ISSN 2782-1668 (print)
ISSN 2712-8857 (online)

**JOURNAL
EUROPEAN AND ASIAN
LAW REVIEW**

2022
Volume 5. Issue 2

Journal was founded in 2018. Issued 4 times a year

Founder, publisher and distributor:
Ural State Law University named after V. F. Yakovlev

Actual problems of the legal science and practice of the member states of the Eurasian Economic Union and the Shanghai Cooperation Organization are considered in the journal.

The journal publishes scientific articles, analytical materials, expert comments and reviews prepared by professional lawyers – scientists and practitioners from the member states of the Eurasian Economic Union and the Shanghai Cooperation Organization, as well as politicians, government officials, business and the public.

State registration Certificate PI No. FS 77-72531 dated 20 March 2018.

Editorial office address: 21 Komsomolskya Str., office 114, Yekaterinburg, Russia 620137

Phone: +7 (343) 375-06-70, e-mail: ealawreview@uslu.su

http://ealawreview.ru

Table of contents

Social and Labour Relations in the Euro-Asian region

Articles

Vol 5. Is. 2

Information for citation:
Anbrekht, T. A. (2022) Development of Pension Rights for Migrant Workers on the Territory of the Eurasian Economic Union. *European and Asian Law Review*. 5 (2), 5–13. DOI: 10.34076/27821668_2022_5_2_5.

UDC 349.3
BISAC LAW115000
DOI: 10.34076/27821668_2022_5_2_5

Research Article

DEVELOPMENT OF PENSION RIGHTS FOR MIGRANT WORKERS ON THE TERRITORY OF THE EURASIAN ECONOMIC UNION

TATYANA A. ANBREKHT
Tyumen State University
ORCID ID: 0000-0002-2050-0323

The Treaty on the Eurasian Economic Union defined the establishment of a shared labor force market as one of the main goals of the integration association. Ensuring the freedom of movement for workers from EAEU member states is inextricably linked with exercising their right to pension benefits. The Agreement on Pension Benefits for the Working Population of EAEU Member States is based on the recognition of equal rights for workers, territorial equality, and export of pensions. As of the effective date of the Agreement, pension rights of the working population of EAEU member states shall be developed in full parity with the citizens of the state of employment. The Agreement establishes the types of pension contributions based on which the pension rights of the working population of EAEU member states are developed and the types of pension benefits these legal norms apply to. The paper includes a comparative analysis of legislations of EAEU member states the provisions of which define the development of pension rights of the working population of EAEU member states. In the course of work, the conditions for pension rights development have been analyzed, similarities and differences have been identified. The conducted research has shown that the pension systems of EAEU member states are in the process of being restructured. The stability of the pension systems is impacted by demographic, economic and migration issues. Under their influence, EAEU member states introduce structural changes to the pension systems, improve the rate policy, raise the retirement age and raise requirements for the length of employment.

Key words: *pension rights, pensions, pension contributions, migrant workers, Eurasian Economic Union*

Introduction

Development of Eurasian integration is one of the goals secured in the Treaty on the Eurasian Economic Union (hereinafter the EAEU)[1], and this goal is aimed at ensuring the freedom of workforce movement and establishing a unified labor force market. It is important to stress that the implementation of the principle of free movement underlying the EAEU gives the citizens an opportunity to work in another country without the need to obtain a work permit (Topilin, 2016).

N. G. Shchegoleva, when studying the intensity of labor migration in the EAEU notes that 'integration is manifested to the greatest extent in Kazakhstan, Kyrgyzstan, and Armenia, the citizens of which migrate for various reasons – primarily labor ones – to the Russian territory' (Shchegoleva, 2019: 142).

Thus, the largest number of migrants to the territory of the Russian Federation in 2021 arrived from the Kyrgyz Republic, and 884,133 persons during migration registration cited work as the main purpose

[1] Treaty on the Eurasian Economic Union (signed in Astana on May 29, 2014). Available at: http://www.eurasiancommission.org/ [Accessed: 2 January 2022].

for entry. Meanwhile, only 363,880 notifications of entry into employment or independent contractor agreements were received. As for other EAEU member states, 389,809 persons arrived from the Republic of Armenia with the purpose of working with 138,946 notifications of entry into employment or independent contractor agreements received respectively; 163,938 persons – from the Republic of Kazakhstan with 59,746 notifications received; and 174,500 persons – from the Republic of Belarus with 34,015 notifications received[2].

Free movement of migrant workers is closely linked with the need to preserve the right to social and, first and foremost, pension benefits. A special place is given to the issues of pension benefits in the integration processes of EAEU member states. Per Article 98 of the Treaty on EAEU, migrant workers exercise the right to social benefits (insurance) in accordance with national statutes of the state of employment. That said, pension benefits are regulated by the legislation of the state of permanent residence as well as by provisions of a separate international agreement.

The importance of agreement development is the long-felt need to provide migrant workers with an opportunity to exercise their pension rights established on the territory of EAEU to the full extent regardless of the state of their further residence. Among other reasons, the need to reduce the level of illegal migration and informal employment is indicated by researchers (Shubenkova & Shichkin, 2021). Besides, as I. V. Shesteryakova notes, 'it was necessary to make a decision regarding pension benefits for citizens working on the territory of contracting states for the purposes of further integration within the EAEU' (Shesteryakova, 2020: 241).

Working out the Agreement, the parties had to consider the existing structural differences in pension systems of EAEU member states, different ways of financing pensions, the amount of pension contributions, and the source of their generation, as well as the fact that pensions could differ by their types, structures and terms of entitlement (Karabchuk et al., 2014; Dyatlov et al., 2017: 1156; Akatnova, 2019: 152–153).

In 2019, the Supreme Eurasian Economic Council signed the Agreement on Pension Benefits for the Working Population of EAEU Member States (hereinafter the Agreement)[3]. The Agreement is aimed at ensuring equal rights for migrant workers, protecting and preserving pension rights they have acquired on the EAEU territory, as well as at developing cooperation in the field of pension benefits.

Materials and Methods

The paper is dedicated to the issues of developing migrant workers' pension rights on the territory of the EAEU. To accomplish the objectives set by the author in the process of research, both general scientific methods (analysis, synthesis, and the Aristotelian method) and special ones (comparative legal method, scientific generalization method, and the Delphi method) were used.

Results

The results of the research are presented in the Conclusion.

Discussion

One of the issues influencing the choice of a pension provision scheme in the framework of integration associations, the EAEU in particular, is significant differences in pension systems. E. E. Machulskaya rightfully notes that 'there is no umbrella pension system in the world to suit any country, since the structure of the pension system in every state is determined by specificities of its historical development, economy, demography, and culture' (Machulskaya, 2017: 35). However, nowadays suggestions about the unification of the pension legislation of EAEU member states, the establishment of a supranational pension fund, and a single pension space require bringing the relations in the field of Eurasian integration to a new level and, therefore, are unlikely to be implemented in the near future. Therefore, the Agreement keeps 'intrastate requirements for pension entitlement provided for on the territory of each EAEU member state without

[2] Specific Indicators of the Migration Situation in the Russian Federation as of January–December 2021 with Allocation by Countries and Regions. Available at: https://мвд.рф/dejatelnost/statistics/migracionnaya/item/28104344/ [Accessed: 2 January 2022].

[3] Collection of Legislation of the Russian Federation. 2021. No. 11. Art. 1716.

the need to establish a supranational pension system or establish uniform requirements for granting a pension to the citizens of the integration association' (Mishalchenko et al., 2020: 75).

It is the legal regulation that has formalized the rights of the working population of EAEU member states as equal with those of citizens in the state of employment that should be considered one of the critical provisions in the Agreement since it is a 'difficult, but inevitable step for effective integration' (Agashev, 2018), (Agashev, Trifonov & Trifonova, 2021: 119). Thus, the Agreement provides for the development of pension rights of migrant workers throughout the EAEU space since January 1, 2021, as of the effective date of the Agreement. That said, it is important to stress that these rights are developed at the expense of pension contributions on the same terms and in the same manner as the development of pension rights of citizens from the state of employment.

The Agreement is based on the principle of pro rata funding of expenditures related to payments per the pension rights developed on the territories of contracting parties (Karabchuk et al., 2014). Simultaneous use of the pro rata principle when each state holds responsibility for the pension rights developed on its territory and multilateral participation of states in an international agreement entered into to solve the issues of pension benefits is innovative for the Russian Federation (Mishalchenko et al., 2020: 73).

It should be noted that in the Republic of Armenia the scope of the Agreement includes labor pensions (age pensions, preferential pensions, long service pensions, disability pensions, pensions for loss of breadwinner, partial pensions) provided as part of public pension benefits, as well as compulsory accumulative pensions (annuity, scheduled payments, one-time payments, one-time payments to successors).

The age of retirement is 63 years established equally for men and women[4].

In 2011, the introduction of the accumulative part of a pension started in Armenia. At the first stage, a voluntary accumulative pension was generated, and since 2014, the transition to the generation of a compulsory accumulative pension has been made (Aliev, 2016; Tamazyan & Dzhangiryan, 2018).

Participants in the accumulative level of the pension system are the individuals who have paid social contributions so that an accumulative allocation is provided or voluntary pension contributions are made in their favor, as well as the persons who have acquired shares in the compulsory pension fund.

In addition, the generation of an accumulative pension depends on the DOB of the participants. Thus, mandatory participation in its generation is required for individuals born on January 1, 1974, or later. Individuals born before 1974 are provided with an opportunity to take part in the accumulative system on a voluntary basis. The grounds for generating an accumulative pension is a declaration of the chosen retirement savings fund.

The total amount of accumulative contribution is 10 %. The state co-finances accumulative contributions. However, co-financing only covers participants in the compulsory accumulative level of the pension system and depends on the participant's income[5].

It should be noted that in 2019 some changes aimed at implementing the equal participation principle were made to the pension legislation of the Republic of Armenia so that citizens and the state participate equally in generating accumulative contributions. Therefore, the amount of the social contribution for the participants of the compulsory accumulative level is gradually increasing.

For example, in 2021, the social contribution for wage workers with a monthly salary below 500,000 drams was 3.5 % (in 2020 – 2.5 %). With a monthly income above 500,000 drams, the social contribution was calculated as a difference of 10 % and 32,500 drams. However, the difference between government accumulative allocations and social contributions has never exceeded 32,500 drams per month.

In 2022, the social contribution for wage workers with a monthly salary below 500,000 drams was 4.5 %. With a monthly income above 500,000 drams, the social contribution is calculated as a difference of 10 % and 27,500 drams. However, the difference between government accumulative assignments and social contributions has never exceeded 27,500 drams per month.

Subsequently, the social contribution for wage workers with a monthly salary below 500,000 drams will be 5 %. In case the monthly salary is above 500,000 drams, the social contribution will be calculated as the difference between 10 % and 25,000 drams.

[4] Art. 9 of the Law of the Republic of Armenia No. ZR-243 'On State Pensions' dated December 30, 2010. Available at: http://www.parliament.am/legislation.php?sel=show&ID=4008&lang=rus [Accessed: 2 January 2022].

[5] Law No. ZR-244 of the Republic of Armenia 'On Accumulative Pensions' dated December 30, 2010. Available at: http://www.parliament.am/legislation.php?sel=show&ID=4992&lang=rus [Accessed: 2 January 2022].

As for individual entrepreneurs, the social contribution for those with an income below 6,000,000 drams is 5 %. In case the income exceeds 6,000,000 drams, the social contribution is calculated as the difference between 10 % and 300,000 drams. For the self-employed, the social contribution is 5 % regardless of the size of the income.

The pension system of the Republic of Belarus up to now has been considered single-tier, based on the principle of pay-as-you-go (Zabolotskii, 2019: 44). It should be noted though that since October 1, 2022, another level of voluntary insurance of a supplementary accumulative pension has been added to the pension system (additional accumulative pension insurance)[6].

In the Republic of Belarus, the Agreement applies to the following types of pensions: age labor pensions, long service pensions (except for pensions of military, equal-status individuals, their family members, and civil officers), disability pensions, pensions for loss of a breadwinner.

It is important to stress that the retirement age has gradually risen in Belarus since 2017[7]. Thus, from 2017 to 2023 the retirement age is rising annually by six months to reach 63 years for men and 58 years for women (Yemelyanov, 2016).

In the Republic of Belarus, pension rights are developed through the payment of insurance premiums for compulsory pension insurance. In addition, pension rights are developed with the involvement of both employers who are responsible for the principal obligations for insurance premiums and their workers. The amount of insurance premiums is distributed as follows: the employer pays 28 %, and the employee – 1 %[8].

As for additional accumulative pension insurance, the insured are working citizens for whom the employers pay compulsory insurance premiums for pension insurance. As a separate matter, it should be noted that the same right is granted to foreign citizens along with the citizens of the Republic of Belarus.

The legislator counts the age of the insured as a special requirement for participation in additional accumulative pension insurance. In particular, the insured should have at least 3 years remaining until reaching the generally established retirement age.

It is noteworthy that the insured is given the right to define the insurance premiums rate for the additional pension insurance contract by themselves. At the same time, the contribution may not exceed 13 % of the sum of payments accrued in favor of the insured. It is important to stress that the employer also participates in generating the supplementary accumulative pension of the employee.

The distribution of insurance premiums depends on the rate defined by the insured. Particularly, the employer withholds and transfers to the insurer no more than 10 % of the sums accrued, and no more than 3 % – at their own expense.

Besides, the legislator determines the following possible options for distributing insurance premiums between the employer and the insured.

First, if the insured chooses an insurance rate that does not exceed 6 %, then insurance premiums are distributed equally between them and the employer. Second, in case the insured chooses a rate exceeding 6 %, insurance premiums are distributed between the parties as follows: the employer pays insurance premiums in the amount up to 3 % and the remaining sum is paid at the expense of the insured.

In addition, the amount of the employer's compulsory insurance premiums is reduced by the sum of compulsory insurance premiums for pension insurance.

Kazakhstan became the first EAEU member state where 'an accumulative level was introduced into the pension system and the transition was made from the pay-as-you-go pension system to an accumulative system' (Yelemesov et al., 2021: 11). In 2013, the Unified Accumulative Pension Fund was established based on the prior State Accumulative Pension Fund.

In the Republic of Kazakhstan, the Agreement applies to pension payments from the Unified Accumulative Pension Fund: upon reaching retirement age, upon confirmation of first- and second-degree disability, if the permanent disability is confirmed, and for a one-time payment to successors.

[6] Decree No. 367 of President of the Republic of Belarus 'On Voluntary Insurance of a Supplementary accumulative Pension' dated September 27, 2021. Available at: https://president.gov.by/ru/documents/ukaz-no-367-ot-27-sentyabrya-2021-g [Accessed: 2 January 2022].

[7] Decree No. 137 of President of the Republic of Belarus 'On Improving Pension Benefits' dated April 11, 2016. Available at: https://president.gov.by/ru/documents/ukaz-137-ot-11-aprelja-2016-g-13449 [Accessed: 2 January 2022].

[8] Law No. 138-XII of the Republic of Belarus 'On Compulsory Insurance Premiums to the Social Protection Fund under the Ministry of Labor and Social Protection of the Republic of Belarus' dated February 29, 1996. Available at: https://belzakon.net/Законодательство/Закон_РБ/1996/1787 [Accessed: 2 January 2022].

The retirement age for men is 63. As for women, a decision was made to increase the retirement age to make it equal to the retirement age established for men. Thus, since 2018, the retirement age has risen annually by six months for women to reach 63 by 2027[9].

Since 1998, financing of the accumulative pension has been provided through the payments of compulsory pension contributions to the Unified Accumulative Pension Fund in the amount of 10 % of the employee's monthly income adopted for the calculation of the aforementioned contributions[10]. Additionally, employers, at their own expense, pay compulsory professional pension contributions to the Unified Accumulative Pension Fund in the amount of 5 % of the worker's monthly income in favor of the employees engaged in jobs with hazardous working conditions[11].

Thus, while before the adoption of the Agreement, pension legislation of the Republic of Kazakhstan had not provided for the development of pension rights for the working population from EAEU member states, as of its effective date, pension rights of migrant workers from the EAEU have been developed through the payment of compulsory pension contributions.

Additionally, it should be noted that as a result of the reform made in Kazakhstan in 2021, the contributors were allowed to use their pension savings accumulated through compulsory pension contributions for housing improvements and medical care[12].

Thus, the use of pension savings is allowed if one of the conditions established by the legislation is met. First, if the sum of pension savings in the account exceeds the sufficiency threshold of pension savings. Second, if the amount of the pension ensures the beneficiary's average monthly income replacement ratio of at least 40 %. Third, if a retirement annuity contract has been entered into with the insurance company[13]. Thus, as of the beginning of 2022, 1,274,449 requests for the payment of pension savings had been submitted, and 827,234 of them were executed for the sum of 1,274,449 mln tenge; 261,402 applications – for medical care, 180,480 of them were executed for the sum of 161,408 mln tenge[14].

In the Kyrgyz Republic, the Agreement applies to the pensions provided within the framework of state-sponsored social insurance (age pensions, disability pensions, pensions for loss of breadwinner) and pensions from the funds of the State Accumulative Pension Fund (the accumulative part of the pension and payments at the expense of pension savings).

The established retirement age is 63 for men and 58 for women (Aliev, 2015).

Insurance premiums for state social insurance are paid by employers (legal entities, peasant (farm) households, individual entrepreneurs). Workers act as payers of insurance premiums along with employers (Kasymbayeva, 2019).

For employers, insurance premiums to the Pension Fund amount to 15 % of all the payments accrued in favor of employees. This sum is distributed to transfer 12 % to the personal insurance account of the insured and 3 % – to the pay-as-you-go part of the Pension Fund.

For workers, insurance premiums are 10 % and can be distributed as follows: 8 % to the Pension Fund and 2 % – to the State Savings Fund[15].

In this case, foreign citizens paid insurance premiums only if they have permanent residence on the territory of the Kyrgyz Republic. The requirement regarding payment of insurance premiums did not apply to foreign citizens temporarily residing on the territory of the Kyrgyz Republic. Therefore, regarding

[9] Law No. 342-V of the Republic of Kazakhstan 'On Introduction of Amendments and Supplements to Certain Regulatory Acts of the Republic of Kazakhstan on Pension Benefits' dated August 2, 2015. Available at: https://adilet.zan.kz/rus/docs/Z1500000342 [Accessed: 2 January 2022].

[10] Art. 24, 25 of Law No. 105-V of the Republic of Kazakhstan 'On Pension Benefits in the Republic of Kazakhstan' dated June 21, 2013. Available at: https://adilet.zan.kz/rus/docs/Z1300000105 [Accessed: 2 January 2022].

[11] Art. 26 of Law No. 105-V of the Republic of Kazakhstan 'On Pension Benefits in the Republic of Kazakhstan' dated June 21, 2013. Available at: https://adilet.zan.kz/rus/docs/Z1300000105 [Accessed: 2 January 2022].

[12] Law No. 342-V of the Republic of Kazakhstan 'On Introduction of Amendments and Supplements to Certain Regulatory Acts of the Republic of Kazakhstan on Economic Growth Recovery' dated January 2, 2021. Available at: https://adilet.zan.kz/rus/docs/Z2100000399 [Accessed: 2 January 2022].

[13] Art. 31 of Law No. 105-V of the Republic of Kazakhstan 'On Pension Benefits in the Republic of Kazakhstan' dated June 21, 2013. Available at: https://adilet.zan.kz/rus/docs/Z1300000105 [Accessed: 2 January 2022].

[14] One-time Pension Payments. Available at: https://www.enpf.kz/ru/indicators/pa/withdrawal-data.php [Accessed: 10 February 2022].

[15] Law No. 8 of the Kyrgyz Republic 'On Insurance Premium Rates for State Social Insurance' dated January 24, 2004. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/1393 [Accessed: 10 February 2022].

employees from among the working population of EAEU member states the employer allocated funds to the pay-as-you-go part of the Pension Fund in the amount of 3 %.

The situation changed with the adoption of the Agreement. As of its effective date, the insurance premiums have amounted to 15 % for employers and 10 % for employees.

It should be noted that at the end of 2021, amendments were made to the legislation that provided for increasing the insurance premium rate for all the workers from among foreign citizens and their employers. Hence, since November 19, 2022, employers will accrue and pay insurance premiums for the insured individuals from among foreign citizens regardless of their permanent or temporary residence at the rates of insurance premiums established for the citizens of the Kyrgyz Republic[16].

In the Russian Federation, the Agreement applies to insurance pensions: old age pensions, disability pensions, pensions for loss of breadwinner, including flat-rate allowances to the insurance pension, its upgrading and increase, and additional payment to the insurance pension. Additionally, the scope of the Agreement includes the accumulative pension and payments at the expense of pension savings.

Russia is one of the last in the Eurasian space to start raising the retirement age, thereby keeping one of the lowest retirement age indicators: 55 for women, and 60 for men. However, starting from 2019, the retirement age for old age pensions has been rising gradually to reach 60 for women and 65 for men. Along with the higher retirement age, the requirements for the pension insurance duration are being increased to 15 years (Machulskaya, 2018; Zaripova & Khamitova, 2020).

At first, compulsory pension insurance in the Russian Federation only applied to foreign citizens with permanent residence on its territory. In addition, given that Russia is a recipient state for migrant workers, the issue of counting foreign citizens temporarily residing on the territory of the country as insured individuals has become urgent and demands resolution. Since 2012, migrant workers of EAEU member states have been included in the system of compulsory pension insurance[17].

Pension rights of migrant workers are developed through the payment of insurance premiums by the insured. It should be noted that the burden of paying insurance premiums is placed on the employer in the Russian system of compulsory pension insurance. It is remarkable that the need for redistributing obligations for paying insurance premiums between the employer and the employee was called an improvement area in the rate policy in the Program of Pension Reform, but the suggestion was never reflected in the legislation[18].

As A. K. Solovyov notes, 'the rate in pension systems ensures a balance of pension rights of the insured individuals and the state's obligations to them, which is a necessary and sufficient element for establishing a guaranteed level of pension benefits' (Solovyov et al., 2018: 31–32). As of now, insurance premiums for compulsory pension insurance are 22 % within the framework of the set base for calculating insurance premiums[19]. However, 'their distribution considered the inclusion of the fixed component of the pension into the insurance pension set as a fixed amount regardless of the length of employment and income of the insured' (Tuchkova, 2017: 19). Therefore, out of 22 %, the pay-as-you-go part constitutes 6 %, and the individual part of the insurance premium rate – 16 % (Safonov, Anyushina & Dubrovskaya, 2021).

It is important to note that the generation of the insurance or accumulative pension depends on the DOB of the insured. Thus, an insurance pension is generated for individuals born in 1966 and earlier. Individuals born in 1967 and later are given the choice: to generate an insurance pension or insurance and accumulative pensions. The aforementioned norm also applies to foreign citizens that reside permanently on the territory of the Russian Federation (Grigoriev, 2020). However, this rule does not apply to foreign citizens that reside temporarily on the territory of the Russian Federation. In respect to them, employers pay insurance premiums regardless of their DOB. And while since January 1, 2021, this requirement may

[16] Law No. 132 of the Kyrgyz Republic 'On Introduction of Amendments to the Law of the Kyrgyz Republic 'On Insurance Premium Rates for State Social Insurance' dated November 15, 2021. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/112316?cl=ru-ru [Accessed: 10 February 2022].

[17] Art. 22.1 of Federal Law No. 167-FZ 'On Compulsory Pension Insurance in the Russian Federation' dated December 15, 2001. *Collection of Legislation of the Russian Federation*. 2001. No. 51. Art. 4832.

[18] Government Decree of the Russian Federation No. 463 'On the Program of Pension Reform in the Russian Federation' dated May 20, 1998. *Collection of Legislation of the Russian Federation*. 1998. No. 21. Art. 2239.

[19] Art. 22 of Federal Law No. 167-FZ 'On Compulsory Pension Insurance in the Russian Federation' dated December 15, 2001. *Collection of Legislation of the Russian Federation*. 2001. No. 51. Art. 4832.

not be applied to migrant workers from EAEU member states, it should be noted that for the period of 2014–2024, the generation of accumulative pension in the framework of compulsory pension insurance has been suspended. Therefore, the Pension Fund of the Russian Federation forwards the entire individual part of the insurance premium rate to finance the insurance pension[20].

It is important to stress that since 2017, the functions of administering insurance premiums paid by employers for their employees in order to develop the pension rights of the latter have been delegated to the Federal Tax Service of Russia. That said, the Pension Fund of the Russian Federation was given the obligation to perform public functions and to provide public services not related to its operations as an insurer, e.g., exercise rights to additional social support measures for certain categories of citizens.

Given the situation, the Government of the Russian Federation made suggestions for optimizing the operations of the RF Pension Fund. In particular, unification of the RF Pension Fund and the Compulsory Social Insurance Fund of the Russian Federation is proposed and the creation of a Pension and Social Insurance Fund of the Russian Federation on their basis (the Social Fund of Russia for short). Based on the Strategy for Long-Term Development of the Pension System of the Russian Federation[21] and the Concept for Digital and Functional Transformation of the Social Area[22], the Government of the Russian Federation has worked out and presented for discussion the draft of the Federal Law 'On State Non-Budgetary Fund 'Pension and Social Insurance Fund of the Russian Federation'[23]. The Government of the Russian Federation suggests that January 1, 2023, should be set as the commencement date for the Social Fund of Russia. Therefore, providing compulsory pension insurance will be one of the activities of the Social Fund of Russia.

Additionally, setting a uniform rate for insurance premiums for compulsory pension insurance and compulsory social insurance is suggested by increasing the rate of insurance premiums for compulsory social insurance up to the amount of insurance premiums for compulsory pension insurance. And, therefore, insurance premiums will be paid by the insured as a single payment.

Implementation of functions of the Social Fund of Russia provides for establishing a uniform digital platform in the framework of which information systems of the Ministry of Labor and Social Protection of the Russian Federation, the Pension Fund of the Russian Federation, the Social Insurance Fund of the Russian Federation, federal medical and social assessment institutions will be unified.

Conclusion

It has been a year since the Agreement entered into force, allowing assessing the first steps made by EAEU member states for implementing its major provisions.

The conducted analysis of pension systems of EAEU member states has shown their ongoing transformation driven by economic, demographic, and migration factors. The analysis of migration flows is a testimony to the fact that the Russian Federation is a labor force recipient country. Besides, some EAEU member states, such as the Kyrgyz Republic, are encountering significant labor outflows that is considered a negative factor affecting the stability of the pension system.

Currently, EAEU member states are making reforms aimed at a gradual increase in the retirement age. Thus, the system for raising the retirement age is to be completed in the Republic of Belarus in 2022.

[20] Federal Law No. 351-FZ of December 4, 2013 'On Introduction of Amendments to Certain Regulatory Acts of the Russian Federation on Compulsory Pension Insurance Regarding the Choice of a Pension Provision Option by Insured Individuals'. *Collection of Legislation of the Russian Federation*. 2013. No. 49 (Part VII). Art. 6352; Federal Law No. 429-FZ of December 21, 2021 'On Introduction of Amendments to Article 33.3 of the Federal Law 'On Compulsory Pension Insurance' and Article 6.1 of the Federal Law 'On Introduction of Amendments to Certain Regulatory Acts of the Russian Federation on Compulsory Pension Insurance Regarding the Choice of a Pension Provision Option by Insured Individuals'. *Collection of Legislation of the Russian Federation*. 2021. No. 52 (Part I). Art. 8988.

[21] Government Resolution of the Russian Federation No.2524-r 'On the Strategy of Long-Term Development of the RF Pension System' dated December 25, 2012. *Collection of Legislation of the Russian Federation*. 2012. No. 53 (Part II). Art. 8029.

[22] Government Resolution of the Russian Federation No. 431-r ';On Establishment of the Concept for Digital and Functional Transformation of the Social Area within the Operations of the Ministry of Labor and Social Protection of the Russian Federation until 2025' dated February 20, 2021. *Collection of Legislation of the Russian Federation*. 2021. No. 10. Art. 1634.

[23] Draft of Federal Law 'On State Non-Budgetary Fund 'Pension and Social Insurance Fund of the Russian Federation'. Available at: https://regulation.gov.ru/projects#npa=124505 [Accessed: 15 February 2022].

Since 2019, the retirement age has risen gradually in the Russian Federation to reach 60 for women and 65 for men. In the Republic of Kazakhstan, the retirement age for women has risen gradually since 2018 to reach 63 by 2027.

It should be noted that prior to the adoption of the Agreement, the legislation of EAEU member states did not provide for the possible development of pension rights for migrant workers, except for the Russian Federation, where the legislation obliged the employers to pay insurance premiums for compulsory pension insurance for migrant workers temporarily residing on its territory. However, the possibility of exporting pension rights was not available.

The rate policy of EAEU member states along with the approaches used for distributing insurance premiums between employers and employees are instrumental in developing pension rights for the working population. It should be noted that the Russian Federation is the only EAEU member state that does not provide for the participation of workers in paying insurance premiums for compulsory pension insurance. In the Republic of Belarus, compulsory insurance premiums for the pension insurance of workers amount to 1 %, in the Kyrgyz Republic – 10 %, and in the Republic of Kazakhstan – 10 %. In the Republic of Armenia, the amount of the social contribution has increased gradually to 5 % which will allow the distribution of the obligations for the payment of pension contributions equally between the state and participants in the pension system.

The Agreement entered into is based on the principle of pro rata liability of the state in the scope of pension rights developed on its territory and it provides for the mechanism of pension export.

It should be noted that nowadays countries are starting to carry out general processes in the field of pension benefits on the territory of the EAEU in the framework of the integrated information system that will allow exchanging the data required to provide pensions to migrant workers, while no provision exists for the setup of shared information resources of EAEU member states in the field of pension benefits.

References

Agashev, D. V. (2018) Issues of Integration of Social Security Laws of the Eurasian Economic Union Member States. *Social and Pension Law*. (3), 22–26. (in Russian)

Agashev, D. V., Trifonov, S. G. & Trifonova, K. V. (2021) Social Welfare of Migrant Workers in the EU: Comparative Models in the Context of the Legal Integration System of the EAEU States. *Tomsk State University Journal. Law*. (39), 115–124. https://doi.org/ 10.17223/22253513/40/10. (in Russian)

Akatnova, M. I. (2019) Maintenance of Pension Rights of Employees of the EAEU Member States. *Courier of Kutafin Moscow State Law University (MSAL)*. (11), 152–158. https://doi.org/10.17803/2311-5998.2019.63.11.152-158. (in Russian)

Aliev, S. B. (2015) Topical Issues of Pension Provision for Active and Retired Employees in the Eurasian Economic Union Member States. *Legal Informatics*. (3), 24–33. (in Russian)

Aliev, S. B. (2016) *Trudovaya migratsiya i sotsial'noe obespechenie trudyashchikhsya v Evraziiskom ekonomicheskom soyuze* [Labor Migration and Social Security of Workers in the Eurasian Economic Union]. Moscow, Eurasian Economic Commission. (in Russian)

Dyatlov, S. V., Feigin, G. F. & Lebedeva, L. F. (2017) Transformation of Pension Systems in the Countries of Eurasian Economic Union. *Ekonomika regiona* [Economy of Region], 13(4), 1151–1163. https://doi.org/10.17059/2017-4-14. (in Russian)

Grigoriev, I. V. (2020) Pravovoe regulirovanie pensionnogo obespecheniya trudyashchikhsya-migrantov v Rossii [Legal Regulation of Pension Benefits for Migrant Workers in Russia]. *Pravo i politika* [Law and Politics]. (8), 94–109. https://doi.org/10.7256/2454-0706.2020.8.33364. (in Russian)

Karabchuck, T. S. & Soboleva, N. E. (2014) Introduction of the Common Pension Space in the Countries of the Eurasian Economic Union: How Important is it and what are the Impacts? *Eurasian Economic Integration*. 3 (24), 5–24. (in Russian)

Karabchuck, T. S., Kostenko, V .V. & Almakayeva, A. M. et al. (2014) *Mobil'nost' pensii v ramkakh Evraziiskogo ekonomicheskogo soyuza i SNG* [Pension Mobility within the Eurasian Economic Union and CIS]. Eurasian Development Bank Centre for Integration Studies. (in Russian)

Kasymbayeva, N. B. (2019) On Compulsory Social Insurance in the Kyrgyz Republic. *The Newman in Foreign Policy*. 47, 31–35. (in Russian)

Machulskaya, Ye. Ye. (2017) Pension Reforms in Europe: Possibility of Use of the European Experience in Russia. *Social and Pension Law*. (1). (in Russian)

Machulskaya, Ye. Ye. (2018) Raising Retirement Age: Alternatives. *Zakonodatelstvo* [Legislation]. (10), 37–43. (in Russian)

Mishalchenko, Yu. V., Platonova, L. A. & Toropygin, A. V. (2020) Pension Provision of Citizens in the EAEU and the Union State of the Russian Federation and the Republic of Belarus. *Eurasian Integration: Economics, Law, Politics*. (3), 67–77. (in Russian)

Safonov, A. L., Anyushina, M. A. & Dubrovskaya, O. A. (2021) Formation of Pension Rights of Citizens of the Russian Federation in the System of Compulsory Pension Insurance. *Social & Labour Research*. (1), 54–63. https://doi.org/10.34022/2658-3712-2021-42-1-54-63. (in Russian)

Shchegoleva, N. G. (2019) *Regional'naya ekonomicheskaya integratsiya: metodologiya, arkhitektura i vektory razvitiya (na primere EKOVAS, SSAGPZ, ASEAN, EAES)* [Regional Economic Integration: Methodology, Architecture and Vectoris of Development (as exemplified by ECOWAS, GCC, ASEAN, EAEU]. Moscow, Nauka. (in Russian)

Shesteryakova, I. V. (2020) Agreement on Pension Provision for Employees-Members of the EEU: Issues of Conflict of Laws Regulation. *Saratov State Law Academy Bulletin*. 2 (133), 240–244. https://doi.org/10.24411/2227-7315-2020-10058. (in Russian)

Shubenkova, Ye. V. & Shichkin, I. A. (2021) Ensuring Decent Work and Social Protection for Labour Migrants in Regional Integration. *Innovatsii i investitsii* [Innovations and Investments]. (2), 81–86. (in Russian)

Solovyov, A. K., Al-Nator M. S., Dontsova, S. A. & Kuchuk S. Ye. (2018) Retirement Age: Actuarial and Statistical. Moscow, Prometey. (in Russian)

Tamazyan, K. R. & Dzhangiryan, A. Ye. (2018) Funded Pension System of Armenia: History of Formation. *Financial Journal*. (4), 53–61. https://doi.org/10.31107/2075-1990-2018-4-53-61. (in Russian)

Topilin, A. V. (2016) Migration and the General Labor Market of the EAEU: Challenges and Ways of Integration. *Migration and Social Development*. 1 (1), 39–62. http://dx.doi.org/10.18334/migration.1.1.38076. (in Russian)

Tuchkova, E. G. (2017) The Results of Reforms and Prospects of Formation of Tiered National Pension System. *Courier of Kutafin Moscow State Law University (MSAL)*. 10 (38), 16–25. https://doi.org/10.17803/2311-5998.2017.38.10.016-025. (in Russian)

Yelemesov, R. E., Ospanbayev, Zh. A. & Zholdasbai, Zh. B. (2021) Formation and Development of Kazakhstan's Pension System: Retrospective Analysis. *Russian Foreign Economic Journal*. (3), 7–17. https://doi.org/10.24411/2072-8042-2021-3-7-17. (in Russian)

Yemelyanov, E. V. (2016) Integration factor in EAEU countries' pension security development. International Trade and Trade Policy. *International Trade and Trade Policy*. (3), 82–89. (in Russian)

Zabolotskii, E. D. (2019) Reforming and Integration of Pension Systems in the Eurasian Economic Union. *Moscow University Economic Bulletin*. (5), 40–64. (in Russian)

Zaripova, A. R. & Khamitova, G. M. (2020) Pension Reform in the Russian Federation: Expectations and Results. *Social and Pension Law*. (3), 32–36. (in Russian)

Information about the author

Tatyana A. Anbrekht – Candidate of Juridical Sciences, Associate Professor, Associate Professor of the Civil Law Disciplines Department, Tyumen State University (Tyumen, Russia; e-mail: T_anbrecht@mail.ru).

Date of Paper Receipt: February 28, 2022
Date of Paper Approval: April 1, 2022
Date of Paper Acceptance for Publishing: June 24, 2022

Vol 5. Is. 2

Information for citation:
Demidov, N. V. (2022) Workplace and Legal Culture of Employees and Employers in Russia: Modern Challenges through the Lens of History. *European and Asian Law Review*. 5 (2), 14–24. DOI: 10.34076/27821668_2022_5_2_14.

UDC 349.2
BISAC LAW054000
DOI: 10.34076/27821668_2022_5_2_14

Research Article

WORKPLACE AND LEGAL CULTURE OF EMPLOYEES AND EMPLOYERS IN RUSSIA: MODERN CHALLENGES THROUGH THE LENS OF HISTORY

NIKOLAY V. DEMIDOV
Tomsk State University
ORCID ID: 0000-0002-6716-8591

The work is aimed at examining the issues related to the impact of the industry-specific workplace and legal culture on enforcing labor law standards in Russia. The focus is on historical continuity of national legal culture phenomena and its negative aspects that hinder enforcement of labor law standards in practice. The research was conducted with a comparative-historical diachronic approach using sociological method tools within the general framework of an anthropological approach. Based on the results of the research, the structural elements of the industry-specific legal culture were identified, its manifestations for employees and employers as labor market key players were described. The essence of each element is described as well. Parallels are drawn between the status of legal consciousness and legal literacy in the context of free employment in the age of factory-and-plant legislation and nowadays. The concept of historical consistency, implicitness of some workplace culture factors that have been distorting enforcement of labor legislation for more than two hundred centuries is presented. The major factors include low legal literacy of employees and employers, disregard for legal provisions, the penchant of Russian citizens for non-legal regulators of employment relations, inflated paternalistic expectations, legal indifferentism by employment contract parties, social alienation of employees and employers, and employee's refusal to defend their labor rights in case of violation. It is concluded that existing defects of legal consciousness and legal illiteracy need to be taken into account in norm-setting work in order to avoid the issue of the poor effectiveness of labor law standards in Russia.

Key words: *history of labor law, factory-and-plant legislation, enforcement of labor law standards, legal consciousness, workplace culture, anthropology of law*

Introduction

Over the course of all three periods of labor law history in Russia, a stable area of relations has existed – execution of workplace and legal provisions in practice. In the context of radical legislative changes, the enforcement of labor law standards was associated with the same patterns and identical challenges. Thus, it is actually not only legislation that presets labor relations. They are significantly transformed under the influence of informal civilization factors that exist on the level of cognitive activities such as legal literacy and legal consciousness. This can be largely attributed to the legal culture for employees and employers that has been almost the same throughout history. Methodologically, this gives the grounds to apply tools inherent to the anthropological approach to labor law and examine labor law standards' dependency on beliefs, values, stereotypes, and traditions of labor relationship participants.

Anthropological phenomena are historically consistent, mostly objective and driven by economical, biological, ethological, and geographical factors. These grounds allow analysis of the phenomena of workplace and legal culture in terms of history and drawing parallels with the states of minds in the age of factory-and-plant legislation of the Russian Empire in the 19th century and in the first quarter of the 21st century.

It is noteworthy that the status of the industry-specific workplace and legal culture has never been studied with a comparative-historical approach by Russian scholars. Numerous reports that establish the information background can be found in sources of the 19th and 20th centuries. These include memoirs and reports of the first factory inspectors of the Russian Empire, individual legal acts, texts of contracts, pieces of journalism, essays by politicians and economists, works of Soviet and modern researchers who specialize in labor law. The existing body of data allows establishment of quite substantial patterns regarding levels of workplace and legal culture in the previous ages and their comparison with the state of affairs in Russia in the first quarter of the 21st century. However, there is no scientific research summarizing previous experience, which poses a unique academic challenge. It is also of certain interest, since evolutionarily, the modern difficulties of labor legislation enforcement go back to the two-century long history of behavior patterns and cognitive experience of employees and employers. World perception, attitude towards the law, values, convictions, and stereotypes are hereditary even in the context of radical changes in political regimes, and, therefore, they deserve academic focus.

Materials and Methods

This research was conducted with a comparative-historical diachronic approach using sociological method tools within the general framework of an anthropological approach.

Results

The results of the research are presented in the Conclusion.

Discussion

Destructiveness of the Employers' Legal Consciousness: the General Place of History of Russian Labor Law

Evasion of law by employers has become a historical constant in enforcement of Russian labor law standards since the age of factory-and-plant legislation. I. I. Yanzhul, one of Russia's first Factory Inspectors, described manifestations of this phenomenon in the early 20th century, but he mostly provided a universal characterization for all historical periods of Russia: 'The second aspect of my first impressions is complete indifference by industrialists toward the Law of June 1 (the Law of June 1, 1882, 'On Employment of Child Workers at Factories'. – *N. D.)* and its prospects: they seemed to doubt if it was possible to be put into practice or maybe they were just used to seeing laws unexecuted. Moreover, some of them even joked about putting the law and control measures into effect and did not hesitate to point out some tricks that would allow avoiding the law even under sufficient control. Some industrialists or their representatives expressed their strong conviction, however unclear its grounds were, that the initiative would never be completed, that the government would cancel the law before it came into effect (which – alas! – turned out to be true later)' (Yanzhul, 1907: 35).

Works by factory inspectors written on the cusp of the 19th and 20th centuries, such as A. A. Mikulin, S. Gvozdyov, I. I. Yanzhul, P. A. Peskov, A. N. Bykov, are full of facts regarding offenses. It is not difficult to recognize today's practices in the following descriptions:

'A worker who had reported to the inspector and confirmed his complaint in the factory's office... could expect to last only to the end of the employment period at best, but in most cases they had to be ready for dismissal'(Mikulin, 1893: 77).

'N. Vinogradov, a factory inspector of the Vladimir Governorate, during his visit to Kolchugin's brass and copper-rolling mills on June 24, 1909, discovered that supervisors of mills did not specify workers' qualification in their pay books, which allowed them to ignore Art. 95 and 96 of the Industry Charter by recategorizing highly qualified employees as unskilled laborers' (Kruze, 1980: 16).

'It is fair to say that there is a place for abuse by the powerful ones who blatantly do not care about rank and payment at the factories' (Plevako, 1993: 525).

Employers had a particular affinity for making their workers pay fines. As one of income sources for entrepreneurs, fines were imposed both for property damage and for disciplinary offences, though quite often – without any legitimate grounds. The fines bore no relation to the salary, had a poor association with the offense severity and were imposed selectively and randomly. According to A. A. Mikulin, 'Before the Law was adopted, the inequity at some factories reached an incredible scale when it came to fine imposition. We know the industrialists that integrated increased fine imposition straight into the system of factory operations, so their key measure for the accomplishments of senior workers – factory supervisors, foremen, quality checkers, etc. – was the size of the fines imposed by them on common workers. These senior workers could incur significant displeasure of the industrialist or even could get fired if the number of fines from workers was reduced' (Mikulin, 1905: 83).

Such an approach thrived in the times when Art. 107 of the Factory and Plant Industry Charter provided for only two grounds for fines: unauthorized leaves and causing damage to the employer. As I. I. Yanzhul concluded, 'there seems to be no boundaries for various reasons to impose fines at the factory' (Yanzhul, 1888: 82).

Aside from the fines, deductions and withholdings of all kinds were used in prerevolutionary Russia. Thus, arbitrary quitting (dismissal) from the factory could result in: a deduction in payment for the period of 6 days to a month and a half; deduction of 1–2 rubles for every day worked at the factory over the previous month, or deduction of 20 % of lost earnings as a forfeit (Yanzhul, 1884: 77–78).

Quite a valid analogy with the way employers of the early 21st century-imposed fines on their workers can be drawn here. In the context of an absolute prohibition on fining, in fact monetary sanctions are used most widely. For instance, based on the results of a survey conducted among Russian employers, 44 % of them impose fines on their workers, and 9 % of employees lose almost a third of their monthly wages[1]. It is pointed out that fining has started to be used particularly intensively in Russia during the pandemic, i.e., since spring 2020. In 2018, 26 % of workers said that their employers-imposed fines on employees, and in 2021 this figure reached 38 %. In most cases, fines are imposed for gross violations of labor discipline (unauthorized absence, appearing at work under the influence of alcohol, etc.), for poor-quality work and a failure to meet the delivery date. The top five most popular grounds include being late to work and nonfulfillment of a plan[2]. Indirectly, the practice of imposing sanctions on incentive pay is also supported by the Russian justice system that allows employers to cancel the bonus payments that have been paid for a long time[3].

The 21st century is by no means the time when the problem of substitution of civil law for labor contracts emerged, the chance for the employer to cite the most convenient legislation. Thus, in 1874, the Senate ruled in a case over a death of a worker in a collapsed building, rejecting the employer's references to inapplicability of the Hiring Rule of 1861 because there was a civil law contract[4]. A. A. Mikulin mentioned quite a modern scheme for substituting labor relations with a type of workforce outsourcing: 'I met some industrialists who refused to give the pay books to some workers, because, as they explained, the work had already been delivered by the contractor to some individual who now in their turn was supposed to hire workers and pay them'. In order to prevent parading such an excuse to evade the law (which had been noticed by the Factory Inspection multiple times) the following explanation was provided: 'The term 'contractors' should be applied only to those with whom the factory management has entered an agreement (contract) in writing, or those that have a trade or shop license. Then all the responsibility for illegal actions towards workers and existing authorizations fall upon the contractor as an independent industrialist' (Mikulin, 1893: 30–31). Soviet researcher E. E. Kruze also wrote about substituting labor by civil relations through drawing up contractor and subcontractor agreements (Kruze, 1980: 16).

Some actions of 19th century employers can be classified as deliberate opposition to requirements of law, which is not uncommon nowadays as well. Low legal literacy and destructions of legal

[1] Rudich, K. (2021) Fines Cannot Be Imposed until They Can. When Employers Can Punish Their Employees with the Ruble. Available at: https://secretmag.ru/practice/shtrafovat-nelzya-no-mozhno-za-chto-rabotodatel-imeet-pravo-nakazat-sotrudnika-rublyom.htm [Accessed: 22 March 2022].

[2] Fedotova, E., Petrova, Yu. & Kozlov, A. (2021) What Employers Fine Their Workers for Today. Available at: https://www.vedomosti.ru/management/articles/2021/08/10/881599-rabotodateli-shtrafuyut [Accessed: 22 March 2022].

[3] Appellate Decision of the Moscow City Court No. 33-31476/2020 of September 24, 2020, regarding Civil Case No. 33-31476/2020.

[4] Contractual Law on Decisions of the Civil Cassation Department of the Governing Senate. (1874) Vladimir, Governorate Management.

consciousness make these actions possible. A. A. Mikulin described it as follows: 'the industrialists who unfortunately constituted the majority and gave our Inspection most of the cases to work on were large and medium manufacturers that treated the law with open hostility and did not intend to agree with any of its main provisions'. They demanded to be given complete freedom regarding the conditions they offered when hiring their workers – just like it had been before. Those industrialists often sent specifically invited jurors, attorneys and lawyers to the Inspection, so that they tried to defend the requirements of their clients – each based on some article of law' (Mikulin, 1893: 58). 'Although all the possible measures had been taken to ensure the industrialists' familiarization with the requirements of the law (samples of pay books, rules, time sheets, and the books that were to be maintained had been sent), despite all those efforts, during the very first visits there were only a very few isolated instances when more or less proper compliance with all the legal requirements could be found' (Mikulin, 1893: 65).

The following characteristic also seems extremely relevant for our days: 'having rushed to fulfill all the formal requirements they needed to, the industrialists immediately started looking for ways to bypass the law and to continue running their businesses on the same bases that had now become illegal, but covering them from the outsiders with exact execution of everything the law required' (Mikulin, 1893: 66–67).

Driven by their aspiration for wealth accumulation, entrepreneurs not only invented ways to evade the law, but also shared relevant experience turning it into massive business practices.

Unlawful Nature of Hiring

It's a tacit pattern of relations between an employer and an employee outside legislation that has become a key reason for challenges in enforcing factory legislation and – partly – even modern labor law. Per calculations of Rosstat (Federal State Statistics Service), in 2019, the share of unofficially employed people reached 21.3 % (15.25 million people)[5]. The size of the informal workforce increases steadily in the dynamics of 2010–2020[6]. It results in precarious labor relations in Russia, cutting millions of workers out of the scope of labor law standards, destabilization and dehumanization of social life, erosion of legal consciousness, and damage to the national economy. Similar unlawful labor relations thrived in Russia in the age of Alexander III and Nicholas II, when factory legislation had already been formalized. It was religious and ethical norms that served as the main social regulator at the time instead of legal regulators.

At the end of the 19th century, the Russian state and society were both in transition from the age of feudalistic agriculture to industrialization. It was this era when the moral imperatives had already lost their previous effectiveness and no longer served as a guide for entrepreneurs striving for profit. Replacement of the previous feudalistic state of mind with a new way of thinking required a long period of time. In the meanwhile, the worldview turned toward legal nihilism that originated from Middle-Age hiring relations. In the 18th century, it continued as a matter of tradition and seemed rather like the rule than the exception. A. S. Lappo-Danilevsky described the middle of the 18th century as follows: 'individuals whose work was used by large entrepreneurs could look for defense against abuse in the court, of course, but judicial procedures of the time tended to take an extremely long time' (Lappo-Danilevsky, 1899: 85). Then, an appeal by industrialist A. Dryablov, submitted to the Senate in 1747 was described as a way to delay execution of a judgment in the labor dispute he had lost. Appealing took 21 years and resulted in death and ruin of workers.

During the 18th century, hired workers were brought to ruin by unpaid wages, punished corporally for requests and complains, involved in forced overtime work and were subject to unmotivated prohibitions (to sing, talk or tend gardens). They were deprived of correctly drawn documents, included in 'black lists', and they suffered from payment delays. Undoubtedly, today's state of affairs is far from such large-scale and gross violations. However, the consumer perception of workers is also inherent to Russian entrepreneurs of our days to some measure. L. S. Tal in his work Essays on Industrial Labor Law established this model of relations from the Middle-Age cottage industry: 'Both the state and the society were completely indifferent about the way the master of the house treated them as long as he didn't violate accepted obligations or criminal laws' (Tal, 1918: 3–4). In the late 19th century, inspector I. I. Yanzhul found the following standard/principle in the rules of one factory: 'The owner of the factory is a master

[5] Galcheva, A. (2019) Rosstat Announced Growth in Informal Employment in Russia. Available at: https://www.rbc.ru/economics/05/09/2019/5d6e74fb9a794709eeba4f8c [Accessed: 22 March 2022].

[6] Workforce, Employment and Unemployment in Russia (based on results of sampling surveys of the workforce) (2020). Statistics Digest. Moscow, Rosstat.

and policymaker with unlimited power who is not constrained by any laws, and he often use these laws at his will; the workers owe him absolute obedience' (Yanzhul, 1884: 83). To increase their own uncontrolled power, entrepreneurs openly formalized the ban on judicial recourse in the local acts, thus withdrawing any disputes on labor relations from the competence of the court (Yanzhul, 1884: 84).

Among other things, such a 'consumer approach' of employers was demonstrated by such a phenomenon as extending labor hiring at the merchant's will. Thus, contracts were entered into with stevedores, according to which the contractor was supposed 'to take work for us and enter into written or verbal agreements with the employers not with our consent, but at his own discretion. We, in turn, have to work in absolute obedience without asking for a raise in salary or for contract changes. ...We, the workers, are obliged to always be sober, honest, polite, neat and at least 22 years old' (Kanel, 1906: 48–49).

S. V. Pakhman, a researcher and civil law specialist of the Court Reform age, came to the following conclusion regarding civil relations: 'in the field of private civil relations, the vast majority of our population abides by the rules established through conventions and mostly inconsistent with the legislative principles, rather than the statute law' (Pakhman, 1877: VII). In fact, it should be noted that legal nihilism established over the course of centuries was the main quality of Russian employees and employers by and large. Implicit principles of the culture could not be overcome in the Soviet era, and they manifested themselves in the restoration of capitalism in Russia.

At the cusp of the 19th–20th centuries, the issue of legal nihilism was caused by economic developments associated with the transition from an agricultural to an industrial economy. The previous ways to regulate labor relations were undermined, and the lack of effective legal regulation resulted in large-scale abuse among the employers. The times of the Soviet breakup became a similar phase of profound transformation for the social and economic paradigms. The previous model of patronage labor relations ceased to exist in the early 1990s and was replaced with contract freedom in its extreme. The 2000s became the period when legitimacy was partially restored in the area of labor relations. However, even today, it has turned out to be impossible to achieve unconditional execution of workplace and legal provisions, primarily due to legal consciousness defects such as legal nihilism and indifferentism of employees and employers.

Paternalistic Expectations of Employees and Employers

The age of factory law and today's labor law share an interesting phenomenon: both employees and employers expect some kind of care from the state. Thus, in the worldview of a pre-revolutionary Russian worker, employer or official, the role of statist principles was important. Similar phenomena can be found today as well. In such a model, the state is considered the main regulatory entity. Thereby, local regulations and social partnership acts are not developed properly and cannot close the gaps in federal norm creation. Authoritative paternalism in labor relations regulation has been established over the centuries of a monarchy and then under the patronage of the Soviet state and Communist Party. S. V. Ruzin explains the focus of pre-revolutionary employees and employers on the government's will in the field of labor by 'exaggerated ideas about the role of the state authority' and 'a lack of constitutional political and legal tradition'(Ruzin, 2012: 11). Similar behavior was typical for Soviet workers, and it's largely justified today as well. The dominance of the political will in regulating labor relations results in legal regulation gaps that are difficult to overcome. With a lack of detailed federal-level instructions, the place of missing standards is taken by spontaneous practices. In turn, they are defined by the interests of employers as the economically and institutionally stronger party in the labor relations.

Meanwhile, the thought first voiced in the early 20th century is still obvious: 'We see that the old idea that it's not horses, but harness straps that carry the cart; that it's not people, but those establishments existing in the country that create the human way of life. External mechanical superstructures are expected to change the essence of the people's life, but, alas, it's not them it depends on... Despite the significance of the government and courts, their influence is hardly deep enough to reach the most organic bases of the people's existence, the fundamentals of its material and spiritual being, which is a prerequisite to mitigate the coarseness of common people's lives and to eliminate tensions between interests of certain individuals. Anyway, all these are just more or less mechanical superstructures in human lives' (Gurko, 1909).

Nevertheless, despite the lack of central authorities' attention to the social and labor relations, employees and employers were waiting for the will of the government to be expressed at the end of the 19th century, just like they do in the first quarter of the 21st. Independent establishment of mutual behavior rights raises

concerns regarding the correctness of the formalized standards, scares with the efforts it requires, with unclear rules and easy availability of illegal practices. Therefore, as long as there is no expression of government will and effective central oversight, the employer assigned by the economic leadership builds its own 'low-level' structures for labor.

Legal Indifferentism of Employees and Employers

The combination of government dominance in regulating labor relations and its discrepancies with the life of the society has historically led to non-compliance with the labor law standards. The combination of state administrativism 'from the top' and non-legal regulation of everyday relations between employees and employers has emerged and taken root. Aside from the traditional national model of thinking, indifference toward existing legal instructions was driven by two factors: both employees and employers followed objective economic interests, and the government supervision was weak. In all times, including the era of the Russian Empire, labor law standards were destined to resist the economic benefit factor of the employer as, in some measure, of the actual employee. In view of this circumstance, the industry would hardly ever achieve absolute efficiency. However, significant alienation of a legal provision from its addressees – employees and employers – was and is common for enforcement of labor regulations in Russia. Pursuing their own goals in the labor market, they preferred to enter into private extralegal agreements. Just like today, it has always been not massive violations as such that were the key feature, but employees' and employers' virtual tacit agreement with them. In the context of significant life burdens 'by right', immediate pragmatic goals proved to be above following formal rules as expected.

It is fair to say that the pattern of national labor legal consciousness has been consistently ambivalent for at least two hundred years. On the one hand, it is based on superiority of centralized over decentralized standards, but, on the other hand – allowability of deviation from implementing them. The emancipation of 1861, just like the USSR abolishment, enabled introduction of economic instead of the previous administrative coercion. Driven by considerations of benefit and sometimes even survival, labor relations deprived of government supervision developed predictably outside legal regulation in both eras.

Entrepreneurs' indifference to the law was noted by Ya. T. Mikhailovsky, Chief Factory Inspector of the country, in the late 19th century: 'generally, personal attitudes of industrialists to Factory Inspection officials could hardly be considered hostile. Owners of industrial enterprises treated the inspectors with proper respect, gave them an opportunity to collect all the necessary data about the establishment and provided with the means to check those data. They expressed their willingness to abide by the requirements of the law, though such willingness was not always transformed into deeds, at least at first' (Mikhailovsky, 1886: 75).

Social Alienation of Employees and Employers

It is a conventional difficulty of the dialogue between an employee and an employer that constitutes a pattern to explain many contradictions associated with execution of labor law standards. Class differences and disparate interests caused isolation of two strata at all stages of the industry's existence. Since the Middle Ages, provision of work had been considered a good deed in the spirit of Roman clientele. In the 15th–17th centuries, the master's power was a combination of patriarchal family patronage, Christian pastoral care, feudalistic personal service and estate patronage. Moral, legal, property and class status inequality emerged. It originated from the provisions of the Charter on the Rights and Benefits for the Towns of the Russian Empire issued by Catherine II (1785). Clauses 49 and 50 of the Charter established the following: 'Each craftsman has the right to be a master in his house for both his apprentices and students, and all the other members of his household; as long as the rights of the city and government are not violated. The craftsman must treat his apprentice and students in a fair and gentle manner. The apprentice and students must be loyal, obedient and respectful towards their master and his family'. Such an organizational model turned out to be a legacy of the post-reform industrial Russia received in the second half of the 19th – early 20th century. In this context, T. S. Morozov's reaction to the lost case about the strike of 1885 was not accidental: the industrialist suffered a stroke and died three and a half years later. Numerous ideologists of capitalistic freedom ascribed the lack of a labor issue in the country to the tradition of protective and trust-based relations of the hiring parties[7]. To a certain degree, this way of world perception is typical for the modern Russian employers as well.

[7] Russia's Revival Union (Progressive National Party): I. Program. II. Charter. (1906) Saint Petersburg, the School for the Deaf and Dumb.

Workers' Refusal to Defend Labor Rights

In all times, efficient execution of labor law standards has been prevented by the employees' passive attitude towards protecting their violated labor rights. This rather modern phenomenon was also typical for pre-revolutionary attitudes towards labor. There were different grounds for abandoning the attempt to take legal actions or to contact regulatory authorities. One of the most frequent occurrences was the risk of losing a job, if there even was one. The confidential documents sent to I. V. Lutkovsky, the Governor of St. Petersburg, by the Third Section of His Imperial Majesty's Own Chancellery in 1876 stated: 'Some strong feelings can be noticed between workers of the Hubbard & Co. (Maxwell's) textile and cotton factories because of master Maxwell who has built a house for the workers next to the factory and now makes them absolutely live there. According to the workers, the apartments in the house are very uncomfortable, damp and at the same time expensive, so the workers reluctantly move in, but Maxwell apparently had nothing to do with this previously; those dissatisfied with his apartments and, therefore, refusing to live there, lose their jobs or have to pay him 2 rubles 25 kopecks per month, so the workers pay him for the empty apartment and for the one they live in. However, no matter how burdensome this rule is, no matter how tangible the tax is for them, they obey or they would lose their jobs'[8].

There's a well-known quote of A. A. Mikulin that describes the workers' concerns even in case the factory is visited by an inspector: 'In most cases, nothing could be heard from the workers during questioning, aside from their assurances that everything is done absolutely correctly, even when it is known in advance that there are abuses at the factory, and, even if some of us managed to extract mentions of any irregularities and violations from the workers, it was only through hints and indirect questions. This fact is extremely clear evidence of the true nature of that seeming freedom and equality that existed in the contract and relations between industrialists and workers. The worker who had reported to the inspector and confirmed his complaint in the factory's office, thus made his further stay at the factory impossible and could expect to last only to the end of the employment period at best, but in most cases they had to be ready for dismissal, though without any grounds' (Mikulin, 1893: 68).

A. N. Bykov noted some ambiguity in the Australian workers' position that made them passive about defending their right: 'law violations are sometimes enabled by the weakest workers: afraid of being fired for ineptitude, they work for payment below the set rate, but give testimony about getting the established salary' (Bykov, 1909: 56). Undoubtedly, a similar refusal of the Russian workers to seek protection of their labor rights was motivated by forced circumstances.

A note can be found in the collection of reports accumulated by factory inspectors in 1909: 'according to the Senior Factory Inspector of the Governorate of Estonia, there's a manufactory that raises a lot of criticism due to its established practice of firing not only those responsible for their faults, but their relatives as well. The same measure is used if the manufactory is involved in legal proceedings because of some worker's family member'[9].

A. K. Klepikov (pseudonym 'S. Gvozdev'), a factory inspector of the early 20th century, emphasized that the goal of the worker's complaint to the factory inspection was not to restore the violated rights, but to receive compensation, i.e., to benefit by chance rather than achieve stable order. 'It is such a painful feeling to see so clearly that the worker's complaint, even if crudely expressed, about the abuses he has suffered for a long time now seems absolutely random; that after breaking away from the industrialist, now he will still continue to hold his tongue and allow violation of his rights quietly' (Gvozdev, 1911: 239–240).

Nowadays, according to the materials of the Russian Monitoring of the Economic State and Health of the Population of RLMS-HSE, in 2019, 26 % of the formally employed workers did not have holidays. The level of expected loss of work in the field of legal labor amounted to 64 %, and that of the informally employed workers reached 66 %[10].

Payment delays are quite typical for modern-day Russia, and they never encounter resistance by the employees. An example is violations found during construction of the Vostochny Cosmodrome. In 2015, the number of victimized workers reached 2,626 for one of cases, and the sum of debts exceeded 150 mln.

[8] Establishment of Revolutionary Traditions of the Petersburg Proletariat. The Post-Reform Period. 1861–1883. (1987) Leningrad, Lenizdat.

[9] Collection of Reports Accumulated by Factory Inspectors in 1909. (1910) Saint Petersburg, V. F. Kirshbaum.

[10] Russia Longitudinal Monitoring Survey of HSE. (2019) Available at: https://rlms-hse.cpc.unc.edu [Accessed: 22 February 2022].

rubles[11]. Another contractor withheld about 19 mln. rubles from 730 workers[12]. In October 2017, employees of Chief Military Construction Directorate No.6 (previously – Dalspetsstroy Rossii) were ready to protest against non-payments since February of the same year (the sum of debts – 270 million of rubles)[13]. The ways to protect violated labor rights are remarkable and they hardly correlate with the Labor Code of the Russian Federation: multiple massive hunger-strikes, voluntary dismissals as a sign of protest, picketing of buildings where the executive branch authorities reside, an appeal to the President of the Russian Federation during the television question-and-answer session in 2016. The duration of payment delays was 2–8 months depending on the cases.

According to the sociological survey of Rabota.ru, 75 % of 5,000 respondents encountered unpaid salaries. Meanwhile, only 14 % of the victimized individuals appealed to public authorities and 10 % of them ceased to fulfill their job duties[14]. Here is a pattern that goes beyond historical boundaries and can be attributed to the multi-million social group's way of thinking.

Legal Illiteracy of Employees and Employers

The fundamental legal illiteracy of Russian citizens should be mentioned as a pattern of executing labor law standards in everyday life.

A. K. Klepikov's phrase is applicable to all the periods of Russian labor law development: 'First of all, I should acknowledge that our workers have an extremely underdeveloped sense of legitimacy. It would be strange to expect otherwise' (Gvozdev, 1911: 108). He also said: 'There is only one thing to describe the workers in general, and this is their ignorance, their deep, almost pervasive blindness' (Gvozdev, 1911: 2).

V. I. Lenin's opinion about the reasons for the proletariat's legal illiteracy in the Russian Empire is valid: 'In fact, there is no time or mentor for a worker who is taken to the factory from a young age, having barely learnt the basics of how to read and write (and many of them can't learn at all!), to get any ideas about laws, and, probably, there is no need' (Lenin, 1967: 278). His words can also be found in one of published papers: 'The laws are unknown to the worker' (Lenin, 1959: 112).

Legal non-enlightenment was based on simple illiteracy of most workers. According to modern sociology, at the cusp of the 19th–20th century 73 % of the entire country's population were illiterate in the literal sense. This indicator reached 85 % among the peasants (Petrov, 2000: 114). The industry's position was slightly better in the major centers: 70.26 % of child workers of the Petersburg Factory District knew how to read and write. In other districts, knowing how to read and to write was the general rule (Mikhailovsky, 1886: 89).

According to a contemporary of 1877: 'The lack of education among our working class and even more so for the rural population, their almost general illiteracy are well-known. To reproach our people with this would be a contradiction to the historical facts that influenced their life process. We could see that they always lived under a strong pressure of the exploitative serf-hood fighting for their very physical existence as hard as they could – oblivion, far from the educated classes of society and from any educational and creative influence. People's customs and morals constituted a characteristic paradigm of sorts that wasn't influenced by any educational elements. Thus, the Russian people fell behind the pace of any cultural progress due to their traditional relations' (Lukashevich, 1887: 48). P. B. Axelrod, a leader of the Mensheviks and ideologist, described the period of the 1870s as follows: 'The general intelligence level of the Russian workers was extremely low, only a small number of them knew how to read and write' (Axelrod, 1907: 16).

I. I. Yanzhul wrote about a similar period of the 1880s: 'At the vast majority of factories we visited, I was mostly shocked (by the way, for quite a long time – at least for two years) with extreme ignorance and unawareness of the government's intentions regarding the potential intervention in the factories' operations, or about the factory laws that had already been issued' (Yanzhul, 1884: 33). K. A. Pazhitnov spoke in

[11] The Federal Service for Labor and Employment (Rostrud) discovered salaries payable for the sum of 150 mln. rubles. (2015) Available at: https://rostrud.gov.ru/press_center/novosti/292784/ [Accessed: 22 February 2022].

[12] Telekhov, M. (2016) The Court Sentenced Contractor of Vostochny Cosmodrome to Fine for Pay Delays. Available at: http://rapsinews.ru/judicial_news/20160808/276625369.html [Accessed: 22 February 2022].

[13] Builders of the Vostochny Cosmodrome Launched a Hunger Strike because of Salaries Payable (2017) Available at: https://lenta.ru/news/2017/10/13/vostochnyi_golodovka/ [Accessed: 22 February 2022].

[14] More than 75 % of Russians Experienced Pay Delays. (2021) Availabalbe at: https://www.rbc.ru/society/10/03/2021/60476c189a7947566073437c [Accessed: 22 February 2022].

a similar vein: 'There is no question that foreign capital owners are more civilized than the Russian; though it also cannot be denied that their high level of culture is a result of all the Western attitudes combined' (Pazhitnov, 1908: 266).

V. P. Bezobrazov reported the ignorance of the Russian industrialists: 'All the confusion, hostile attitude and lamenting in the factory world after the introduction of new laws was often caused by simple ignorance of them among the vast majority of people from this world, even after several years after their introduction. That ignorance, which still remains in the factory world to a known extent (mostly among the owners of small-sized establishments) resulted in numerous misunderstandings and violations the industrialists had to pay for. Factory inspectors say all too much regarding this matter in their reports. Aside from describing extreme challenges they encountered in their activity in an abundant and detailed manner, factory inspectors mostly talk about the fact that most factory owners are completely unaware of the new legal provisions' (Bezobrazov, 1888: 16). 'Ignorance, including illiteracy in not only a huge number of our working people, but also the vast majority of the actual owners and administrators at some small-sized enterprises, serve as a massive hindrance not only for application of new laws, but for their understanding as well' (Bezobrazov, 1888: 34–35).

The Legal Literacy of the Russian Citizens Project of 2018 showed that labor rights rank third in the number of violations; 31 % of people estimate the level of their legal knowledge as 'below average'; only 6 % managed to answer correctly five specific legal questions; 34% would like to know more about labor rights[15]. During the period of 2014–2019, the author of this work conducted tests for employees as well as working students at Tomsk universities. Both legal and other fields of education were covered, including engineering. According to the survey, the indicators of legal enlightenment in terms of labor law were even worse: only 12 % of respondents answered correctly to the questions of the most simple, basic level.

The factor of non-enlightenment and defects in legal consciousness in the field of labor are self-reinforcing, i.e., they mutually stimulate each other. The lack of knowledge in the field of labor law results in disregard for legislative mandates and distrust for the other party of labor relations. Also, a low level of legal consciousness impedes getting actual perceptions about labor law, which, in turn, discourages a positive attitude towards standards of law even further. The consequences include legislation manipulations and direct violations of law by the employer, unpreparedness of workers to protect the violated rights. Despite the external, subjective nature of this issue, it has served as a multiplier that distorts the process of any social and labor relations in all times.

Conclusion

By now, the history of labor law in Russia amounts to at least 140 years, or even about 300 years if the earliest regulatory acts are taken into account. Development of this legislation area has sometimes been subject to drastic changes associated with a change in the political regime, profound modification of economic and social paradigms. At the same time, at various stages of evolution, execution of labor law standards was not devoid of well-known errors. There are manifestations of violations of law by employers and employees, a passive attitude towards defense of violated labor rights, a denial of the potential for social partnership potential and local normative work. It is the state of the legal culture that seems to be the key reason for such a state of affairs both in the 19th century and in the first quarter of the 21st century. Imperfection of the system for execution of labor law standards in the Russian Federation and of the factory-and-plant legislation system in the Russian Empire is caused by a system of factors. The main ones should be mentioned:

– unlawful elements, integration of the 'master-server' structure into the labor relations. The hired were (and sometimes still are) considered favored due to the good will of their employer, like in the times of patron-client relations in Ancient Rome,

– the transitional state of the society and economy both at the cusp of the 19th–20th century and at the cusp of the 20th–21st century. At the end of the 19th century, Russia was transformed from an agricultural to an industrial civilization. At the end of the 20th century, Russia makes a transition from the Soviet administrativist regime of labor force organization to the market agreement-based model. Some

[15] Legal Literacy of Russians: on the Way to a Civil Society (2018). Available at: https://amulex.ru/storage/partners_doc/UA0nJJ6VjTgIGrfgbMyuArOupkiVMyqEsnjyZPZU.pdf [Accessed: 22 February 2022].

turning points affect the state of legal consciousness and explain its destructive aspects. A conflict of two models, a transition from the previous to the new paradigm gave birth to the era of early labor law in the form of factory-and-plant legislation with the numerous contradictions of its implementation and now it also affects the labor law of today's Russia,

– a well-known role in reduction of labor law standards effectiveness belongs to the systems of dependency of employees and employers in regulating labor relations. Waiting for imperative orders 'from the top', employers and employees of the Russian Empire, the Soviet Union and the Russian Federation build their own spontaneous practices that are far from legal foundations,

– legal indifferentism of employees and employers. The legal consciousness of Russian workers in the 19th – early 21st centuries, while being extremely underdeveloped, liberally allowed and still allows non-compliance with legal provisions. Disregard for centralized legal rules is conditional upon the fact that both employers and employees respect their own objective economic interests and the weakness of government supervision,

– alienation of employee and employer social groups traditional for Russia, a lack of dialogue and institutions to build it,

– workers' refusal to defend labor rights. Even though the workers had statutory labor rights in the age of the Russian Empire, they never used the opportunities to defend them. Partly because the worker risked encountering response repressions by the employer, partly – because the efforts required to defend the rights were considered burdensome and disproportionate to the expected benefit,

– legal illiteracy of both employees and employers. The concurrent factor was that people were simply illiterate and the vast majority of workers did not know how to read and write. Despite all the efforts of the state to inform labor relationship participants about standards of law, they remained unknown to not only the workers, but representatives of the employer as well.

It seems important to recognize the massive amount of negative factors that are institutionally integrated into the national legal consciousness. This distorting factor should be considered by lawmakers when developing and introducing the innovations of labor law. Otherwise, a phenomenon of weak executability of labor law standards occurs that often devalues even meaningful innovations and creates an 'endless circle' of legal nihilism, indifferentism and ignorance.

References

Axelrod, P. B. (1907) *Rabochii klass i revolyutsionnoe dvizhenie v Rossii* [Working Class and the Revolutionary Movement in Russia]. Saint Petersburg, Obshchestvennaya Polza. (in Russian)

Bezobrazov, V. P. (1888) *Nablyudeniya i soobrazheniya V.P. Bezobrazova otnositel'no deistviya novykh fabrichnykh uzakonenii i fabrichnoi inspektsii* [Observations and Considerations of V. P. Bezobrazov Regarding Validity of New Factory Laws and Actions of the Factory Inspection]. Saint Petersburg, V. Bezobrazov & Co. (in Russian)

Bykov, A. N. (1909) *Fabrichnoe zakonodatel'stvo i razvitie ego v Rossii: Lektsii, chitannye v SPb. politekhnikume i v Tekhnologicheskom institute v 1908-9 ucheb. godu* [Factory Legislation and Its Development in Russia: Lectures Given in the Saint Petersburg Polytechnic School and in the Technological Institute in the 1908/09 Academic Year]. Saint Petersburg, Pravda. (in Russian)

Gurko, V. (1909) *Nashe gosudarstvennoe i narodnoe khozyaistvo* [Our State and National Economy]. Saint Petersburg, Skoropechatnya P. O. Yablonskogo. (in Russian)

Gvozdev, S. (1911) *Zapiski fabrichnogo inspektora (iz nablyudenii i praktiki v period 1894–1908 gg.)* [Notes of a Factory Inspector (from Observations and Practice of 1894–1908)]. Moscow, Tipolit. W. Richter. (in Russian)

Kanel, V. Ya. (1906) *Sudorabochie i sudovladel'tsy* [Stevedores and Shipowners]. Moscow, Publishing House of S. Dorovatsky and A. Charushnikov. (in Russian)

Kruze, E. E. (1980) *Usloviya truda i byta rabochego klassa v Rossii v 1900–1914 gg.* [Conditions of Working Class Labor and Life in Russia in 1900–1914]. Leningrad, Nauka. (in Russian)

Lappo-Danilevsky, A. (1899) *Russkie promyshlennye i torgovye kompanii v pervoi polovine XVIII stoletiya* [Russian Industrial and Trade Companies in the First Half of the 18th Century]. Saint Petersburg, V. S. Balashev & Co. (in Russian)

Lenin, V. I. (1967) *O promyshlennykh sudakh. Polnoe sobranie sochinenii v 55 t.* [On Industrial Courts. Complete Works in 55 volumes]. 5 edition. Vol. 4. Moscow, Politizdat. (in Russian)

Lenin, V. I. (1959) *O stachkakh. V.I. Lenin o trudovom zakonodatel'stve* [On Strikes. V. I. Lenin on Labor Law]. Moscow, Gospolitizdat. (in Russian)

Lukashevich, F. A. (1877) *Ocherki promyshlennosti i torgovli v Rossii* [Essays on Industry and Trade in Russia]. Kharkov, M. Zilberberg. (in Russian)

Mikhailovsky, Ya.T. (1886) *O deyatel'nosti fabrichnoi inspektsii: otchet za 1885 god glavnogo fabrichnogo inspektora Ya.T. Mikhailovskogo* [On Activities of the Factory Inspection: a Report by Factory Inspector Ya. T. Mikhailovsky of 1885]. Saint Petersburg, V. Kirshbaum. (in Russian)

Mikulin, A. A. (1893) *Ocherki iz istorii primeneniya zakona 3-go iyunya 1886 goda o naime rabochikh na fabrikakh i zavodakh Vladimirskoi gubernii* [Essays from the History of the Application of the Law of June 3, 1886 on the Hiring of Workers in the Factories and Plants of the Vladimir Governorate]. Vladimir, V. A. Parkov. (in Russian)

Mikulin, A. A. (1906) *Fabrichnaya inspektsiya v Rossii. 1882–1906* [Factory Inspection in Russia. 1882–1906]. Kyiv, Kulzhenko S.V. (in Russian)

Pakhman, S. V. (1877) *Obychnoe grazhdanskoe pravo v Rossii. Yuridicheskie ocherki. T. I: Sobstvennost', obyazatel'stva i sredstva sudebnogo okhraneniya* [Common Civil Law in Russia. Legal Essays. Vol. I: Property,Obligations and Means of Legal Protection]. Saint Petersburg, Second Section of His Imperial Majesty's Own Chancellery. (in Russian)

Pazhitnov, K. A. (1908) *Polozhenie rabochego klassa v Rossii* [The Position of the Working Class in Russia]. Saint Petersburg, Obshchestvennaya Polza. (in Russian)

Petrov, V. R. (2000) *Deformatsiya pravosoznaniya grazhdan Rossii (problemy teorii i praktiki)* [Deformation of Legal Consciousness of Russian Citizens (Theoretical and Practical Issues)]. PhD Thesis in Law. Nizhny Novgorod. (in Russian)

Plevako, F. N. (1993) *Izbrannye rechi* [Selected Speeches]. Moscow, Yuridicheskaya Literatura. (in Russian)

Ruzin, S. V. (2012) *Pravosoznanie promyshlennykh rabochikh Rossii vo vtoroi polovine XIX – nachale XX v. i ego rol' v transformatsii rossiiskogo gosudarstva* [Legal Consciousness of Russian Industrial Workers in the Second Half of the 19th – Early 20th Century and Its Role in Transforming the Russian State]. Abstract of PhD Thesis in Law. Vladimir. (in Russian)

Tal, L. S. (1918) *Ocherki promyshlennogo rabochego prava* [Essays on Industrial Labor Law]. Moscow, Moskovskoye Nauchnoye Izdatelstvo. (in Russian)

Yanzhul, I. I. (1907) *Iz vospominanii i perepiski fabrichnogo inspektora pervogo prizyva: materialy dlya istorii russkogo rabochego voprosa i fabrichnogo zakonodatel'stva* [Memories and Correspondence of the First Call Factory Inspector: Materials for the History of the Labor Issue in Russia and Factory Law]. Saint Petersburg, Brockhaus-Efron JSC. (in Russian)

Yanzhul, I. I. (1884) *Fabrichnyi byt Moskovskoi gubernii. Otchet za 1882–1883 g. fabrichnogo inspektora nad zanyatiyami maloletnikh rabochikh Moskovskogo okruga I. I. Yanzhula* [Factory Life of the Moscow Governorate. A Report by Factory Inspector I. I. Yanzhul on Activities of Child Workers in the Moscow District in 1882–1883]. Saint Petersburg, V. Kirshbaum. (in Russian)

Information about the author

Nikolay V. Demidov – Candidate of Juridical Sciences, Associate Professor of the of Labor Law and Social Welfare Law Department, Tomsk State University (Tomsk, Russia; e-mail: fra_nickolas@list.ru).

Date of Paper Receipt: March 14, 2022
Date of Paper Approval: April 1, 2022
Date of Paper Acceptance for Publishing: June 24, 2022

Vol 5. Is. 2

Information for citation:
Demidenko, T. P. (2022) The Role of Resolutions of the Plenum of the Supreme Court of the Russian Federation in Regulating Labor Relations. *European and Asian Law Review*. 5 (2), 25–29. DOI: 10.34076/27821668_2022_5_2_25.

UDC 349.2
BISAC LAW054000 / Labor & Employment
DOI: 10.34076/27821668_2022_5_2_25

Research Article

THE ROLE OF RESOLUTIONS OF THE PLENUM OF THE SUPREME COURT OF THE RUSSIAN FEDERATION IN REGULATING LABOR RELATIONS

TATYANA P. DEMIDENKO
Ural State Law University named after V. F. Yakovlev
ORCID ID: 0000-0003-3280-1139

The author of this research aims, through this research, to create a theoretical understanding of the role of Resolutions of the Plenum of the Supreme Court of the Russian Federation (SCRF) in the regulation of labor relations and others directly associated with them, as well as the possibility of their classification as a source of labor law. By researching these acts' significance in labor law both in Russia and other countries a conclusion is drawn that currently the acts of supreme judicial authorities may be classified as sources of labor law, since they influence on the emergence, changing and termination of legal labor relations and have an objectified form of expression. However, the aforementioned acts are issued by judicial authorities, not law-making authorities, and a failure to comply with the rules of conduct that they create cause consequences not only for the courts, but for other subjects as well. Considering the latest trends in the formulation of rules of conduct by supreme judicial authorities and their perception by legislators via their reflection in regulatory acts, the significance of supreme judicial authorities' acts is to serve as a basis for the development of typical sources of labor law, specifically labor law acts.

Key words: *labor law source, supreme judicial authorities' acts, Resolutions of the Plenum of the Supreme Court of the Russian Federation, regulatory resolutions*

Introduction

The role of supreme judicial authorities' acts, including Resolutions of the Plenum of the Supreme Court of the Russian Federation (SCRF), in the regulation of labor relations is an acute issue when it comes to the science of labor law. Currently, these acts are widely applied in Russia, as evidenced by a significant number of decisions containing the references to Resolutions of the Plenum of the Supreme Court of the Russian Federation. Moreover, a survey conducted among 30 federal judges in Sverdlovsk Oblast, Chelyabinsk Oblast and Perm Krai has shown that 70 % of respondents always refer to provisions of Resolutions of the Plenum of the Supreme Court of the Russian Federation when preparing a judicial act for a case, while the remaining 30 % do so only when their provisions eliminate existing defects in legislation.

That said, Resolutions of the Plenum of the SCRF are difficult to classify as classical sources of labor law, since according to the law they are neither classified as such, nor are they mentioned in article 5 of the Labor Code of the Russian Federation (LCRF), so their place in the labor law source system is not established. Enforcement actions may not be applied for violations of legal norms established by

supreme judicial authorities; however, the consequences may ensue in the form of reversal or change of a court ruling by a court of a higher instance. In this context, the issue of the role and significance of Resolutions of the Plenum of the SCRF in labor relations regulation becomes particularly acute. The goal of this research is to develop a theoretical understanding of the role of Resolutions of the Plenum of the SCRF in the regulation of labor relations and others relations directly associated with them, as well as the possibility of their classification as a special kind of source of labor law. The author has assumed that considering extensive practice of these acts' application, nowadays it is reasonable to classify them as atypical sources of labor law.

Materials and Methods

Within the framework of this research, general scientific methods (analytical, synthetic, comparative, and descriptive) and special legal techniques (technical, comparative law and historical law approaches) have been used, and surveys have been carried out as a sociological method, allowing the author to study the significance of such acts made by Resolutions of the Plenum of the SCRF in law-enforcement activity.

Results

Results of the conducted research are reflected in the Conclusion of this work.

Discussion

Currently, the issue of the role of Resolutions of the Plenum of the SCRF in the system of labor law sources remains controversial and acute. While in Soviet legal science there was a well-established position that Resolutions of the Plenum of the Supreme Court of the Russian Federation were not sources of law, nowadays, such a position does not appear so obvious, though many jurists continue to insist that the function of the Plenum of the Supreme Court of the Russian Federation is to elaborate on the issues of court practice in terms of law interpretation, and these acts may not serve as sources of law (Yershova, 2008: 335). Meanwhile, it is also noted in literature that courts of all instances have long been using Regulations of Plenums of the highest instances to justify their conclusions as 'a uniform standard, an example for lower instances' (Zagainova, 2007: 350). Additionally, V. N. Gorshenev has written that explanations by Supreme Courts shall be classified as at least additional sources of law (Gorshenev, 1972: 153).

It should be noted that in some countries, the practice of recognizing Supreme Court's acts as sources of law does exist. By the authority of clause 5, paragraph 1, article 4 of the Law 'On Legal Acts' of the Republic of Armenia dated April 3, 2002, acts of the Armenian Court of Cassation are considered legal acts[1]. As it appears from the meaning of subparagraph 3, clause 2, article 17 of Constitutional Law No. 132-II 'On the Court System and the Status of Judges in the Republic of Kazakhstan' of the Republic of Kazakhstan dated December 25, 2000[2], the Supreme Court may adopt regulatory resolutions in the field of labor, among other things.

It is customary to refer to acts of official interpretation of law as 'interpretative' which defines the goal of their generation as such: to interpret, to explain the significance of the standard (Golovina, 1997: 100). P. E. Nedbailo has noted that the act of law interpretation '..is the explanation and clarification of the political will of the Soviet peoples expressed in laws and other legal acts' (Nedbailo, 1960: 349). A similar position has been upheld by N. D. Yegorov who believes that explanations from higher court instances are 'of paramount importance for the development of a uniform understanding of civil legislation by judicial authorities, without which it would be impossible to ensure due course of law and public order' (Sergeeva & Tolstoy. 1996, I: 36). Moreover, such a position has found support in Russian legislation. For example, as follows from the provisions of article 391.9 of the Civil Procedure Code (CPC) of the Russian Federation, article 308.8 of the Arbitration Procedural Code (APC) of the Russian Federation, it is violation of the uniformity of the interpretation and application of legal standards by courts of

[1] Website of the Parliament of the Republic of Armenia. Available at: http://parliament.am/legislation.php?sel=show&ID=1280&lang =rus [Accessed: 14 May 2022].

[2] Bulletin of the Parliament of the Republic of Kazakhstan. 2000. No. 23. Article 410.

higher instances that serves as grounds for judicial decisions to be reversed or changed when exercising of supervisory powers. However, such a violation implies an interpretation contained in the judicial decision and application of legal provisions that contradicts explanations provided by a Resolution of the Plenum of the Supreme Court of the Russian Federation or by a Resolution of the Presidium of the Supreme Court of the Russian Federation[3]. However, for example, in the Republic of Belarus, Resolutions of the Plenum of the Supreme Court have the same significance as that of regulatory acts. Such a provision first found its way into legislation with the adoption of Law No. 361-Z of the Republic of Belarus dated January 10, 2000. Currently, this position is reflected in Article 17 of Law No. 130-Z 'On Regulatory Acts' of the Republic of Belarus dated July 17, 2018. That said, as noted in literature, regulatory Resolutions of the Plenum of the Supreme Court of the Republic of Belarus may include both legal norms regarding the interpretation of legal provision and legal provisions themselves (Tomashevski, 2007: 91).

Consequently, having made the conclusion that the interpretation of legal provisions is the main function of Resolutions of the Plenum of the SCRF, the approaches used by the Plenum of the SCRF must be established. Thus, the SCRF often creates definitions for the terms contained in some provisions of labor law when there are no respective definitions in the act itself. Thus, a Resolution of the Plenum of the SCRF fills existing legal gaps.

For example, in Resolution of the Plenum of the SCRF No. 2 'On Application of the Labor Code of the Russian Federation by Courts of the Russian Federation'[4] dated March 17, 2004, definitions for terms such as 'business qualities' (clause 10) and 'the day of disciplinary offence detection' are provided (clause 34). In clause 5 of Resolution of the Plenum of the SCRF No. 52 'On the Application of Legislation Regulating Pecuniary Liability of Employees for Damage Caused to the Employer' dated November 16, 2006,[5] the concept of 'normal economic risk' is elaborated; in clause 15 it is clarified what 'damage caused by employees to third parties' is.

Meanwhile, the content of a legal term may not always be able to be described with a definition. In this case, the Supreme Court of the Russian Federation turns to an approach wherein words or phrases are explained through immediate description of things, actions, or situations ('ostensive definition'). A need for the use of ostensive definitions arises when it is not possible to define the term through a generic term or a list of generic features. It mostly applies to the situations with explanations of evaluative categories, the use of which in labor law is not rare.

That is, for example, how the term 'justifiable reasons' is clarified (clause 5 of Resolution of the Plenum of the SCRF No. 2 dated March 17, 2004; clause 16 of Resolution of the Plenum of the SCRF No. 15 dated May 29, 2018)[6]. In clause 16 of the aforementioned Resolution of the Plenum, it is defined what is to be meant by structural divisions of an employee organization. Resolution of the Plenum of the SCRF No. 1 dated January 28, 2014[7], establishes a list of individuals who are classified as persons with family obligations and persons bringing up children without mothers (clause 2). Clause 14 of Resolution of the Plenum of the SCRF No. 52 dated November 24, 2015[8], defines the concept of a sport regime by listing its components. These examples show that the main function of Resolutions of the Plenum of the SCRF is to fill the existing legislation gaps.

However, another function should be identified as well: legal norms of Resolutions of the Plenum of the Supreme Court of the Russian federation are drafts of legal provisions that may be consequently reflected in the labor legislation. As it is noted in literature, in the Soviet period, some legal provisions were created or improved under the influence of the court practice (Golovina, 1997).

---

[3] Review of Court Practice of the Supreme Court of the Russian Federation No. 3 (2015). Approved by the Presidium of the Supreme Court of the Russian Federation on November 25, 2015. *Bulletin of the Supreme Court of the Russian Federation. 2016*. No. 3.

[4] *Rossiyskaya Gazeta*. 2004. No. 72.

[5] *Rossiyskaya Gazeta*. 2006. No. 268.

[6] On the Application of Legislation Regulating the Labor of Employees Working for Individual Employers and Small Business Entities Classified as Microenterprises by Courts: Resolution of the Plenum of the SCRF No. 15 dated May 29, 2018. *Rossiyskaya Gazeta*. 2018. No. 121.

[7] On the Application of Legislation Regulating the Labor of Women, Individuals with Family Obligations and Minors: Resolution of the Plenum of the SCRF No. 1 dated January 28, 2014. *Rossiyskaya Gazeta*. 2014. No. 27.

[8] On the Application of Legislation Regulating the Labor of Athletes and Coaches by Courts: Resolution of the Plenum of the SCRF No. 52 dated November 24, 2015. *Rossiyskaya Gazeta*. 2015. No. 270.

Some examples of how provisions of a Resolution of the Plenum of the SCRF are reflected in the LCRF may be found in the institute of labor discipline. In 2004, the Supreme Court of the Russian Federation established with Resolution of the Plenum No. 2 dated March 17, 2004, that an employee's absence at work for an entire working day (shift) without any justifiable reasons shall be deemed an unexcused absence regardless of the duration of the working day (shift), thereby completing the definition previously stated in clause 4, article 33 of the Labor Code of 1971. Consequently, Federal Law No. 90-FZ dated June 30, 2006[9], introduced this provision into the LCRF.

Also, in 2004, clause 53 appeared in the Resolution of the Plenum of the SCRF dated March 17, 2004, to specify that when adjudicating disputes about disciplinary actions against the worker, the employer shall confirm that in the course of prosecution, the following matters had been taken into account: the severity of the disciplinary offence, the circumstances under which it had been committed, previous behavior of the employee, and their attitude to their work. Consequently, in 2006, two of the listed factors, the severity of the offence and the circumstances under which it was committed found their way into paragraph 5, article 192 of the LCRF, while the other two factors were ignored, in connection with which the interpretation provided in the Resolution of the Plenum became much more broad.

However, as practice shows, when adjudicating disputes about disciplinary actions, the courts use this very broad interpretation of this provision and take into account both the factors listed in paragraph 5, article 192 of the LCRF and those enshrined in clause 53 of the Resolution of the Plenum of the SCRF in equal measure. In other words, in most cases the courts refer both to the circumstances listed in the Labor Code of the Russian Federation and the circumstances mentioned in the Resolution of the Plenum of the SCRF. Thus, in the Ruling dated December 14, 2020[10], the Supreme Court of the Russian Federation referring the case to the court of first instance for a new hearing noted that the court had not studied the issue of whether the employer had taken into account disciplinary severity of the disciplinary offence which violated provisions of clause 5, article 193 of the LCRF, as well as explanations provided in clause 53 of the Resolution of the Plenum of the SCRF dated March 17, 2004[11] regarding the circumstances it had been committed under, the previous behavior of the employee, and their attitude to their work.

That said, it is unclear why not all the factors listed in the Resolution of the Plenum have been reflected in the provision of the LCRF. Does it mean that the factors enshrined in the Labor Code of the Russian Federation shall take precedence when labor disputes are considered? In this case, it appears that the application of such a source labor law (a Resolution of the Plenum of the SCRF) shall be of secondary importance, as legal norms created by the Plenum of the Supreme Court of the Russian Federation may be applied only as part of overall interpretation with the provisions of the Labor Code of RF, since when a dispute is considered, the circumstances described in article 192 of the LCRF are of primary importance. However, if, while assessing evidence, the court comes to the conclusion by its own inner conviction that the existing evidence is not enough to make a decision, they can also consider other circumstances established in a Resolution of the Plenum of the Supreme Court of the Russian Federation.

In other words, there is such a situation wherein Resolutions of the Plenum of the Supreme Court of the Russian Federation function as an independent source of law that the courts refer to when labor disputes are considered. Under these circumstances, this kind of source must not be ignored when it comes to law enforcement activity. However, it should be noted that Resolutions of the Plenum of the Supreme Court of the Russian Federation as atypical sources of labor law are legally binding only for the court that is adjudicating the dispute. As for other law enforcers, including employers, Resolutions of the Plenum of e Supreme Court of the Russian Federation shall not be binding. However, in some cases, provisions

[9] On Introduction of Amendments to the Labor Code of the Russian Federation, Invalidation of Some USSR Regulatory Resolutions on the Territory of the Russian Federation and Revocation of Some Legal Acts (Provisions of Regulatory Resolutions) of the Russian Federation. *Corpus of Legislation of the Russian Federation*. 2006. No. 27. Article 2878.

[10] Ruling of the Judicial Chamber for Civil Cases of the Supreme Court of the Russian Federation No. 19-KG20-12-K5 dated December 14, 2020. ConsultantPlus Legislative and Reference System.

[11] A similar position is expressed, for instance, in the Review of Litigation Practice for Disputes Related to Termination of an Employment Contract upon the Employer's Initiative approved by the Presidium of the Supreme Court of the Russian Federation on December 9, 2020. ConsultantPlus Legislative and Reference System; Ruling of the Second Cassation Court of General Jurisdiction dated December 15, 2020, with regard to case No. 88-24025/2020. ConsultantPlus Legislative and Reference System; Ruling of the Third Cassation Court of General Jurisdiction dated September 07, 2020, with regard to case No. 88-9136/2020. ConsultantPlus Legislative and Reference System.

of Resolutions of the Plenum of the Supreme Court of the Russian Federation are essentially placed on the same level as the Labor Code of the Russian Federation by courts, which appears inappropriate, since the LCRF is superior in the hierarchy of sources of labor law. As K. L. Tomashevski rightly notes in respect to the Supreme Court of the Republic of Belarus, the rule-making component of the activity of courts of higher instances shall not prevail over their main designation, as it shall still be secondary by nature (Tomashevski, 2013: 304).

In this regard, it can be said that given that Resolutions of the Plenum of the Supreme Court of the Russian Federation provide explanations for the issues of court practice in order to ensure the uniform application of the legislation of the Russian Federation, the Resolutions of the Plenum of the Supreme Court of the Russian Federation shall comply with the Constitution of the Russian Federation, the LCRF and other federal laws. That said, it should be noted that legal norms of Resolutions of the Plenum of the Supreme Court of the Russian Federation may consequently be enshrined in the law as legal norms. In this case, an atypical source of labor law shall be subject to application until respective amendments are introduced into the legislation.

Conclusion

As of now, Resolutions of the Plenum of the Supreme Court of the Russian Federation are not recognized a source of labor law unlike those in some other countries; their place in the system is not established, though in fact they are the sources of labor law and regulate labor relations and others directly associated with them. Considering the trends in the formulation of rules of conduct by supreme judicial authorities and their perception by the legislator through their reflection in regulatory acts, the significance of Resolutions of the Plenum of the Supreme Court of the Russian Federation is to serve as a basis for the development of typical labor law sources, specifically, labor legislation.

References

Golovina, S. Yu. (1997) *A Conceptual Framework of Labor Law*. Yekaterinburg, Publishing House of USLA. (in Russian)

Golovina, S. Yu. (1997) The Role of Court Practice in Generation of the Conceptual Framework of Labor Law. *Bulletin of the Omsk University*. (3), 100–103. (in Russian)

Gorshenev, V. M. (1972) *Means and Organizational Forms of Legal Regulation in a Socialist Society*. Moscow. (in Russian)

Nedbailo, P. E. (1960) *Application of the Soviet Legal Norms*. Moscow. (in Russian)

Sergeeva, A. P. & Tolstoy, Yu. K. (eds.) (1996) *Civil Law: A Textbook*. Moscow. (in Russian)

Tomashevski, K. L. (2007) Court Practice as a Source of Labor Law: from Theoretical Developments to Statutory Recognition. *Russian Annual Book of Labor Law*. (3), 81–91. (in Russian)

Tomashevski, K. L. (2013) *A System of Labor Law Sources (History, Theory and Practice)*. Minsk, Amalfeya: MITSO International University. (in Russian)

Yershova, E. A. (2008) *Essence, Sources and Forms of Labor Law in the Russian Federation*. Moscow, RSUJ. (in Russian)

Zagainova, S. K. (2007) *Court Mechanisms in Judicial Power Enforcement in Civil and Arbitration Proceedings*. Moscow. (in Russian)

Information about the author

Tatyana P. Demidenko – Teaching Assistant of the Department of Labor Law, Ural State Law University named after V. F. Yakovlev (Yekaterinburg, Russia; e-mail: t.vedeshkina95@gmail.com).

Date of Paper Receipt: March 1, 2022
Date of Paper Approval: April 8, 2022
Date of Paper Acceptance for Publishing: July 1, 2022

Vol 5. Is. 2

Information for citation:
Ofman, E. M. (2022) Invalidity of Employment Contracts: Experience of Legal Regulation in Eurasian Economic Union Member States. *European and Asian Law Review*. 5 (2), 30–40. DOI: 10.34076/27821668_2022_5_2_30.

UDC 34.048, 349.222.2
BISAC LAW054000 / Labor & Employment
DOI: 10.34076/27821668_2022_5_2_30

Research Article

INVALIDITY OF EMPLOYMENT CONTRACTS: EXPERIENCE OF LEGAL REGULATION IN EURASIAN ECONOMIC UNION MEMBER STATES

ELENA M. OFMAN
South Ural State University
ORCID ID: 0000-0001-5456-1557

The article raises the problem of necessity and expediency of reception into the Russian labor legislation of civil legal construction of invalidity of legal transactions, evaluates the experience of member states of the Eurasian Economic Union on the implementation of legal regulation of invalidity of employment contracts on certain grounds. Both general scientific (analysis, synthesis, deduction, induction) and special methods of legal research (comparative method) are used in the study. Based on the analysis of the Labor Codes of the Republic of Belarus, the Kyrgyz Republic, the Republic of Kazakhstan and the analysis of materials of judicial law enforcement practice of Russia each condition of invalidity of the employment contract was investigated and the effectiveness of these conditions and the identified grounds of invalidity of the employment contract on the sphere of labor relations in Russia was evaluated. Enshrining norms on the invalidity of an employment contract in the LC RF are inexpedient, the legislator has developed adequate ways and means to overcome defects of form, content and subject composition of labor legal relations. Defect of subject composition of an employment contract, defect in the content of the employment contract and its (contract) form, as a rule, do not entail the recognition of this contract as invalid. Failure to comply with the will of the parties of labor legal relations in the process of its emergence, change and termination should be a subject of legal regulation at the level of a codified act. It seems necessary to fix at the level of the Labor Code of the Russian Federation norms on the ratio of will and expression of will; on the primacy of expression of will over the will. In ideal legal relations, the will and expression of will must coincide. Establishment in the law of the factors that influenced the process of evolution of will and deformed it is necessary only in case of defective development of one or another model of exercising subjective rights and / or performance of duties. The article makes proposals to adjust the norms of the current labor law, aimed at eliminating the flaws in the flawed nature of certain conditions of the employment contract identified by the courts.

Key words: *labor contract, invalidity of the labor contract, mechanism for exercising rights, vice of the will of the subjects of labor relations*

Introduction

The study of volitional aspect of the mechanism of exercising subjective rights and duties of subjects of labor legal relations (employee and employer) inevitably raises the problem of analyzing the feasibility and effectiveness of the civil legislation on the invalidity of the deal to labor legal relations with defects

of will (and these defects are possible at different stages of this legal relationship: the emergence, its existence, change and termination). The Russian legislator remains 'deliberately silent' on this problem, while the courts, taking advantage of the legal gap, by their decisions actively recognize the actions of employers (and only employers!) as illegal, using the concepts of 'defect/defect of will', 'misleading the employee'; 'fraud'; 'threat from the employer'.

In order to make a logical understanding of the correctness of the normative consolidation of the invalidity of an employment contract, the article draws attention to the existing in the science of civil law classification of deals on the grounds of invalidity (depending on which of the features of the deal was 'flawed'): deals with content flaws; deals with flaws in the subject composition; deals with flaws of will and expression of will; deals with flaws in form. Designated deals are largely similar in the Civil Codes of the analyzed states (Kazakhstan, Belarus, Kyrgyzstan, the Russian Federation). In this regard, it seems appropriate to analyze each condition of invalidity of the deal and apply it to the sphere of labor relations in order to identify the need to enshrine norms on invalidity of the employment contract in a codified act.

Materials and Methods

The study of the problem of the reception of civil law norms into labor law became possible by using both general scientific (analysis, synthesis, deduction, induction) and special legal research methods (comparativist method). As a scientific basis the works of Russian and foreign scholars in the field of labor law, evaluating the correctness of the application of wording by the legislator in the reception of civil law wording in the labor law, proposing changes in the current labor legislation were used. As empirical material was used Russian judicial practice regarding the identification of defects in the form, content, subject composition and volitional aspect of employment legal relations.

Results

On the one hand, in their decisions, the courts indicate that 'labor legislation of the Russian Federation does not contain a mechanism for invalidating an employment contract, labor relations are not covered by the Civil Code of the Russian Federation (hereinafter – CC RF)1[1], labor legislation does not provide grounds for considering an employment contract as a transaction that can be declared invalid'[2], on the other hand, – acts of courts contain direct wording on 'sufficiency of the totality of the examined conditions of the employment contract'. Such a 'deal' is, for example, 'the inclusion of compensation for termination of the employment contract by agreement of the parties in the employment contract concluded with the executive employee after the initiation of the bankruptcy case'. In this case, 'the parties acted intentionally with a view to causing property damage to the interests of creditors because, acting reasonably and in good faith, they could and, based on the circumstances of the case, should have anticipated the possible transition to bankruptcy proceedings and the resultant dismissal of employees by the bankruptcy trustee'[3].

In another case, a clause in an employment contract in terms of setting the salary of an employee above a certain amount was invalidated and the consequences of the invalidity of the deal were applied[4].

Another example of how the Supreme Court of the Russian Federation (hereinafter – the RF Supreme Court) recognized a 'suspicious deal' and applied the consequences of invalidity to it is the case of the clause regarding the substantial increase of the employee's salary (from 30 000 rubles to 3 000 000 rubles) included into an employment contract within the suspicious clause 1 of Article 61.2 of the Bankruptcy Law. The court found that the employee's qualifications had not been changed, the job duties and working

[1] Hereinafter all references to Russian normative acts and court practice are given according to the legal reference system 'KonsultantPlus'. Available at: http://www.consultant.ru.

[2] Determination of the Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation of April 8, 2019, case No. 81-KG18-27; Determination of the Supreme Court of the Russian Federation of December 14, 2012, case No. 5-KG12-61; Determination of the Eighth Cassation Court of General Jurisdiction of December 10, 2020 No. 88-18029/2020 in case No. 2-158/2020; Determination of the First Cassation Court of General Jurisdiction of December 14, 2020 No. 88-27162/2020.

[3] Determination of the Supreme Court of the Russian Federation of December 31, 2022, case No. 308-ES21-1139(5).

[4] Determination of the Supreme Court of the Russian Federation of January 28, 2020, case No. 309-ES18-17796(2); Determination of the Supreme Court of the Russian Federation of October 28, 2019, case No. 305-ES19-1960.

conditions had not been adjusted, and additional duties and responsibilities had not been assigned, so the employee's pay had been unreasonably increased in anticipation of bankruptcy. Moreover, the employee's accrued wages differed from the price and conditions at which similar deals were made under the same circumstances, including wages for similar positions in the marketplace, and the compensation provided to the employee was not commensurate with the scope of the job functions he performed. As a result, the courts decided that as a result of the transaction on the inclusion in the employment contract of a clause on a significant increase in the employee's salary, the bankruptcy estate was reduced, from which the claims of bankruptcy creditors would be settled, while the disputed salary was not essentially aimed at compensating the employee for the costs associated with the performance of his employment duties. Applying the consequences of the invalidity of the deal, the court in its decision determined the 'fair amount' of this employee's salary, which amounted to 450,000 rubles[5].

Of scientific and practical interest are a number of court decisions: to invalidate the additional agreement to the employment contract to change its term (the contract was changed from open-ended to fixed-term); to invalidate the agreement to terminate the employment contract to pay severance pay of 3,000,000 rubles to the employee when the employment contract is terminated by agreement of the parties (paragraph 1 of part 1 of Article 77 of the Labor Code of the Russian Federation, hereinafter – LC RF)[6]; to recognize the repeated dismissal of the employee and the repeated payment of compensation to him in connection with this dismissal as unlawful in connection with the discretion of this 'deal' signs of interest, its commission with the purpose of violating the rights of creditors (consequences of invalidity of the deal have been applied)[7].

The issue of invalidity of the employment contract does not leave the attention of scientists, who in their works come to diametrically opposite conclusions: from a complete rejection of the idea of including this civilistic structure in the Russian labor legislation to the development of provisions aimed at the appropriate adjustment of the LC RF.

Professor S. Yu. Golovina believes that 'to address the issue of the consequences of violations of the rules of the employment contract is sufficient for paragraph 11 of Article 77 of the Labor Code of the Russian Federation, which provides an appropriate basis for termination of the employment contract, and to neutralize the conditions of the employment contract, worsening the position of the employee, there is part 2 of Article 9 of the Labor Code of the RF' (Golovina, 2017: 13).

Proponents of the introduction into the labor legislation of the structure of 'invalidity of a labor contract' also do not agree in one opinion. Some argue about the need for 'a fundamental adaptation of the construction of invalidity of an employment contract to the specifics of labor relations, reasonable harmonization with the method of labor regulation – both on the grounds of invalidity, on the subjects, and on the content of legal consequences' (Tarusina, 2021: 50; Syrovatskaya & Idrisova, 1990: 55–56).

Others speak of the necessity and expediency of adapting the norms of civil law to labor relations (analogy of law) to overcome the 'legal vacuum' in addressing, in particular, issues of applying the consequences of invalidity of 'labor law deals' (Brilliantova & Arkhipov, 2007: 69–70).

Professors A. M. Lushnikov and M. V. Lushnikova clearly note that the construction of restitution is not applicable to labor relations in its pure form. They reason: 'Most likely there should be only one possible legal consequence – it is the replacement of invalid conditions of the labor contract with conditions that comply with current labor legislation or collective agreements and treaties', but taking into account that 'the parties of the labor contract have not reached an agreement on the issue of bringing the conditions of labor contracts into compliance with current legislation'. Legal consequences should be differentiated: from the recognition of conditions as invalid (analog of the nullity of the deal) to the recognition of them as legal (analog of the voidability of the deal), but with specific sectoral features. The institute of invalidity of employment contracts should be applied to imaginary and pretense deals in terms of application of legal consequences (Lushnikov & Lushnikova, 2009: 406, 408, 416).

[5] Ruling of the Arbitration Court of the Moscow District of May 5, 2021, case No. F05-20807/2018; Ruling of the Supreme Court of the Russian Federation of July 09,2021, case No. 305-ES18-25788(5); Ruling of the Supreme Court of the Russian Federation of May 20,2019, case No. 308-ES19-6122 in Case No. A63-3630/2017.

[6] Determination of the First Court of Cassation of General Jurisdiction of December 21, 2021, case No. 88-31838/2021.

[7] Determination of the First Court of Cassation of General Jurisdiction of March 1, 2021, case No. 88-3545/2021.

The fourth scientists consider it necessary to make 'some improvements' in labor legislation, allowing to qualify the employment contract as invalid: to supplement Article 391 of the LC RF with provisions on the right of the employer to apply to court with a claim for invalidation of the employment contract; to include in Article 67 of the LC RF a rule about the circle of persons entitled to sign the employment contract; to differentiate the legal consequences of invalidity of the employment contract depending on the fault (its degree) of the employee and employer (Urakova, 2011: 32).

The above-mentioned ideas of scientists, heterogeneous judicial practice and silence of the legislator force to pay attention to the achievements of the labor legislation of EEC member countries, which were not afraid to lose sectoral independence, authenticity and included provisions on invalidity of employment contracts and their terms in the texts of their codified acts - the Labor Code of the Republic of Belarus (hereinafter – LC RB) (Articles 22–23). Articles 22–23), the Labor Code of the Kyrgyz Republic (hereinafter – LC KR) (Articles 60–61), the Labor Code of the Republic of Kazakhstan (hereinafter – LC RK) (part 2 of Article 10, part 4 of Article 33). No less interesting is the analysis of these norms in order to clarify the completeness of legal regulation of the issue of invalidity of a labor contract, its terms and conditions, as well as the formation of proposals aimed at adjusting the current labor legislation of the Russian Federation on this issue.

In general, the Labor Code of the Republic of Belarus and the Labor Code of the Kyrgyz Republic contain similar grounds for invalidation of the employment contract and similar norms on invalidation of certain conditions of the employment contract. So, the employment contract is invalid (the LC of KR specifies that by the court) in case of its conclusion under the influence of deception, violence, threat, as well as under extremely unfavorable conditions for the employee due to concurrence of severe circumstances; without the intention to create legal consequences (imaginary employment contract); with a person declared incapable due to mental illness or dementia. But there is a non-identity of the grounds for invalidation of the employment contract: the Labor Code of the Kyrgyz Republic defines that the contract may be considered invalid if it is concluded with a person who is unable to understand the meaning of his actions, while the Labor Code of the Republic of Belarus links invalidity of the employment contract with the fact of its conclusion with a person under 14 years old, with a person who is 14, but without a written consent of one of the parents (adoptive parent, guardian). Legal consequences of invalidation of an employment contract in the Labor Code of the Republic of Kazakhstan and the Labor Code of the Kyrgyz Republic are the same: their recognition as such does not entail the loss of the employee's right to guarantees, compensation and benefits (the right to vacation, compensation for unused vacation days; inclusion of the period worked in the insurance period (the Kyrgyz legislator specifies). The Labor Code of the Republic of Belarus does not regulate this issue.

The invalidity of certain terms of the employment contract in the case of worsening the legal status of employees as compared to the law, including in the case of their discriminatory nature, does not entail the invalidity of the entire employment contract – this is the position of all three listed Labor Codes. Interestingly, the codified acts link the defect in the content of the employment contract to its 'individual conditions', and not to the employment contract itself.

It may be noted that the Labor Code of the Republic of Belarus and the Labor Code of the Kyrgyz Republic list an incomplete set of grounds for invalidating a transaction, compared to the civil law, depending on the subject composition of the labor legal relations, the content of the employment contract, defects of will and expression of will (does not contain such cases for invalidation of the employment contract as sham transactions, does not specify delusion as a ground for invalidating the employment contract). The disadvantages of the reception in the labor legislation of both states of civil law constructions on the invalidity of civil law transactions without taking into account the specifics of labor legal relations are indicated by scientists: this is the problematic application of certain grounds for invalidation of an employment contract, and the lack of legislative grounds for invalidity of an employment contract; and the undeveloped rules on the procedure for invalidating an employment contract; and the lack of rules on the period of appeal to court, on the moment, at which an employment contract or its terms are declared invalid (Tarasevich, 2009: 291–292; Tarasevich, 2015: 52; Ramankulov, 2017: 158).

On the one hand, 'all this prevents the achievement of consistency of norms of the relevant institutions of labor law, the formation of a uniform law enforcement practice' (Tarasevich, 2009: 290). On the other hand, it will allow the Russian legislator to take into account the identified shortcomings of legal regulation

and create an effective mechanism for legal regulation of the institute 'Employment Contract' in the LC RF (if not to exclude, then at least to minimize the conclusion, modification and termination of contracts with defects of will, as well as to provide the courts with intrumentation for qualifying actions as an abuse of right by the employee and the employer).

Discussion

A defect in the subject composition as a condition for invalidating of an employment contract invalid

A defective subject composition implies that the transaction was made by a person whose actions do not entail legal consequences: the subject is improper (Ablyatipova & Ryukhtina, 2020: 111). The LC of the RB includes persons considered legally incompetent, persons under 14 years of age and persons aged 14 to 16 years without the written consent of a parent (adoptive parent, guardian) (Article 22), and the LC of the KR includes legally incompetent persons and persons who are unable to understand the meaning of their actions (Article 60).

As a general rule, Russian labor legislation does not establish a requirement for an employee to have full legal capacity as one of the criteria for the emergence of labor legal personality. Exceptions are cases stipulated by the LC RF and other federal laws and normative legal acts containing norms of labor law.

In the practice of the Supreme Court of the Russian Federation there are two cases of the greatest interest in the issue of the legality and possibility of incapacitated persons to act as employees; indirectly, one of the highest courts of the Russian Federation addresses the question of the validity of an employment contract concluded by incapacitated persons. The Court has established two positions, according to which:

1. An incapacitated person has the right to be a party to an employment legal relationship, and specifics are stipulated only for incapacitated persons who act as employers. The legislator in Article 20 of the LC RF explicitly establishes only one restriction for acquiring the status of an employee – the age limit. Moreover, according to the general provisions of the legislation the employer at the conclusion of an employment contract does not have the right to require from the applicant for work documents about his state of health other than those listed in Article 65 of the Labor Code of the RF[8].

2. Termination of the employment contract at the initiative of the employee (incapacitated person) is legal only if the employer complies with a number of rules (procedures), otherwise the dismissal may be declared illegal. The employer (according to the logic of the court) before the end of the dismissal procedure must find out a number of legally significant circumstances: whether the actions of the employee when heshe submitted the application for voluntary resignation based on the individual-psychological characteristics of the person were voluntary and conscious; whether the employee understood the consequences of writing such a statement; whether the previously submitted application for voluntary resignation was withdrawn, including the time and status of the person, to whom the withdrawal was sent[9].

In order to create an effective mechanism for legal regulation and a mechanism for exercising subjective rights, to prevent vicious procedures for concluding and terminating an employment contract with a legally incapacitated person, it seems necessary to include in the LC RF the following norms: an employment contract with this category of workers may be concluded with the prior consent of their guardians, taking into account the opinion of such a citizen. In addition, it is necessary to establish in the LC RF the obligation of a legally incapable person (his legal representative) to inform the employer when concluding an employment contract about the individual and psychological features of his personality, about his special status (about the status of the person being represented). These amendments to labor legislation will eliminate the defects associated with the formation of the will and its implementation by a legally incapable employee and his representative, as well as prevent the abuse of the right of these persons, from the stage of concluding an employment contract to the stage of its termination.

Analysis of legislation and practice of its application allows us to assert that labor relations with the participation on the side of an employee of an incapacitated person, a person limited in legal capacity,

[8] Ruling of the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation of April 23, 2010, case No. 13-B10-2.

[9] Determination of the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation of April 29, 2019, case No. 46-KG19-8.

underage workers are not considered invalid because of the viciousness of the subject composition of such legal relations. The LC RF has developed adequate, peculiar only to this area of law, rules that entail various favorable legal consequences for the employee as a weak party of legal relations: the conclusion of a labor contract is qualified by the courts as a lawful action, and termination of the contract is allowed only in cases expressly provided for by law (Article 84 of the LC RF). At the same time the termination of the employment relationship is admissible only if the employer is unable to transfer the employee with his/her written consent to another available job (part 2 of Article 84 of the Labor Code of the Russian Federation). Moreover, the Code states that if the violation of the rules for concluding an employment contract is not the employee's fault, he/she must be paid severance pay in the amount of the average monthly earnings. If the violation of the above mentioned rules for concluding the employment contract was caused by the employee, the employer is not obliged to offer him/her another job and to pay the severance pay (Article 84.3 of the Russian Labor Code).

The admission of an employee to work by an unauthorized person (i.e. a defect in the employment contract on the part of the employer) also does not entail the invalidity of the work performed. Of course, an employment relationship will not arise (although such a likelihood of a development of events is laid down in Article 67.1 of the RF Labor Code), but even in this case the employer still has an obligation to pay the individual for the time actually worked or the work performed. Another example: the LC RF expressly states that if an individual carries out entrepreneurial activity without state registration and (or) licensing, in violation of the requirements of the law, then when entering into an employment relationship with employees for the purpose of carrying out this activity he is not exempt from the obligations imposed by the LC RF on employers-individual entrepreneurs (paragraph 1 of Article 5).

Defective content of an employment contract as a condition for of its invalidation

The content of the deal is the totality of its terms, and if the deal was made with the discrepancy of its terms to the requirements of the law, it can be declared invalid.

The defect in the content of an employment contract in labor legislation has its own name – 'improper execution of an employment contract', which is understood as the absence of those information and (or) conditions, which are provided for by parts 1 and 2 of Article 57 of the Labor Code of the RF, as well as the inclusion of conditions that limit the rights or reduce the level of guarantees for employees compared with those established by labor legislation and other normative legal acts containing norms of labor law (part 2 of Article 9 of the LC of the RF).

The Plenum of the Supreme Court of the Russian Federation in its Resolution of December 23, 2021 No. 45 indicates: 'Failure to include in an employment contract conditions on labor rights and obligations stipulated by a collective agreement, agreements, local normative acts (for example, a specific date of payment of wages) does not form an objective aspect of an administrative offense under part 4 of Article 5.27 of the Code of Administrative Offences of the Russian Federation, since the employer has no statutory obligation to fix the relevant provisions in the employment contract' (par. 4 item 10).

It is necessary to agree with the opinion of professor E. B. Hohlov that 'employment contracts may exist without agreeing in them all mandatory conditions (such contract E. B. Hohlov calls 'an employment contract with indefinite working conditions')... One may consider that if the employee has agreed with the employer at least one condition (as a rule, it is a condition of the employment function), then the employment contract is already concluded, and all its other conditions may be filled in the future, both in the contractual and judicial order' (Predko & Hohlov, 2000: 67). It is interesting to note that another representative of the St. Petersburg school of labor law A. V. Zavgorodniy (Zavgorodniy, 2013: 54) believes that when concluding an employment contract and before the actual admission of an employee to work the parties to legal relations (the employee and the employer) must reach an agreement on at least two mandatory conditions of the employment contract – on the employee's employment function and on his/her salary.

I suppose that the more correct position is that an 'employment contract with indefinite terms' is considered concluded if the parties agree on at least one (and any!) of its terms. Indirectly this is indicated by the LC RF, in part 3 of Article 19.1 establishing the presumption of the existence of labor relations, and item 4 of paragraph 24 of the Resolution of the Plenum of the Supreme Soviet of the RF of

May 29, 2018 No. 15. Significant role in this ruling is played by point 23, which restores the gap in the legal regulation in terms of determining the amount of an employee's wages in the absence of written evidence from the employer confirming the amount of the employee's wages. In such a case the court has the right to determine its amount based on the employee's regular remuneration of his/her qualifications in the area, and if it is impossible to establish the amount of such remuneration – based on the minimum wage in the subject of the Russian Federation. The author of this article considers this legal provision to be very progressive and consistent with the goals and objectives of labor law, because it is aimed at preventing the abuse of rights by employees who agree to 'gray' wages, and at the same time to prevent offenses by employers who want to set the wage in the contract at the minimum wage.

Thus, the invalidity of an employment contract with defective content is impossible, we can only talk about the nullity of a particular provision of the employment contract, and that is not always the case. In some cases, courts qualify defective terms of an employment contract as contestable, for example, the amount of an employee's severance pay upon termination of an employment contract the court considered as unreasonably excessive and determined by its decision the 'fair amount' of the employee's salary, which was 450 000 rubles, having calculated the severance pay from it[10].

Nevertheless, I believe that the LC RF has developed a mechanism aimed at overcoming the defect in the content of the employment contract:

1) failure to include in the contract any information and conditions from among those provided by parts 1 and 2 of Article 57 of the Code is not the basis for recognizing it unconcluded or its termination; the employment contract must be supplemented with missing information and (or) conditions (part 3 of Article 57),

2) conditions included in the text of the employment contract, which limit or reduce the level of guarantees of emploees in comparison with the labor legislation, are not subject to application (part 2 of Article 9). In this case flawed conditions of an employment contract must be 'replaced' by conditions established by current normative legal acts containing norms of labor law.

Today we can also identify another defect in the content of the employment contract – deliberate silence of the employer on issues delegated to him by the legislator, subject to regulation at the level of local normative acts, collective or employment contracts (for example, the issue of increasing the real content of wages). Adjustment, modification of erroneous condition of the employment contract is possible by agreement of the parties to the employment contract, and in case of impossibility to achieve balance between the parties, absence of common opinion in solving the identified problem – by appeal to jurisdictional authorities. It seems that the pre-trial stage of coordinating the will of the parties is not mandatory, the employee or the employer have the right to apply directly to the competent authority in order to recognize certain conditions of the employment contract as illegal, limiting or reducing the level of his guarantees in comparison with the labor law. The judicial practice knows a sufficient number of examples of such a variant of elimination of the flaw in the content of the employment contract: it is a challenge by employers of the grounds and amounts of the so-called 'golden parachutes' when terminating the employment contract with management employees (especially often – in bankruptcy of the employer), and the requirement of employees to fulfill the employers' obligation to index wages. By the way, in the absence of a clear legislative position on the mechanism of wages indexation in the absence of local normative acts or a collective agreement of an employer the courts usually calculate wages by increasing them by the growth of consumer prices in the corresponding subject of the Russian Federation. At the same time, some courts analyze the absolute amount of wages paid to the employee (in annual terms), and if it is established that it has decreased rather than increased, then the employer's obligation to index wages will be considered not fulfilled[11].

Comprehension of the defect in the content of the employment contract has led to another conclusion: since the employer has power over the employee, the conditions in the employment contract that do not comply with labor law are associated not with a defect in the content of this contract, but with a defect in the will of the parties (or one party) of employment legal relations, since the employee's refusal to enter into an employment contract on the conditions initiated by the employer is due not only to

[10] Determination of the First Court of Cassation of General Jurisdiction of March 1, 2021, case No. 88-3545/2021.

[11] Determination of the Third Court of Common Pleas, October 13, 2021, case No. 88-15878/2021.

economic, but also organizational dependence on the employer. About the defect of will of the parties to labor legal relations and its legal consequences (nullity or voidability) will be discussed below.

Defective form of an employment contract as a condition for declaring it invalid

According to civil law, a defect in the form of the deal means that the parties have not complied with the written (simple, notarial) form of the deal established by the legislator. An employment contract is concluded in writing, in some cases it is required to be registered with local authorities (Article 303 of the Labor Code of the Russian Federation). Based on Federal Law as of November 22, 2021 № 377-FZ 'On Amendments to the Labor Code of the Russian Federation' employers may handle HR documents in electronic form; uniform requirements for the composition and format of electronic documents shall be set by the Ministry of Labor of Russia, Roskomnadzor and Rosarchive (par. 13 clause 1 Article 1 of this Federal Law).

The duty of proper registration of labor relations is imposed on the employer, evasion of execution of which forms an administrative offense under part 4 of Article 5.27 of the Code of Administrative Offences of the Russian Federation. The Plenum of the RF Supreme Court in its resolution of December 23, 2021, № 45 contains the provision that this offense is not continuous and will be completed after the expiry of paragraph 2 of Article 67 of the Labor Code three working days or from the date of the actual admission of the employee to work.

Interesting is the correlation of legal consequences of failure to comply with a simple written form of a deal under the civil legislation of the Russian Federation and the labor legislation of the Russian Federation. Thus, Article 162 of the Civil Code of the Russian Federation establishes that failure to comply with the simple written form of the deal deprives the parties to a dispute to refer to witnesses and other evidence to confirm the deal and its terms; failure to comply with the specified form of the deal leads to its invalidity (in cases expressly specified in the law). Evidence of the existence of an employment relationship between the parties, who have not signed an employment contract, is any factual data that allows to establish the fact of the existence of an employment relationship between the employee and the employer: personal performance of the employee for a fee, including remotely, in the interests, under the direction and control of the employer, as well as other circumstances relevant for the proper resolution of the case, including the permanent nature of the existing relationship. Such evidence may include any means of proof provided for by the procedural legislation: explanations of the performer of work, testimony, written and physical evidence, photo and film footage, sound and video recordings (paragraph 11 of Resolution of the Plenum of the Supreme Court of the Russian Federation of December 23, 2021 No. 45; paragraph 17 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 29 May, 2018 No. 15).

Summary of the above, it can be argued that the employer's failure to comply with the written form of the employment contract does not affect the legality of the arising employment relationship in the actual admission of the employee to work with the knowledge or on behalf of the employer (Articles 67, 67.1), does not lead to the recognition of this legal relationship invalid, that is not generating legal consequences. The employer must execute the employment contract within the period regulated by law (three working days from the date of admission of the employee to work) and in the prescribed form.

Defect of will as a condition for declaring of an employment contract invalid

Deals with defects of will and expression of will are characterized by the absence or improper formation of the will of the person performing the transaction, improper expression of this will, in other words, in such a transaction the will and expression of will do not correspond to each other. Such deals can be conventionally divided into deals made without inner will (under the influence of violence, threat, malicious agreement) and deals in which the inner will was formed incorrectly (under the influence of delusion, deceit). These deals also include fraudulent and feigned deals.

Despite the absence in labor law of rules on defects of will in the mechanism of exercising subjective rights and obligations of the subjects of labor relations, the courts actively recirculate the provisions of the Civil Code, establishing 'a defect of will of the employee to conclude an agreement to terminate the employment contract by agreement of the parties'[12], 'a defect of will of the employee upon termination

[12] Determination of the First Court of Common Pleas of October 11, 2021, case No. 88-22889/2021; Determination of the Seventh Court of Common Pleas of December 14, 2021, case No. 88-19007/2021.

of the employment contract by agreement of the parties'[13], 'a defect of will at the termination of the employment contract at the initiative of the employee'[14], 'defect of will'[15]; 'misleading an employee'[16]; deception[17]; 'threat from an employer' (in particular, for dismissal on the employer's initiative on faulty grounds in the absence of the employee's application for termination of the employment contract at the initiative of the employee[18]; to apply a disciplinary sanction if an employee refuses to sign an agreement on termination of the employment contract by agreement of the parties[19]).

The legislator's ignorance of the fact that an employment contract is recognized as flawed due to a willful defect creates certain difficulties in practice. For example, in their decisions, courts use the concepts of 'abuse of right', 'fraud', 'misleading' in the same synonymous series (thus, misleading an employee was related to the deceptive actions of the employer, who in an attempt to avoid compliance with the reduction procedure offered the employee to sign documents on the alleged transfer to another employer[20], and misleading the employee at employment regarding the amount of wages led to the conclusion of an employment contract under the influence of deception[21]) and even qualify misrepresentation as a form of abuse of right (in particular, the employer's unilateral refusal to pay the additional remuneration provided by the parties' agreement was regarded by the court as an attempt by the employer to mislead the employee about his pay, an abuse of right[22]; offering redundant employees vacant positions without a real opportunity to choose them; such behavior of the employer was qualified by the court as 'misleading the employee'[23]).

Sometimes courts incorrectly use the categorical apparatus of labor and civil law (there is a confusion of the concepts of 'deception' and 'misleading'), which is certainly wrong both logically and semantically.

For example, in one case the court found that the employer had been misled because the employee had knowingly provided false information about his and his daughter's permanent residence in an area with preferential socioeconomic status, as a result of which the federal budget of the Russian Federation was harmed in the amount of over 600 000 rubles[24]. In another case, the court found no evidence of misleading the employer, since the employee did not conceal the existence of temporary disability certificates, even though he did not submit them in a timely fashion[25]. It seems that in the three cases described above misrepresentation means deception.

The imaginary and pretense of an employment contract are also examples of a defect in the formation of the will of an employee and / or employer in the mechanism of exercising subjective rights and fulfilling obligations.

The imaginary in labor law can manifest itself in various forms: this is the conclusion by the head of the organization of fictitious labor contracts with employees who actually did not fulfill the labor duties stipulated by the labor contract, in order to cash out the funds (wages) transferred to the bank accounts of the specified 'employees'[26]; and the conclusion by the employer of fictitious employment

[13] Determination of the Second Court of Common Pleas of November 16, 2021, case No. 88-25245/2021; Determination of the Seventh Court of Common Pleas of December 16, 2021, case No. 88-19838/2021.

[14] Determination of the First Court of Common Pleas of September 27, 2021, case No. 88-21164/2021; Determination of the Seventh Court of Common Pleas of March 30, 2021, case No. 88-4672/2021.

[15] Appellate Determination of the Tambov Regional Court of September 21, 2015, case No. 33-2682/2015.

[16] Determination of the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation of March 15, 2021, case No. 5-KG20-158-K2; Definition of the Supreme Court of the Russian Federation of October 4, 2013, case No. 69-KG13-4; Definition of the Supreme Court of the Russian Federation of October 4, 2013, case No. 69-KG13-4; Determination of the Ninth General Court of Cassation of November 25, 2021, case No. 88-8227/2021.

[17] Determination of the Seventh Court of Cassation of General Jurisdiction of January 19, 2021, case No. 88-55/2021; Ruling of the Arbitration Court of the Moscow District of July 12, 2016, case No. F05-9271/2016; Determination of the Sixth Court of Cassation of General Jurisdiction of May 21, 2020, case No. 88-11659/2020.

[18] Determination by the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation of May 17, 2021, Case No. 11-KG21-8-K6.

[19] Determination of the First Court of Common Pleas of October 4, 2021, case No. 88-19708/2021.

[20] Determination of the Seventh Court of Common Pleas of January 19, 2021, case No. 88-55/2021.

[21] Determination of the Eighth Court of Common Pleas of December 10, 2020, case No. 88-18029/2020.

[22] Determination of the Second Court of Common Pleas of December 1, 2020, case No. 88-23934/2020.

[23] Determination of the Third Court of Common Pleas of September 22, 2021, case No. 88-15366/2021.

[24] Determination of the Second Court of Common Pleas of March 11, 2021, case No. 88-713/2021.

[25] Determination of the Supreme Court of the Russian Federation of October 4, 2013, case No. 69-KG13-4; Determination of the Second Court of Common Pleas of July 1, 2021, case No. 88-14074/2021.

[26] Ruling of the Commercial Court of the Moscow District of July 12, 2016, case No. F05-9271/2016.

contracts with pregnant women in order to receive benefits for compulsory social insurance in connection with maternity at the expense of the Social Insurance Fund of the Russian Federation[27]; and the inclusion in the employment contracts of executive employees (additional agreements thereto) of the conditions for the payment of compensation to them in connection with the termination of the employment contract or the conclusion of separate agreements with executive employees of a similar content after the initiation of bankruptcy proceedings in order to withdraw funds from the settlement accounts of the employer and, as a consequence of the decrease in the bankruptcy estate[28].

The pretense of an employment relationship is seen in the substitution by the actual employer of the existing labor relations with a civil law contract (contract; vehicle rental and even a loan[29]). And if the consequences of a feigned civil law contract are obvious (the contract is voidable), then the imaginary employment contract does not cause such unambiguous legal results (the contract can be recognized as null and void).

Conclusion

Fixing in the LC RF norms on invalidity of a labor contract (labor legal relations) with defects in its form, content and subject composition is irrelevant, the legislator has developed quite adequate ways and means aimed at overcoming them. Vulnerability of subject composition of an employment contract both on the side of an employee and on the side of an employer, defects in the content of the employment contract and its (contract) form, as a rule, do not entail the recognition of this contract and the arisen employment legal relations as null and void.

On the contrary, the defect of will of the parties of labor relations in the process of its emergence, change and termination should be subject to legal regulation at the level of a codified act. It seems necessary to establish in the LC RF the rules on the relationship between will and expression of will (a person's will is manifested in his expression of will); on the primacy (priority) of expression of will over the will. Establishing in the law the factors that have influenced the process of evolution of will and deformed it, is necessary only in the case of defective development of one or another model of exercising subjective rights and/or performance of duties. Such factors include: pretence, imaginary labor legal relations, misleading, fraud of one of the parties of labor legal relations, bondage of labor legal relations, threat from the employer.

The article makes proposals for the adjustment of the norms of the current labor law, aimed at eliminating the deficiencies identified by the courts in the defectiveness of certain terms of the employment contract.

References

Abljatipova, N. A. & Rjuhtina, D. I. (2019) Vyyavlenie kriteriev nesoblyudeniya formy sdelki v sisteme nedeistvitel'nosti grazhdansko-pravovykh sdelok [Identification of Criteria for Non-compliance of the Transaction Form in the System of Civil-legal Transactions Invalidity]. *Scientific Notes of V. I. Vernadsky Crimean Federal University. Juridical science*. 6 (72), 110–118. https://doi.org/10.37279/2413-1733-2020-6-2-110-118. (in Russian)

Brilliantova, N. A. & Arhipov, V. V. (2007) Neobhodimye usloviya trudovogo dogovora: problemy ikh otrazheniya v trudovom dogovore [Necessary Conditions of the Employment Contract: Problems of their Reflection in the Employment Contract] *Sovremennoe pravo* [Modern Law]. 4, 67–71. (in Russian)

Golovina, S. Yu. (2017*)* Osobennosti trudovogo dogovora po zakonodatel'stvu gosudarstv-chlenov EAES [Peculiarities of the Employment Contract under the Legislation of the EEU Member States]. *Rossiiskoe pravo: obrazovanie, praktika, nauka*. 3, 9–18. (in Russian)

Lushnikov, A. M. & Lushnikova, M. V. (2009) *Kurs trudovogo prava: Uchebnik: V 2 t. T. 2. Kollektivnoe trudovoe pravo. Individual'noe trudovoe pravo. Processual'noe trudovoe pravo* [Course of Labor Law: Textbook: In 2 vols. T. 2. Collective Labor Law. Individual Labor Law. Procedure Labor Law]. Moscow, Statut. (in Russian)

[27] Determination of the Seventh Court of Common Pleas of September 23, 2021, case No. 88-14135/2021; Ruling of the Arbitration Court of the Ural District of November 20, 2019, case No. F09-7844/2019.

[28] Ruling of the Seventeenth Arbitration Court of Appeal of June 29, 2015, case No. 17AP-10885/2014-GK.

[29] Appellate Determination of the Sverdlovsk Regional Court of July 24, 2020, case No. 33-8135/2020.

Predko, N. V. & Hohlov, E. B. (2000) Soderzhanie trudovogo dogovora [The content of the employment contract]. *Proceedings of Higher Educational Institutions. Pravovedenie*. 5 (232), 59–77. (in Russian)

Ramankulov, K. S. (2017) Voprosy razvitiya ponyatiinogo apparata trudovogo prava gosudarstv-chlenov EAES [Issues of development of the conceptual apparatus of the labor law of the EEU member states]. *Russian Juridical Journal*. 3, 153–163. (in Russian)

Syrovatskaya, L. A. & Idrisova, S. B. (1990) O nedeistvitel'nosti trudovogo dogovora i ego uslovii [On the invalidity of the employment contract and its terms]. *Proceedings of Higher Educational Institutions. Pravovedenie*. 4, 52–56. (in Russian)

Tarasevich, N. I. (2009) Problemy obespecheniya soglasovannosti norm o nedeistvitel'nosti trudovogo dogovora s normami inykh institutov trudovogo prava [Problems of Ensuring Consistency of Norms on the Invalidity of an Employment Contract with the Norms of Other Labor Law Institutions]. *Nauchnye trudy Belorusskogo gosudarstvennogo ehkonomicheskogo universiteta* [Scientific Works of the Belarusian State University of Economy]. Minsk, BGEHU, 284–294. (in Russian)

Tarasevich, N. I. (2015) Problemy sochetaniya gosudarstvennogo i dogovornogo regulirovaniya v normakh instituta 'Trudovoi dogovor' [Problems of combining state and contractual regulation in the norms of the institute 'Labor Contract']. *Vesnik of Yanka Kupala State University of Grodno. Series 4. Jurisprudence*. 5 (201), 51–55. (in Russian)

Tarusina, N. N. (2021) Subsidiarnoe primenenie pravovykh norm: tsivilisticheskie ehtyudy [Subsidiary Application of legal norms: civil studies]. *Bulletin of Tver State University. Series: Law*. 2 (66), https://doi.org/44–52.10.26456/vtpravo/2021.2.044. (in Russian)

Urakova, E. V. (2011) Nedeistvitel'nyi trudovoi dogovor: oshibochnye analogii [Invalid labor contract: mistaken analoges]. *Labor Law in Russia and Abroad*. 3, 28–32. (in Russian)

Zavgorodniy, A. V. (2013) Otdel'nye voprosy zaklyucheniya trudovogo dogovora: teoriya i praktika [Selected Issues in Concluding an Employment Contract Theory and Practice]. *Vestnik of Saint Petersburg University*. 14 (3), 49–64. (in Russian)

Information about the author

Elena M. Ofman – Candidate of Juridical Sciences, Associate Professor of the Department 'Theory of State and Law, Labor Law', Institute of Law, South Ural State University (National Research University) (Chelyabinsk, Russia; e-mail: elena-ofman@yandex.ru).

Date of Paper Receipt: March 3, 2022
Date of Paper Approval: April 9, 2022
Date of Paper Acceptance for Publishing: June 24, 2022

Vol 5. Is. 2

Information for citation:
Ramankulov, K. S. & Ramankulova, A. S. (2022) Trends and Problems of Child Labor Eradication in EAEU Member States (Comparative Legal Issues). *European and Asian Law Review*. 5 (2), 41–47. DOI: 10.34076/27821668_2022_5_41.

UDC 349.2 (476)
BISAC LAW 054000
DOI: 10.34076/27821668_2022_5_2_41

Research Article

TRENDS AND PROBLEMS OF CHILD LABOR ERADICATION IN EAEU MEMBER STATES (COMPARATIVE LEGAL ISSUES)

KUBANYCHBEK S. RAMANKULOV
Kyrgyz National University named after J. Balasagyn
ORCID ID: 0000-0002-9117-9012
ASEL S. RAMANKULOVA
Kyrgyz National University named after J. Balasagyn
ORCID ID: 0000-0001-7646-3659

It should be noted that as a universal approach to international legal regulation of labor relations, the principle of effective child labor prohibition is one of four fundamentals in the field of labor to be applied by ILO member states on a mandatory basis regardless of ratification of any particular Conventions, but just subject to their adherence to the ILO Constitution. Although child labor is prohibited by regulatory acts and this is reflected in national policies and special programs of Eurasian Economic Union (EAEU) member states, child labor remains a problem that puts the basic rights of a significant number of children in jeopardy. The primary methods are system analysis and a comparative legal method of studying child labor issues in the Eurasian Economic Union member states in respect to the analysis of its current state and ensuring the effective implementation of a child labor prohibition in the Eurasian Economic Union. The issues of new institutional arrangements for protecting children's rights in EAEU member states are analyzed in the paper. There is a particular focus on the lack of a special children's rights protection authority (aside from Russia and Kazakhstan) and the trend of significantly weakened activities by labor inspections in EAEU member states in respect to implementing child labor prohibition as well. The need for defining the concepts of 'light work' and 'labor education' and their formalization in labor legislation provisions is stated in the paper along with the need to adopt legal norms disclosing the nature of relations arising from the work performed by children and the types of this work in the informal economic sector. It appears necessary to work out a concept for regulating relations in the field of child labor in the framework of strategies for the social and economic development of Eurasian Economic Union member states that shall provide for the elimination of child labor based on child labor legislation monitoring and the practice of its enforcement in these states.

Key words: *prohibition of child labor, education, protecting children's rights, the worst forms of child labor*

Introduction

It is the progress achieved by the Eurasian Economic Union member states in the late 1990s that turned out to be the most notable for solving the problem. Essentially, the laws on children were adopted, legal institutions and mechanisms were established to protect children who found themselves in difficult circumstances, and designed to ensure the application of international legal standards for child labor. In the same period, the issue of child labor was first reflected in the national policy and special programs of the

Eurasian Economic Union member states. Also, it was noticeable on a doctrinal level that applied research began to prevail among the studies dedicated to child labor. However, over the last decade, a significant weakening has been observed across all the aforementioned points, while child labor remains a problem that puts the basic rights of a significant number of children in jeopardy (see more about this below).

Materials and Methods

A system method has been chosen in this paper as the primary to study trends of development in the main legal institutions for child labor prohibition with regard to the norms of the Eurasian Economic Union and international labor standards. Also, in the process of research, a general scientific dialectical method of social phenomena recognition and special research methods were used (a legalistic method, a method of legal modelling).

The lack of consolidated statistics on the use of child labor in EAEU member states, as well as the lack of credible statistics for some countries of this Union should be noted (Russia, Armenia). Thus, noting the total figure of 79,690 working children aged 5–14 in Kazakhstan, the UNESCO Institute for Statistics has also noted the lack of up-to-date comprehensive data on the issue of child labor in this country. Data for 2018 were published by the aforementioned Institute in 2019[1]. At the same time, according to the cluster survey conducted in 2018, 26.7% of children are involved in child labor in Kyrgyzstan[2]. Much smaller values for 2019 are provided by the National Statistical Committee of the Republic of Belarus – no more than 4 % of children as a whole are involved in various types of child labor, although the percentage is higher in the countryside. Teenagers aged 12–17 (per international criteria) are not involved in child labor at all[3].

Results

It is necessary to work out an appropriate conceptual framework, to use basic terms and definitions in a coordinated manner for academic and practical purposes as well as in the processes of international interaction in the framework of the legislation of Eurasian Economic Union member states for effective interaction while building a legal policy pertaining to children's protection and child labor in these countries. Also, it should be noted that significant changes are taking place in the field of regulating child labor relations on the level of Eurasian Economic Union member states that is a typical sign of a complex institution being established within the labor law systems of these countries. For example, the laws on children (and the respective Code in Kyrgyzstan) and program documents in respect to child labor relations adopted lately address a wider scope – organization of protecting children's rights – and secure a common model for the entire system of protecting children's rights on the national level in Eurasian Economic Union member states. That said, it is worth noting that there are no common conceptual documents regarding child labor issues accepted by Eurasian Economic Union member states, so they are regulated on a domestic level almost completely in these countries.

Discussion

Various concepts are used in legislations of EAEU member states regarding the parties of these relations such as 'children', 'child', 'teenager', 'minors', 'persons under 18', 'youth', etc. According to Art. 1 of the Convention on the Rights of a Child adopted by Resolution 44/25 of the General Assembly on November 20, 1989, a child means every human being below the age of 18 years unless under the

[1] Bureau of International Labor (2018) Kazakhstan. Minimal Accomplishments. 2018 Findings on the Worst Forms of Child Labor. Available at: https://kz.usembassy.gov/wp-content/uploads/sites/46/%D0%97%D0%B0%D0%BA%D0%BB%D1%8E%D1%87%D0%B5%D0%BD%D0%B8%D0%B5-%D0%B2-%D0%BE%D1%82%D0%BD%D0%BE%D1%88%D0%B5%D0%BD%D0%B8%D0%B8-%D0%BD%D0%B0%D0%B8%D1%85%D1%83%D0%B4%D1%88%D0%B8%D1%85-%D1%84%D0%BE%D1%80%D0%BC-.pdf [Accessed: 3 April 2022].

[2] Resolution No. 421-r of the Government of the Kyrgyz Republic dated November 6, 2019. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/217736 [Accessed: 3 April 2022].

[3] *On Happiness, Children and Relations in the Family: the Belarusians Answered Belstat Questions*. Available at: https://mir.pravo.by/news/different/o-schaste-detyakh-otnosheniyakh-v-seme-belorusy-otvetili-na-voprosy-belstata/ [Accessed: 3 April 2022].

law applicable to this child, the majority is attained earlier. This definition is considered basic, conventionally used in labor legislations of CIS countries to establish the underage individuals who have not passed to the adult age group yet. Therefore, the legal definition of 'persons under 18' should be an umbrella term to define parties in the context of protecting children and child labor used to denote all individuals under the legal age in the codes of Eurasian Economic Union member states when it comes to labor regulation. If a certain age needs to be indicated, the concept 'persons under 18' may be specified through the term 'minors' (e.g., a minor under 16, a minor age 15, etc.), which allows regulating specificities of each party's legal status in this age group of children separately. Additionally, such an approach makes it possible to exclude from use such concepts as 'youth' and 'young workers', since they do not have a clear, certain and unambiguous meaning.

A vast range of issues arises when relations directly associated with child labor are considered. Thus, international labor standards establish the concepts of 'child labor' and 'child work'. This being said, it is implied that 'child labor' means a negative form of child work, while 'child work' is a legal way to apply child labor based on observance of labor rights and freedoms. However, these definitions arouse discord on the national level of EAEU member states. For example, Art. 15 of the Child Code of Kyrgyzstan is called 'The Use of Child Labor' which obviously does not correspond to the aforementioned perception, since in terms of international labor standards, child labor is considered a phenomenon to be excluded. However, the concepts of child labor and child work themselves do not have individual definitions formalized by international labor standards, which causes challenges, particularly for the articulation of other terms regarding children safeguarding in the field of labor relations regulation in the national legislation. Thus, for example, labor codes of Eurasian Economic Union member states provide for students aged 14 or older to be allowed to do light work that neither causes any harm to health nor interrupts the educational process (see Art. 18 of the Labor Code of Kyrgyzstan, Art. 21 of the Labor Code of Belarus, Art. 31 of the Labor Code of Kazakhstan, Art. 63 of the Labor Code of Russia, Art. 257 of the Labor Code of Armenia).

It seems obvious that the concept of light work excludes all the hazardous or dangerous conditions, and such work should be considered easier than normal work assigned to an adult worker. However, there are neither legal definitions of the term 'light work' nor a list of this work in the regulatory acts of the aforementioned states.

In practice, the use of child labor is mostly justified by implementing the process of labor education (Lyutov, Ramankulov & Gerasimova, 2019: 37; Shoshin, 2009: 295–300). That said, the concept of 'child (children) education' is used only with respect to the general socialization of children in current legislations on children's rights of Eurasian Economic Union member states (Sosnina, 2018: 53–55; Anisimov, Pavlov & Pavlova et. al, 2016: 1668–1686)[4]. Also, it should be noted that the provisions of ILO Convention No. 138 (the fundamental Minimum Age Convention, 1973) cannot be applied to the work performed by children and teenagers in general, vocational, or technical schools or any other educational institutions. According to the same Convention (Art. 7), national legislations of Convention member states may establish age limits for working children of aged 13–15 in case they perform light work that most likely will not cause any harm to the children's health and development. Additionally, the performance of light work should not prevent children from attending educational institutions, participating in vocational guidance programs approved by competent authorities and, if possible, obtaining benefits from the received training. However, the concept of 'labor education' has never been specified in legislations of Eurasian Economic Union member states, which increases the risks of using child labor in practice, including its worst forms, under the guise of labor education processes.

Also, it is important to solve the aforementioned problems in the context of introducing into foreign and Russian experience in the Eurasian Economic Union member states the Decent Work Concept (hereinafter the Concept) developed by the International Labor Organization[5]. This document establishes the provision according to which decent work is productive work in conditions of freedom, security, and human dignity that also pays a fair income and offers prospects for personal development. Therefore, the

[4] Maslova, D. (2018) *No Education. No Future. Migrants' Children Are Involved in Hazardous Child Labor Most Often.* Available at: https://kaktus.media/doc/378024_ni_ycheby_ni_bydyshego._chashe_v_opasnyy_detskiy_tryd_vovlecheny_deti_migrantov_intervu.html [Accessed: 3 April 2022].

[5] International Labor Office (1999) *Decent Work: a Report by the General Director of the International Labor Office.* 87th session of ILO, Geneva. Available at: http://www.ilo.org [Accessed: 3 April 2022].

suggestions should be noted from the UN Committee on Economic, Social and Cultural Rights regarding its focus on the concept of 'exploited' while disclosing the essence of decent work, particularly, the aspect related to children's protection and child labor. However, according to some experts, the term 'exploited' 'is not self-explanatory and it does not have a fully approved meaning' (Siegel, 2003: 6). The main focus of ILO Convention No. 182, for example, is on the prohibition of the worst forms of child labor and immediate measures for its eradication (1999), aside from sexual exploitation, and also on the issues of morality, drugs, and hazardous labor. Moreover, this fundamental Convention is expressively protective and imperative by nature, aimed at eradicating some of the most negative phenomena related to child labor (Smirnov, 2011: 155). The norms of another fundamental convention, Convention No. 138, are of another legal nature. They are mostly represented by more flexible means of regulation, although it is only the norms limiting labor of minors for a restricted list of work that are essentially considered mandatory for the states that have ratified the Convention.

It should be noted that currently there is a valid list of manufacturing operations, professions, and work under arduous and harmful labor conditions where the labor of persons under 18 is prohibited. However, these lists are mostly focused on industrial manufacturing which makes them poorly adapted for agriculture where child labor is used to a great extent. That said, according to the Convention, the concept of 'work' is applied in the scope covering all kinds of child employment in formal and informal economic sectors. Therefore, it will be a crucial factor for Eurasian Economic Union member states to adopt legal norms disclosing the nature of relations arising from the performance of work by children in the informal economic sector and the types of this work.

The modern legal measure system in the field of child labor is a tool that enables the development of comprehensive solutions for the issue of child labor elimination in the context of international labor standards and in terms of implementing the social welfare state principles in the Eurasian Economic Union member states. Bringing the issue of child labor elimination to the forefront is primarily the national objective of Eurasian Economic Union member states in accordance with the fundamental international legal principle of effective child labor prohibition and national constitutions of the aforementioned states.

Thus, in accordance with Art. 27 of the Constitution of Kazakhstan, 'preservation of rights and protection of children's legal interests is one of the priority areas of the national policy'. The Constitution of Kyrgyzstan prohibits the use of child labor (Art. 23). The Constitutions of Armenia (Art. 16, 37), Belarus (Art. 32), Russia (Art. 32) establish the norm on protection by the state of motherhood, childhood, and family. These constitutional norms provide for their appropriate reflection in the hierarchy of legal goals that provide a focus on solution to the problem of child labor elimination in a number of major social relations development areas in Eurasian Economic Union member states. The strategic areas of social and economic development reflected in the program documents of most Eurasian Economic Union member states include the issues of improving the level of labor and the quality of the labor environment when minors are involved[6]. It is important to note that the aforementioned countries are adopting national plans, taking actions to prevent and eradicate the worst forms of child labor that provide for the implementation of appropriate measures by various public control and administration authorities, law enforcement agencies, local authorities, and public organizations. Generally, the organizational and legal system focused on the issue of child labor elimination in Eurasian Economic Union member states complies with the ILO Convention[7] that adheres to the comprehensive approach to both the politics and the operational strategy, so that this issue could be addressed and solved in a multi-sectoral context by

[6] Provisions on Preventing Child Labor Exploitation Have Been Added to the Armenian State Employment Strategy for 2019–2023 due to the Efforts of 'Save the Children – Armenia' and the Program. Available at: https://www.euneighbours.eu/ru/search/24?keys=&page=318 [Accessed: 3 April 2022]; The Plan of Measures for Preventing Children's Involvement in the Worst Forms of Child Labor (WFCL) for 2019–2024 Is neither Refined nor Approved yet despite Establishment of a Task Force in 2018 within the Kyrgyzstan Government Program Implementation. *Prevention of Children's Involvement in the Worst Forms of Child Labor: a Plan of Measures for 2019–2024*. Available at: https://www.ilo.org/moscow/news/WCMS_671370/lang--ru/index.htm [Accessed: 3 April 2022]; Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan (2021) *Information about Implementation of Plan of Measures for Eradication of the Worst Forms of Child Labor for 2020–2022 (based on the results of 2020)*. Available at: https://www.gov.kz/memleket/entities/enbek/press/article/details/41079?lang=ru [Accessed 3 April 2022].

[7] International Labor Office (2018) *Ending Child Labour by 2025: A Review of Policies and Programs International Labor Office (ILO), 2nd ed.* Geneva. 29–69. Available at: https://www.ilo.org/ipec/Informationresources/WCMS_653987/lang--en/index.htm [Accessed: 3 April 2022].

the potentialities of various national law branches, as well as by coordinated and consistent efforts made by the most diverse organizations and interested parties.

Therefore, another area in solving the aforementioned problem in Eurasian Economic Union member states is strengthening the potential of national agencies — a crucial element in ensuring the stability of relations for child labor elimination. It is important to strengthen the potential of all authorities, agencies, organizations, and individuals dealing with child labor issues. However, in most Eurasian Economic Union member states (aside from Russia and Kazakhstan), there are no special authorities in charge of protecting children's rights that prevents focusing on the entire range of protecting children's rights issues, also including child labor issues. The position of the Children's Rights Ombudsman was introduced in Russia and Kazakhstan by the Presidents of those states in 2009 (Decree No. 986 of the President of the Russian Federation dated September 1, 2009) and in 2016 (Decree No. 192 of the President of the Republic of Kazakhstan dated February 10, 2016) respectively. The disagreement between goals and means (resources) leads to formalism in operations of agencies, illusive diversity of services that either reproduce the same function or remain restricted in terms of high-quality response to certain tasks. The immediate consequence of such a situation is low efficacy of services specializing in children's protection, the decline in trust in them on the part of citizens, emergence of barriers to interaction.

Legal experience in the field of employment in Eurasian Economic Union member states allows noticing the problems in the interrelations between the eradication of child labor and regulation of permissible employment of children in accordance with the law. Thus, the problem of children's legal employment becomes even more complicated, because currently there are two independent markets: an education market and a labor market (Zabelina, Asaliev & Druzhinina, 2021: 985–1002; Petrochenko, 2018: 131–132). That said, the segment of children's employment in the labor market is 'absorbed' by the segment of older individuals, including students and graduates of secondary and higher educational institutions. Additionally, the growing number of NEET category children, i.e., those who do not receive any professional training or education and are not involved in legal employment, is not taken into account in Eurasian Economic Union member states (Zabelina & Mirzabalaeva, 2019: 307–313). The situation is getting more complicated since the optimal correlation of educational and labor legislations with respect to the permissible forms of child labor use has not been established in the aforementioned states (some of them have been mentioned above). As a result, significant differences are offset when it comes to the employment of children of various age groups who go to school and their peers who have never been educated, first of all, from the perspective of the risks of being involved in the worst forms of child labor. It should be noted that the solution to this problem is also complicated by the reduced efficacy of monitoring in the field of child labor that has been performed selectively or has not been performed at all lately in Eurasian Economic Union member states. That is why it is expedient to continue the practice of developing concepts for the field of child labor in the framework of strategies for social and economic development of Eurasian Economic Union member states with a focus on eliminating child labor based on activating monitoring processes in the field of child labor legislation and the practice of its enforcement in these states.

Conclusion

In the context of establishing institutional arrangements for protecting children's rights in Eurasian Economic Union member states, legal regulation of protection of children who found themselves in difficult circumstances has gained significant momentum (e.g., the term 'a child in difficult circumstances' is used in Art. 4 of the Law of the Republic of Belarus 'On the Rights of a Child'). Legal institutions designed to protect children in difficult circumstances have been established following the adoption of laws on children's rights in Eurasian Economic Union member states that integrated the issues of child labor into the already established comprehensive system of child protection. The new Child Code has gained the most notable momentum in Kyrgyzstan after trade unions of the republic initiated the inclusion of some issues of child labor based on the experience of ILO regional program approval. In this case, regulation of special features typical for identification and social support of children involved in the worst forms

of social labor is stipulated by legal norms of Section 7 of the Provision for the Procedure of Identifying Children and Families in Difficult Circumstances[1]. At the same time, development of these children protection institutions in Eurasian Economic Union member states appears not only as adoption of new norms, but as development of the necessary law enforcement level to ensure an effective solution to the issue of child labor eradication. In this regard, it is impossible not to note the specificities of functioning of state labor inspections in Eurasian Economic Union member states the competencies of which include exercise of state monitoring and supervision over compliance of labor legislation, including the issues of child labor. It is these states where weakening of the labor inspection systems is the most noticeable (Lyutov, 2019: 92–106; Goryan, 2017: 9–21), though such a policy is pursued under the guise of employer rights protection against regulatory pressure, the fight against corruption, budget economy, etc. It is important to note that the policy aimed at weakening the labor inspection system, first, undermines the opportunities for effective implementation of a child labor prohibition in Eurasian Economic Union member states, thus enabling preservation of threats and risks for life and health when it comes to child labor, and, second, promotes further uncertainty with respect to solving the problem of child labor eradication in all forms and manifestations and, therefore, strips the states in question of the prospects for long-term stable social and economic development.

References

Anisimov, S. A., Pavlov, B. S., Pavlova, V. I. & Saraikin, D. A. (2016) *Child Labor: Anachronism of Poverty or a Key to Prosperity*. In: *19th International Conference 'Culture, the Individual, Society in the Modern World: Methodology, the Experience of Empirical Research' Conference Digest*. Yekaterinburg, UrFU, 1668–1686. Available at: http://elar.urfu.ru/handle/10995/81561 [Accessed: 3 April 2022]. (in Russian)

Lyutov, N. L., Ramankulov, K. S. & Gerasimova, E. S. (2019) *Estimating the Scale of Labor Legislation Reform in Kyrgyzstan: An Analytical Report*. Bureau of Countries of Eastern Europe and Central Asia and ILO Technical Support Group for Decent Work Issues (Moscow), ILO Governance and Tripartism Department, Geneva.

Goryan, E. V. (2017) Labor Inspection in Legal Arrangements for Child Labor Control: International Standards. *Administrative and Municipal Law*. (5), 9–21. (in Russian)

Lyutov, N. L. (2019) Labor Inspections in Post-Soviet States: Degradation for the Sake of the Myth of Economic Efficacy? *Relevant issues of Russian Law*. (12), 92–106. (in Russian)

Petrochenko, A. A. (2018) Problems of Youth Employment in Eurasian Economic Union Member States. *Bulletin of Volgograd State University (VolSU). Series 3*. (1), 127–135. (in Russian)

Shoshin, M. A. (2009) The Essence of Labor Education. *Scholarly notes OSU. Series: Humanities and Social Sciences*. (1), 295–300. (in Russian)

Siegel, L. (2003) On the Way to Development of a General Order on the Right for Labor: Key Components. UN Economic and Social Council. The Committee for Economic, Social and Cultural Rights: 31st session. Geneva, November 10–28, 2003. 1–29.

Smirnov, D. A. (2011) Some Content Aspects of the International Legal Principle of Active Child Labor Prohibition. *International, Russian and Foreign Legislation on Labor and Social Support: the Modern State (Comparative Analysis): Materials of the 7th International Scientific and Practice Conference*. Moscow. 155. (in Russian)

Sosnina, N. G. (2018) Problems of Early Children Labor Activities: Foreign and Russian Experience. *Bulletin of South Ural State University. Law Series*. 53–55. (in Russian)

Zabelina, O. V. & Mirzabalaeva, F. I. (2019) Youth Employment and NEET Youth in the Context of Economic Digitalization. In: *Global Challenges and their Regional Development through the Lens of Sociological Measures: Materials of the 4th International Scientific and Practical Internet Conference*. Vologda. 307–313. (in Russian)

[1] Executive Order No. 391 of the Government of Kyrgyzstan dated June 22, 2015. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/97688 [Accessed: 03 April 2022].

Zabelina, O. V., Asaliev, A. M. & Druzhinina, E. S. (2021) Problems of the Youth Segment of the Russian Labor Market and New Focuses of the Youth Employment Support Policy. *Ekonomika truda* [Labor Economics]. 8 (9), 985–1002. (in Russian)

Information about the authors

Kubanychbek S. Ramankulov – PhD in Law, Professor, Head of the Civil, Labor and Environmental Law Department, Faculty of Law, Kyrgyz National University named after J. Balasagyn (Kyrgyz Republic, e-mail: ramaks65knu@mail.ru).

Asel S. Ramankulova – post-graduate student, Kyrgyz National University named after J. Balasagyn (Kyrgyz Republic, e-mail: aramankulova@gmail.com).

Date of Paper Receipt: March 7, 2022
Date of Paper Approval: April 10, 2022
Date of Paper Acceptance for Publishing: June 24, 2022

Information for citation:
Serova, A. V. (2022) Influence of State Policy on the Development of Labor Legislation in the Context of Global Digitalization. *European and Asian Law Review*. 5 (2), 48–60. DOI: 10.34 076/27821668_2022_5_2_48.

UDC 349.2
BISAC LAW054000 / Labor & Employment
DOI: 10.34076/27821668_2022_5_2_48

Research Article

INFLUENCE OF STATE POLICY ON THE DEVELOPMENT OF LABOR LEGISLATION IN THE CONTEXT OF GLOBAL DIGITALIZATION

ALENA V. SEROVA
Ural State Law University named after V. F. Yakovlev
ORCID ID: 0000-0002-7444-9690

When it comes to the development of society, digitalization appears to be one of its megatrends. Both on international and national levels, program acts are adopted to establish strategic areas of state policy, their principles, goals, objectives, and indicators. The world of work is also subject to digital transformation. That is why it becomes relevant to study the influence of state policy in the field of building an information society and digital economy development on the modernization of labor legislation. Three EAEU member states have been included in the subject of research: Russia, Belarus, and Kazakhstan. The methodology of work is based on a general scientific dialectical method of objective reality recognition. When conducting the research, general scientific logic techniques (analysis, synthesis, induction, deduction, the method of rising from the abstract to the concrete, etc.) and specific scientific methods of cognition (a legalistic approach, a legal historical method, and a comparative-legal analysis) were used. A special feature of the work's methodology is the use of a political and legal approach. As a result of the conducted research, the following results have been obtained: on the number of amendments introduced into legislations of Russia, Belarus, and Kazakhstan over the years; on the total number of amended articles and new articles and chapters labor codes were supplemented with; on the political decisions made regarding the digitalization of labor, and on the content of legislative innovations. It has been established that each of the studied state pursues the state policy aimed at developing a digital economy and that during the researched period, some changes associated with regulating the use of digital technologies by addressees of labor law had occurred. However, the extents of state policy influence on improving labor legislation are different in these countries, just as their paths to modernization are unique. However, two areas of labor legislation digital transformation have been identified in all three countries. One of them is associated with remote work regulation, and the other – with regulating the electronic document flow in work relationships. In respect thereof, other promising areas for developing state policy and labor law in the context of global digitalization have been proposed: regulating the labor of platform workers, improving the system of rights guarantees for employees and employers in the field of employee training, protecting employees' rights for personal privacy during their working activity, and regulating the use of the artificial intelligence system.

Key words: *digital economy, information society, state policy, labor legislation, remote work, electronic HR document flow*

Introduction

Building an information society and digital economy development is one of the global objectives of the entire global community nowadays. Special attention is given to this matter on the international level.

This is attested to by a whole cohort of international acts adopted both on the global level of international cooperation and on the regional one. There may be such examples as the Okinawa Charter of Global Information Society (2000)[2], Declaration of Principles: Building the Information Society: a Global Challenge in the New Millennium (2003)[3]; the Tunis Agenda for the Information Society (2005)[4], the CIS Concept of Cooperation in Digital Development of Society (2019)[5] and others. The idea that unites the aforementioned acts is that modern digital technologies should be integrated into practice to realize their benefits. As it is rightly noted in the Okinawa Charter of Global Information Society (2000), one of the key areas is the implementation of 'economic and structural reforms to foster an environment of openness, efficiency, competition, and innovation, supported by policies focusing on adapting labor markets, human resource development, and ensuring social cohesion'.

Many states adopt strategic planning documents that lay the foundation for setting the state policy in line with building an information society and digital economy development on the national level. Since interaction between labor law addressees is inevitably subject to digital transformation, the issue of how the state policy influences the development of labor legislation provokes academic interest from a legal perspective.

The review of scientific literature on this matter allows the following conclusions. With regard to the science of labor law, some matters of labor digitalization can be distinguished that are the most popular among labor scientists.

The first such matter is the study of remote work specificities (Golovina & Shcherbakova, 2021; Lyutov, 2018; Vasilyeva & Shuraleva, 2017), as the use of digital technologies by employees and employers for interaction with each other inevitably leads to a change in the characteristics of their work relationships. It becomes possible to perform work outside the standard workplace that is under the employer's supervision. The second popular area of academic researches, which is also connected with a change in work relationships attributes is the discussion of issues related to the legal status of platform workers (Beerepoot & Lambregts, 2014; Chesalina, 2017; Codagnone, Karatzogianni & Matthews, 2018; Lyutov & Voytkovskaya, 2020; Shuraleva, 2019; Zaytseva & Mitryasova, 2018). The third area actively developed in the science of labor law is related to the analysis of problems arising due to the use of electronic HR document flow (Zaytseva, 2018). The fourth area combines the research of other issues related to the use of digital technologies in work relationships and special attention within this area is given to artificial intelligence systems (Filipova, 2018). Also, there are works of academic literature dedicated to general issues of labor digitalization, including the analysis of strategic planning documents (Tomashevskii, 2020).

Despite such active research of labor digitalization issues, the actual process of state policy's influence on the development of labor legislation and trends emerging in the process have not been adequately considered by scientists.

In respect thereof, the goal of this research is a comprehensive analysis of the influence the state policy in the field of building an information society and digital economy development has on the modernization of labor legislation as exemplified by three Eurasian Economic Union (hereinafter EAEU) member states – Russia, Belarus, and Kazakhstan.

Since the introduction of digital technologies also occurs in the field of labor, as has been mentioned above, it appears necessary to identify, first, how actively the state policy of Russia, Belarus, and Kazakhstan develops in terms of building an information society; second, in which part it has become a reason for amendments; third, to what extent this state policy takes into account the needs of labor law addressees in the field of digital transformation, in other words, whether it is comprehensive and consistent. Eventually, a comparative-legal analysis of the state policy influence on developing labor legislation will allow identifying trends in development, establishing the factors that have an impact on them, and articulating recommendations regarding further improvement in state policy areas and labor legislation.

[2] Okinawa Charter of Global Information Society dated July 22, 2000. *Diplomaticheskiy Vestnik,* August 2000, No. 8.

[3] Declaration of Principles: Building the Information Society: a Global Challenge in the New Millennium (Geneva, December 10–12, 2003). Available at: https://www.itu.int/net/wsis/outcome/booklet/declaration_Aru.html [Accessed: 3 October 2022].

[4] Tunis Agenda for the Information Society No. WSIS-05/TUNIS/DOC/6(Rev.1)-R dated November 15, 2005 (Tunisia). Available at: https://www.un.org/ru/events/pastevents/pdf/agenda_wsis.pdf [Accessed: 3 October 2022].

[5] Decision of the Council of CIS Heads of Government dated October 25, 2019 'On the CIS Concept of Cooperation in Digital Development of Society and the Plan of Priority Measures for Its Implementation'. *Garant Legislative and Reference System* [Accessed: 3 October 2022].

Materials and Methods

The academic research is based on the political and legal approach that allows for achieving the goal set for the research and ensuring its innovation. This approach is actively developed in the theory of government and law (Kodan, 2012; Malko, 2012), but it needs to be developed on the industrial level in the framework of the science of labor law.

This approach is about the fact that the research on the influence the state policies of Russia, Belarus, and Kazakhstan in the field of digital economy development have on labor law modernization encourages, on the one hand, the trends of labor legislation development to be identified and understood in a historical context and, on the other hand, areas of improvement in the state policy itself to be adjusted, the policy to be given the substance that reflects the essential needs of labor law addressees.

The framework of studies is generally conventional for legal research. Its basis is formed by a general scientific dialectical method of objective reality recognition.

Collection, processing, analysis and interpretation of data on how digitalization influences the world of work and what actual needs of labor law addressees are related to its development, the conclusions of the research will be made using various general scientific logic techniques (analysis and synthesis, induction and deduction, the method of rising from the abstract to the concrete, etc.). Thus, the most comprehensive and relevant data will be obtained and reliable and objective conclusions will be drawn.

Also, various specific scientific methods of cognition will be used in the research: a legalistic approach, a legal historical method, and a comparative-legal analysis.

For example, a legalistic approach will allow examining the current status of the state policy in the field of digital economy development, legal and labor regulation of social relationships arising in regard to the use of digital technologies by labor law addressees. In this case, through various techniques and kinds of legal norm interpretation (grammatical, logical, systematic, historical and political, special juridical, teleological, functional, literal, extensive, restrictive, etc.) the content of certain legal norms in this area will be studied in detail, and defects in national strategic planning will be identified.

To establish the logic of developing state policy and labor legislation in respect to the statutory regulation of issues included in the subject of research, to identify trends and the possible areas of their reformation a legal historical method will be used.

With a method of comparative-legal analysis, the foreign experience of legal regulation regarding the use of digital technologies by labor law addressees will be studied and compared with the Russian political and legal practice.

Therefore, the use of the aforementioned methods and approaches will allow studying the issues established in this research in a comprehensive and inclusive manner, making theoretical generalizations, articulating practical recommendations and conclusions. Thereby, the set objectives will be carried out and the goal will be achieved.

Results

In the framework of this research, the frequency of labor legislation modernization in three EAEU member states (Russia, Belarus, and Kazakhstan), the application of digital technologies and electronic means by the addressees of labor law in the view of its adaptation have been analyzed. According to the received data, the initial innovations appeared in Russia in 2010, in Belarus – in 2019, and in Kazakhstan – in 2007. The period of time between specific changes was a few years at first: 3–6 years in Russia, 3–5 years – in Kazakhstan. Lately, the modernization of labor legislation in Russia and Kazakhstan occurs every year. However, when interpreting the received data it should be taken into account that two labor codes have been included in the research sample in the framework of Kazakhstan labor legislation study – one of 2007[6] (hereinafter – LC of RK 2007) and one of 2015[7] (hereinafter – LC of RK 2015). It is impossible to provide any data for Belarus in this respect since the amendments regarding the electronic

[6] Labor Code of the Republic of Kazakhstan No. 251-III dated May 15, 2007 (repealed). *Kazakhstanskaya pravda*. May 22, 2007. No. 76 (25321).

[7] Labor Code of the Republic of Kazakhstan No. 414-V dated November 23, 2015. *Kazakhstanskaya pravda*. November 25, 2015. No. 226 (28102).

form of interaction between the parties of work relationships have been introduced to the Labor Code of the Republic of Belarus[8] (hereinafter – LC of RB) only once (Table 1).

Table 1

Escalation of Labor Law Digital Transformation in EAEU Member States (number of amendments by year)

Country	Year							
	2007	2010	2012	2013	2015	2019	2020	2021
Belarus	0	0	0	0	0	1	0	0
Kazakhstan	1	0	1	0	2	0	2	4
Russia	0	1	0	1	0	3	1	2

During the period from 2010 to 2021, 25 amendments were introduced into the Labor Code of the Russian Federation[9] (hereinafter – LC of RF), 16 new articles were added, including those united within one new chapter – 49.1 – dedicated to remote work regulation. By the way, after the introduction of the chapter in 2013, it was subject to large-scale amendments in 2020. Consequently, its content was expanded from 5 to 9 articles, and the previous articles were amended. As for LC of RB, the only new chapter 25.1 'Specificities of Labor Regulation of Remote Workers' including 5 articles was introduced in 2019. As for Kazakhstan, considering the two labor codes, a total of 13 articles were subject to amendments. A separate chapter of three articles dedicated to the regulation of remote workers' labor that had been valid in LC of RK 2007 (Ch. 23.1) was transformed into 1 article (Art. 138) in LC of RK 2015, but at the same time, some other articles were amended to include provisions regarding remote work (Table 2).

Table 2

The Number of Amendments Introduced into the Labor Legislation of EAEU Member States in respect to Electronic Interaction of Labor Law Addressees

Country	Criterion		
	Number of amended articles	Number of new articles (clauses)	Number of new chapters
Kazakhstan (2007–2015)	0	4	1
Kazakhstan (since 2016)	13	2	0
Belarus	0	5	1
Russia	25	16	1

In terms of the content, all amendments to labor legislation in the studied EAEU member states are about the regulation of the electronic form of interaction between labor law addressees. In Russia, the electronic HR document flow was introduced gradually, starting from the ratification of the electronic form for certain kinds of documents (e.g., the requirements for the government body for collective employment dispute settlement, pension insurance certificates, employment history, and others), as well as from the ratification of use of documents related to one category of workers – remote workers – in electronic form. Only in 2021 did provisions on electronic interaction become general norms. This information is provided in more detail in Table 3. A similar situation can be seen in the process of reformation of the Kazakhstan labor legislation (Table 5). However, unlike Russia, Kazakhstan has never created separate articles that

[8] Labor Code of the Republic of Belarus No. 296-З dated July 26, 1999. *Vedomosti Natsionalnogo sobraniya Respubliki Belarus*. 1999. No. 26–27. Art. 432.

[9] Labor Code of the Russian Federation No. 197-FZ dated December 30, 2001. *Rossiyskaya Gazeta*. December 31, 2001. No. 256.

were general provisions and regulated the issues of electronic document flow comprehensively in work relationships. Instead, the regulation of the electronic document flow is performed selectively in respect to individual types of documents. In Belarus, in contrast to Russia and Kazakhstan, the digital transformation of labor legislation has not reached the same scale and covered the regulation of electronic interaction only in the framework of remote work.

Another issue included in the subject of research is to identify whether there is a dependency between state policy and the reformation of labor legislation. This can be done only through the comparison in a historical context of political decisions made in the studied area and relevant labor and legal innovations. As a result of the conducted analysis, the following data have been obtained.

In Russia, active and targeted development of state policy in the field of labor digital transformation was marked by the adoption of Decree No. 203 of the President of the Russian Federation 'On Strategy for Information Society Development in the Russian Federation for 2017–2030' dated May 9, 2017. In this strategic planning document, it is set that 'the goal of a new technological basis for developing the economy and social area is to improve the quality of life for citizens' (cl. 39). The encouragement of remote work development and the introduction of the electronic document flow are stated as ones of the key objectives for the application of digital technologies (cl. 40 and cl. 41). Besides, in cl. 42 'protection of interests of the Russian citizens, provision for their employment (development of a digital economy may not infringe upon the citizens' interests' is stated as one of the national interests in the field of the digital economy.

In furtherance of that Decree, Resolution No. 1632-r 'On Adoption of the 'Digital Economy of the Russian Federation' Program' of the RF Government dated July 28, 2017, was issued to be in force until February 12, 2019. It defined five basic areas for that program, including legal regulation with the purpose of 'generating a new regulatory environment to ensure a favorable legal order for the emergence and development of state-of-the-art technologies, as well as for the execution of economic activities related to their use (digital economy)'. In the roadmap for the implementation of the aforementioned area, the development of the project for 'the concept of high-priority measures for legal regulation improvement with the purpose of digital economy development, which among other things provides for work relationships formalization specificities in a digital economy, including a transition to paperless interaction between employees and employers (introduction of electronic format for entering into employment contracts, optimization of other 'paper' duties of the employer)' is stated as an anticipated result.

Then, instead of Resolution No. 1632-r of the RF Government dated July 28, 2017, the Presidium of the Presidential Council of the Russian Federation for Strategic Development and National Projects approved the Passport of the Digital Economy of the Russian Federation National Program (protocol No. 16 dated December 24, 2018) in accordance with which the structure and content of this program were subject to amendment. Thus, the passage of federal law to provide for the use of digital technologies in work relationships, including recording employment history in electronic form, was stated as one of the results of the Legal Regulation Federal Project within the changes in the national program.

In the very last version of the analyzed Passport of the National Program adopted by Protocol No. 7 of the Presidium of the Presidential Council of the Russian Federation for Strategic Development and National Projects dated June 4, 2019, the specified result of the Legal Regulation of the Digital Environment Federal Project was articulated as follows: 'Legal regulation of digital interaction between the business community and the state is ensured, including in terms of recording employment history in electronic form (an 'electronic employment record book'); entering into, amendment, termination, and storage of employment contracts, introduction of the HR document flow in an electronic format'.

The implementation of political and legal decisions in the field of digital economy development in respect to the generation of legal regulation for electronic interaction of labor law addressees in Russia is graphically shown in Table 3. As is seen from its content, the digital transformation of the Russian labor legislation started even before the adoption of the program for digital economy development. Further on, some labor and legal innovations were a direct consequence of that program, while others went beyond its scope, but one way or another, they were related to the Strategy of Information Society in the Russian Federation. However, some inconsistency in this process should be noted. This is about the fact that some provisions of strategic planning documents are delayed, so they actually lag behind the legislative business. Thus, on November 6, 2021, the Government of the Russian Federation adopted the Strategic Area in the field of social sphere digital transformation that belonged to the scope of the Ministry of Labor of

Russia[10] in the framework of which the Electronic HR Document Flow Project was specified. Its execution period was until 2023. However, similar provisions had already been introduced to the LC of RF on November 22, 2021 (Art. 22.1–22.3), and the bill itself was presented to the State Duma on April 29, 2021.

Table 3

Improvement in the Russian State Policy in the field of Digital Economy and Labor Legislation Development in respect to the Electronic Interaction between Labor Law Addressees (by years)

Year	Political decisions	The content of amendments to the labor legislation
2010		The electronic form of documents (claims, requests) addressed to the relevant government body for collective employment dispute settlement is allowed (Art. 399, 401 of LC of RF)
2013		Specificities of labor regulation for remote workers are introduced (Art. 49.1 of LC of RF, including Art. 312.1–312.5)
2017	The Strategy of Information Society Development in the Russian Federation for 2017–2030 is adopted	
	Generation of the concept of regulating work relationships formalization specificities in the digital economy, including one in terms of transition to paperless interaction between employees and employers (introducing electronic format for entering into employment contracts, optimization of other 'paper' duties of the employer) is set forth	
2018	Adoption of the federal law to provide for the use of digital technologies in work relationships, including recording employment history in electronic form, is set forth	The first experiment in the transition of documents and data on the employee regarding work relationships to electronic form (with duplication in hard copy) is conducted[11]
2019		The written form of the insurance certificate of compulsory pension insurance is cancelled (Art. 65, 303, 312.2 of LC of RF)
		It is set forth that a state labor inspector shall be entitled to send the employer a decision on compulsory enforcement in the form of an electronic document (Art. 360.1 of LC of RF)
	Legal regulation of digital interaction between the business community and the state is ensured, including one in terms of recording employment history in electronic form (an 'electronic employment record book'); entering into, amendment, termination and storage of employment contracts, introduction of the HR document flow in an electronic format	Introduction of an 'electronic employment record book' (Art. 62, 65, 66, 66.1, 80, 84.1, 165, 234, 283, 309, 341.2, 392, 394 of LC of RF)

[10] Resolution No. 3144-r of the RF Government of the Russian Federation dated November 6, 2021. Available at: www.pravo.gov.ru. November 9, 2021. No. 0001202111090005 [Accessed: 3 July 2022].

[11] Order No. 194 of the Ministry of Labor and Social Protection of the Russian Federation 'On Conducting the Experiment on Transition of Documents and Data on an Employee regarding Employment Relationships into Electronic Form' dated March 26, 2018. *Byulleten trudovogo i sotsialnogo zakonodatelstva Rossiyskoy Federatsii*. 2018. No. 6.

Table 3, continued

Yea	Political decisions	The content of amendments to the labor legislation
2020		The second experiment on the use of work-related electronic documents is conducted (without duplicates in hard copy)[12]
		Legal regulation of labor regulation specificities for remote workers is amended (Art. 49.1 of LC of RF)
2021		A new version of section X 'Labor Protection' that includes provisions on electronic document flow in the field of labor protection, electronic monitoring, etc. is approved (Art. 214, 214.2, 216.2 of LC of RF)
	The Strategic Area in the field of social sphere digital transformation is adopted that belongs to the scope of the Ministry of Labor of Russia in the framework of which the Electronic HR Document Flow Project is provided for (execution period – until 2023)	Legal regulation of electronic document flow in the field of work relationships is introduced as general codes (Art. 22.1, 22.2, 22.3, 68, 312.1 of LC of RF)
2022 (adoption is planned, the expected commencement date – 09.01.2022)		The procedure is defined for interaction between 'Work in Russia', the unified digital platform in the field of employment and work relationships, and the employer's information system that allows signing and keeping the electronic document, registering the fact of its reception by work relationships parties with the unified state and municipal services portal (the Resolution of the RF Government should be adopted)
2022–2023 (adoption is planned, the expected commencement date – 03.01.2023)		The uniform requirements are defined for the composition and formats of electronic documents during their creation (the Order of the Ministry of Labor of Russia should be adopted in coordination with the Ministry for Digital Development, Communications and Mass Media of the Russian Federation and the Federal Archival Agency of Russia)

The state policy of Belarus in the field of informatization development was put into practice officially earlier than in the RF. This happened in 2010, when the Strategy of Information Society Development until 2015 was adopted[13]. E-employment and social protection of the population providing for the generation of remote workplaces among other things (telework) were established as priority areas for information society development. Otherwise, that area addressed public relations in the field of population employment and social support.

Later on, in 2016, the Strategy of Informatization Development of the Republic of Belarus for 2016–2022 was formulated in Belarus[14]. Since that time, the area of development in question was seen as improvement in the social sphere based on information and communications technologies. It is determined

[12] Federal Law No. 122-FZ 'On Conducting an Experiment on the Use of Work-Related Electronic Documents' dated April 24, 2020. *Sobraniye zakonodatelstva Rossiyskoy Federatsii*. April 27, 2020. No. 17. Art. 2700.

[13] Strategy of Information Society Development for 2015 (approved by Resolution No. 1074 of the Council of Ministers of the Republic of Belarus dated August 9, 2010). Available at: https://belzakon.net/Законодательство/Постановление_Совета_Министров_РБ/2010/61583? [Accessed: 3 July 2022].

[14] Strategy of Informatization Development of the Republic of Belarus for 2016–2022 (adopted at the meeting of the Presidium of the Council of Ministers No. 26 dated November 3, 2015). Available at: http://nmo.basnet.by/informatization/Стратегия%20развития%20инф-ии%20на%202016-2022%20гг.PDF [Accessed: 3 July 2022].

in cl. 3.5 of this Strategy that a few areas are identified in the field of informatization of the social and labor sphere, including 'generation of a unified electronic social and labor passport for a citizen of the Republic of Belarus by integrating existing databases and those under formation and provision of telecommunication (mobile as well) access to it'.

In accordance with Strategy 2022, the State Digital Economy and Information Society Development Program for 2016–2020 was worked out the same year[15]. However, it did not provide for the areas of digital economy development in respect to the labor sphere.

Analysis of the information presented in Table 4 allows the following conclusion: state policy in Belarus is developed in two areas – provision of remote work regulation and generation of a unified electronic social and labor passport. While the first area was implemented in the labor legislation 9 years after its establishment, the second one still waits for its implementation.

Table 4

Improvement in the Belarusian State Policy in the Field of Digital Economy and Labor Legislation Development in Respect to the Electronic Interaction of Labor Law Addressees (by years)

Year	Political decisions	The content of amendments to the labor legislation
2010	Generation of remote workplaces is set forth (telework)	
2016	Generation of a unified electronic social and labor passport is specified for a citizen of the Republic of Belarus by integrating existing databases and those under formation and provision of telecommunication (mobile as well) access to it	
2019		Specificities of labor regulation for remote workers are introduced (Ch. 25.1 of LC of Belarus that includes Art. 307.1–307.5)

In Kazakhstan, the foundation for the targeted development of state policy in the field of electronic document flow in work relationships was laid in the state policy launched in the first years of the 21st century and aimed at the industrial and innovation development of the country. 'Kazakhstan–2030. Prosperity, Security and Ever-Growing Welfare of All the Kazakhstanis'[16], the Address of the President of the Republic of Kazakhstan in 1997 was essential in this respect: it was noted that 'telecommunications are potentially able to smooth imbalances and negative phenomena in the social sphere providing new workplaces, reducing economic migration between rural and urban regions'. One of the significant strategic planning documents of that period was the Strategy of Industrial and Innovation Development of the Republic of Kazakhstan for 2003–2015[17]. In 2010, it was updated in the framework of the State Program of Forced Industrial-Innovative Development of the Republic of Kazakhstan for 2010–2014[18]. The development of electronic services and e-government was one of the key areas of this program.

[15] Resolution No. 235 of the Council of Ministers of the Republic of Belarus 'On Adoption of a State Program for Digital Economy and Information Society Development for 2016–2020' dated March 23, 2016. National Legal Internet-Portal of the Republic of Belarus 5/41866 dated April 1, 2016 [Accessed: 3 July 2022].

[16] Address of the President of the Republic of Kazakhstan to the People of Kazakhstan, 1997. 'Kazakhstan–2030. Prosperity, Security and Ever-Growing Welfare of All the Kazakhstanis'. Available at: https://adilet.zan.kz/rus/docs/K970002030_ [Accessed: 3 July 2022].

[17] Decree of the President of the Republic of Kazakhstan No. 1096 'On the Strategy for Industrial and Innovation Development of the Republic of Kazakhstan for 2003–2015' dated May 17, 2003. *SAPP Respubliki Kazakhstan*. 2003. No. 23–24. Art. 217.

[18] Decree of the President of the Republic of Kazakhstan No. 958 'On the State Program for Forced Industrial-Innovative Development of the Republic of Kazakhstan for 2010–2014 and Revocation of Some Decrees of the President of the Republic of Kazakhstan' dated March 19, 2010. *Kazakhstanskaya pravda*. 3.31.2010. No. 74 (26135).

Additionally, in 2010, the state policy in the field of information society development was separated in Kazakhstan, when the Strategic Plan of Development of the Republic of Kazakhstan until 2020[19] and the Informational Kazakhstan 2020 State Program[20] were approved. They were also aimed at distributing electronic services and e-government development, but the strategic goals set for them lacked those directly related to electronic document flow in work relations. In 2017, the Digital Kazakhstan State Program was adopted in Kazakhstan[21]. However, the elimination of the hard-copy document flow was still provided for the process of the state's interaction with business and citizens, i.e., in public relationships.

At the end of 2021, the Concept of Development of the ICT Industry and the Digital Sphere was approved[22]. In the framework of this Concept, a fair social policy ensured due to digitalization was chosen as one of the basic approaches. It provided not only for the digitalization of social payments and social services, but also the transition of employment record books and employment contracts, employee training and retraining into digital format.

When comparing the political decisions made and the content of amendments to the labor legislation in respect to the digital transformation of interaction between labor law addressees, it is possible to conclude that the modernization of the labor legislation in Kazakhstan is taking place independently from the reformation of state policy in the field of digital economy development. The need for introducing digital technologies into interaction between work relationships parties is only confirmed in state policy (Table 5).

Table 5

Improving the Kazakhstan State Policy in the Field of Digital Economy and Labor Legislation Development in Respect to the Electronic Interaction between Labor Law Addressees (by years)

Year	Political decisions	The content of amendments to the labor legislation
2010	Generation of remote workplaces is set forth (telework)	
2016	Generation of a unified electronic social and labor passport is specified for a citizen of the Republic of Belarus by integrating existing databases and those under formation and provision of telecommunication (mobile as well) access to it	
2019		Specificities of labor regulation for remote workers are introduced (Ch. 25.1 of LC of Belarus that includes Art. 307.1–307.5)
	Address of the President of the Republic of Kazakhstan 1997 'Kazakhstan–2030. Prosperity, Security and Ever-Growing Welfare of All the Kazakhstanis' – the role of telecommunications in the field of labor is stated	

[19] Decree of the President of the Republic of Kazakhstan No. 922 'On the Strategic Plan for Development of the Republic of Kazakhstan until 2020' dated February 1, 2010 (repealed due to Decree No. 636 of the President of the Republic of Kazakhstan dated February 15, 2018). *SAPP Respubliki Kazakhstan*. 2010, No. 10. Art. 115.

[20] Decree of the President of the Republic of Kazakhstan No. 464 dated January 8, 2013 'On the 'Informational Kazakhstan–2020' State Program and Introduction of Supplements to Decree of the President of the Republic of Kazakhstan No. 957 'On Approval of a List of State Programs' dated March 19, 2010' (repealed due to Decree No. 681 of the President of the Republic of Kazakhstan dated May 5, 2018). *SAPP Respubliki Kazakhstan*. 2013. No. 11. Art. 200.

[21] Resolution No. 827 of the Government of the Republic of Kazakhstan 'On Approval of the 'Digital Kazakhstan' State Program' dated December 12, 2017. Available at : https://adilet.zan.kz/rus/docs/P1700000827 [Accessed: 3 July 2022].

[22] Resolution No. 961 of the Government of the Republic of Kazakhstan 'On Approval of the Concept of Developing the ICT Industry and the Digital Sphere' dated December 30, 2021. Available at: https://adilet.zan.kz/rus/docs/P2100000961 [Accessed: 3 July 2022].

Table 5, continued

Year	Political decisions	The content of amendments to the labor legislation
2007		Anotification is set forth as an application of an employee or an employer, including those submitted by E-mail (Art. 1 of LC of RK, 2007).
2012		Specificities of labor regulation for remote workers are introduced (Ch. 23.1 of LC of RK 2007, including Art. 221.1–221.3)
2015		Legal regulation of labor regulation specificities for remote workers is amended (instead of Ch. 23.1 of LC of RK 2007 only Art. 138 of the new LC of RK 2015 is dedicated to the matter)
		It is allowed to notify the employee of wage components in an electronic form (Art. 113 of LC of RK 2015)
2020		It is allowed for the employer to issue acts as electronic documents and to familiarize employees with the acts via e-mail (Art. 11, 23 of LC of RK 2015)
		It is allowed to enter into employment contracts in the form of an electronic document (Art. 33 of LC of RK 2015)
2021		The procedure for the electronic notification of employees or employers is changed (Art. 1 of LC of RK 2015)
		Remote voting is allowed as a way to hold general meetings (conferences) of workers of the organization in order to elect elected representatives (Art. 20 of LC of RK 2015)
		It is allowed for employees to provide explanations regarding a committed disciplinary offense in electronic form (Art. 65 of LC of RK 2015)
		Legal regulation of labor regulation specificities for remote workers is amended (cl. 55.1, 55.2, cl. 1 Art.1, Art. 28, 74, 123, 127, 138 of LC of RK 2015)
	The Concept of Developing the ICT Industry and the Digital Sphere, 2021: a Transition of employment record books and employment contracts, employee training and retraining into digital format	

Discussion

The digitalization of all areas of life is one of the megatrends in public life. Plotting a vector for developing modern society, it does not leave countries a chance to ignore it. Currently, state policy in most countries (if not all) develops in the light of this very key stable trend. In the framework of the conducted research, this premise is proven as exemplified by the analysis of the current state policy of three EAEU member states (Russia, Belarus and Kazakhstan) and its influence on the development of their national labor legislation.

As it has been established, strategic planning documents are adopted in each of the studied EAEU member states to register the main areas, goals and objectives in respect to developing an information society in general and digital economy in particular. This factor is a unifier for them. However, the extents

of the state policy's influence on the modernization of labor legislation are different. That is why it does not seem possible to establish any general trend for them in this regard. Thus, the first provisions of labor legislation appeared in Russia outside the implementation of state policy in the field of digital economy. The following innovations were a direct consequence of the political decisions made. Then, a situation occurred when the formalization of the definition of strategic areas happened belatedly, after they had actually already been implemented in the labor legislation. In Belarus, remote work regulation has also become a formal manifestation of previously formulated political decisions. The state policy of Kazakhstan in this matter, on the other hand, differs significantly from those of Russia and Belarus. The Kazakhstan program documents define the areas of digital transformation that are connected with the state's activities. Innovations in labor legislation appear simultaneously with this process.

From the perspective of the frequency of labor legislation modernization, the origins of labor legislation in Russia and in Kazakhstan have some shared attributes: the accelerated intensity of the reformation process is typical for both countries, which is hardly in evidence in Belarus.

Additionally, the results of the research make it possible to identify two groups of factors that define the extent of the state policy's influence on labor legislation. The first group is internal factors, including the improvement in certain areas of state policy united with a strategy of information society development one way or another. The second group is external factors (e.g., the spread of the COVID-19 pandemic of the novel coronavirus infection). They have been starkly demonstrated by amendments to the labor legislation in Russia and Kazakhstan in 2020–2021 related to the regulation of electronic document flow in work relationships.

Based on the data received as a result of a comprehensive analysis of labor legislation innovations in the studied group of countries, a few conclusions can be drawn.

First, in general, the process of labor legislation reformation in Russia, Kazakhstan and Belarus is inductive by nature. In this case, this refers to a situation when at the first stage, special norms are created to regulate certain aspects of electronic interaction between labor law addressees. For example, certain kinds of documents are transferred into electronic form (e.g., an employment record book) or the approbation of regulation of electronic interactions between employees and employers occurs only within one group of employees (remote workers). However, in 2021, a transition to the second was made in Russia where the provisions were formulated to be included in the general part of labor law.

Second, the conducted analysis allows identifying the areas of labor legislation digital transformation that are supported in the studied EAEU member states at the country level. The first area is related to remote work regulation. The second – with the regulation of electronic interaction between labor law addressees. Certainly, they are closely connected with each other in terms of their content. However, in the framework of the first area, digital technologies are supposed to be used for communication between employees and employers, but within a highly restricted scope. It is applicable to only one category of employees – remote workers. That said, the second area suggests spreading the electronic document flow on general terms in respect to any categories of workers.

The third conclusion directly results from the previous and unfolds as follows. Innovations in labor legislation mostly address the form of work relationships, but not their content, since they are largely about the electronic form of documents. In this regard, promising areas for developing state policy and labor legislation in the context of global digitalization should be established.

One of these areas is a choice of the optimal model for regulating the labor of individuals whose work relationships with their employers have been modified content-wise due to the use of digital technologies and electronic means of labor function execution. In this case, this is about platform workers. Therefore, the idea that their relationships with digital platform operators are work relationships described in the works of labor law scholars (Lyutov & Voytkovskaya, 2020) should be supported and brought to life as soon as possible.

Another promising area of development for state policy and labor legislation is the generation of effective legal safeguards for employees and employers' rights in terms of employee training. This is determined by the following circumstances. On the one hand, the integration of digital technologies into the manufacturing process and the HR document flow requires building the relevant digital competen-

cies of workers. On the other hand, the digitalization of manufacturing can go hand in hand with a loss of need for human labor for the employer. Certainly, this process has not yet become so largescale and universal. However, certain risks are already being created today.

Special attention should be paid to the issue of protecting employees' rights for personal privacy during their working lives, since electronic monitoring of the working process and automated processing of employees' personal data create risks of confidentiality breach and impairment, the barriers of the acceptable volume of the collected information about the employee are actually erased, it becomes possible to use personal information not for legal labor purposes, etc. (Kovač-Orlandić, 2020).

The use of artificial intelligence systems can place adherence to the principles of labor law in jeopardy, among other things. First of all, this applies to the principle of equality of rights and opportunities of workers and prohibition of labor discrimination. In the long run, this problem will affect those workers who, for example, will not improve their physical and intellectual capabilities with technical innovations, therefore ceding ground to their more technologically savvy colleagues. Then this will be relevant when establishing the legal status of artificial intelligence systems (Filipova & Anosova, 2021).

It should be noted that the entire problematics of defining promising areas for state policy improvement in respect to digital economy and its influence on the modernization of labor legislation is not exhausted by the aforementioned. Still, each of the mentioned areas is multi-faceted, which makes it necessary to study them as part of separate independent research.

Conclusion

The trend for global digitalization requires all the states to make balanced and adequate political decisions aimed at improving all areas of public life to adapt it to the universal introduction of digital technologies. The field of labor is not an exception. The results received in the course of this research have confirmed the hypothesis that global digitalization is a cornerstone for developing strategic areas of state development. Those of them that are already actively implemented in some EAEU member states were identified in the research. First of all, this concerns the adaptation of labor legislation to digital economy development in respect to establishing a unified centralized legal regulation of electronic HR document flow and specificities of the labor of remote workers. The significance of the conducted research also lies in the fact that other areas that should become the focus of developing political and legal decisions are suggested here.

A comparative-legal analysis of the extent of state policy's influence on the reformation of national labor legislation in various countries has allowed identifying what level of digital transformation had been achieved by legislative provisions of these countries, as well as tracking the path they make in the process of their development. From the practical point of view, this allows identifying the best practices and suggesting them for consideration when generating national development strategies.

Eventually, the states must start generating a new legal labor regulatory environment to ensure a favorable legal regime for introducing and using state-of-the-art technologies by labor law addressees, on the one hand, and to ensure improving the quality of life for all the workers, including those involved in unconventional forms of employment, on the other hand.

References

Beerepoot, N. & Lambregts, B. (2014) Competition in Online Job Marketplaces: Towards a Global Labor Market for Outsourcing Services? *Global Networks.* (15), 236–255.

Chesalina, O. V. (2017) Work on the Basis of Internet Platforms (Crowdwork and Work on Demand Via Apps) as a Challenge to Labor and Social Law. *Labor Law in Russia and Abroad.* (1), 52–55. (in Russian)

Codagnone, C., Karatzogianni, A. & Matthews, J. (2018) *Platform Economics: Rhetoric and Reality in the* '*Sharing Economy*'. Bingley, Emerald Group Publishing.

Filipova, I. A. & Anosova, N. E. (2021) The Creative Factor in the Competition between Human and Artificial Intelligence: A Challenge for Labor Law. *PCSF 2021: Technology, Innovation and Creativity in Digital Society.* 182–191. (in Russian)

Filipova, I. A. (2018) Legal Regulation of Artificial Intelligence: a Need for Regulation in Russia, Foreign Studies and Practice. *State and Law.* (9), 79–88. (in Russian)

Golovina, S. Yu. & Shcherbakova, O. V. (2021) Modification of Working Conditions of Teaching Staff of Higher Education Institutions: Legal Aspects. *Perspectives of Science & Education*. 4 (52), 547–565. https://doi.org/10.32744/pse.2021.4.36. (in Russian)

Kodan, S. V. (2012) Political and Legal Approach in the Study of State and Legal Development of Russia (19th – Early 20th Centuries). *Sociodynamics*. (2), 88–117. https://doi.org/10.7256/2306-0158.2012.2.177. (in Russian)

Kovač-Orlandić, M. (2020) Employee's Right to Privacy: Where is the Bound of the Employer's Right to Monitor Employees' Communications. *Strani Pravni Zivot*. (4), 85–99. https://doi.org/10.5937/spz64-29470.

Lyutov, N. L. (2018) Remote Work: the Experience of the European Union and the Problematic Aspects of its Legal Status in Russia. *Lex Russica*. 10 (143), 30–39. (in Russian)

Lyutov, N. L. & Voytkovskaya, I. V. (2020) Taxi Drivers Performing Work through Online Platforms: What Are the Legal Consequences of Labor 'Uberization'? *Actual Problems of Russian Law*. 15 (6), 149–159. https://doi.org/10.17803/1994-1471.2020.115.6.149-159. (in Russian)

Malko, A. V. (2012) Legal Policy as a Category of the 21st Century. *State and Law*. (11), 5–13. (in Russian)

Shuraleva, S. V. (2019) Cloud Employees: the Influence of Internet Platforms on Development of Labor Relationships. Labor Law in Russia and Abroad. (1), 15–18. (in Russian)

Tomashevski, K. L. (2020) Digitalization and Its Impact on the Labor Market and Work Relations (Theoretical and Comparative Legal Aspects). *Vestnik of Saint Petersburg University. Law*. 11 (2), 398–413. https://doi.org/10.21638/spbu14.2020.210. (in Russian)

Vasilyeva, Ju. V. & Shuraleva, S. V. (2017) Distant (Remote) Work in Russia: Issues of Legal Regulation. *Russian Foundation for Basic Research Journal*. 4 (89), 96–107. (in Russian)

Zaytseva, L. V. & Mitryasova, A. S. (2018) Labor of Taxi Drivers on the Basis of Internet Platforms: Some Issues of Legal Regulation. *Bulletin of the Tomsk State University – Tomsk State University Journal*. (435), 239–245. https://doi.org/10.17223/15617793/435/30. (in Russian)

Zaytseva, L. V. (2018) Legal Aspects of Application of Local Electronic Document Flow Systems to the Regulation of Labor Relationships. *Labor Law in Russia and Abroad*. (3), 34–37. (in Russian)

Information about the author

Alena V. Serova – Candidate of Juridical Sciences, Associate Professor of the Department of Labor Law, Ural State Law University named after V. F. Yakovlev (Yekaterinburg, Russia; e-mail: a.v.serova@usla.ru).

Date of Paper Receipt: March 11, 2022
Date of Paper Approval: April 11, 2022
Date of Paper Acceptance for Publishing: June 24, 2022

Information for citation:
Shuraleva, S. V. (2022) Atypical Work Relationships: a Comparative Analysis as Exemplified by EAEU Member States. *European and Asian Law Review*. 5 (2), 61–69. DOI: 10.34076/27821668_2022_5_2_61.

UDC 349.2
BISAC LAW054000
DOI: 10.34076/27821668_2022_5_2_61

Research Article

ATYPICAL WORK RELATIONSHIPS: A COMPARATIVE ANALYSIS AS EXEMPLIFIED BY EAEU MEMBER STATES

SVETLANA V. SHURALEVA
Perm State National Research University
ORCID ID: 0000-0003-1220-1179

The paper is dedicated to the issues of the correlation between typical and atypical work legal relationships, the problem of classification of atypical work legal relationships based on the modification of personal, property, and organizational criteria. Based on an analysis of EAEU member states' legislations on certain kinds of atypical work legal relationships, the author comes to a conclusion about expanding fixed-term work legal relationships in combination with the elements of age discrimination that constitutes a negative trend and does not enable improvement in the quality of work-life for employees. After the COVID-19 pandemic, the demand for various kinds of remote work will grow. It is not implausible that in due time, the execution of work functions in a hybrid format (some working hours remotely and some – in the office) will become an element of typical work legal relationships. Although the regulation of atypical work legal relationships in EAEU member states differs (sometimes significantly), the establishment of common economic space, common markets, including a labor market, mutual influence of legal systems on each other, striving to take the experience of neighbors into account and other circumstances will lead to the gradual harmonization of the legal space in the field of work and other relationships directly connected to them.

Key words: *work legal relationships, atypical work legal relationships, atypical employment, remote work, temporary remote performance of work duties, fixed-term employment contract, EAEU*

Introduction

The prevalence of relations mediating atypical employment is one of the challenges labor law faces in practically all modern countries. And EAEU member states are no exception.

Atypical employment is constantly being modified, acquiring new forms. The European Foundation for Improving Living and Working Conditions (Eurofound) includes the following relations in the new forms of employment: employee sharing, job/work sharing, interim management, casual work, ICT-based mobile work, including remote work, crowd work, etc. (Eurofound, 2015; Eurofound, 2018; Eurofound, 2020). That said, platform employment is driven by the development of an 'on-demand economy' where employers use a 'human cloud' to solve their problems more and more often (Schwab, 2017: 62).

The fast pace of changes that are currently in process requires an appropriate legal regulation of atypical employment in the short term. In the context of EAEU member state integration, regulation of relationships in the field of atypical employment, including atypical work relationships as its segment, seems a promising area for the rapprochement of national legislations.

Atypical work legal relationships are seen as a manifestation of differentiation in the field of labor (Motsnaya, 2009), as a consequence of the inevitable reinforcement of legal regulation flexibility. In a few cases, such flexibility benefits both employees and employers, since it allows creating of more workplaces, replacing a temporarily absent worker, combining employee's work and family obligations perfectly, including new information and communications technologies in the interaction between an employee and their employer, etc. However, atypical work legal relationships (new types specifically) come laden with precarization risks. That is why new forms of atypical employment as well as suggestions regarding amendments to the current legislation need to be analyzed thoroughly in terms of the advisability of their introduction into the labor law.

At the modern stage, comparative legal research in this field is a promising area. Lately, there has been an increasing number of academic papers dedicated to remote work, outstaffed labor and its types (labor of workers employed based on a contract to provide the labor of workers (personnel) per the legislation of far-abroad countries (Istomina, 2021: 59–61; Leonova, 2021: 53–56; Lyutov, 2018: 30–39) and EAEU member states (Gileva, Kiryushchenkov, 2021: 62–64; Tomashevski, 2021: 30–33; Chudinovskikh, 2018: 109–111; Shuraleva, 2019: 41–44; Shuraleva, 2020: 39–42).

N. V. Zakalyuzhnaya's doctoral thesis 'Fundamental Forms of Atypical Work Relations in Russia and Abroad in the Context of Economic Modernization' should be noted, since it is focused on outstaffed labor and its modifications as well as on remote work (Zakalyuzhnaya, 2021).

Since atypical employment, including atypical work relationships, is mostly connected with a risk of labor precarization, it seems timely and valuable to study the consequences of labor law liberalization in EAEU member states (Golovina, 2021: 12–15), as well as the impact of remote work (Golovina & Shuraleva, 2021: 47) and other atypical work legal relationships on the quality of work life.

However, there is still not enough comprehensive research on legislation on atypical work relationships in EAEU member states aimed at identifying legal regulation common trends and patterns in this area, which is indicative of the relevance of this work.

Materials and Methods

In this research, the emphasis is placed on some atypical work legal relationships that are already regulated in the legislation of EAEU member states. The research is based on general scientific methods of scientific knowledge (dialectical, logical methods, analysis, synthesis, comparison) and specific scientific methods of knowledge (structured system analysis, legalistic approach, comparative legal, and historical methods).

Results

The results of the research will be presented in the Conclusion.

Discussion

Work Legal Relationships: Typical and Atypical

The semantics of such words as 'unconventional' or 'atypical' suggests that this is about something deviating from the pattern, from a typical, normal phenomenon. As a rule, atypical work legal relationships are studied in comparison with 'typical' work legal relationships.

The modern understanding of classical or typical work legal relationships is associated with the concept of a single, lasting work legal relationship that 'has not exhausted its scientific potential and has not lost its practical value' even to the present day (Lushnikova & Lushnikov, 2006: 528–529). It was established by N. G. Alexandrov, one of the leading theoreticians of Soviet law (Lushnikova & Lushnikov, 2006: 524).

Regarding 'work legal relationships in general', the scholar defined them as relationships mediating non-individual, cooperative labor of an individual of legal status; he viewed 'working time as the content of the worker's duties and the subject of the competence of the other party' as an attribute of any work relationship that gives it some features of a uniquely lasting legal relationship; he considered labor discipline a necessary element of such a relationship (Alexandrov, 2009: 122–129).

Perhaps, anticipating ideological reproaches against him, N. G. Alexandrov emphasized the fact that 'work legal relationships in general' were just a scientific abstraction that allowed noticing those features of capitalist and socialist work legal relationships driven by the same nature of any non-individual labor of individuals of legal status in order to bring the core differences in those two kinds of legal relationships into sharp focus (Alexandrov, 2009: 122).

Modern definitions of work legal relationships in the legislation of EAEU member states largely rely on the concept of a single, lasting work legal relationship, although some criteria (e.g., those differentiating capitalist and socialist work legal relationships) have faded in importance.

Therefore, personal execution of work functions by an employee for pay, their compliance with internal labor regulations given that the employer provides working conditions in accordance with the labor legislation, collective contracts, agreements, local regulatory acts, and an employment contract are specified by Art. 13 of the Labor Code of the Republic of Armenia (hereinafter LC of RA), Art. 13 of the Labor Code of the Kyrgyz Republic (hereinafter LC of KR), Art. 15 of the Labor Code of the Russian Federation (hereinafter LC of RF). The Labor Code of the Republic of Belarus (hereinafter LC of RB) and the Labor Code of the Republic of Kazakhstan (hereinafter LC of RK) do not contain extensive definitions of work relationships, but they refer to the definition of an employment contract that includes the aforementioned elements.

The criteria for delimiting work relationships from civil law relations can be found in legal precedents. For example, according to Regulatory Resolution No. 9 of the Supreme Court of the Republic of Kazakhstan dated October 6, 2017 'On Some Issues of Legislative Execution by Courts when Settling Labor Disputes', the nature of work relationships can be indicated by the circumstances when the employee performs some work (executes a labor function) personally in accordance with a certain qualification, specialty, profession or position while complying with a labor order, while the employer pays them for their work. This correlates with Art. 27 of LC of RK.

In Decree No. 15 of the Plenum of the Supreme Court of the Russian Federation dated May 29, 2018, 'On Application by Courts of the Legislation That Regulates Labor of Employees Working for Employers – Individuals or Legal Entities and for Employers – Small Business Entities That Count as Micro-enterprises' (hereinafter Decree No. 15 of the Plenum of SC of RF), it is explained that in case the presence or absence of work relationships is established, the courts should not only proceed from the presence (or absence) of some formalized acts (civil law contracts, staffing chart, etc.), but also establish whether the attributes of work relations and the employment contract specified in Articles 15 and 56 of LC of RF have de facto occurred, whether the employee has been actually allowed to perform the labor function.

Aside from the aforementioned attributes, in Cl. 17 of Decree No. 15 of the Plenum of SC of RF, some attributes of employment relationships specified in ILO Work Relationship No. 198 (specifically, the performance of work by the employee in accordance with the employer's directives; integration of the worker into the employer's organizational structure; recognition by the employer of such employee rights as weekly days off and annual vacation; payment by the employer for the expenses of the employee's trips for work performance; regular payments to the employee that serve as the only and/or main source of income for them; provision of tools, materials and mechanisms by the employer).

Thus, at the current stage, the following attributes of work legal relationships can be identified:

they are based on the mutual agreement of parties (an employee who personally executes their labor function in the interests of, under the leadership and control of the employer ('hiring entity' in LC of RB) with whom the employment contract is entered into,

they usually provide a full-time job,

the labor function is performed within the employer's location area,

the employee is subject to the labor discipline,

the employer in full and in a timely manner pays the salary to the employee, recognizes their labor rights (e.g., the right to rest) and provides labor and legal guarantees, provides appropriate working conditions.

However, the idea of typical and atypical work legal relationships may change in time and space. The COVID-19 pandemic has accelerated the introduction of various types of remote work into the operations of many enterprises, organizations, and public agencies. Some experts are sure that many employees and employers would like to keep the hybrid remote work even after anti-epidemic restrictions are lifted. In this case, remote (distance) work will become a variant of the norm if not in the near future, then in the medium term.

The trend of extra-broad contract usage as fixed-term employment contracts in the Republic of Belarus (Tomashevski, 2015: 159), liberalization of labor legislation in favor of employers in the Republic of Kazakhstan (Golovina, 2021: 12–15) suggest a gradual shift of the norm in national legal systems, not in the employee's interests, unfortunately.

Then is there any sense in comparing 'atypical' and 'typical' work legal relationships, if the latter will eventually turn into just another 'special case'? I believe it is not only possible but also necessary, if 'typical' work legal relationships are seen as a certain 'standard' of work relationships where the concept of an employee's labor rights protection is carried out given that the balance of employee's and employer's interests is maintained.

On Classification of Atypical Work Legal Relationships

Following L. S. Tal, M. V. Lushnikova notes that atypical kinds of employment contracts are notable for the lack of or modification of one or several aforementioned attributes: personal, organizational or proprietary (Lushnikova, 2005: 117). A similar position is held by M. A. Shabanova (Shabanova, 2008).

It would seem that atypical work legal relationships can be studied from the perspective of modifying the relevant attributes. This conclusion agrees with O. V. Motsnaya's position who considers the duration of work legal relationships, the place of work performance, the labor regime, or specificities of labor function execution to be the key differentiation factors that cause changes in certain significant attributes of work legal relationships (Motsnaya, 2009).

The personal attribute manifests itself in a special value of the worker's personality: the work legal relationships of an employee who personally performs their labor function. Their business qualities are critical for the employer. On the other hand, the figure of the employer is no less significant for the worker. It is no coincidence that labor codes of some EAEU member states provide for special articles on the change in the property owner (change in the shareowner (stake in the charter capital) for legal entities in the Labor Code of RK), rearrangement, the change of jurisdiction (Art. 36 of LC of RB, Art. 47 of LC of RK, Art. 77 of LC of KR, Art. 75 of LC of RF). According to the general rule, in the aforementioned situations, work legal relationships with the employee continue. An exception is made for the head of the organization, their deputies, and chief accountant since for them the aforementioned circumstances can become the grounds for the termination of the employment contract (Art. 77 of LC of KR, Art. 77 of LC of RF).

N. G. Alexandrov wrote about the indissoluble connection between the organizational and proprietary relationships in the framework of work legal relationships. According to the scholar, the proprietary nature of work legal relationships manifests itself in the compensatory nature of labor and in the fact that, generally, the labor process is about making new property assets out of other property assets. The organizational nature manifests itself in the labor discipline (Alexandrov, 2009: 148). It should be agreed that remuneration as an element of work legal relationships is similar, though not equal to remuneration in civil law relations, and labor process management is similar to management in other areas of public life, though not equal to it (Alexandrov, 2009: 149).

Therefore, the classification of atypical work relationships can be built based on a modification of:

personal criterion (including outstaffed labor and its varieties (e.g., labor of workers (personnel) employed based on a secondment contract),

proprietary criterion (e.g., zero-hour contracts and on-demand work that do not provide any guarantees for a job and, therefore, wages),

organizational criterion: by the place of labor function execution (e.g., ICT-based mobile work, including remote work, home-based jobs), based on the duration of labor function execution and specificity of working hours (work legal relationships mediated by fixed-term employment contracts, part-time employment contracts).

A stipulation should be made that this classification is rather conditional. The same kind of atypical work legal relationships can belong to two groups at once.

As for the examples studied above, what calls attention to itself is both the groups of atypical work legal relationships that used to be well-known back in Soviet times (e.g., fixed-term employment contracts) and the relatively new types that have become possible due to digitalization (ICT-based mobile work, including remote work).

Atypical Work Relationships in the Legislation of EAEU Member States: Legal Regulation Analysis

Legal regulation of atypical work legal relationships in EAEU member states is largely focused in labor codes that have already been the subject of detailed research (Tomashevski, 2017).

At the same time, some norms on atypical work legal relationships may be established in other laws as well. According to Art. 341.3 of LC of RF, specificities of labor regulations in the case of workers (personnel) temporarily outstaffed to other legal entities through a secondment contract by the employer that is not a private employment agency, are established by a federal law that has not been adopted yet. In Art. 18.1 of RF Law No. 1032-1 'On Employment of the Population in the Russian Federation' (hereinafter the RF Law on Employment) dated April 19, 1991, which includes such definitions as 'performing activities on provision of workers' (personnel) labor' and 'a secondment contract', the entities are defined that are entitled to perform the aforementioned activities and requirements for them; the cases when the workers may not be outstaffed to the receiving party on a secondment contract are specified. That said, it is established in Cl. 14 of this Article that federal laws may impose additional restrictions for outstaffing on a secondment contract to the receiving party.

In the context of discussions about a new version of the RF Law on Employment the Ministry of Labor plans to prepare, one may predict that it will include a significant corpus of regulations on the issues of atypical employment, including atypical work legal relationships.

Labor legislation of all EAEU member states regulates mostly atypical work relationships with the modification of personal and/or organizational criteria: work legal relationships mediated by fixed-term employment contracts, part-time jobs, and home-based jobs. As for relatively new atypical employment forms, it is worth noting remote work (legal regulation is absent in LC of KR only), work legal relationships with a worker in the framework of a secondment contract (regulated by LC of RK and LC of RF).

Though the regulation of the aforementioned atypical employment relationships has national specificities based on a certain legal system, it can be said that there are some common trends. Let's see it as exemplified by work legal relationships based on a fixed-term employment contract and those mediating remote work.

Atypical Work Relationships Based on a Fixed-Term Employment Contract. The rules on entering into employment contracts are provided for by the legislations of all EAEU member states. According to the legislation of most EAEU member states, fixed-term employment contracts are entered into for a definite period of no more than 5 years. Such a period is not established in the Republic of Armenia, and in the Republic of Kazakhstan fixed-term employment contracts are entered into pursuant to the general rule for a term of at least one year (Cl. 1 Art. 30 of LC of RK).

If the validity period is not specified in the employment contract, it is deemed entered into for an indefinite term (Art. 17 of LC of RB, Art. 94 of LC of RA, Art. 58 of LC of RF, Art. 55 of LC of KR). Fixed-term employment contracts are entered into in the cases established by the legislation. The law specifies situations when work legal relationships may not be established for an indefinite term given the nature of the future work or the conditions of its performance and/or specifies certain categories of workers.

In some cases, entering into fixed-term employment contracts is mandatory and inevitable for the parties of the employment contract, but due to direct instruction of the law, it may also be established by an agreement of the parties (Parts 1, 2, Art. 59 of LC of RF, Art. 17 of LC of RF).

However, quite an extensive list of grounds for entering into a fixed-term employment contract is often not articulated comprehensively enough (Art. 59 of LC of RF, Art. 55 of LC of KR); it refers not only to other articles of labor codes but also to other laws thus expanding the scope of fixed-term work legal relationships even further.

For example, according to the Russian legislation, aside from the grounds specified in Art. 59 of LC of RF, fixed-term employment contracts may be entered into with employees of religious organizations (Art. 344 of LC of RF), the employees that belong to the faculty and academic staff (Art. 332 of LC of RF), the employees working for individuals as employers (Art. 304 of LC of RF), with the employees involved in implementing the regional program for labor mobility improvement (Art. 22.2 of the RF Law on Employment of the Population), etc. In civil service, entering into a fixed-term service contract makes it possible not to hold a tender for a civil service position (Part 2, Art. 22 of Federal Law No. 79-FZ 'On Civil Service in the Russian Federation' dated July 27, 2004).

However, while according to LC of RF the list of grounds for entering into a fixed-term employment contract is provided for by law and the employer has to put one of these grounds in the fixed-term

employment contract, Art. 30 of LC of RF allows entering into a fixed-term employment contract without any reasons, at the employer's discretion.

Global changes in the labor legislation of the Republic of Belarus in relation to the adoption of Law No. 219-Z of the Republic of Belarus 'On Amendments to Laws' dated July 18, 2019, touched upon fixed-term employment contracts as well. Assessing this case, K. L. Tomashevski (Tomashevski, 2020: 152) notes that even though Belarussian legislators have considered the Russian experience with respect to establishing a limited list of cases when fixed-term employment contracts may be entered into, they have still kept and formalized the practice of unlimited contract use, which eliminates the potential positive effect of this innovation.

The list of exceptions also raises some questions. Partially, it is premised on objective factors (performance of seasonal, temporary, public work; the need to replace an absent worker; filling an elective position by an individual, etc.). However, it is difficult to agree with the situation when reaching retirement age by any employee automatically places them in a vulnerable position in terms of work legal relationships.

For example, among the categories of workers with whom a fixed-term employment contract is entered into specified in Art. 95 of LC of RA, there are the individuals entitled to have an old age pension who have reached the age of sixty-three or the individuals not entitled to have an old age pension who have reached the age of sixty-five. Additionally, the employer on their own initiative is entitled to terminate the employment contract with them if the relevant grounds are provided for by the employment contract (Cl. 11, Part 1, Art. 113 of LC of RA).

Reaching the retirement age by the employee is the grounds to dismiss them on the employer's initiative in Kazakhstan as well (sign. 24, Part 1, Art. 52 of LC of RK). In this case, a fixed-term employment contract with such a highly professional employee may be extended indefinitely if they are capable of performing (Part 5, Art. 30 of LC of RB).

Therefore, the employer is entitled on their own initiative to terminate work relationships with the employees who have reached retirement age, at best, to offer them a fixed-term employment contract. One should agree with S. Yu. Golovina that this is age discrimination and contradicts ILO Convention No. 111 'Discrimination (Employment and Occupation)' and ILO 'Older Workers' Recommendation No. 162 (Golovina, 2021: 13).

In this context, N. V. Zakalyuzhnaya's suggestion on lifting restrictions for applying fixed-term employment contracts and significant extension of grounds for entering into them in the Russian labor legislation (Zakalyuzhnaya, 2021: 144–145) seems quite debatable. Delegation of these authorities to the level of social partnership (considering the weak negotiation positions of trade unions) and, particularly, to the level of local normative work will result in greater discrimination, inequality of employees' legal status, and will cause social instability. These results will hardly enable improvement in the economic and social situation.

These circumstances suggest expanding fixed-term work legal relationships in combination with elements of age discrimination.

Atypical Work Relationships Mediating Remote Work. Regulation of remote work relationships is evolving quite quickly in the EAEU space. The relevant standards appeared in the labor legislations of Russia, Belarus, and Kazakhstan even before the COVID-19 pandemic. However, the pandemic stimulated the establishment and/or improvement of remote work standards.

At the beginning of the COVID-19 pandemic, Law No. ZR-236 of the Republic of Armenia dated May 5, 2020, introduced Art. 106.1 'Temporary Performance of Duties in a Remote Manner during Natural Disasters, Technological Emergencies, Epidemics, Accidents, Fires, and Other Emergencies or Immediate Damage Control' into LC of RA.

The Article provides a definition of the work performed remotely: this is the work performed during natural disasters, technological emergencies, epidemics, accidents, fires, and other emergencies or immediate damage control from the non-workplace in case it is impossible to ensure the performance of this work at the workplace.

Such work is not considered a change in the workplace or other significant working condition under Part 1, Art. 105 of LC of RA. If to continue working in a conventional format or remotely is not an option, and the employee has an unused annual vacation, the annual vacation is provided to the employee upon request by the employer (Parts 2, 3, Art. 106.1 of LC of RA).

Unfortunately, the legislator has not provided any guarantees in case the right to vacation has been exercised previously, and it is not possible to work remotely.

On the contrary, temporary restriction of rights and freedoms of individuals and legal entities by the legislation during natural disasters, technological emergencies, epidemics, accidents, fires, and other emergencies or immediate damage control, when it is impossible to perform duties, including remote work, is considered force majeure (Part 7, Art. 186 of LC of RA) and the downtime caused by this force majeure is not paid for (Part 6, Art. 186 of LC of RA).

Therefore, the LC of RA regulates remote work, but only in case of emergencies without providing any labor and legal guarantees to the employees.

Since January 1, 2021, new amendments to Ch. 49.1 of LC of RF have come into force to significantly transform the Russian legislation on remote work.

The most important innovations are associated with the emergence of three types of remote work: remote execution of a labor function on a permanent basis (during the entire validity period of the employment contract), on a temporary basis (for a continuous period of no more than 6 months) and occasionally if the execution of a labor function will be rotated between a stationary mode and at the workplace (Art. 312 of LC of RF). This creates opportunities for legitimizing relationships when in fact the employee sometimes works from home recording the time of working from home and in the office that can protect the employee from unlawful disciplinary sanctions.

The procedure for electronic interaction between employees and employers has been simplified: an enhanced certified encrypted signature has become mandatory only for employers when signing employment contracts, supplemental agreements, and other contracts. The employee has received the right to use the enhanced encrypted non-certified signature. Other forms of interaction aside from electronic document exchange have been legalized (Art. 312.3 of LC of RF). This reduces the employer's costs for acquiring encrypted signatures, allows for establishing other channels for interaction between employees and employers.

An additional guarantee has been introduced to ensure that the remote execution of a labor function by the employee may not be considered the basis for salary reduction (Art. 312.5 of LC of RF), which should be welcomed.

The procedure for the temporary transfer of an employee to remote work on the employer's initiative has been established for exceptional cases (Art. 312.9 of LC of RF).

Due to the abuse by employers, additional grounds for the termination of employment contracts on the employer's initiative are now established not by an employment contract, but directly in Art. 312.8 of LC of RF.

The first basis suggests that during the remote execution of a labor function, the employee does not interact with the employer without due cause on issues connected with their employment duties for more than two business days in a row (according to the general rule) from the day the employer's request is received. The second basis for the termination of the employment contract is linked to a change in the environment for labor function execution by the employee if in this case, the employee can no longer perform their obligations on the same terms.

According to N. L. Lyutov, most innovations were adopted in the interests of employers (norms on unilateral, temporary transfer of employees to the remote mode in case of emergency, on callback of employees from remote to stationary mode, etc.). The scholar considers the main benefit to be the exception of the discriminatory norm on the dismissal of remote workers on the grounds that are not specified in the employment contract. The problem of establishing the employees' right not to be in constant contact with their employers has not been resolved by the law (Lyutov, 2021: 43). The innovations received their share of critics (Belitskaya & Korshunova, 2021).

It would seem that after the pandemic, the interest in remote work will not disappear; on the contrary, the further expansion of the scope of remote labor relationships and further development of their legal regulation will occur. Currently, labor legislations in all EAEU member states, except for Kirgisia, regulate remote (distance) work to a degree.

The idea of convergence with respect to legal labor regulation of people working at stationary and non-stationary workplaces has been voiced already in legal law science (Ivanchina, 2021: 27). According to Yu. V. Ivanchina, remote work is a typical form of labor in the information society and it is not particularly justified to classify it as atypical employment (Ivanchina, 2021: 24).

It is difficult to say at which stage of development of the information society we currently are, but in the long run, this statement is correct.

Conclusion

Characteristics of atypical work legal relationships are usually identified through a comparison with typical or classic work legal relationships. That said, 'typical' work legal relationships are seen as a certain 'standard' of work legal relationships where the concept of employee's labor rights protection is carried out given that the balance between employee's and employer's interests is maintained.

Sometimes, deviation from the established standards may be reasonable to create more workplaces, replace a temporarily absent worker, establish a balance between employee's work and family obligations, include new information and communications technologies in the interaction between employees and their employers, etc. However, atypical work legal relationships (and new types specifically) come laden with precarization risks. That is why it is necessary to approach amendments to the current legislation with deliberate care.

This work is based on the approach in accordance with which atypical work legal relationships are characterized by the lack and/or modification of one or several following attributes: personal, organizational, or proprietary.

Legal regulation of atypical work legal relationships in EAEU member states is performed through the labor codes of EAEU member states. However, due to the planned modernization of the RF Law on Employment, it is not implausible that a corpus of regulations will appear there – on atypical work legal relationships, among other things.

An analysis of the regulation of atypical work relationships based on a fixed-term employment contract suggests the expansion of fixed-term work legal relationships combined with the elements of age discrimination that constitutes a negative trend and does not enable improvement in the quality of work-life for employees.

The COVID-19 pandemic has become a catalyst for developing labor legislation on remote work; however, even after the pandemic, the demand for various kinds of remote work will grow. It is not implausible that over time, the execution of employment functions in a hybrid format (some working hours remotely and some – in the office) will become an element of typical work legal relationships.

Although how regulation of atypical work legal relationships in EAEU member states is performed differs (sometimes significantly), the establishment of common economic space, common markets, including the labor market, mutual influence of legal systems in each other, striving to take the experience of neighbors into account and other circumstances will lead to the gradual harmonization of the legal space in the field of employment and other relationships directly connected with them. That said, as S. Yu. Golovina rightfully notes (Golovina, 2021: 13), 'still, the idea of employees' labor rights protection should prevail over the concept of legal relationships liberalization'.

References

Alexandrov, N. G. (2009) *Trudovoe pravootnoshenie* [Work Legal Relationships]. Moscow, Prospekt. (in Russian)

Belitskaya, I. Ya. & Korshunova, T. Yu. (2021) We Wanted Better, but Ended Up with New Rules of Remote Work. *Labor Law in Russia and Abroad*. (3), 20–23. (in Russian)

Chudinovskikh, M. V. (2018) Regulation of Remote Labor in Eurasian Economic Union Member States. *Eurasian Advocacy*. 4 (35), 109–111. (in Russian)

Dogadov, V. M. (1927) *Ocherki trudovogo prava* [Labor Law Essays]. Leningrad, Priboi. (in Russian)

Eurofound (2015) *New Forms of Employment*. Luxembourg, Publications Office of the European Union,.

Eurofound (2018) *Overview of New Forms of Employment – 2018 Update*. Luxembourg, Publications Office of the European Union.

Eurofound (2020) *Telework and ICT-Based Mobile Work: Flexible Working in the Digital Age, New Forms of Employment Series*. Luxembourg, Publications Office of the European Union.

Gileva, N. V. & Kiryushchenkov, M. I. (2021) Outstaffing in Kazakhstan: Legal Aspects. *Labor Law in Russia and Abroad*. (3), 62–64. (in Russian)

Golovina, S. Yu. (2021) The Impact of Labor Legislation Liberalization on the Quality of Work Life (as exemplified by Russia and Kazakhstan). *Labor Law in Russia and Abroad*. (4), 12–15. (in Russian)

Golovina, S. Yu. & Shuraleva, S. V. (2021) The Distant Work Impact on the Quality of Working Life: Law Aspects. *SHS Web of Conferences. 14th Session of Euro-Asian Law Congress 'The Value of Law'. 00047*. https://doi.org/10.1051/shsconf/202213400047.

Istomina, E. A. (2021) Legal Regulation of Remote Work in France. *Labor Law in Russia and Abroad.* (3), 59–61. (in Russian)

Ivanchina, Yu. V. (2021) Stationary and Non-Stationary Workplaces: Convergence of Legal Regulation. *Labor Law in Russia and Abroad.* (3), 24–27. (in Russian)

Leonova, A. A. (2021) Legal Regulation of Remote Work in the Netherlands. *Labor Law in Russia and Abroad.* (2), 53–56. (in Russian)

Lushnikova, M. V. & Lushnikov, A. M. (2006) *Ocherki trudovogo prava* [Labor Law Essays]. Moscow. (in Russian)

Lushnikov, A. M. & Lushnikova, M. V. (2021) *Trudovoe pravo* [Labor Law]. Moscow, Prospekt. (in Russian)

Lyutov, N. L. (2018) Transformation of Work Legal Relationships and New Forms of Employment in the Context of a Digital Economy. *Zhurnal rossiyskogo prava* [Journal of Russian Law]. (7), 115–130. https://doi.org/10.12737/jrl.2019.7.10. (in Russian)

Lyutov, N. L. (2021) New Norms on Remote Labor: Are Old Problems Solved? *Lex Russica*. 6 (175). 36–45. (in Russian)

Motsnaya, O. V. (2009) Atypical Employment: Some Matters of Theory and Practice. Abstract of PhD Thesis in Law. Moscow, Institute of State and Law of the Russian Academy of Sciences. (in Russian)

Schwab, K. (2017) *Chetvertaya promyshlennaya revolyutsiya* [The Fourth Industrial Revolution]. Moscow 'E' Publishing House. (in Russian)

Shabanova, M. A. (2008) Specificities of Legal Regulation of Atypical Employment Contracts. PhD Thesis in Law. Yaroslavl. (in Russian)

Shuraleva, S. V. (2019) Remote Work: A Comparative Analysis of EAEU Member States' Legislations (part 1). *Labor Law in Russia and Abroad.* (4), 41–44. (in Russian)

Shuraleva, S. V. (2020) Remote Work: A Comparative Analysis of EAEU Member States' Legislations (part 2). *Labor Law in Russia and Abroad.* (1), 39–42. (in Russian)

Skachkova, G. S. (2021) Remote Labor: Some Enforcement Matters. *Labor Law in Russia and Abroad.* (3), 28–31. (in Russian)

Tomashevski, K. L. (2017) National Laws and Other Legal Acts on Labor in EAEU Member States: An Overall Review and the Issue of Mutual Hierarchy. *State and Law*. (7), 82–89. (in Russian)

Tomashevski, K. L. (2015) A Paradigm of Belarussian Labor Law in the Early 21st Century. A Paradigm of Labor and Social Law in the Age of Building the Post-Industrial Society. *Collection of research papers based on the results of the 3rd International Scientific and Practical Conference*. Minsk–Grodno, October 23–24, 2015. 155–163. (in Russian)

Tomashevski, K. L. (2020) Global Reform of the Labor Code in the Republic of Belarus in 2019–2020 (Matters of Employment Contracts and Collective Agreements). *Lex Russica*. 9 (166), 143–154. (in Russian)

Tomashevski, K. L. (2021) Remote (Distance) Work in Labor Legislation of EAEU Member States during the Pandemic. *Labor Law in Russia and Abroad.* (2), 30–33. (in Russian)

Zakalyuzhnaya, N. V. (2021) Fundamental Forms of Atypical Work Relations in Russia and Abroad in the Context of Economic Modernization. Doctoral Thesis in Law. Moscow. (in Russian)

Information about the author

Svetlana V. Shuraleva – PhD in Law, Associate Professor of the Labor and International Law Department, Perm State National Research University (Perm, Russia; e-mail: shura_leva@mail.ru).

Date of Paper Receipt: March 12, 2022
Date of Paper Approval: April 10, 2022
Date of Paper Acceptance for Publishing: June 24, 2022

Vol 5. Is. 2

Information for citation:
Tomashevski, K. L. (2022) The Right to Strike and Freedom of Association in Belarus: Actual Problem in Light of ILO and UN Standards. *European and Asian Law Review*. 5 (2), 70–75. DOI: 10.34076/27821668_2022_5_2_70.

UDC 349.2
BISAC LAW054000
DOI: 10.34076/27821668_2022_5_2_70

Research Article

THE RIGHT TO STRIKE AND FREEDOM OF ASSOCIATION IN BELARUS: ACTUAL PROBLEM IN LIGHT OF ILO AND UN STANDARDS

KIRILL L. TOMASHEVSKI
International University 'MITSO'
ORCID ID: 0000-0002-4098-4943

The article will briefly review the international standards of the United Nations and the ILO regarding the interpretation of the right to strike. Then the author examines the norms of the current labor legislation of Belarus, which regulate the procedure for organizing a strike. Special attention in the article will be paid to the new law of May 28, 2021 No. 114-Z, which significantly restricted the right to strike, prohibiting political demands and introducing a number of new grounds for dismissal related to participation or campaigning for strikes. The author substantiates measures to liberalize the legislation of Belarus in terms of the right to strike.

Key words: *freedom of association, strike, trade unions, labour rights, ILO, employee*

Introduction

In 2020 the Republic of Belarus faced not only the economic and social consequences of the coronavirus pandemic, but also the equally serious consequences of the presidential election campaign. As part of these elections, Belarusian trade unions were involved in political processes. After unrecognized by many countries of the world (EU countries, USA, Canada, Ukraine, etc.) the results of the Presidential election, there were strikes of employees of a number of enterprises. The decision of the Minsk regional court to declare the strike at a large mining enterprise 'Belaruskali' illegal once again demonstrated the complexity of organizing and conducting a strike under the legislation of Belarus.

Our report will examine the interpretation of the right to strike in the UN human rights pacts, the interpretation of the Committee on freedom of Association of the ILO Administrative Council, and Belarusian legislation. The author will put forward proposals to liberalize the legislation on strikes, which will make it possible to organize and conduct it legally, taking into account international standards and foreign experience.

One of the consequences of the political crisis in Belarus in 2020 was the mass withdrawal of workers from trade unions affiliated with the Federation of trade unions of Belarus, whose leadership actively supported the candidacy of Alexander Lukashenko during the presidential election campaign.

The Law adopted of May 28, 2021, which will enter into force at the end of June, will be analyzed, which further restricts the right to strike and introduces rules on the dismissal of employees who participated in the illegal strike, who were subjected to administrative arrests or calling for participation in strikes. An assessment of these changes is given, and the positions of the Committee of Experts of on the application of ILO conventions and recommendations on the compliance of the policy of the Belarusian authorities in the aspect of freedom of association and the right to strike are given.

Materials and Methods

In this research the following methods are used: general scientific (analysis, synthesis, comparison) and special legal (formal-legal, comparative-legal, legal modeling).

Results

The results of the research are presented in the Conclusion.

Discussion

The right to strike, as you know, is proclaimed at the universal level in a number of UN documents. In accordance with Article 8, part 1 (d), of the International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200 A (XXI) of December 16, 1966, and ratified by the Republic of Belarus, the States parties to the present Covenant undertake to ensure the right to strike, provided that it is exercised in accordance with the laws of each country.

Part 4 of Article 6 of the European Social Charter of 1996, ratified by Russia and not ratified by the Republic of Belarus, establishes the right of employees and entrepreneurs to collective action in the event of a conflict of interest, including the right to strike.

The right to strike, although not explicitly enshrined in the ILO conventions, is derived from the right to organize trade unions, in the practice of the Committee on Freedom of Association (CFA) of the Governing Body of the International Labour Organization (ILO)[1]. According to N. L. Lyutov and E. S. Gerasimova, despite the absence of this right in the fundamental ILO Conventions No. 87 and No. 98, CFA recognizes the right to strike as an integral part of the freedom of association enshrined in these conventions (Lyutov & Gerasimova, 2015: 39). However, it is appropriate to recall the well-known crisis in the ILO in 2012, when employers' associations, together with government delegates, blocked the formation by the Conference Committee on the Application of Standards of 'short list' of 25 cases drawn from the Annual Report of the ILO Committee of Experts on the Application of Conventions and Recommendations list in countries where violations of ILO conventions are allowed, under the pretext that the Committee of Experts does not have a mandate on the interpretation of the right to strike.

The right to strike is enshrined in ILO Convention No. 87, as well as within the broader international legal framework. Indeed, it can be said that the right to strike is now customary international law. The supervisory system of the ILO was correct in observing that the right to strike exists, and acted within their constitutional mandate and in conformity with the rules of treaty interpretation in so holding protects the right to strike (Tomashevski, 2012: 37–39).

The national legislation of the Republic of Belarus also recognizes the right of workers to strike, and at the constitutional level. According to part 3 of Article 41 of the Constitution of the Republic of Belarus, citizens have the right to protect their economic and social interests, including the right to strike. A more detailed regulation of this right is found in Articles 388–399 of the Labour Code of the Republic of Belarus.

Recall that a strike is a stage of resolving a collective labour dispute, consisting in the temporary voluntary refusal of employees to perform (in whole or in part) their labour duties.

Let us pay attention to the following important procedural features of a strike under Belarusian law:

a strike can be declared provided that such mandatory stages of a collective labour dispute as a conciliation commission and labour arbitration have been passed, and the decisions taken at these stages did not suit the side of the workers represented by the trade union (their association),

the decision to hold a strike is taken at a meeting or conference by secret ballot (2/3 of the employees present). Quorum requirements: at a meeting-at least 1/2 of employees, at a conference-at least 2/3 of delegates (Article 389 of the Labour Code),

the representative body of employees must notify the employer in writing of the decision to hold a strike no later than two weeks before it begins,

[1] Freedom of association – Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (revised) edition, 2006. Available at: https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/WCMS_090632/lang--en/index.htm [Accessed: 1 June 2022]. Freedom of Association. Compilation of decisions of the Committee on Freedom of Association. Geneva, 2018. Available at: https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/WCMS_632659/lang--en/index.htm [Accessed: 1 June 2022].

after receiving a notice of a strike, the employer must immediately inform the owner or his authorized body, suppliers, consumers, transport organizations, local executive and administrative bodies (Article 390 of the Labour Code),

the minimum required work is determined in the collective agreement or within 5 days from the date of the decision to hold a strike (Tomashevski & Volk, 2021: 434–435).

By the Law of the Republic of Belarus No. 114-Z of May 28, 2021 (hereinafter referred to as the Law)[2] amendments have been made to the Labour Code of the Republic of Belarus (hereinafter – Labour Code) on issues related to the strike. This law was prepared in high secrecy.

On April 12, 2021, after the adoption of the Law in the first reading, the Executive Committee of the Belarusian Congress of Democratic Trade Unions appealed to the Parliament and the Government to withdraw the draft law from consideration, and also informed them that a request for immediate intervention was prepared and sent to the Director General of the ILO as a procedure used in emergency circumstances and requiring an emergency response to the situation with workers' rights on the part of the ILO and its management[3].

As the Constitutional Court of Belarus notes in its decision from April 30, 2021 No. P-1267/2021[4], the adoption of the Law is due to the need to improve the legal regulation of public relations that develop when employees carry out work activities aimed at ensuring national security, protecting public order, the rights and freedoms of others. It is interesting that the Law itself does not indicate the purpose of its adoption, and there is no preamble in it.

Among the new grounds for dismissal of employees at the initiative of the employer, included in paragraph 7 of Article 42 of the Labour Code, we will single out two that directly relate to the exercise of the right to strike: 1) forcing employees to participate in a strike, creating obstacles for other employees to perform their work duties, calling employees to stop performing their work duties without good reasons, 2) participation of an employee in an illegal strike, as well as in other forms of refusal of an employee to perform their work duties (in whole or in part) for no good reason. Moreover, these grounds for the dismissal of an employee on the initiative of the employer are guilty and disciplinary.

The new norm on the possible dismissal of employees for participating in an illegal strike, as well as in other forms of refusal of an employee to perform their work duties (in full or in part) without good reason – this is essentially legalizing the lockout.

For comparison, Article 415 of the Labour Code of the Russian Federation prohibits a lockout, that is, the dismissal of employees at the initiative of the employer in connection with their participation in a collective labour dispute or in a strike. Although the lockout was not prohibited in Belarus (as in Russia), it was not allowed before this law.

Moreover, dismissal on the above-mentioned grounds, according to the amendments made to Article 46 of the Labour Code, is made without prior notice to the relevant trade union, as well as without the mandatory prior consent of the relevant trade union in cases where collective contracts, agreements provide for prior consent to the termination of the employment contract at the initiative of the employer. Thus, when dismissed on these new grounds, trade unions will generally be deprived of the right to protect employees from possible arbitrariness on the part of the employer.

The addition made to Part 5 of Article 49 of the Labour Code establishes the right of the employer to suspend an employee from work if the employee calls on other employees to terminate the performance of their labour duties without valid reasons. In fact, this right to suspension from work is also a hidden form of lockout, as well as restrictions on the right to strike, because without agitation and calls for a strike, it is not possible to organize it (at the meeting, more than 2/3 of the employees present must vote for it, while at the meeting there must be at least half of all employees of the organization).

The Constitutional Court of Belarus in its decision did not very convincingly try to justify the change in the Law of the legal regulation of the grounds and procedure for termination of an employment contract at the initiative of the employer by referring to the fact that it contributes to the exercise of the employer's rights in the field of labour management (by referring to Articles 13 and 44 of the Constitution, Articles 12 and 55 of the Labour Code).

[2] National Legal Internet Portal of the Republic of Belarus. 29 May 2021, 2/2834.

[3] Website of Belarusian Congress of Democratic Trade Unions. Available at: http://www.bkdp.org/news/1/2583/ispolkom-bkdp-prinyal-zayavlenie-v-svyazi-s-vvedeniem-v-strane-zapreta-na-provedenie-zabastovok/ [Accessed: 1 June 2022].

[4] National Legal Internet Portal of the Republic of Belarus. 7 May 2021, 6/1795.

The above-mentioned Law, Article 388 of the Labour Code, is supplemented by the norm: '*During a strike, it is prohibited to make political demands*'.

Legitimate questions arise: if political demands cannot be made during a strike, can striking workers criticize the governmental socio-economic policy if it reduces living standards of the population? Can they criticize the personnel policy of employers? What can they even demand? Only the fulfillment of the terms of the collective agreement and all...?

In support of the 'constitutionality' of this rule, the Constitutional Court of Belarus refers to Part 2 of Article 22 of the Law of the Republic of Belarus 'On Trade Unions', which establishes that when holding strikes on the initiative of trade unions, it is prohibited to make political demands. It is obvious that the norm introduced in the Labour Code tightens this ban, since sometimes strikes in Belarus were directed and organized not by trade unions, but by strike committees among the most active workers.

As a relatively recent example, we can recall the strike at Belaruskali at the end of August 2020, where the participants mainly put forward political demands (related to the holding of presidential elections, etc.), but also added socio-economic ones to the political demands (in particular, the preservation of the collective agreement and the abolition of the fixed-terms contract hiring system).

On August 18, 2020, the co-chairs of the strike committee notified the management of Belaruskali of the announcement of an indefinite strike, referring to Article 41 of the Constitution. Among the demands were: annulment of the results of the presidential election and prosecution of those responsible for fraud, release of political prisoners and participants of peaceful actions, prevention of prosecution of participants of the strike, appeal to the management of banks not to charge interest on loans from participants of the strike until its completion, as well as the preservation of the collective agreement at the enterprise until its expiration. Two days later, the strike committee received a clarification of the requirements – its co-chairs demanded the abolition of the fixed-terms contract system of employment. The Minsk Regional Court on September 11, 2020, at the request of the prosecutor of the Minsk region, declared the strike illegal[5].

Many participants of this strike were brought to administrative responsibility for participation in unauthorized mass events, 49 employees who declared joining the strike were dismissed for violating labour discipline. The International Trade Union Confederation (ITUC) General Secretary Sharan Burrow after appealing the court's decision said: 'The Supreme Court's ruling, upholding a lower court decision, is yet another blow to the fundamental right of all workers to take strike action to defend their interests. The court system is totally subjugated to the will of Lukashenko, denying justice to workers and the people of the country'[6].

In the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) adopted in 2020, which are published for the 109th session of the International Labour Conference in 2021[7]. The Committee takes note of the allegations of the ITUC and the Belarusian Congress of Democratic Trade Unions about extreme forms of violence aimed at suppressing peaceful protests and strikes, as well as about the detention, imprisonment and torture of workers in detention after the presidential elections in August 2020: '*The Government points out that most of the persons mentioned by the Belarusian Congress of Democratic Trade Unions, have been brought to administrative responsibility for organizing and / or actively participating in illegal protest actions or calling for participation in such protest actions. The Government believes that holding individuals accountable for illegal actions cannot and should not be considered as harassment of workers and trade unionists for exercising their civil rights and freedoms, including the right to participate in sanctioned peaceful protests and legal strikes. The status of a worker or trade union leader does not create additional benefits or immunity*'.

On March 2021 The Governing Body of the ILO has approved the report of the Committee on Freedom of Association (CFA) and its recommendations to the Government of Belarus. The CFA expresses serious and deep concern about the events in Belarus and notes the deterioration of the situation with respect to labour and trade union rights. 'The Committee considers that the current situation in Belarus is still far from ensuring full respect for the right to freedom of association and the application of the provisions of ILO Convention No. 87', the report says. In recent months (Autumn 2020), thousands of Belarusian employees and trade union activists have been subjected to repression in connection with their participation in peaceful

[5] National Economic Newspaper (18 September 2020). No. 70.

[6] Belarus: Right to Strike Setback, but World Championship Withdraws. Available at: https://www.ituc-csi.org/belarus-right-to-strike-setback?lang=en [Accessed: 1 June 2022].

[7] Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22, 23 and 35 of the Constitution) Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_740979.pdf [Accessed: 1 February 2020].

actions and strikes. At some point, at the peak of the strike activity, the industrial giants of Belarus – JSC Belaruskali, JSC Grodno Azot, the Belarusian Metallurgical Plant in Zhlobin, BelAZ in Zhodino, the Minsk Tractor Plant, the Minsk Wheel Tractor Plant and others-stopped their work. Belarusian employees faced mass administrative and criminal arrests, beatings, searches, dismissals from work, bans on strikes and collective actions. The Committee's recommendations call on the Government of Belarus to release all trade unionists who remain in custody and to drop all charges related to participation in peaceful protests and strikes, as well as to take all necessary measures to prevent human rights violations and ensure full respect for the rights and freedoms of employees[8].

During the 109th session of the ILO General Conference, these facts in Belarus were the subject of active discussion.

The change made in Part 4 of Article 395 of the Labour Code leads to the fact that the decision of the regional (Minsk city) court to recognize the strike as illegal or the decision to hold it will be subject to immediate execution not after its entry into legal force (as now), and the day after it was issued.

According to the Constitutional Court of Belarus, this change in the legislative norm ensures the prompt execution of the court order, which is necessary to minimize the consequences of an illegal strike, including for the country's economy, and therefore obliges the participants of the strike to stop it and start working the next day after the strike is declared illegal.

Conclusion

Freedom of association and the right to strike as an integral part of it must be respected and ensured by all ILO Member States, including Belarus.

Thus, the Law of May 28, 2021 No. 114-Z, which will enter into force on June 29, 2021, deals with the restriction of the labour and socio-economic rights of employees to strike and to freedom of speech in employment relations, including under the threat of their dismissal on disciplinary grounds.

Moreover, the right to strike is constitutional, and freedom of speech (freedom of expression) in the field of work is essentially universal and generally recognized.

With the subsequent codification of the labour legislation of Belarus, it is necessary to reduce the number of disciplinary grounds for dismissal of employees, excluding those that restrict the right to strike, simplify the procedure for declaring a strike, and regulate the right of employees to collective action.

References

Lushnikova, M. V., Ramankulov, K. S. & Tomashevski, K. L. et al. (2017) Eurasian Labour Law. Moscow, Prospekt. (in Russian)

Lyutov, N. L. & Gerasimova E. S. (2015) International Labour Standards and Russian Labour Legislation. Moscow, Center for Social and Labour Rights. (in Russian)

Tomashevski, K. L. (2021) Problems of Freedom of Association and Scope of Collective Agreements in Belarus as a Challenge to International Labor Standards. *Vestnik of Saint Petersburg University. Law*. (4), 1082–1094. https://doi.org/10.21638/spbu14.2021.417. (in Russian)

Tomashevski, K. L. & Volk, E. A. (2021) *Trudovoe pravo* [Labour Law]. Minsk, Amalfeya. (in Russian)

Information about the author

Kirill L. Tomashevski – Doctor of Juridical Sciences, Professor, Professor of the Civil Law Disciplines and Trade Union Work Department, International University 'MITSO' (Minsk, Belarus; e-mail: tomashevskii@mitso.by).

Date of Paper Receipt: February 11, 2022
Date of Paper Approval: April 11, 2022
Date of Paper Acceptance for Publishing: June 24, 2022

[8] Website of Belarusian Congress of Democratic Trade Unions. Available at: https://bkdp.org/news/zaklyuchenie-komiteta-po-primeneniyu-norm-mezhdunarodnoj-organizaczii-truda [Accessed: 1 February 2022].

Scientific Periodical

European and Asian Law Review

2022

Volume 5. Issue 2

Address of the founder, publisher and distributor:
21 Komsomolskaya Str., of. 114, Yekaterinburg, Russia 620137

Address of the editorial staff office:
21 Komsomolskaya Str., of. 114, Yekaterinburg, Russia 620137
Phone: +7 (343) 375-06-70; e-mail: ealawreview@uslu.su
http://ealawreview.ru

Proofreader A. F. Fedotova
Computer make-up I. V. Yatsuk
Cover designer A. N. Kovshova

Free distribution

In accordance with item 1 section 2 article 1, item 1 section 4 article 11 of the Federal Law of December, 29 2020 No. 436-FZ the journal is not subject to identification.

Signed for publishing 30.08.2022. Publication 30.09.2022
Layout 60x84/8. Reg. pr. sh. 8,83. Reg. ed.sh. 9,57. Circulation 500 copies
Order No. 6

Ural State Law University named after V. F. Yakovlev
21 Komsomolskaya Str., of. 114, Yekaterinburg, Russia 620137

Научное издание

European and Asian Law Review

2022

Том 5. Выпуск 2

Адрес учредителя, издателя и распространителя:
620137, Екатеринбург, ул. Комсомольская, д. 21

Адрес редакции журнала:
620137, Екатеринбург, ул. Комсомольская, д. 21, оф. 114
Телефон: +7 (343) 375-06-70; e-mail: ealawreview@uslu.su
http://ealawreview.ru

Редактор А. В. Федотова
Компьютерная верстка И. В. Яцюк
Дизайн обложки А. Н. Ковшова

Распространение бесплатное

В соответствии с п. 1 ч.2 ст. 1, п. 1 ч. 4 ст. 11 Федерального закона
от 29.12.2020 № 436-ФЗ маркировке не подлежит

Подписано в печать 30.08.2022. Выход в свет 30.09.2022
Формат 60x84/8. Усл. печ. л. 8,83. Уч.-изд. л 9,57. Тираж 500 экз.
Заказ № 6

Уральский государственный юридический университет имени В. Ф. Яковлева
620137, г. Екатеринбург, ул. Комсомольская, д. 21