

THE FORMATION OF THE SYSTEM OF LEGAL REGULATION OF NATIONAL QUALIFICATIONS IN RUSSIA *NACIONĀLO KVALIFIKĀCIJU SISTĒMAS TIESISKĀ REGULĒJUMA VEIDOŠANA KRIEVIJĀ*

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Abstract. *The purpose of the research is to identify the features of the system of legal regulation of national professional qualifications. The research problem is caused by insufficient legal regulation of the system of national professional qualifications as well as ambiguous interpretation of the system of legal regulation of national professional qualifications. The novelty of the research is expressed in establishing the interrelation between the imperative observance both the professional standards and the interests of the participants, and the disposition of the participation procedure and the social and labor infrastructure of the independent qualification evaluation; ranking of categories of employees and establishing a special order of independent evaluation of qualifications. The main findings of the study reflect the need for an interpretation of the category of "legal regulation of national professional qualifications". Features of the legal regulation of independent assessment of qualifications for certain categories of employees. The focus is on optimizing the legal regulation system with regard to independent evaluation of qualifications.*

Keywords: *independent qualification assessment, professional standards, system of legal regulation of national qualifications.*

Introduction

The urgency of the development of the national system of professional qualifications (hereinafter - NSPC) is conditioned by the development of a legal system regulating the development of social infrastructure in the labor market, evaluative procedures for the professional quality, financing and taxation of participants at the federal and regional levels. This system correlates the imperative application of professional standards in accordance with the requirements of the labor market and the market of educational services on the basis of social partnership and developed social infrastructure of the labor market.

The aim of the paper is to establish the characteristics of the legal regulation of national professional qualifications.

The objectives of the paper in accordance with the aim are:

- 1) clarification of the category "the system of legal regulation of national professional qualifications";
- 2) establishing the relationship between disposition and imperativeness for an independent qualification evaluation;
- 3) peculiarities of the formation of the system of legal regulation of national professional qualifications;
- 4) optimization of the legal regulation system for independent qualification evaluation.

In the course of the research, such general scientific methods as comparative-legal, systemic, deductive and inductive methods, analysis and synthesis were used. Special methods: linguistic, technical and legal analysis, which ensures the validity of the findings.

Descriptive part

The system of national professional qualifications (hereinafter - SNPK) is a list of professions that are in demand on the Russian labor market. The competitiveness of this system, along with the increasing effectiveness of its application in economic activity via added value is due to the emergence of modern innovative professions, staff and freelancers.

By virtue of paragraph 1 of the set of measures to improve the system, including secondary vocational education, for 2015-2020 (*Об утверждении комплекса мер, направленных на совершенствование системы среднего профессионального образования, на 2015-2020 годы и целевых индикаторов и показателей комплекса мер, направленных на совершенствование системы среднего профессионального образования, на 2015-2020 годы, 2015*), the list of professions is fixed by orders of the Ministry of Labor of Russia No. 667n (*О реестре профессиональных стандартов (перечне видов профессиональной деятельности), 2014*), 832 (*Об утверждении справочника востребованных на рынке труда, новых и перспективных профессий, в том числе требующих среднего профессионального образования, 2015*), 2 (*Об утверждении перечня профессий (специальностей, должностей) для привлечения иностранных работников, прибывающих в Российскую Федерацию на основании визы, на 2018 год, 2018*). Taking into account the latest changes from 12.04.2018, the Register (*Реестр профессиональных стандартов, 2018*) includes 1134 types of professional activity. Despite the unformed register, changes in professional standards in the field of education and science are already being actively introduced in connection with the legal reform of the education system (Table 1).

Table 1

Register: the dynamics of changes in the professional standard of the teacher

Code of professional standard	Area of professional activity	Type of professional activity	Name of professional standard	Date of implementation	The weight of changes in the professional standard		The weight of changes in the professional standard		Date of implementation (changes to the order)
					number	date	number	date	
01001	Education and Science	Preschool education	The teacher: pedagogical activity in the sphere of preschool,	29.12.2013	1115n	25.12.2014	36091	19.02.2015	03.03.2015
					422n	05.08.2016	4332636091	23.08.2016	03.09.2016
		Primary general education	primary general,	1115n	25.12.2014	4332636091	19.02.2015	03.03.2015	
				422n	05.08.2016	43326	23.08.2016	03.09.2016	
		Basic general education	basic general,	1115n	25.12.2014		19.02.2015	03.03.2015	
				422n	05.08.2016		23.08.2016	03.09.2016	
Secondary general education	secondary general education (to bring up a teacher)								

According to paragraph 3 of Part 1 of Art. 2 of the Federal Law of 03.07.2016 No. 238-FZ "On Independent Qualification Evaluation" (hereinafter - Law No. 238-FZ), an independent evaluation of the suitability of applicants foresees the imperative of professional standards (*Трудовой кодекс Российской Федерации, 2001, ст. 195.3*), or qualification requirements (*О Правилах разработки, утверждения и применения профессиональных стандартов, 2013*). At the same time, the disposition of participation in qualification assessment (*Трудовой кодекс Российской Федерации, 2001, ст. 97*) is implemented on the basis of the law enforcement system at the federal and regional levels.

These bases (Table 2) have additionally been worked out by regional, legal provisions on the introduction and development of the SNPC, the elaboration of organizational and methodological materials for the functioning of an independent assessment of qualifications, the conduct of professional examinations (on the basis of Worldskills Russia), the formation of test and measurement materials, the Pskov region included:

1. Order of the State Administration of Education of the Pskov Region No. 1557 dated December 15, 2016 "On the Regional Coordination Center" Worldskills Russia "in the Pskov Region."
2. The Agreement on the Association Partnership of the Regional Coordination Center in the Union of the Professional Communities and Workforce Development Agency "Young Professionals (Worldskills Russia)".
3. Extract from the Register of Associate Partners (members) of the Regional Coordination Center in the Union "The Agency for the Development of Professional Communities

and Workers" Young Professionals (Worldskills Russia) " dated January 20, 2017 (*Региональный координационный центр WorldSkills Russia в Псковской области на базе "Псковский агротехнический колледж", 2018*).

Table 2

Legal basis for independent assessment of qualifications

1.	Federal Law No. 238-FZ dated 03.07.2016 "On Independent Qualification Assessment"
2.	Federal Law dated 03.07.2016 No. 251-FZ "On Amending Part Two of the Tax Code of the Russian Federation in connection with the adoption of the Federal Law" On Independent Qualification Assessment "
3.	Decree of the President of the Russian Federation of April 16, 2014 No. 249 (as amended on December 18, 2016) "On the National Council of the President of the Russian Federation for Professional Qualifications"
4.	Decree of the Government of the Russian Federation dated 16.11.2016 No. 1204 "On Approval of the Rules for Conducting an Evaluation of Qualifications by the Center for the Evaluation of Qualifications in the Form of a Professional Exam"
5.	Order of the Government of the Russian Federation No. 2042-r dated 29.09.2016 (On the Center for Professional Training, Retraining and Advanced Training of Workers)
6.	Orders of the Ministry of Labor of the Russian Federation (Nos. 649n, 701n, 706n, 725n, 726n, 729n, 759n, 758n), regulating the development of the SNOC infrastructure

The above mentioned local provisions allow developing the system of legal regulation of national professional qualifications on the principle of social partnership of organizations, employers, employees and representatives; labor legal relations, labor market competitiveness and the market of educational services regulating the WSR (*Региональный координационный центр WorldSkills Russia в Псковской области на базе "Псковский агротехнический колледж", 2018*) demonstration exam at the sites, the material and technical base of which meets the requirements of the Union "Worldskills Russia"(Figure 1).

Conducting the World Standards Demonstration Examination	Pilot approbation in 2018 in the subjects of the Russian Federation	Pilot approbation in 2018 in the educational institutions of higher education
<ul style="list-style-type: none"> •Methods of organizing and conducting a demonstration exam by the standards of Worldskills Russia •Order No. OP-54/2018 of February 20, 2018 •Order No. PO-495/2017/2 of 06.11.2017 •Instructions for obtaining the Passport of Competences "Skills Passport" •Order No. OP-233/2017 of May 16, 2017 	<ul style="list-style-type: none"> •Information letter to the subjects of the Russian Federation •Order No.O-473/2017 of 11/10/2017 •List of competencies for pilot testing of DE 2018 •The procedure for selecting subjects •Commission Regulation •Order No. PO-511/2017 of 13.11.2017 •Order No. PO-511/2017/1 of 13.11.2017 •Order No. PO-555/2017 dd. 06.12.2017 	<ul style="list-style-type: none"> •Informational letter to heads of educational organizations •Order on selection of educational organizations •List of competencies on HRV standards in 2018 •The order of selection of educational organizations •Composition of commission •Order No. PO-584/2017 of December 29, 2017

Figure 1. Local system of legal regulation of SNPK

In the opinion of Worldskills Russia expert V.V. Kochetkova, The Worldskills Russia Union can act as a subsystem of legal regulation, including independent assessment of qualifications in the area of working professions, career guidance in the form of electives, master classes in educational organizations of all levels (*Кочетков, 2015, p. 23-25*).

In the system of legal regulation of the SNPK, along with social partnership, there are such principles of unification as:

- unification and impartiality of the assessment of competencies by involving the representatives of educational organizations, producer-employers and professional experts of professional councils as well as the professional communities;
- unity of qualification registers for reserving and recruiting personnel;
- a unified methodology, standards for evaluation tools, diagnosed indicators and criteria that are significant for ensuring the quality of performance of activities;
- unity of approaches to the development of evaluation tools WSR and SNOС.

In general, the category "legal regulation system of national professional qualifications" is a complex mechanism for applying the norms regulating the development of the system of national professional qualifications and the procedure for independent evaluation of qualifications based on the principles of unification and social partnership.

Formation and development of the system of legal regulation of national qualifications (hereinafter - SPRN) are based on the balance of the principles of natural and positive law. The nature of the law is enshrined in Article 37 of the Constitution of the Russian Federation as the right to freedom, to work, to dispose of one's own labor potential, to choose the kind of work activity, independent qualification assessment, professional retraining, and advanced training (*Конституция Российской Федерации, 1993, ст. 37 ч. 1*). But at the same time it can imply the imperative conditions as "the right to work in conditions that meet the safety requirements" (*Конституция Российской Федерации, 1993, ст. 37 ч. 3*), compensation and reproduction of the labor resource (*Конституция Российской Федерации, 1993, ст. 37 ч. 5*) and working places availability as a factor in the labor market.

Natural law correlates with disposition, that is, the order of finding a compromise (the price of the contract, the choice of the source of financing). Thus, the right to choose the source of payment for an independent assessment of qualifications is indicated in Part 2 of Article 4 of Law No. 238. In turn, the trade-off of labor relations is conditioned by social partnership (*Трудовой кодекс Российской Федерации, 2001, ст.37*), the social and labor infrastructure of independent qualification assessment, its institutes - educational organizations, branch representatives, state executive bodies, local self-government bodies, the Union "Worldskills Russia" in solving social and labor issues.

In general, the system of legal regulation with regard to evaluation of qualifications is carried out on the interrelationship between imperativeness and disposition for the parties of social and labor relations. Norms determine the imperative compliance with the procedure for conducting an independent evaluation. For example, if the employee is sent on the initiative of the employer, the employee must be asked for the written consent. At the same time, the disposition is expressed in the choice of sources of financing for carrying out this procedure. So, in accordance with Art. 187 of the LC RF: payment for such an assessment is carried out at the expense of the employer's funds, or according to part 2 of article 4 of Law No. 238-FZ: at the initiative of the applicant at the expense of the applicant's funds, or other physical (legal) persons (*О независимой оценке квалификации, 2016*). The imperativeness of observance of the norms of labor law (*Трудовой кодекс Российской Федерации, 2001, ст.187*) is expressed in guaranteeing the rights to preserve the place of work (position), average earnings at the main place of work, payment of business trips for passing the qualification assessment. At the same time, according to art. 196 of the RF Labor Code, when the employer sends an employee to pass an independent assessment of qualifications, the guarantees can be set forth collectively by collective agreement, other agreements, local regulatory enactments, and an employment contract.

Peculiarities of the formation of the system of legal regulation of national professional qualifications are determined by the legal regime of professional activity in accordance with the legal status of the employee. According to Article 21 of the LC RF, the legal regime for professional activity is defined in the form of empowering the employee with rights and obligations on the basis of a labor and collective agreement (*Трудовой кодекс Российской Федерации, 2001, ст.20,21*).

Ranking by the peculiarities of professional activity and legal status of employees (Stolyarov, 2014, p. 247) allows you to specify the following classification (Figure 2).

General Workers	Remote workers of labor relations	Employees of civil law relations
<ul style="list-style-type: none"> • General legal regime of the TD • Employment contract 	<ul style="list-style-type: none"> • Special legal regime of the AP • Employment contract 	<ul style="list-style-type: none"> • Special legal regime of the TD • Civil contract

Figure 2. Classification of categories of workers

The legal regulation of independent evaluation of the qualifications of distance workers provides for the application of national and international professional standards, including those ones on the basis of the Worldskills system (*Об учреждении союза "Агентство развития профессиональных сообществ и рабочих кадров "Ворлдскиллс Россия", 2014*). At the same time, in accordance with Part 2 of Article 4 of Federal Law No. 238, paragraph 3 of the Rules of the RF Government Resolution No. 1204 can be clarified in the following form: "The professional exam is conducted by the qualification assessment center to confirm the compliance of the competitor's qualifications with the provisions of the professional standard or, qualification (including international - Union "Worldskills Russia") requirements" (*Об утверждении Правил проведения центром оценки квалификаций независимой оценки квалификации в форме профессионального экзамена, 2016*). This rule gives the right to the participants of the Worldskills to obtain a Certificate of Qualification.

The Rules (*Об утверждении Правил проведения центром оценки квалификаций независимой оценки квалификации в форме профессионального экзамена, 2016*) lack the norm of the need to provide a material and technical base for the use of software equipment and the processing of results during the professional exam - which requires the addition of an additional subclause 5.1: "The professional exam is conducted using modern technologies on the basis of the employer's organization or legal entity". To bring into correspondence part 1 of article 8 of the Federal Law № 238, point 1, namely: "1. The Center for Qualification Assessment conducts an independent qualification assessment in accordance with the logistics, including a legal entity."

The system of legal regulation of independent evaluation of qualifications of civil law workers ensures their social and labor rights, including in obtaining a certificate of qualification. This procedure can be envisaged for informal workers in the establishment of labor relations through participation in competitive selection for the qualification requirements of the Union of Worldwide Russia. Taking into account the special legal regime of professional activity of such employees, a special order of independent assessment of qualifications should be envisaged, which can be expressed by including the qualification preparation stage and issuing a "Certificate of Qualification". It is proposed to consolidate and add to paragraph 10 of the Rules of the RF Government Resolution No 1204, in the following form: "The applicant is allowed to pass a professional examination on the basis of qualification training and an identity document".

The Ministry of Labor and Social Protection of the Russian Federation notes that the validity of the qualification certificate that is issued following the successful completion of an independent evaluation is determined by the council for professional qualifications, depending on the pace of development of the type of professional activity based on the monitoring and forecasting of professions. However, in order to avoid contradictions in labor relations it is necessary to establish a standard for the validity term of the certificate of qualification and introduce an additional clause 1 of part 4 of article 2 of Law No. 238-FZ on establishing the validity of the document for 3 or 5 years, taking into account art. 196, 197 of the LC RF taking into account the development of the regional labor market.

Article 4 of Article 4 of Federal Law No. 238-FZ raises a contradiction and requires clarification of the legal force of the documents - "Certificates of Qualification" and "Conclusions on the passing of a professional examination". It should be clarified in this rule the following: "Conclusion on the re-passing of a professional exam", with the recommendation of the completion of additional education courses.

In Article 2 of Law No. 238-FZ, it is advisable to introduce the concept of "Qualification Certificate" with the following disclosure: "Certificate of Qualification - a document on compliance with a professional standard or qualification requirements for the performance of a certain type of work".

Conclusions and suggestions

1. The category "the system of legal regulation of national professional qualifications" is defined as an integrated mechanism for applying the norms regulating the development of the system of national professional qualifications and the procedure for independent evaluation of qualifications based on the principles of unification and social partnership.
2. It is established that the system of legal regulation with regard to evaluation of qualifications is carried out on the relationship between the imperative observance of professional standards and the interests of participants, and the disposition of the participation procedure and the social and labor infrastructure of independent assessment of qualifications for the parties to social and labor legal relations.
3. As an optimization of the system of legal regulation of the CDD, taking into account the ranking for certain categories of employees, a legal procedure for independent assessment of qualifications is proposed. A competitive selection is proposed for qualifying (including international - Union "Worldskills Russia"), which entitles participants to obtain a certificate of qualification. For certain categories of employees, provision should be made for paragraph 10 of the Rules of the Resolution of the Government of the Russian Federation No. 1204 of the admission to the professional examination on the basis of qualification training. At the same time, it is proposed to add to the norm on the procedure for conducting a professional examination in accordance with material and technical support. In the improvement of the system of legal regulation of the CDD with respect to the independent assessment of the qualification of the "Certificate of Qualification" and "Conclusions", clarification on the legal force and the validity of the documents was proposed and the legal validity of the "Certificate of Qualification" should be legally enforced.

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Kopsavilkums

Pašreizējā Krievijas Federācijas attīstības posmā cilvēkkapitālu sāka uzskatīt par vienu no uzņēmējdarbības aktīviem, par līdzekli ekonomikas modernizācijai un, kā liecina pasaules pieredze, ieguldījumi šajā jomā nodrošina veiksmīgu valsts attīstību un konkurētspēju. Šī mērķa īstenošanai Krievijas Federācijā izveidota Nacionālā profesionālo kvalifikāciju sistēma, kas paredz izveidot mijiedarbības mehānismu starp pilsoņiem, uzņēmējdarbības un valdības struktūrām, arodbiedrībām un profesionālajām biedrībām. Rezultātā personāla kvalifikācijas izveide, attīstība, uzkrāšana, atjaunošana, novērtēšana un aizsardzība paaugstinās Krievijas Federācijas konkurētspēju. Raksta autori izpētīja kvalifikāciju neatkarīgu novērtēšanu tiesisko regulējumu Krievijas Federācijas teritorijā, identificēja galvenās problēmas un izteica viedokli par Nacionālās profesionālās kvalifikācijas sistēmas attīstības iespējām Pleskavas reģionā.