

**SELF-EMPLOYED INDIVIDUALS AS PARTIES TO ECONOMIC DISPUTES: A
SCIENTIFIC AND LEGAL ANALYSIS**

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Abstract

The rapid transformation of the global economy, driven by the digitalization of labor and the rise of the “gig economy” has led to the emergence of a unique economic subject: the self-employed individual. This article examines the legal status of self-employed individuals within the framework of economic disputes. It analyzes the dual nature of their activities, which oscillate between entrepreneurial and labor-like characteristics, and explores the resulting jurisdictional and procedural complexities. Through a review of scientific literature and judicial practice, the article highlights the ongoing polemics regarding the protection of “economically dependent” self-employed individuals and the criteria for distinguishing genuine self-employment from “sham” arrangements. The study concludes with recommendations for legislative refinement to ensure legal certainty and equitable dispute resolution.

Key words: gig economy, self-employed individuals, economically dependent, sham arrangements, economic dispute

Introduction

The modern economic landscape is characterized by a significant shift away from traditional employment models toward more flexible, individualized forms of labor. Central to this shift is the “self-employed” individual—a category that has gained substantial legal and economic weight in recent years. In many jurisdictions, including the Russian Federation and the European Union, the self-employed are increasingly recognized as distinct subjects of economic activity. However, their integration into the system of economic dispute resolution remains fraught with theoretical and practical challenges.

Economic disputes involving self-employed individuals often sit at the intersection of civil, commercial, and labor law. Unlike traditional legal entities or individual entrepreneurs (IEs), the self-employed often operate under simplified tax regimes (such as the Professional Income Tax in Russia) and may lack the formal organizational structure of a business. This ambiguity raises fundamental questions: Are they “mini-entrepreneurs” subject to the rigors of commercial litigation, or are they “vulnerable workers” deserving of protections akin to labor law? This article seeks to address these questions by examining the legal nature of self-employment and the procedural hurdles encountered in judicial practice.

The Legal Nature of Self-Employment: A Theoretical Duality

The scientific discourse surrounding self-employment is marked by a fundamental tension between two conceptual approaches. The first approach, often championed by commercial law scholars such as I. V. Ershova and E. V. Trofimova, views self-employment as a form of entrepreneurial activity. Ershova argues that the legalization of self-employed citizens is a step toward bringing “shadow” economic activity into the formal legal field, thereby treating them as subjects of business law [1]. From this perspective, the self-employed are independent actors who assume economic risks and should be held to the standards of professional diligence.

Conversely, a second approach emphasizes the social and protective aspects of self-employment. Scholars like Sencur Pecek highlight the phenomenon of “economically



dependent” self-employed persons—individuals who, while legally independent, rely on a single client for the vast majority of their income [2]. Pecek contends that these individuals occupy a “grey zone” and require a special legal regime that provides certain labor-like protections, such as minimum remuneration standards or protection against arbitrary contract termination. This duality creates a “legal identity crisis” for the self-employed, as noted by F.Carrigan, who observes that the judicial system often struggles to reconcile the economic reality of dependence with the legal form of independence [3].

Scientific Polemics: The “Sham Self-Employment” Debate

One of the most contentious areas of scientific polemics concerns the distinction between genuine self-employment and “sham” or “false” self-employment. This issue is particularly acute in economic disputes where a company attempts to mask an employment relationship as a civil law contract to avoid tax and social security obligations.

The polemic centers on the criteria used to determine the “true” nature of the relationship. Traditionalists argue for a strict adherence to the formal contract (the “will of the parties” doctrine). However, modern judicial practice and many legal theorists advocate for the “economic reality” test. In the Russian context, the Supreme Court of the Russian Federation has increasingly leaned toward the latter, emphasizing that the actual nature of the relationship—characterized by subordination, fixed working hours, and integration into the employer’s business—should prevail over the contract’s title [4].

The debate intensifies when considering the burden of proof. Should the self-employed individual be required to prove they are an employee, or should the “employer” bear the burden of proving the individual’s independence?

Y.D.Zhukova and A.S.Podmarkova suggest that the current legislative gaps create an unfair advantage for larger commercial entities, advocating for a “presumption of employment” in cases where economic dependence is evident [5]. This proposal, however, is met with resistance from those who fear it would stifle entrepreneurial initiative and increase the cost of doing business.

Procedural Aspects and Jurisdictional Challenges

The status of the self-employed as subjects of economic disputes also raises significant procedural questions, particularly regarding jurisdiction. In Russia, for instance, a long-standing debate has surrounded whether disputes involving self-employed individuals should be heard in courts of general jurisdiction or arbitration (commercial) courts.

Historically, arbitration courts were reserved for disputes between legal entities and individual entrepreneurs. However, as noted by Nikita Rozhentsov, recent legislative trends and judicial interpretations have begun to shift certain categories of self-employed disputes into the arbitration system [6]. The rationale is that if the dispute arises from “entrepreneurial or other economic activity” the specialized expertise of arbitration judges is more appropriate. Yet, this shift is not without its critics. Some argue that the self-employed, often lacking legal representation, may find the more formal and rigorous procedures of arbitration courts prohibitive, thereby limiting their access to justice.

Furthermore, the issue of liability remains a point of contention. Unlike a limited liability company, a self-employed individual is personally liable for their professional obligations with all their property. This creates a high-risk environment for the individual, leading some scholars to propose the application of “consumer insolvency” rules to the self-employed to provide a “fresh start” in cases of business failure [7].

Judicial Practice: The “Economic Reality” in Action

Judicial practice serves as the ultimate testing ground for these theoretical debates. In the European Union, the Court of Justice of the European Union (CJEU) has played a pivotal role in



defining the boundaries of self-employment. In cases such as *Gusa v. Minister for Social Protection*, the Court recognized that self-employed individuals who lose their work due to external economic factors should retain certain “worker” rights, acknowledging their vulnerability in the face of market shocks [8].

In Russia, the Federal Tax Service (FTS) and the courts have become increasingly vigilant in identifying “labor substitution”. A landmark study by the FTS highlighted that many companies use self-employed contracts to hide permanent staff, leading to a surge in disputes where the self-employed individual seeks to reclassify the relationship as labor-based [9]. These cases often hinge on “indicators of employment” such as the provision of tools by the client, the requirement to follow internal company rules, and the regularity of payments.

The polemic here is not just about tax revenue but about the fundamental rights of the individual. As E. V. Ryabova points out, the current “professional income tax” regime, while beneficial for many, can lead to “potential discrimination” if it is used to strip workers of their social safety net under the guise of “entrepreneurial freedom” [10].

Conclusion and Recommendations

The self-employed individual is a complex and evolving subject of economic disputes. The scientific polemics surrounding their status reflect a broader societal struggle to adapt 20th-century legal categories to 21st-century economic realities. To resolve the current ambiguities, several steps are necessary:

1. **Legislative Clarification:** There is a pressing need for a clearer statutory definition of “self-employment” that accounts for varying degrees of economic dependence. A “third category” of worker—the “dependent contractor”—could bridge the gap between employee and entrepreneur.

2. **Unified Jurisdictional Criteria:** Clearer rules are needed to determine when a dispute involving a self-employed person belongs in a commercial court versus a court of general jurisdiction, perhaps based on the nature of the underlying contract rather than the formal status of the parties.

3. **Procedural Protections:** Given the inherent power imbalance in many disputes between self-employed individuals and large corporations, procedural safeguards (such as simplified evidence rules or fee-shifting arrangements) should be considered.

In conclusion, the self-employed are not merely a tax category but a vital and vulnerable segment of the modern economy. Their role as subjects of economic disputes requires a nuanced legal approach that balances the need for entrepreneurial flexibility with the imperative of social protection. Only through a synthesis of commercial and labor law principles can a truly equitable system of dispute resolution be achieved.

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