

**Labour Law in Russia:  
Recent Developments and New Challenges**

## **ADAPT LABOUR STUDIES BOOK-SERIES**

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Labour Law in Russia:  
Recent Developments and New Challenges

Edited by

Vladimir Lebedev and Elena Radevich

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**P U B L I S H I N G**

Labour Law in Russia: Recent Developments and New Challenges,  
Edited by Vladimir Lebedev and Elena Radevich

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## FOREWORD

ELENA RADEVICH AND VLADIMIR LEBEDEV

Russia's transition towards a market economy in the early 1990s called for new approaches to the regulation of employment relations in the post-Soviet period in order to strike a balance between employers' interests and employees' rights in changed conditions. The adoption of the Labour Code of the Russian Federation (hereafter: LC RF) in 2001 contributed to solving the issue only partly, as in reality it was passed as a compromise between different political forces and consists of both provisions which can be implemented in the new context of the market economy and restrictions inherited from the planned economy.

The recent and ever-changing socio-economic conditions and the increasing complexity of the employer-employee relationship originating from globalization and technological progress called for the need to further develop Russian employment legislation, which resulted in substantial amendments made to the original LC RF in 2006, with the majority of its provisions being profoundly revised.

However, a thorough analysis of the changes under way shows that many aspects concerning the employment relations are still far from being addressed. This, in turn, indicates a research interest towards foreign, and in particular, European experience, which can be seen as a source for further improvement of Russian employment legislation.

The papers collected in the present volume of the ADAPT Labour Studies Book-Series consider the recent developments of the legal regulation of employment relations – as well as some closely related aspects – from a historical and comparative perspective, in order to provide some insights into these issues and examine the current challenges.



# THE DEVELOPMENT OF RUSSIAN EMPLOYMENT LEGISLATION IN THE POST-SOVIET PERIOD

VLADIMIR LEBEDEV

1. Employment legislation in post-Soviet Russia experienced a progressive reduction in the number of rights which were earlier granted to employees as a group (*trudovoy kollektiv*) and trade unions that was later on reflected in the Labour Code of the Russian Federation passed in 2001.

The key objectives of employment legislation established by Art. 1 of the LC RF mainly have declarative contents. Thus, the main goals of Russian employment legislation are proclaimed in the following: “the coordination of the interests of the parties to the employment relationship with those of the state” and, in particular, in the legal regulation of “social partnership, carrying out collective bargaining and concluding collective ‘contracts’ and agreements; the participation of employees and trade unions in the definition of working conditions and the improvement of employment legislation in the cases envisaged by the law”. The declarative character of these main objectives is reflected in the lack of adequate tools ensuring their implementation. Moreover, a dramatic reduction in terms of safeguards has been reported in comparison with those laid down in the Code of Labour Laws of the Russian Soviet Federative Socialist Republic of 1971 (hereafter: CLL RSFSR).

In accordance with Art. 7 of the CLL RSFSR, a collective contract had to be signed by trade union representatives within an organization on behalf of the employees as a group. This was preceded by employees’ meetings (conferences) where they have discussed and approved the draft of a collective contract, and authorized trade unions to conclude a collective contract with management. At that time, the legislator treated employees as a plenipotentiary participant concluding a collective contract.

Yet the expression “employees as a group” (*trudovoy kollektiv*) is not even mentioned in Art. 40 of the LC RF. In the legislator’s opinion, a collective contract is concluded between the representatives of the

employer and those of employees who produce a first draft of the contract that is not usually discussed in the employees' meetings (conferences).

Accordingly, employees are intrinsically excluded from the drafting and the adoption of key acts within an organization which is normally concerned with such aspects as: regulatory practices, systems and rates of remuneration; benefits and compensation; the adjustments to remuneration taking into account price growth, inflation levels and the achievement of the targets set by the collective contract; employment, re-training and dismissal procedures; working hours and time off, including issues concerning leave and its duration; the improvement of working conditions and job safety, especially those of women and youth; the observance of the employees' interests in the privatization of state and municipal-owned organizations; environmental safety and the protection of employees' health at work; the benefits for those employees who combine work and studies; the improvement of health as well as the recreation of employees and their family members; the partial or full payment for employees' meals; the monitoring of the implementation of the collective contract, the procedure for its amendment, the liability of the parties to an employment contract, the provision of adequate conditions for employee representatives, the procedure for informing employees on the implementation of the collective contract; the obligation to refrain from industrial action if the relevant terms and conditions of the collective contract are observed; other issues defined by the parties (Art. 41 of the LC RF).

In 1988, the CLL RSFSR was amended by the special chapter (XV-A) which regulated the participation of blue and white collars in the organization of work processes, established bodies of employees as a group, their rights and safeguards which were to ensure genuine employee participation in the business activity. Employees as a group decided "issues of production and social development". In accordance with relevant employment legislation, they took measures to improve work organization, quota-setting, remuneration and job safety.

The CLL RSFSR defined the powers of employees' meetings (conferences) in production. These meetings (conferences) established the council of employees as a group, approved economic and social development plans as well as the collective contract, confirmed internal working regulations (*pravila vnutrennego trudovogo rasporyadka*) and dealt with other important labour issues in the organization (Art. 235<sup>1</sup>).

2. The CLL RSFSR granted extensive powers to the trade union representatives operating in the organization. Thus, in accordance with Art. 35 of the CLL RSFSR it was prohibited to terminate an employment contract without the consent of trade union representatives. As a general

rule, it was possible to dismiss an employee no later than one month after receiving the consent on the part of trade unions. Moreover, employment legislation did not provide for the possibility to appeal the refusal of trade union representatives to grant their consent to the termination of an employment contract. The violation of that rule always involved the employee's reinstatement, although such a one-sided approach was widely criticized in theory and practice. However, when the courts reinstated an employee, the requirement of Art. 35 of the CLL RSFSR was not fulfilled unless other circumstances were included.

The LC RF inherently deprived trade union representatives of their right to verify the lawfulness of an employee's dismissal and give consent to the termination of an employment contract. The legislator only gives the right to provide an opinion on the matter. In accordance with Art. 373 of the LC RF, at the time of making a decision regarding the possible termination of an employment contract of an employee who is a trade union member under items 2, 3 or 5 of part 1 of Art. 81 of the LC RF,<sup>1</sup> the employer shall send the elected body of the main trade union a draft of the order as well as copies of the documents motivating the decision. The opinion of the trade union has practically no influence on the employer's decision. The employer can dismiss an employee even if the trade union considers the dismissal to be groundless and (or) against current employment legislation.

Some minimum levels of protection are also given to the heads of the elective collegial bodies of an organization and its departments who are also full-time employees (Art. 374 of the LC RF). In some cases, while maintaining the dismissal order, it is necessary to obtain the consent of the relevant trade union representative body.

3. Current Russian employment legislation widens the employer's room for manoeuvre, while reducing the safeguards for employees to be restored among their legal rights if infringed. This should come as no surprise, considering the legislator's concern for entrepreneurship which appears to be reasonable taking into account that between the last and the current century, entrepreneurship reported a decrease, especially in the engineering industry, producing a limited number of scientific achievements and lower investments.

At this stage the protective function of the courts in Russia is dwindling and employees rarely resort to labour dispute review bodies to

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<sup>1</sup> This includes: redundancies or job cuts in an organization; the employee's failure to meet the job requirements due to a lack of qualifications, as certified by an evaluation procedure; the employee's repeated and unjustified failure to fulfill his/her duties, if preceded by a disciplinary penalty inflicted by the employer.

protect their rights. It is more and more common to think that it is almost impossible for employees to protect their rights violated by the employer by bringing the case before the court.<sup>2</sup>

4. Employers usually start neglecting employment legislation immediately after the conclusion of the employment contract. The LC RF defines an employment contract as an agreement between an *employer* and an *employee* (Art. 56). Yet in legal terms, this definition does not make any sense taking into account that in the terminology established by the LC RF “employee means a natural person who has entered into employment relations with an employer” (Par. 2, Art. 20 of the LC RF), while “employer means a natural person or a legal entity (organization) that has entered into employment relations with an employee” (Par. 4, Art. 20 of the LC RF).

Pursuant to Art. 57 of the LC RF, the following terms must be included in the employment contract: the place of work (i.e. the name of the employer); the job function; the date of commencement of work and, if a fixed-term contract is concluded, its term and the reasons for concluding a fixed-term employment contract under the LC RF or another federal law; remuneration (basic wage, extra payment, and incentives); working hours and rest periods (if different from those established for other employees); bonuses for operating in harmful and/or hazardous working conditions if the employee is hired to perform work in such conditions, including a description of working conditions; the terms and conditions defining the nature of work (mobile, travelling, en route, or any other kind of work); the reference to mandatory social insurance for the employee under the LC RF and other federal laws; other terms and conditions in the cases envisaged by employment legislation and other labour-related provisions.

Employers violate Art. 57 of the LC RF as they avoid specifying the employee’s job functions, basic wage or remuneration rates, and other terms of payment. In other cases, employees are partly paid under the table so employers can save on social contributions and taxes.

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<sup>2</sup> The Russian Federation ranks among the top places in the number of applications submitted to the European Court of Human Rights; those filed from Russian citizens account for a quarter of the total figure. In Russia, the European Court of Human Rights is viewed by employees as the last opportunity to exert their rights. As of 2010, the European Court of Human Rights handed down more than 500 rulings on the applications submitted by Russian citizens against Russian authorities (see Gerasimova, 2010, I. “Svoboda obedinenija v profsojuzy. Praktika Evropejskogo Suda po pravam cheloveka [Freedom of association in trade unions. The practice of the European Court of Human Rights],” in Gvozdzickikh, A. (Moscow: CSTP), pp. 4-5).

5. Par. 3, Art. 37 of the Constitution of the Russian Federation establishes that anyone shall have the right to work in conditions which meet safety and hygiene requirements, to receive remuneration which is equal to at least the minimum wage without any discrimination whatsoever and to be protected against unemployment.

These constitutional provisions are detailed in the Labour Code of the Russian Federation. Thus, Art. 3 of the LC RF prohibits employment discrimination: employment rights and freedom should be ensured to anyone, regardless of sex, race, colour of skin, nationality, language, origin, property, family, social status and occupation, age, place of residence, attitude to religion, political views, affiliation or failure to affiliate with public associations, and other factors not relevant to the professional qualities of the employee. On reflection, this statement is the only attempt made by the legislator to tackle discrimination in the context of employment law.

Some safeguards for certain categories of employees are provided at the national level, yet they are not always ensured by employers. In some cases, employees themselves do not know about such guarantees. The awareness-raising activity in relation to employment legislation carried out by some public organizations (for example, “*Znanie*”) was narrowed down in the post-Soviet period and has not been restored since then, both for a lack of interest on the part of employers and because of limited financial resources at the national level. An attempt was made by trade unions (inspectors and trade union committees) which proved unsuccessful, since their activity mainly aims at the restoration of the employees’ rights which have been infringed by the employer rather than the prevention of breaches of employment legislation.

The issue of discrimination, which is increasingly urgent in contemporary Russia, is still not considered important by the legislator, although there are reasons to believe that it will become a decisive factor in the years to come.<sup>3</sup> Discrimination in the Russian Federation depends

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<sup>3</sup> See ILO. 2003. *Time for Equality at Work. Global Report Under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights At Work. Report of The Director-General*. Geneva: ILO. [http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_PUBL\\_9221128717\\_EN/lang--en/index.htm](http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221128717_EN/lang--en/index.htm); ILO. 2007. *Equality at Work: Tackling the Challenges. Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Report of the Director-General*. [http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_082607/lang--en/index.htm](http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_082607/lang--en/index.htm); *Diskriminacija v sfere truda: teorija i prakтика: nauchno-praktičeskij sbornik [Discrimination in the Sphere of*

on a range of factors, including objective ones. Firstly, it relates to the increasingly dissatisfaction among Russians with their underestimation as the dominant nation in between other nations subject to the Russian Federation (Federal entities such as the Republic of Tatarstan, the Republic of Moldova, the Chechen Republic, the Republic of Dagestan, and so on).

Secondly, it can be explained by the migration flows from neighbouring countries, with many people who enter the country illegally. Migrants are usually given low pay and are employed in low-skilled or semi-skilled jobs. As a general rule, employers hiring migrant workers do not respect their rights, do not pay them their full wage and do not comply with safety requirements.

The relevant authorities, particularly in Moscow, are not interested in tackling and preventing discrimination based on one's immigration status, being more concerned with the provision of statistics on the number of migrant workers, their identification and deportation. Recently, the proposal to introduce a visa system within Central Asian and Transcaucasia has gained ground, along with that of assigning criminal liability to those employers who hire illegal immigrants.

Thirdly, in many cases the protective function of employment law is not as effective as it should so long as employees who are provided with some benefits at the national level are not aware of them and employers seek to avoid their granting. The Labour Code of the Russian Federation lays down some special provisions regulating the employment of certain categories of workers, among others women and young people under the age of eighteen (Chapters 41 and 42 of the LC RF). These provisions determine the range of statutory safeguards which are usually ignored by employers. Moreover, employers generally avoid hiring employees who are protected by additional safeguards, in particular, those which limit the range of potential jobs for such employees. Thus, Art. 253 of the LC RF sets some limitations on the use of female labour in heavy jobs, occupations featuring harmful and/or dangerous working conditions, and underground jobs, with the exception of intellectual work and work performed in the sanitary and consumer services sector. Further, and taking account of their physical constitution, women cannot be employed in jobs involving the lifting and the moving of heavy objects. Similar

provisions are stipulated in relation to employees younger than eighteen<sup>4</sup> (chapter 42 of the LC RF).

Moreover, current legislation makes provisions for pregnant women and for women with children younger than 18 months to be assigned to other occupations (Art. 254 of the LC RF). Upon submission of a medical certificate, pregnant women can demand to reduce the amount of work performed or to be given another occupation which does not involve adverse working conditions of the employer who will retain the average wage of their previous position.

Part-time workers and those on fixed-term contracts might also be subject to discriminatory practices. Accordingly, they also need further legal protection.<sup>5</sup>

6. Recently, the implementation of “a decent work agenda” has been extensively debated in the Russian legal literature.<sup>6</sup> However, taking into account the foregoing issues, it is very likely that “a decent work agenda” will only constitute a slogan or a scientifically substantiated principle based on the cooperation between employers and employees. As is generally known, their interests are competing, in particular, if we talk about the correlation between the employer’s profits and employees’ wages, as well as the financial support of health care, etc. Striking a balance between them might take decades but it will be the starting point in the planning of an effective and decent work agenda.

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<sup>4</sup> It is the government of the Russian Federation that establishes the range of prohibited jobs for these workers.

<sup>5</sup> See, for example Radevich, E. 2013. “Zaschita trudovykh prav chastichno zanyatykh rabotnikov [Protection of Part-time Workers’ Employment Rights (Italian Experience)],” *Aktual’nye problemy trudovogo prava i prava social’nogo obespecheniya*: Proceedings of the fifth International Conference, Moscow: Prospekt, 253-258; Radevich, E. 2013. “Pravovaya zaschita rabotnikov po srochnym trudovym dogovoram [Legal Protection of Fixed-term Workers],” *Profsoyuzy i aktual’nye problemy trudovogo, korporativnogo i social’nogo prava*: Proceedings of the 2<sup>nd</sup> International Conference, Minsk: Mitso, 133-135.

<sup>6</sup> In 2013, the conference “Puti realizatsii v Rossii programmy dostoinogo truda i dostoinogo social’nogo obespecheniya [The ways of implementation of the Decent Work Agenda in Russia]” was held by Lomonosov Moscow State University, the Ministry of labour and social protection of the Russian Federation, the Association of Russian lawyers and the Federation of independent trade unions. More than 200 participants from Russia, Sweden, Bulgaria, Azerbaijan, Kyrgyzstan, Latvia, Lithuania, Belarus, Kazakhstan, Ukraine, etc. have attended this conference. It was concluded that it was necessary to improve employment legislation considering the strategic directions formulated in the ILO Decent Work Agenda.

Moreover, a decent work agenda cannot be considered in a merely exploitative manner. In other words, its meaning should not be exclusively limited to such issues as payment rises, job safety maintenance and social partnership although they are undoubtedly important.

The ILO Declaration on Social Justice for a Fair Globalization of 10 June 2008<sup>7</sup> lays down the objectives through which the Decent Work Agenda is expressed, in particular:

- a) promoting employment by creating a sustainable institutional and economic environment in which: individuals can develop and update the necessary capacities and skills they need to enable them to be productively occupied for their personal fulfilment and the common well-being;
- b) developing and enhancing measures of social protection, social security and labour protection (healthy and safe working conditions; wages and earnings policies, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all, and a minimum living wage to all the employed and those in need of such protection);
- c) promoting social dialogue and tripartism as the most appropriate methods to increase the effectiveness of labour law and institutions, including the recognition of the employment relationship, the promotion of good industrial relations and the development of effective labour inspection systems;
- d) respecting, promoting and realizing the fundamental principles and rights at work, which are of particular significance, as both rights and conditions are necessary for the full realization of all the strategic objectives.

At the 97th session of the International Labour Conference (Geneva, 10 June 2008) a declaration was made about the universality of the Decent Work Agenda: “all Members of the Organization must pursue policies based on the strategic objectives—employment, social protection, social dialogue, and rights at work”. Therefore, the Decent Work Agenda and the methods of its implementation should be established at the national, regional<sup>8</sup> and local level.

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<sup>7</sup> The ILO Declaration on Social Justice for a Fair Globalization on 10 June 2008. [http://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS\\_099766/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang--en/index.htm).

<sup>8</sup> Some measures were taken in this connection. On 25 January 2013 the following regional program was adopted: “Programma Federacii profsoyuzov Respubliki Bashkortostan, Objedineniy rabotodateley Respubliki Bashkortostan, Pravitel’sstva

An analysis of the issue of the Decent Work Agenda at the organisational level which overlooks the labour process and the relationship between the parties is doomed to be ineffective. Any labour process requires the cooperation of employees and is based on their volitional action or inaction. This system is reflected in the production process of an organization, where efficiency is ensured by the activity of the employer and the employees (or their representatives). Decent work in such conditions can be ensured not only through objective factors (for example, the technical advances used in the labour processes), but also through the personal characteristics of the parties involved: their training levels, and their (professional and legal) expertise. Decent work will emerge where the interests of flexible employees and those of thoughtful employers will coincide.

To ensure decent work, an employer should:

- a) promote the coordination between an organization and other entities (state and civil society);
- b) cooperate with employees in the labour process;
- c) meet legal and moral requirements.

The analysis of the relation between employers (or their representatives) and civil society and the state shows that decent work should also have an ideological character.<sup>9</sup> Establishing the conditions for decent work requires an ideological base, which should involve not only the employer, but also the state as a social partner, employers'

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Respubliki Bashkortostan 'Dostoiniy trud v Respublike Bashkortostan' (na period do 2025 goda) [The program of Federation of trade unions of Bashkortostan, Employers association of Bashkortostan, and the Government of Bashkortostan 'The decent work in Bashkortostan' to 2025)]".

[http://fprb.ru/download/economika\\_oplata\\_truda/programma\\_dostoin\\_trud.pdf](http://fprb.ru/download/economika_oplata_truda/programma_dostoin_trud.pdf). On 26 September 2012 the Krasnodar regional trilateral commission on the regulation of social and labour relations approved "Standarty dostoinogo truda [Standards of decent work]," providing some labour standards which should give employees and their family members decent work and life and adequate social security. <http://docs.cntd.ru/document/462502910>.

<sup>9</sup> Art. 13 of the Constitution of the Russian Federation concerning the media statements prohibits "ideologizing" social, economic and legal issues". In reality, Art. 13 of the Constitution of the Russian Federation prohibits establishing any ideology involving collectivity. At the same time ideologies as a system of ideas, notions, and conceptions which are shared by individuals or associations, including those of employers and employees have always existed and will exist in the future. The ideology of the decent work can be seen as a form of social consciousness, as well as the most important aim of labour cooperation.

associations, trade unions, political parties, etc. Decent work can be elevated to the state policy level, and disseminated in the relevant structures of civil society<sup>10</sup> as an essential part of the daily lexicon of their representatives. It is necessary to develop a system awarding the honorary title of “organization where the decent work agenda is implemented” and ensure its realization by providing material incentives (grants, honourable distinctions, tax rebates, and so on.). Today, such “militant” ideology is necessary for Russia. It would favour economic expansion and respect for one’s work.

Employers’ duties should also be connected with the implementation of the decent work agenda. Generally, they are determined by the peculiarities of the production process which also affect the selection process of employers’ representatives as well as the recruitment process. Thus, on their part, employers should:

a) develop a respectful attitude of employees towards work, teams and colleagues. Management and its representatives should evoke a feeling of self-appraisal, making employees proud of working for a certain organization;

b) assign tasks in line with the employee’s occupational skills;

c) pay staff on time and at a rate which ensures a decent standard of living, also considering the company’s profitability;

d) establish working conditions which make it possible for an employee to increase or fulfil his/her professional level.

These duties can be fulfilled if employers and employees as a group manage to adopt them through legal acts at the local level, not only bringing the issue to the attention of relevant representatives, but prompting employees to set these duties as their own aims. The theory of flexible employees (*akribologiya*)<sup>11</sup> makes it possible to solve this issue.

7. The analysis of current employment legislation and practices points out the entropy of Russian labour law representing the whole Russian legal

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<sup>10</sup> The implementation of the Decent Work Agenda at national level will depend on national needs and priorities and it will up to member states, in consultation with representative organizations of workers and employers, to determine liability. To this end, they may consider, among other things: the adoption of a national or regional strategy for decent work, or the establishment of a set of priorities for the integrated pursuit of the strategic objectives (see the ILO Declaration on Social Justice for a Fair Globalization on 10 June 2008).

<sup>11</sup> See Lebedev, V. M. 2000. “Akribologiya (obschaya chast’) [Akribologiya (essentials)]. (Tomsk: Tomsk University Publishing House), 116 p.; Lebedev, V. M. 2008. “Trudovoe pravo i akribologiya (osobennaya chast’) [Employment law and akribologiya (special part)]. (Moscow: Statut), 133 p.

system. In the post-Soviet era, especially at the beginning of the current century, Russian law has been changed substantially. The feverish lawmaking process affects almost every branch of law and even their basic provisions (e.g. codes).

The legal entropy in contemporary Russia challenges the fundamentals of civil societies such as the supremacy of law and equality before the court, ensuring the full and real implementation of people's rights, etc. All of these deviations from the basic elements of civil societies, including those in the sphere of employment and social security law, are objective and based on a range of factors. Firstly, they are based on the violation of the principle of separation of powers. The legislative initiatives put forward by the executive bodies, as well as initiatives (e.g. opinions) of the President of the Russian Federation are always converted into laws and regulatory acts.<sup>12</sup> The rest of the employment legal regulations are established through regulatory acts, the efficiency of which is not analyzed by the legislative body. Further, legal entropy is based on the non-compliance of the organization and activity of courts and law-enforcement entities with basic norms, especially when the principle of legality is separate from the principle of rationality. Finally, in contemporary Russia, questioning justice is typical when important aspects concerning how to disobey the law are raised.

The most important and obvious manifestations of such entropy concerning employment law is that the state, employers and trade unions avoid implementing decent working conditions at the local level. This has a number of consequences: cosmetic initiatives (conferences and events) replace real action; the seamy will of the ruling regime is introduced by means of employment legislation; the protective function of employment law is limited and is followed by the narrowing down of employees' rights and those rights which are granted to small businesses; employment discrimination increases, in particular, against migrant workers; the legal mechanisms of protection of certain groups of workers (women, employees younger than eighteen and those working in harmful and/or hazardous working conditions) are sequentially being destroyed.

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<sup>12</sup> The Russian Opinion Research Center conducted research on social and political approval in the year following the presidential elections. From the fourth quarter of 2012 to the third quarter of 2013, the approval rate of the main legislative body—the State Duma—declined by 10%. More than two thirds of respondents disapproved of its activity. The rest of respondents considered that it was possible to perform legislative activity without the State Duma, relying on the lawmaking activity of the President of the Russian Federation and that of the Government of the Russian Federation.

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# THE DEVELOPMENT OF RUSSIAN LABOUR LAW IN THE 21<sup>ST</sup> CENTURY: A COMPARATIVE SKETCH OF REGULARITIES AND TRENDS

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The development of civilization as a whole as well as of any of its components (and the law is an indissoluble component of any civilization) represents difficult, multilevel and multiple factor processes. In this regard, within academic research, we observe the consecutive implementation of three cogitative operations:

1. The detection of the regularity of developments of legal phenomena, both generally, and specifically.
2. The definition, on the basis of revealed regularities of trends, of further development of legal phenomena.
3. Full compliance of expert and legislative activity to revealed trends.

This article is an attempt at revealing the main regularities of development within the legal phenomena in the field of employment law. Further, the definition on the basis of the revealed regularities of trends of development of the labour law in the 21<sup>st</sup> century will be made.

Before discussing the problem at hand, we will briefly define our understanding of legal regularities and trends, what they are in general and what makes them distinct from one another.

There is a dearth of literature on legal regularities in Russia. However, a number of publications present the opportunity to formulate the determination of legal regularities. According to the most widespread notions, it is fair to speak of legal regularities as objective, systematic stable relations of factors and phenomena in certain environments.

Trends are closely connected with legal practices. It is obvious that any subject of theoretical knowledge consists not only of empirically perceived aspects, but also of inherent objective trends, discovered only at the level of scientific abstraction. It is possible to consider a tendency as the main

direction of further development which can over time become standard practice.

We will further consider the precondition of the distinction of trends of the development of labour law, basing our discussion on trends already revealed. We observe that analyzed regularities and trends of global character (if it be exact, rather characteristic of economically developed countries of the West) in many respects coincide with that which is occurring in Russia. However, the latter have certain features that are determined by the set of social, economic and political development of Russia.

At the turn of the 21<sup>st</sup> century, the development of labour law in the West, as well as in Russia came to new qualitative level. Labour law of the workers in the 20<sup>th</sup> century, was suited to the industrial society or even the post-industrial society it was created in. The 21<sup>st</sup> century began as an information society emerged. This society is not based on production (industrial), or the public organization of work, but on a new public organization of which the boundary lines are yet to be outlined. Labour law formulated in the 20<sup>th</sup> century does not keep within the framework of a new public organization of work which has been dictated upon by conditions of the information society. Nowadays adherents of the concept of the post-industrial (information) society as well as sceptics agree on one thing: there have been revolutionary changes in employment that inevitably call for change in labour law and corresponding legislation.

This leads us to discussing the formation of the post-industrial (information) organization of work as the prevailing tendency that has become an expected regularity which has for the most part defined the further development of labour law. However, this organization of work has no universal character. In fact, a number of States remain in the industrial period, with some still progressing towards industrialization.

Thus, at the beginning of the new millennium the development of labour law was decisively influenced by two planetary processes, namely social regularities having these characteristics:

- 1) A technical revolution combined with an accelerated social evolution resulting in a post-industrial society.

- 2) The process of globalization inseparably linked with the above. Modern Russian researchers<sup>1</sup> play special attention to this.

In this context there was a release of a collection of essays, "Labour Law in the Post-Industrial Era"<sup>2</sup> by leading scientists from the West: Great

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<sup>1</sup> See: Morozov, P. E. 2012. *Sovremennye tendencii razvitiya zarubezhnogo trudovogo prava v usloviyah globalizacii* [Current Trends of Development of the Foreign Labor Law in the Conditions of Globalization]. Moscow: Prospekt. 256 p.

Britain, Germany, France, and the Netherlands. These were all authors of this peculiar manifesto of the future changes. The books conclusions and future forecasts have stood the test of time. It is important to note that one of the co-authors, the German researcher, V. Doybler repeatedly reported in Russia on the trends related to the development of labour law in industrialized countries<sup>3</sup>.

Similar to the aforesaid but even more representative with regards to the structure of participants, was the collective research study presented in the book: “The Idea of Labour Law”.<sup>4</sup> Leading scientists—experts in a sphere of the labour law of the countries of the West from Great Britain, the USA, Canada and Germany presented their ideas. The majority of this research is devoted to detection of regularities and trends within the development of labour law. A similar key collection of essays in “Labour Regulation in the 21<sup>st</sup> Century: In Search of Flexibility and Security” (Vilnius, 2011, in English, Lithuanian and Russian languages) was written by a number of leading scientific researchers from the West with a group of Russian scientists (L.Yu. Bugrov, S. Yu. Golovina, K.N. Gusov, A.M. Kurennoy, M. V. Lushnikova, etc.). Also worthy of mention is the collection of articles in “Labour Law of Russia and European Union Countries” (M, 2012).

Furthermore, in April 2013, a conference hosted by the Kiev National University and the Institute of State and Law of NAN of Ukraine<sup>5</sup> was devoted to research of the development of labour law.

Domestically, in Russia, I. Ya. Kiselev (1932-2005) was the first to investigate trends of the development of labour law in the foregoing

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<sup>2</sup> Wedderburn of Charlton, K.K.W., Sinzheimer, H. ed. 1994. *Labour law in the post-industrial era: essays in honour of Hugo Sinzheimer*. Aldershot: Ashgate. 152 p.

<sup>3</sup> See: Doybler, V. 1995. “*Tendencii razvitiya trudovogo prava v promyshlennno razvityh stranah* [Tendencies of Development of the Labor Law in Industrialized Countries],” Paper presented at the Moscow State Law Academy, Moscow, Russia, October, 1994, *Gosudarstvo i pravo* [State and Law], No 2: 103-109. In September 2012 he made the report “Current Trends of Development of the Labor Law of Germany and Euro—Crisis” at the Higher School of Economics (Moscow, Russia) (not published).

<sup>4</sup> Davidov, G., Langille, B. ed. 2011. *The idea of Labour Law*. New York: Oxford University Press. 454 p.

<sup>5</sup> See: Inshina, N.I., Khutoryan, N.M., Scherbina, V.I. ed. 2013. *Tendencii razvitiya nauki trudovogo prava i prava social'nogo obespecheniya* [Tendencies of Development of Science of the Labor Law and Law of Social Security], Papers presented at the 1<sup>st</sup> International Theoretical and Practical Conference. Kiev: Nika-Centr, 676 p.

manner. He noted that the transition to a post-industrial, information society created a crisis in the traditional labour law of the West. "Some lawyers, sociologists, and politicians note that as our social environment shifts towards a post-industrial society, there is a challenge for labour law to survive and it is doomed to extinction, or at least its independent existence is under threat"<sup>6</sup>. However, as the author fairly noted, in the 21<sup>st</sup> century labour law will overcome its challenges, and be revived on a new basis. A niche will be defined for it laying out the subject, its methods, basic principles and it will lead to significantly improved tools. It is likely that improvements in labour law due to the development of human civilization will become a leading branch of law<sup>7</sup>.

I. Ya. Kiselev considered changes in the coverage of labour law (a tendency towards the expansion of labour law), the legal regulation of labour relations (that is an emphasis on flexibility, diversification, and a reduction of authoritative methods of regulation within labour relations at the expense of intensive development of local regulations, i.e. corporate labour law) and the increasing relevance of international labour standards in conjunction with the standardization of labour law at a global scale, which are key innovations in the sphere of labour law<sup>8</sup>. These trends have gained recognition amongst Russian labour law experts<sup>9</sup>.

Furthermore, the main trends in the development of Russian labour law viewed in the context of regularities of global development in employment relations will be considered. In our opinion, the main trends of development of labour law are:

1. The recognition of the importance of labour rights and the widening of the scope of labour law.

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<sup>6</sup> See: Lushnikov A.M., Lushnikova, M. V. 2009. *Kurs trudovogo prava* [Course of the Labor Law]. V.1. Moscow: Statut, 223-262; Lushnikova, M. V., Lushnikov, A.M. 2006. *Ocherki teorii trudovogo prava* [Sketches of the Theory of the Labor Law]. St. Petersburg: Yuridicheskii centr Press, 103-146, etc.

<sup>7</sup> Kiselev, I.Ya. 2003. *Noviy oblik trudovogo prava stran zapada (proryv v postindustrial'noe obschestvo)* [New Shape of the Labor Law of the Countries of the West (Break in Post-Industrial Society)]. Moscow: Intel-Sintez, 12.

<sup>8</sup> See: Kiselev, I.Ya. Op. cit.

<sup>9</sup> See, e.g.: Golovina, S.Yu. 2007. "Sovremennye tendencii v trudovom prave Rossii" [Current Trends in the Labor Law of Russia], Paper presented at the at the Moscow State Law Academy, Moscow, Russia, January 2006, *Sovremennye tendencii v razvitiit trudovogo prava i prava social'nogo obespecheniya: sbornik materialov konferencii* [Current Trends in Development of the Labor Law and the Law of Social Security: collected reports of the conference]. Moscow: Prospect, 9-27.