

SIGNIFICANCE OF LABOUR LAW IN MODERN RUSSIA: TRADITIONS AND CURRENT ISSUES

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Russia's law is a unified system of legal rules governing various social relations. Labour law in Russia governs labour relations between the employer and employee in the labour process. Self-employment is not regulated by labour law in Russia. Labour law has one of the leading places in the system of law in Russia. Today the role of labour law is increasing. It is determined by the market relations and different forms of ownership.

The main mission of labour law in Russia is to create the necessary legal conditions to achieve consensus of interests of both parties of labour relations, matching the state interests. As a result, the main purposes of labour law are: the social and legal protection of employees, providing favorable conditions of work to people, protecting the legitimate rights and interests of employees, arbitrating between the interests of employees, employers and the state in the sphere of social and labour relations.

The origin and development of labour law in Russia has a very complicated history.

Until the Emancipation Reform of 1861 in Russia the social production was mainly based on forced labour of serfs. Legislation that regulated labour reflected the features of the feudal system, prevailing natural economy and the almost complete absence of free labour capitalist style market.

In the period after 1861 until the Bolshevik Revolution of 1917 labour law (represented by mainly the so-called factory legislation) was actively developed. The objects of regulation in factory and labour laws were the relations of waged labour and the emerging public relations after the 1861 reform which entailed the need to regulate them at the legislative level.

Registration of the national labour law's independent branch is associated with the adoption of the Charter of the Industrial Labour in 1913, but the more traditional date is 1918, when it was first adopted by the Labour Code of the RSFSR. Registration of Soviet-type labour law ended only with the adoption of the Labour Code of the RSFSR in 1922

It is worth noting that despite the formal abolition of the pre-revolutionary law by Bolsheviks after the 1917, which included law of the Russian Empire and the acts taken by the Provisional Government - it did not disappear without leaving its traces, and actually had an important influence on the subsequent development of labour laws in our country, in particular, the first Soviet decrees of Labour, the Soviet labour codes, especially in the Labour Code of the RSFSR in 1922. Moreover, the comparative legal analysis shows that many norms and structures of factory and labour laws in a different form and with some adjustments remain in the current labour law. This applies particularly to the regulation of the employment contract, overtime work, and protection of wages, internal labour regulations, and compensation for damages causing injury to employees in the workplace.

After the 1917 revolution, Russian Provisional Government and the Workers' and Soldiers' Council were actively engaged in the problems of labour dispute, but the regulation of this question turned out to be ineffective for the economic, political and social reasons. The rules governing the consideration of individual labour disputes were identified as an independent institution of labour law in Russia in the period of the NEP after the adoption the Progressive Labour Code of the RSFSR in 1922. The codification of labour laws in 1922 was intended to replace the Labour Code of 1918 legislation designed to regulate labour relations in the transition to a market. The adopted in November 9, 1922 Second Soviet Labour Code

completed the formation of Soviet-style labour law. The Labour Code of the RSFSR adopted in 1922 finally designed the basic institutions of the Soviet labour law, giving them a normative content.

The Labour Code of the RSFSR adopted in 1922 was not formally abolished by the end of 30-ies; it had a little resemblance to its original version. It lost its original progressive nature because one part of the rule was abolished, another was changed, the third was not working. World War II and the postwar years did not contribute to the development of labour legislation.

In the late 20-ies of the XXth century there was another change of policy in Russia which reflected most directly in the regulation of labour relations - no effective system for protecting workers' rights was not even mentioned in this period. During the World War II and the postwar period, the institutions of labour law designed to protect labour rights did not receive a positive development.

A sort of revival of these institutions began only in the late 50's of the twentieth century.

The development of socio-political processes in these years was ambiguous and contradictory, but the general trend was the liberalization of the socialist system, state and social system, which was clearly manifested in the development of labour legislation.

The period of "developed socialism" (1960 - 1980) was marked by two major events: the third codification of labour laws in Soviet history, and the adoption of the Constitution in 1977. The Supreme Soviet of the USSR approved the Law "On approval Fundamentals of the USSR and Union Republics on Labour" in July 15, 1970. This was the first in the history of the Soviet-Union codified Labour Act uniting all the basic rules governing the work of employees. With the effect from 1 January 1971, Fundamentals of labour legislation formed the foundation for the entire system of Soviet labour laws to ensure its unity on the scale of the Soviet Union and to a large extent determined the further development.

In the second half of 1980 there was another change of the course, which once again caused the changes and additions to the Fundamentals Law of the USSR and Union Republics on Labour of 1970 (for example, Fundamentals were supplemented by the chapter "labour collective"). In the second phase (1989 - 1991) during the crisis of perestroika, the failure to implement reforms became apparent, and a new turn in policy emerged – to a policy of transition to market relations, further development of democracy in all spheres of public life. The last in the Soviet history Laws on Labour was used during this period. They were unsuccessful attempts to solve the pressing and highly acute problems in the field of labour relations. As it is known, the crisis of Soviet society was completed in 1991 by the collapse of socialism and the collapse of the Soviet Union.

Since 1992, the 1971 Labour Code of Russia was amended almost every year and supplemented by the adoption of federal laws.

Labour Code of the RF adopted in 1971 lost its force from 1 February 2002 due to the adoption and enactment of the current Labour Code of the RF from 30.12.2001 № 197-FL.

In the modern RF, Labour Code underwent many significant changes, in particular, on the basis of the Federal Law of 30.06.2006 № 90-FL "On Amendments to the Labour Code of Russia, the statement of non-applicability of some normative legal acts of the USSR and invalidity of some legislative acts (provisions of legislative acts) on the territory of Russia" adopted in 2006, but many of the changes were not introduced systematically, were not crucial, had merely a clarifying and complementary character.

The legal regulation of labour relations in Russia is based on several principles: recognition of the freedom of labour, prohibition of forced labour and discrimination in employment, protection against unemployment; promoting employment, ensuring the right of every worker to fair working conditions, ensuring the right of every worker to be paid timely

fully the amount of the payment of fair wages; the equal opportunities of employees without any discrimination to the promotion at work; the social partnership in the workplace; the mandatory compensation for harm caused to the employee in connection with his employment duties; the right of everyone to the protection of labour rights and freedoms; ensuring worker's right to dignity in the period of employment; ensuring the right to compulsory social insurance for employees.

Describing the current Labour Code of the RF it is necessary to refer to a clearly expressed aim to protect the rights and legitimate interests of both workers and employers. However, it's not so simple to do it in practice. There are many issues related to its imperfections. With the collapse of the Soviet Union a powerful stream of migrant workers came to Russia, their activities are in most cases outside the field of labour law. There are agreements between the former Soviet republics regulating the career of their own citizens in Russia, but they concern those who reside in Russia legally.

It is clear that Russia needs migration because the country's economy can not rely on the preservation and reproduction of labour resources without the involvement of migrants in the existing demographic situation. Unfortunately there is no fundamental instrument in the field of migration in Russia, such as the concept of migration policy. This complicates the proper regulation of migration and improvement of the scope of the migration legislation, which must be consistent with labour law. Therefore, normative legal regulation in the field of migration there may be system errors.

And as a consequence, this entails a huge prevalence of the number of illegal immigrants over legal. The steady increase in illegal immigration shows a loss of state control over the situation in the migration sphere, which is a direct threat to national security of Russia, forming a large segment of underground economy controlled by migrants, causing considerable damage to the economic interests of Russia and its citizens.

The growth of labour migrants from foreign countries especially illegal ones, is essential for the continuous deterioration of the crime situation in many regions of Russia, thus giving rise to ethnic negativism, and xenophobia, with a threat to life, health and property of citizens, human rights and civil authority of the state. Labour legislation of Russia contains gaps, concerning the rights for labour of foreigners and people without citizenship, the rights of foreigners of retirement and pre-retirement age.

However, these problems are not unique. Today, due to the imperfections in the legal labour laws, there often arise labour disputes associated with the recovery of unpaid wages (this category of cases makes approximately 50-55%). Here a prime example is the situation that occurred in 2009 around the grave violations of labour law at the enterprise "BaselCement – Pikalevo": the payments of wages were delayed for several weeks, the requirements of safety in the workplace were not met, and the collective agreement and the Law on Trade Unions were not respected. It took the intervention of the State in the person of Prime Minister Vladimir Putin. He used the administrative resource and personal authority and influenced the outcome of the problem (<http://kadis.ru/daily/?id=66432>). The second place of disputes, about 40%, belongs to the disputes relating to reinstatement at work following illegal dismissal, and payment of wages during a forced absence.

The foundation of all the errors on the part of employers is the "legal nihilism" in the workplace. Typically, a Russia's employer does not perceive the employer-employee relationship as a separate type of contractual relationship, based on the rule of law, where each side has its rights and obligations, as well as general rules of conduct.

The pattern is most likely taken from the Soviet past and its axiom that a job application statement and a work record are enough for employment. Time and conditions have changed, but the philosophy remains the same. Therefore, in practice, in the event of labour dispute, the court in most cases satisfies the demands of the employee taking his side.

For more than eight years of the Labour Code there were made a lot of changes and additions, which enabled it to provide a sufficiently stable regulatory regime of work of employees. It is also confirmed by the practice of many business enterprises of different ownership forms, the current method of presenting it in textbooks and comments on labour law.

However, the global economic crisis shook the balance of the interests of labour relations participants. The decline in production and consumption caused long suspension of operation of the enterprises and organizations, layoffs, early provision of regular leave and leave without pay, transfers to another job and labour system without the consent of workers. The crisis manifestations in the mechanism of legal regulation of labour revealed weakness of certain provisions of labour law, striking inflexibility of its norms, unpreparedness of the whole system of labour laws to regulate labour relations in extreme conditions.

The trade union as a traditional defender of the labour force was unable to prevent massive layoffs, violations of labour rights and interests of workers, rudeness of employers, to take a proper position in the organization and lead the strikes. As a result of the struggle with employers who violated labour rights of employees ended in courts.

What were the reasons that prevented the existing labour laws to adequately protect labour rights and interests of workers in the global economic crisis, to prevent, eliminate, finally, to mitigate the impact of the negative factors caused by the phenomena of objective reality on workers and employers. At first globalization manifested itself in the legal schemes of employment, dismissal, and the organization of labour of migrant workers, but in fact it was not followed by the general provisions of labour law, although it was clearly demonstrated that there was a need to modify the legal regulation of new terms of employment.

First of all, the problem was caused by the imprecision of language which made it difficult to understand the laws and to make decisions when the crisis occurred. For example, the concept of "mass dismissal" does not exist in Labour Code, as a result, establishing procedural and legal requirements upon the occurrence of massive layoffs, the Code refers to the industry and (or) territorial agreements (Part 1 of Art. 82).

Specific companies, cities and villages are facing real difficulties at the time of economic uncertainty. There are examples of companies forced to reduce production of 5 or more times. It causes the difficulties for labour collectives and for the employers themselves.

With the global financial crisis, when businesses seek to optimize costs, staff costs are one of the first objects of this optimization.

This can not but cause a certain response in society. The spectrum of rights, guarantees and compensations provided by the norms of labour law to employees draw an increased attention of the society as a whole and of entities with legislative power. The global nature of the crisis determined the global interest in this topic. Without exception, states modify their legislation under the influence of economic and social factors, among which are the role and the mood of the public. But the analysis of the main directions of legal regulation of labour in Russia is more interesting in these days (D. Chernyaeva. Tendentsii razvitiya zarubezhnogo trudovogo prava v period krizisa. «Upravlenie personalom». - 2010. № 2).

One of the goals of labour law is to ensure that the legal conditions for reconciling the interests of the employee, employer and state. If this reconciliation does not occur, there may be negative consequences. If the balance is disturbed in favor of employees, it affects the interests of business, and its competitiveness is falling, but if the balance is disturbed in favor of business, there is dissatisfaction with social workers, which may cause a decline in their labour activity. It is therefore important to observe a balance. This is particularly necessary in the global economic crisis.

Russia as a state has no dominant role in the regulation of labour relations, now expanding contractual regulation. State participation is manifested in the fact that it establishes minimum guarantees, which should be available to all and can not be reduced by any employer.

In conclusion, it should be noted that Russia labour law is an evolving area of law, which continues to be improved, reflecting the economic and social challenges of Russia's society, given global trends in labour relations, taking into account the processes of globalization of economic, social and cultural life.