Leitung Hotellerie, fundierte Berufs- und Führungserfahrung – hotel manager, a
thorough professional and management experience (http://stellenanzeige.monster.ch/); Data-Analyst / Data-Scientist, fundierte Erfahrung mit Data Analytics – specialist in data processing, profound experience in the field of data processing and analysis; Servicetechniker (m/f) Standort HamburgHYDRO Systems, mindestens 3 Jahre einschlägige Berufserfahrung – technician (m/f) to service the machines, at least three years of relevant professional experience (http://stellenanzeige.jobpilot.de/); Business Development Manager (f/m), einschlägige Projektleitungserfahrungen - manager (m/f) in business development, relevant experience in project management; Rezeptentwickler / Koch (m/f), Fundierte Erfahrung bei der Entwicklung von neuen und Weiterentwicklung von bestehenden Rezepten der deutschen und internationalen Küche – recipe developer (m/f), profound experience in developing new and improving existing recipes of German and international dishes; Bustouristik/Reiseveranstaltung eine/n Reiseverkehrsveranstalter/in erste Praxiserfahrung – specialist (m/f) in the field bus tourism /travel organizer, primary practical experience; Außendienstmitarbeiter/in mehrjährige fundierte Berufserfahrung – sales representative (m/f), years of thorough experience; Lehrer (Deutsch als Fremdsprache / Zweitsprache) (m/f) erste Praxiserfahrung – teacher of German as a foreign /second language (m/f), primary practical experience (http://stellenanzeige.jobpilot.de/).

Thus, in this case, there are more opportunities for job seekers in the field of employment, compared with the Russian vacancy database (of course, with the appropriate diploma, certificate and other evidence of qualification) because it is possible to get a job, having only in-study practices mentioned as experience.

The analysis of various legal sources has shown that the concept of practice/internship during training is of great importance in German labour law. In general, the possibility of obtaining professional experience during training is given great attention to. The Social code and other legislative sources present the concept of Werkstudent, there is no equivalent in the Russian or English language. It means literally a student working in the field of study, a student who is both studying and working to gain practical experience [14]. According to the Social code, they have pension insurance under the General rules but have no necessity to pay for health insurance until 25 years. At the same time, the weekly working hours include not more than 20 hours per week during the lecture period of the semester [15].

For employers, such students are an opportunity to find new staff, train them for work in their enterprises, as well as save on social contributions. That is why many large enterprises in Germany take Werke studenten.

The very concept of "practice" within the framework of the considered “College/University-production” relationship means mastering the acquired knowledge and skills in a certain period of time or obtaining the necessary knowledge in order to apply them in the enterprise. A trainee in Germany is a person who undertakes a contractual obligation to enter into a professional activity within a certain period of time in order to acquire practical knowledge and skills for his/her professional activity. This time we consider vocational training in relation to the Act on education or any other comparable practical training (see Minimum wage act § 22 Abs. 1 P. 3 MiLoG [16]); however, the Intern does not have the status of an employee (see: materials for judicial practice of the Federal labor court) [17].

The practices in Germany are a part of the professional development assistance programme developed by the Federal labor Agency in accordance with the Social Code.

3. Conclusion
Thus, in this case we are talking about the possibility of the so-called "accumulation" of professional experience. Here the following practices are taken into account: various practices or internships in a foreign country (if any), work during studying (so-called "working students"), or mini-work, course work, including applied materials, public work, social work, work as support staff in research laboratories at the University [18]. In addition, even social networks (an own blog, an Instagram profile, etc.) can be taken into account as professional experience in certain cases [19].
In our opinion, the Russian labour legislation and professional educational standards do not pay due attention to the system of practices. As it is noted by the graduates of Russian universities, it was the practice/internship during their studies that contributed to their further rapid employment [20].

The comparative characteristics of the concept of "professional experience" or "work experience in the field of study" indicate a more detailed representation of this concept in the Labor law of Germany. We believe that the Russian labour law should clarify the concept of professional experience at the legislative level, and perhaps take into account the allocation of different types (levels) of professional experience represented in German labour law.

As possible ways of solving the problem of presence/absence of experience when employing graduates (young professionals), we propose the following o the system of higher education:

1. to assign the status of official professional activity (as a kind of primary professional experience) to various types of practices (in-study), foreign internships, courses, final qualifying works, significant social projects of the all-Russian and international levels.
2. to officially establish the applied nature of the listed activities as a requirement.
3. to develop mandatory criteria for the professional selection of practices.
4. to establish the obligatory applied character of all subject programs in the block of professional disciplines.

The proposed measures will, to some extent, address the problem of the availability/lack of experience to obtain employment and increase the employment opportunities for young professionals.

In the framework of the considered common problem of professional training production personnel practices/internship should be given priority. In order to develop and widely implement practices, it is necessary to solve the tasks in a single unity, in close cooperation of universities, regional authorities, the production potential of the region. After all, practices in Russian universities are often formal and do not go beyond the University; practice databases are not fixed, or their selection is quite random.

Thus, it is the consistent implementation of the system of in-study practices that will contribute to the effectiveness of professional training of production personnel and closer interaction between a College/University and a production department/organization.

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