Associazione per gli Studi Internazionali
e Comparati sul Diritto del Lavoro
e sulle Relazioni Industriali

THE INDUSTRIALISATION OF LABOUR CONTRACT – Part I

The Codification of Russian Labour Law: Issues and Perspectives

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by

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Collana ADAPT
Modena - n. 8/2002

COLLANA ADAPT, n. 8/2002

Collana registrata il giorno 11 novembre 2001 presso il Tribunale di Modena. Registrazione: n.1609.

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SUMMARY:

1. The Russian Labour Code – a law under evolution. –
2. The theoretical-conceptual basis for the codification of the new Labour Code dated December 2001.
3. The issue of legislative competence division in the area of labour law between the Russian Federation and the subjects of the Federation.
4. Structure and contents of the new Russian Labour Code. –

   4.1 continued: social partnership, the representation of interests, collective bargaining and employee involvement.

   4. 2. continued: the individual employment relationship regulations.

5. Conclusions.

1. Over the past decade, the Russian Federation has undergone radical change that has concerned not only the social and economic fabric of the country, but also its legal and institutional framework[1]. As is well-known, this change has introduced a market liberalisation that has placed greater limitations on central government in relation to economic policy and social relations. Yet, the impact of such a change on the real regulatory set-up is less known. Terms like "democracy", "transparency", "pluralism", "decentralisation", "privatisation", "deregulation", "internationalisation", which are normally used, assume a highly provocative meaning, with reference to the Russian Federation, as is well illustrated by the Russian term *"perestroika"* (which literally means: *"reconstruction").* Although these terms help us understand the direction of the ongoing change, they do not enhance our understanding of the actual dynamics that are currently at work in the present economic and social, as well as legal and institutional, systems of the country.

Therefore, the recent codification of the whole of Russian labour law can be a privileged vantage point to observe the deep division between the evolution of law and the actual organisation and production trends characterising the present changes occurring in the Russian Federation.

A merely technical and formal analysis of the new *Trudovoy Kodex Rossiyskoy Federazii* (literally: *"Labour Code of the Russian Federation")*, which became effective as of February 2002, would inevitably lead to a radical change of paradigm in which labour law and industrial relations are viewed in relation to the aforementioned trends[2]. Their governing rules, regulations, and principles - as further illustrated in the following paragraphs – are based on an overall liberalisation of labour relations, which turns the heteronomous hyper-protection employment system under the old *Kodex Zakonov o Trude* on its head (literally: *"Labour Law Code"*, referred to as *KZoT)* dated December 9th 1971 (effective from April 1st 1972) [3]. In agreement with the doctrine [4], this Code

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[1] With regard to this issue, cf., in general, Sil, *Privatisation, Labour Politics, and the Firm in Post-Soviet Russia: Non-market Norms, Market Institutions and the Soviet Legacy,* in Candland and Sil (eds.), The *Politics of Labour in a Global Age,* Oxford University Press, 2001, 205-232; Gimpelson, *Politicheskaya Economia Rossiyskogo Rinka Truda (Political Economy of The Russian Labour Market),* 2001, in http://pubs.carnegie.ru/russian/; *Stiglitz, Whither Reform? Ten years of transition, Annual Bank Conference on Development Economics,* W ashington, Apr il 28- 30, 1999, http://www.worldbank.org/knowledge/chiefecon/stiglitz.htm; Hughes, L itght (eds.), *Russia Ten years After*, Ox ford University Press, Oxford, 2002.

[2] For a thorough analy sis of the social security legal- institutional fram ework cf. the classic essay by Kornai, *The Socialist System – The Political Economy of Communism*, Clar endon Pr ess, Oxfor d, 1992, spec. 203-227 for the aspects related to the labour market.

[3] On the pr evious legal fr amework, cf. M avrin, *On Some Peculiarities and Problems of Russian Labour Law*, in *IJCLLIR*, n. 4/2001, spec. 399- 404; Dedov, *Pravooe regulirovanie rinka truda* (Labour M arket L aw), M oskwa, Stoglav-H, 2000; Smirnov, *Trudovoe pravo* (Labour L aw), M oskwa, Pr ospekt, 2001; Kr apivin, Vlasov, *Trudovoe korporativnoe pravo* (Corporative L abour L aw), Nor ma, M oskwa, 2000; Clarke, *Labour in Post-Soviet Russia*, in Hughes, Litght (eds.), *Russia Ten years After*, Oxford University Press, Oxford, 2002; Clar ke, *New Forms of Labour*

well reflected the monopsonist character of the industrial relations system and of Russian labour law, characterised until recently by a total denial of market economy principles.
Yet, given closer analysis, the new regulatory framework may reveal deep and radical changes that actually occurred prior to the collapse of the Soviet Union, which happened after the Boris Jeltzin was denominated as President of the Russian Federation (1991)[5]. The changes introduced by the 1971 Labour Code, starting from 1992, have not kept pace with the ongoing process of change, thus leading to a very dangerous deregulation of labour relations, which - also due to the weakness of the trade union movement [6] - has totally undermined the existing legal framework[7].
One can state that after the collapse of the Soviet Union (1991), labour market legislation has actually been totally disregarded by economic operators[8]. This has led to the development of a hidden and parallel labour market based on labour relations philosophy that was *contra legem* in comparison to the Soviet system characterised by full employment and an absence of illegal work[9].

Table 1: I*nvisible wages*

Invisible wages	**1993**	**1994**	**1995**	**1996**
In trillions of roubles	9.1	52.0	170	250
In GDP percentages	5	9	10	11

Source: Ekonomika i zizn*, March 9th 1997*

Contract and Labour Flexibility in Russia, Economics of Transition 7, 3, 1999, 563-614; Clarke, *Labour Relations in Transition*, Cheltenham, Edward Elgar, 1996.

[4] at the time of USSR, the State was the only employer. Therefore, labour law and the industrial relations system in general could be regarded as an interesting example of monopsony, which describes a market that consists of only one buyer and does not leave possibilities for others.

[5] For the historical reconstruction of the collapse of the Soviet regime cf., in particular, Caselli, Pastello, *La caduta dell'URSS e il processo pacifico di transizione: un paradosso apparente (The fall of USSR and the peaceful transition process: an apparent paradox),* Europa Europe IV (1), Edizioni Dedalo, 1997; Clarke (ed.), *Management and Industry in Russia: Formal and Informal Relations in the Period of Transition,* Cheltenham, Edward, Elgar, 1995.

[6] Cf. Ashwin, Clarke, *Russian Trade Unions and the Industrial Relations in Transition*, Basingstonke and New York, Palgrave, 2002; Sil, *Privatisation, Labour Politics, and the Firm in Post-Soviet Russia: Non-market Norms, Market Institutions and the Soviet Legacy,* cit., 206-220; Cook, *Labour and Liberalisation: Trade Unions in the New Russia,* New York, The Twentieth Century Fund Press, 1997; Clarke, Fairbrother, Borisov, *Does Trade Unionism have a Future in Russia, Industrial Relations Journal 25,* 1, 1994, 15-25.

[7] On the crisis of legality that has characterised the end of the Soviet system cf., in particular, Kolev, *Labour Supply in the Informal Economy in Russia during the Transition Period,* Discussion paper series, no. 2024, 1998, 3; Sil, *Privatisation, Labour Politics and the Firm in Post-Soviet Russia: Non-market Norms, Market Institutions and the Soviet Legacy,* 231-232.

[8] On the progressive ineffectiveness of the law cf. Mironov, *Analysis of Legal Regulation of Labour in the Russian Federation (memorandum), International Conference on Social and Labour Issues: Overcoming Adverse Consequences of the Transition Period in the Russian Federation,* Moscow, 6 October, 1999, http://www.hro.org/ngo/duma/35/index.htm.

[9] Kolev, *op. cit.*, 5.

The consequences of this social and economic situation are well known. The collapse of the regulatory role played by the State and the ineffectiveness of the fiscal system has not only resulted in dramatic wage reduction, but also the onset of an entirely new phenomenon - mass unemployment[10].

It is also true that the evolution of the Russian labour market is characterised by specific features that distinguish it from the other countries with transition economies, such as those of Central and Eastern European countries.

Experts do not agree on the primary causes of this difference, but observers have noted that shock therapy in Russia has not entailed the all-around sweeping reforms[11] since the early 90s as occurred in Poland, Hungary, the Czeck Republic, and Slovakia [12]. With specific reference to the labour market reform, the Russian government has for a long time opted for a *soft,* if not wait-and-see attitude.[13] Only recently has it enacted a new codification of labour law entailing modernisation and adjustment processes for labour relationships to bridge the gap between legal theory and economic reality.

2. The new Labour Code was approved by the Russian Federation Council *(Soviet Federazii)* on 26 December 2001. Upon its ratification by the President, Vladimir Putin, on December 30th of the same year, it became effective in February 2002.

Issues surrounding the adoption of the new labour code sparked debate between the Russian government and social partners, which started in 1994 during the Chernomyrdin Government.

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[10] For the assessm ent of unem ployment and job insecur ity cf. Standing, *Russian Unemployment and Enterprise Restructuring: Reviving Dead Souls,* Basingstoke, Macmillan, 1996; Ivanov, *Labour Law of Russia in the Transition from the Planned to the Market Economy,* in Blanpain, Nagy (ed.), *Labour Law and Industrial Relations in Central an Eastern Europe (from Planned to Market Economy),* in *Bulletin of Comparative Labour Relations,* n. 31/1996, 135; Cazes, Nesporova, *Towards excessive job insecurity in transition economies?,* Employment Paper 2001/23, http://www.oit.org; Tchetvernina, Moscovskaya, Soboleva, Stepantchikova, *Labour market flexibility and employment security, Russian Federation,* Employment Paper 2001/31, http://www.oit.org.

[11] On the reform s and changes that have recently charact erised the Central and East ern European countries, cf. Orenstein, Hale, *Corporatist Renaissance in Post-communist Central Europe?,* in Candland and Sil (eds.), *The Politics of Labour in a Global Age,* Oxford University Press, 2001; Stiglitz, *Whither Reform*? *Ten years of transition*, Annual Bank Confer ence on Developm ent E conomics, 1999, http://www.worldbank.org/knowledge/chiefecon/stiglitz.htm; Belina, *Labour Law and Industrial Relations in the Czech Republic,* in Blanpain, Nagy (ed.), *Labour Law and Industrial Relations in Central an Eastern Europe (from Planned to Market Economy),* in *Bulletin of Comparative Labour Relations,* n. 31/1996, 53- 67; Nagy, *Transformation of Labour Law and industrial relations in Hungary*, *ibidem,* 67-85; Sewerynski, *Changes In Polish Labour Law And Industrial Relations During The Period Of The Post Communist Transformation*, *ibidem*, 85- 109; Bar ancova, *Labour Law in the Slovak Republic, Present Situation and Future Trends, ibidem*, 139- 157; Hèthy, *Riconciliazione tripartita degli interessi e (possibile) patto sociale. Il caso ungherese (Tripartite Reconciliation of interests and (possible) social pact. The Hungarian case),* in this Journal, 141-158; Weiss, *Labour Law In The South-Eastern European Countries: A Restructuring Model*, in this Journal, 145-149.

[12] On this matter cf. J.E. Stiglitz, *Whither Reform, World Bank,* Annual Bank Conference of Development Economics, 3; Bur awoy, *Transition without Transformation: Russia's Involutionary Road to Capitalism,* http://sociology.berkeley.edu/faculty/burawoy/index.html; Id ., *Transition without Transformation: Russia's Descent into capitalism,* ivi; Id., *The Great Involution: Russia's Response to the Market*, ivi.

[13] Cf. Gimpelson, *op. cit*, 17

During parliamentary debate, some totally different law bills were proposed[14] and an *ad hoc* specialist committee was set up within the Russian Federation Labour Ministry, including representatives from Government, leading trade unions, and a few labour law experts coming from an Anglo-Saxon background, charged with the task of drafting a single government proposal. Some Western Countries financially supported this initiative.

This element highlights the overall structure of the new code, largely inspired by the deregulation approach applied to labour relations. Special emphasis is placed on the individual labour contract, whereas the regulatory role to be played by the trade unions is clearly outlined, due to the extremely fragmented and fragile trade union movement after the collapse of the Soviet trade union system monopoly. This is characterised by the close link – or better by a true symbiosis - existing between the trade union and the Communist party. Alternative trade unions emerged following *perestroika*. Today the large number of trade unions that mushroomed after the collapse of the Soviet system has been consolidated and the main trade union organisations have joined together to give rise to a single trade union, known as *Federation of Independent Trade Unions of Russia,* which has inherited all the privileges granted by the Soviet State to its predecessor [15].

Compared to the previous regulations, the stress is placed upon private law, although not losing some of the public law traits[16]; hence the issue has become an independent branch of the legal system[17]. Yet, the spirit underlying labour law has changed, as it is no longer driven by the hegemonic and totalitarian regulation of labour relations by the State. The shift towards private negotiation autonomy is one of the traits characterising the new Labour Code, even though, as already pointed out, the emphasis is on the individual rather than on collective bargaining autonomy. A few experts have, indeed, interpreted the attempt to replace heteronymous rules with private negotiation autonomy rules as a sign of the tendency towards bringing back labour law within the

[14] The texts of the law bills can be found at the internet site: http://www.e-xecutive.ru http://www.hrights.ru/laws/law28.htm#1.
For a critical review cf. Mironov, *Social and Labour Sphere: Overcoming the Negative Consequences of the Transition Period in RF,* International Conference, Moscow, 6 October 1999.

[15] Cf. Rudocvas, *Trade Unions and Labour law in a Modern Russia*, *IJCLLIR*, 4/2001, 407-423 that states how today trade unions are not held in high esteem by employees and by the public.

[16] Cf. Kiselev, *Zarubezhnoe trudovoe pravo (Foreign labour law)*, Mosckwa, Norma-Infra, 1999, 11.

[17] Cf. Mavrin, *On Some Peculiarities and Problems of Russian Labour Law,* in *IJCLLIR,* n. *IJCLLIR*, 4/2001, spec. 399.

framework of civil law [18]. Nevertheless, the mainstream law experts deny such a configuration and state that even though it is theoretically possible to include the employment contract among civil contracts, it will always remain a special contract subject to *special* rules[19].

3. The division of legislative powers between the Russian Federation and the *"subiectami federazii"* (literally: "the subjects of the Federation ") was one of the most sensitive formulations of labour law, given the fact that the Russian Federation has a relatively recent federal experience.
Before the start of *"perestroika",* the Soviet Union consisted of fifteen republics (similar to the Italian regions in terms of powers, before the recent federal reform, introduced by constitutional law no. 3/2001), all subject to the central government and thus practically devoid of any law-making powers. Though each republic had its own Labour Code, adopted by the Supreme Council of each republic, they differed from the Labour Code of 1971, however, as they were drafted to suit the needs of a particular region[20]. The lack of sovereignty of each individual republic explains why the division of power between the federal government and its territorial branches has been ineffective.
Presently, after the dismantling of the fifteen former soviet republics, there are no less than 89 "subjects" within the Russian Federation each with their own legislative powers. They include the metropolitan areas of Moscow and St. Petersburg, a few former RSFSR regions now called republics (such as Chechnya, Bashkortostan, Kalmikiya, Dagestan, Komi, & etc.), and a few other territorial areas which are more or less similar to Italian regions and provinces.

With specific regard to the labour issue, article 72 of the Constitution dated December 12th 1993 confines itself to establishing that labour law is a policy area shared jointly by the Russian Federation and the *"subiectami federazii".* Yet, in the Russian Constitution there are no specific provisions regulating the division of legislative powers between the Russian Federation and the individual *"subjects",* in such a way that the legislative powers in the labour law field remain a moot point in the new legal and institutional framework.

[18] In this sense cf. Pashkov *et al*, *Pravovedenie*, n. 2, 1997, p. 6ff, that refer to "historical justice" owing to the civil law matrix of the Russian labour law.
[19] Mavrin, *Rinok truda e trudovoe pravo*, cit., 135.
[20] For example, the Code of RSFSR contained the provision regulating the labour in extreme Northern regions

In this regard, article 12 of the 1999 federal law, containing the *"Principles and terms for the definition of the areas of competence of the administration and of the powers between the Russian Federation State bodies and the State bodies of the Federation subjects",* confined itself to stating that all the federal laws and the other legislative provisions issued by the *"subiectami federazii"* must comply with the federal law, but still failed to stipulate how these powers should be allocated [21]. From this point of view, the new Labour Code is a remarkable step forward in the debate on the division of powers within the Russian Federation. Article 6 of the Labour Code clearly defines the areas where the *"subiecti federazii"* can issue laws and the matters that remain exclusively within the remit of the federal Government.
Pursuant to the new code, the federal bodies have exclusive powers not only in the area of the general principles of the system, applicable to the whole Federation territory, but also in relation to:

- The general policy guidelines within the labour relations area;
- The minimum protection levels of rights, liberties and guarantees for workers;
- The terms whereby employment contracts are entered into, modified and terminated;
- The issuing and implementation of disciplinary measures;
- The basic principles of social partnership;
- The regulatory framework of collective agreements (terms and contents of bargaining negotiations, entering and modifications to any collective agreements and contracts);
- The resolution of individual and collective employment disputes;
- The State control and monitoring method principles in view of the enforcement of statutory regulations and laws within the area of labour relations;
- Principles of investigation methods regarding industrial accidents and occupation disease;
- The responsibilities of the parties involved in the labour contracts, including civil and industrial accident liability;

[21] This means that the Federation " subjects" are entrusted with law-making powers in the areas not covered by the federal laws or codes, but they are not allowed to issue new codes. The laws issued by the Federation "subjects" are to be supported by autonomous financial means and, at any rate, they should not be in conflict with federal laws, decrees by the president of the Federation, by the Government and by the other executive bodies at a level federal. On this matter cf., Mironov, *Analysis Of Legal Regulation Of Labour In The Russian Federation (memorandum),* cit.

- The monitoring and statistical surveys within the area of labour relations;
- The regulation concerning a few specific worker categories.

The *"subiecti federazii"* are competent in all the remaining areas. In all cases, they are allowed to introduce *in melius* regulations to improve the areas of competence of the Federation, provided that the costs entailed by the introduction of the new measures are fully covered. In the event in which a regulation issued by the *"subiectami federazii"* is in conflict with the federal law, especially in situations where it works to the detriment of employees, the federal law or Code regulations shall prevail.

4. The new Labour Code differs not just in terms of its contents, but also in its general form compared to the 1971 Code. It consists of 6 headings, 14 sections, 62 chapters and as many as 424 articles. As it is impossible to carry out a thorough and detailed analysis of such a complex body of laws, in our paper we will merely focus on the major items, reflecting the innovative aspects related to the enhancement of the private individual negotiation autonomy and to the division of legislative powers between the federal legislation and the decentralised one. As far as the latter is concerned, law-makers have made a big step forward by setting forth, for the first time, the main principles underlying the juridical regulation of labour relations, in agreement with the division of powers between the Russian Federation and the territorial authorities, as already mentioned in the previous paragraph.
This matter is specifically covered by Title I of the Code, article 2. With reference to the Constitution and international law regulations, it sets forth, among its fundamental principles, the right to work, the banning of forced labour, protection against unemployment and industrial accidents, the right to fair working conditions and wages, and guarantees the liberty and dignity of employees and of their families[22].
Title 1 also provides anti-discrimination measures regarding access to employment, career promotion and vocational training. The clause also stipulates that courts have the authority to enforce laws relating to the performance of work, the right to unionise, and the right to strike within limits set by the labour code or other federal guidelines.

[22] The minimum remuneration thresholds should be set by the federal legislation. For the moment being, there is still a gap in the Russian Federation legal framework on this issue (cf. also *infra*, in the text).

4. 1. Social partners play a special role in the regulation of labour relations that are subject to federal regulation. The main aim pursued by social partnership is to achieve a balance between conflicting interests, in democratic and pluralist forms, by the concertation of the main social groups involved, i.e. employees and employers.

Indeed important precedents for concertation of social dialogue were set prior to the collapse of the Soviet Union by the decree of the President of the Federal Republic dated 15 November 1991 on *"Social partnership and settlement of labour disputes"* [23] and the law dated 11 March 1992 *"On collective agreements and contracts"* [24], which undoubtedly are the most important acts in the history of social partnership building in Russia.

Yet, for the first time, the new Code provides a clear legal definition of social partnership to be intended, under art. 23, Title II, of the Code, as a "system of relations between the employees (or their representatives), and the employers (or their representatives), state or local authorities[25] aimed at ensuring the balancing of interests within the labour relations framework". It was then followed by:

a) The statement of the twelve basic principles of social partnership: equal opportunities among partners; mutual respect towards the partners' interests; partners' interest in participating in negotiations; democratic support by the State to social partnership; compliance with the law by the partners and their representatives; the representation of organised groups; freedom of expression and self-determination during the discussion of labour issues; voluntary character of partners in fulfilling their obligations; true and sound commitment undertaken by partners; obligation to fulfil collective agreements and contracts in good faith; the obligation to contribute to the fulfilment of collective agreements and contracts; and the liability of the partners and their representatives for failure to fulfil collective agreements and contracts (art. 24); all these

[23] Cf. Dedov, *Pravooe reguliroanie rinka truda (Legislative Regulation of the Labour Market)*, Moskwa, Stoglav, 2000, 71. Cf. also Vedomosti Siezda narodnih deputatov RSFSR and Verhovnogo Soeta RF (Parliamentary proceedings – Session of the peoples' representatives of the RSFSR and Supreme Council of the FR), 1991, n. 47, art. 1961.

[24] Vedomosti Siezda narodnih deputatov RSFSR e Verhovnogo Soeta RF (Parliamentary proceedings – Session of the peoples' representatives of the RCFCR and Supreme Council of the FR), 1992, n. 47, art. 890. On the social partnership cf. Teague, *Russian Government Seeks "Social Partnership", RFE/RL Research Report 125,* 19 June 1992, 16-22.

[25] It should be specified that, pursuant to paragraph 2 of art. 23, the State and local authorities are regarded as the social partners solely in the event in which they act as employers (namely in the other cases envisaged by the federal laws).

principles are enumerated in the Federal Law "On Collective Agreements and Contracts".

b) The clear identification of the social partnership levels: at federal, regional, sectorial, area and company level (art. 26).

Chapter IV of Title II is devoted to the representation of employees and employers. Representation now takes place on a voluntary basis whereas under the Soviet regime it was mandated by law. To ensure the proper regulation of relations between social partners – collective bargaining, the drafting and signing of collective contracts [26] and collective agreements [27], and the running and management of the collective regulations at all levels – shop stewards can set up special representation councils. At the federal level, there is a permanent tripartite commission. Similar commissions can also be set up at the Federation subject level, as well as at a local and sectorial level, etc.; yet in these circumstances no permanent bodies can be set up.

With reference to collective bargaining contents and structure, the Code (art. 37, 40, 41 & 42) significantly highlights the relations between the partners involved, thus fully enhancing their private negotiation autonomy. Apart from a few compulsory provisions, the collective agreements and contracts must include the provisions specifically envisaged by the law or by any other statutory regulation. Unlike the previous Code, however, the legislature no longer establishes a minimum and maximum term of duration for collective contracts.

Pursuant to article 43, a collective contract can be entered into for a period not to exceed three years with the possibility of renewal for an additional amount of time not to exceed three years. Unlike the Italian system collective contracts are not merely private agreements between individuals but are binding on all company employees.

Article 45 stipulates that collective agreements can be established at federal, regional, and sectorial levels. Here too, however, agreements can be made for a period of time not to exceed three years with the possibility of renewal for a further period not to exceed three years. The collective agreement is

[26] The collective contract is a legal deed entered between the employee representatives and an employer, regulating the social and labour relations at the enterprise level. Cf. art. 45 of the Labour Code. It should be taken into account that the collective contract can be entered both at the enterprise level and at the level of its branches, subsidiaries and production units. Cf. Dedov, *op. cit,* 81-83; Chetverina *et al, Collective Agreements in Russia: Current Practices,* Moscow, IE RAN, TACIS, ICFTU, 1995.

[27] The collective agreement is a legal deed that sets out the common regulatory principles underlying the social, economic and labour relations entered between the employee representatives and an employer at a federal, regional, sectorial (intersectorial) and area level within the limits of their competences. Cf. art. 45 of the Labour Code; Dedov, *op. cit,* 83-85; Chetverina *et al*, *op. cit.*

entered into only between the parties involved and also applies to the employees and employers who have joined these agreements after they have been signed. If the employees are covered by more than one agreement at the same time, the most favourable provisions from each one shall apply. For the agreements made at a federal level, the federal body representative has the right to put forward the proposal to employers to join such an agreement. If after thirty days from the date the proposal was received, the employer does not put forward a reasoned refusal in writing, the agreement shall automatically become binding on the employer.

Finally, along with the labour law general trends at an international and comparative level, regarding employees who are increasingly more frequently entrusted with information, consultation and participation rights, the Russian Labour Code, under chapter VIII, sets out all the forms of employee involvement[28].

These various forms of employee involvement are defined under article 53 and they provide for:

- The involvement of the employee representation body in the cases set forth by the Code or by a collective agreement;
- An employer obligation to consult employee representative as prescribed by company rules;
- An employer obligation to inform employees in areas in which they have interest;
- The involvement of trade unions regarding questions related to the company operation and organisation changes;
- The involvement of employees or of their representatives in the drafting and/or approval of collective contracts;
- Other forms of involvement envisaged by company rules or by collective contracts or by other company documents at a local level.

Employee representatives have a right to be informed by employers on issues related to the:

- restructuring or dissolution of the company;

[28] On this issue cf ., recent essay by Mavrin, *Legal Aspects of Russian Workers' Participation in an Employers' Business* in Biagi (ed.), *Quality of Work and Employee Involvement in Europe,* Kluwer Law International, 2002, 257-259.

- introduction of technological modifications entailing changes in working conditions;
- vocational training of employees;
- other questions envisaged by the Code in force, federal laws, statutory corporate documents, collective contracts.

The employee representatives have a right to submit proposals in the above mentioned areas to the corporate administrative bodies and to take part in these body's meetings.

4. 2. Title III of the Labour Code covers the issue of individual employment relationships, fully endorsing private negotiation autonomy and introduces regulations to fight against any illegal type of work, which is today a very widespread phenomenon.
Access to employment is granted to young people over sixteen years of age, or even to young people over fourteen or fifteen years of age in a few special cases established by law. It is forbidden to limit access to employment on discriminatory grounds related to sex, race, social or professional status, residence or any other condition not related to the employee's professional ability, except in a few cases explicitly permitted by the federal legislation. Every refusal to hire an employee must be justified in writing on the request by the person concerned.
Employment contracts must be entered in written form and made available in two copies. A trial period is allowed, as set forth in writing, for a duration of time not to exceed three months (this period of time may be extended up to six months for managers and staff with particularly onerous tasks).

Types of contracts
Among the various types of contracts, fixed-term employment contracts must be paid special attention. Article 17, part 2, of the old Labour Code envisaged only three types of fixed-term employment contracts, whereas in all the other cases, only the open-ended employment contract was allowed. Today, pursuant to article 59 of the new Code, the scope of the fixed-term employment contract extends much further, whereas pursuant to article 58, the employment contract can either be fixed-term or open-ended.
The fixed-term employment contract is allowed for a duration normally not to exceed five years, in the following cases:

- to replace an employee who is temporarily absent, and is allowed to keep his/her job;
- to carry out temporary work (for up to two months) and seasonal work;
- for jobs in the extreme Northern regions, in situations where the stipulations of the contract involve employee transfer;
- to carry out extraordinary work in emergency cases (epidemics, breakdowns, catastrophes, etc.);
- in cases of hiring by small-sized enterprises, i.e. with less than forty employees (twenty-five in trade, services and retail businesses) or by individual persons;
- to carry out work abroad;
- to carry out work which is not part of the normal activity of the company (reconstruction, assembly, maintenance, etc.) and to carry out jobs related to the temporary increase in production of the company for a maximum period of one year;
- to carry out jobs or services having a limited time duration;
- to carry out jobs or services, when it is not possible to set a date;
- to carry out work under apprenticeship or vocational training schemes;
- with students engaged in daily study activities;
- with people who have another job within the same company;
- with retired or other people who can work only on a temporary basis for medical reasons;
- with employees in the area of sports and show business, in compliance with the list of professions set out by the Government of the Russian Federation, taking into account the opinion expressed by the tripartite commission regulating social relations;
- with scientists, academics, etc. hired by means of a competition according to the law in force;
- in all the other cases envisaged by the federal laws.

The termination of a fixed-term employment contract is possible after its expiry by prior written notice within at least three days. Whereas, no change has been made to the rule whereby if none of the parties has asked for the termination of the contract after its expiry, the contract shall automatically be regarded as an open-ended employment contract.

Another novelty introduced by the new Code is the regulation of an apprenticeship contract. An employer acquires the right to

enter an apprenticeship contract with a job-seeker or with someone who is already working for him. In this case, the Code makes reference to a professional revocation contract without discontinuity of production. Articles 199 and 200 of the Code set the form and contents of this type of contract. Pursuant to article 205, employees hired on the basis of an apprenticeship contract are covered by rules on health and safety at work. Rights and obligations of apprentices are instead set forth by article 207. In the event of transformation of the apprenticeship contract into another form of contract, no trial period is allowed.

The apprenticeship contract contains a provision (art. 199), whereby, upon the expiry of the apprenticeship contract, the apprentice shall continue to work under an employment contract for the same employer for the period of time already set by apprenticeship contract. In the event in which the apprentice fails to meet this obligation, he/she is required to refund his/her "apprentice scholarship" and the expenses incurred by the employer during his/her apprenticeship period.

Working time: Special attention is paid to work time regulation. With reference to overtime work, the 1971 Code referred to any type of work carried out after the working time set by the law. Articles 97 and 98 of the new Code define overtime work "as every task performed beyond the limits of the time set by the law", equal to forty hours a week, yet only if such a working activity is performed by the explicit request of the employer. In lack thereof, this work cannot be classified as overtime, with all the consequences that derive from it. Article 99 of the Code limits such a request by the employer to a maximum of 120 hours a year and to 4 hours in two consecutive days, but it is clear that such a provision is liable to give rise to relevant forms of abuse, as further illustrated in the following paragraph.

The work carried out by the employee on his own initiative after the working time (art. 97-98) is defined as a second job performed for the same employer *(sovmestitelstvo).* To make it legal, two conditions must be met: first of all a written consent of the employee is necessary; secondly, the second task must be different from the first one.

This work shall not be paid at a higher rate and shall not be subject to any such rigid constraints as overtime work. Article 98 merely sets the 16-hour limit per week. In this regard, the first commentators have highlighted the extreme fragility of the current overtime work regulation, susceptible to abusive practices by the employers, who can resort to this so-called *sovmestitelstvo* work contract scheme to avoid paying the higher

wage rates for overtime. In such a case an employee can work up to 56 hours per week, this being perfectly legitimate, since in this case it is not regarded as overtime work [29].

Article 101 provides that a working day with no time limits can be envisaged for a few employee categories. A detailed list of these tasks is provided for by the collective agreement, contract or company internal regulation. Pursuant to article 190, now the company internal company must make provisions to take the opinions of trade unions into account, whereas prior to the adoption of article 190, trade union involvement could take place only by mutual agreement stipulated by collective agreement and be regarded as an annex to the collective contract. A few critics of the new Code insist on the illegal character of this rule[30], also given the absence of trade unions in many companies or given their representation weakness. In this case, as well, employers can easily circumvent the overtime regulations.

Finally, pursuant to article 104, part 2, employers can introduce a so-called time bank scheme in the company internal regulation. In this case, employees may work for more than 40 hours a week without this being regarded as overtime. The problem is how the additional hours shall be managed. In most cases, employers themselves manage the related records and it is rather difficult for an employee to prove how many additional hours he has worked, also bearing in mind the fact that there is not a sufficient number of inspectors available to monitor the proper enforcement of the laws, the labour contract or the company internal regulation.

Remuneration: Special provisions are provided for by the new Code on the issue of worker remuneration [31]. Article 421, in particular, sets forth that the remuneration cannot be lower than the minimum standard of living threshold. In this case, though, the law-makers have abstained from defining what this "sufficient" minimum level should be in concrete terms, but simply referring the matter over to the federal legislation.

Furthermore, it is important to distinguish the minimum standard of living threshold and the minimum wage. At present, the minimum

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[29] Cf. Mironov, *Zakonotorchesky process v Gosudarstvennoy Dume (Legislative Process of Duma), Bulletin of non-governmental organisations,* Comment by prof. Mironov on the new Labour Code of the Russian Federation , spec. n. 35, 30 January 2002, 5 ss.

[30] *Ibidem*

[31] On the structure of the remuneration system cf., Vedeneeva, *Payment Systems and the Restructuring of Production Relations in Russia* in Clarke, *Management and Industry in Russia: Formal and Informal Relations in the Period of Transition*, Cheltenham , E dward E lgar, 1995, 224- 239; E rl, Sabir ianova, *Ravnoesnie zederzhki zarabotnoy plati: teoretichesky i empirichesky analis instituzionnoy loushki Rossii (employer insolvency in the payment of wages: theoretical and empirical analysis of the institutional trap in Russia),* in http://pubs.carnegie.ru/russian/; Clarke, *Trade Unions and the Non-payment of Wages in Russia, International Journal of Manpower* 19, 1/2, 1998, 68-94.

standard of living threshold is equal to 1185 roubles *per capita;* it becomes 1290 for people fit for work, 894 for retired people and 1182 for children. The problem is that the minimum wage does not correspond to the minimum standard of living threshold. In fact, the minimum wage is set by the federal law dated 19 July 2000, whereby, starting from 1 July 2000, the minimum wage should have amounted to 132 roubles a month, in view of their increase to 200 starting from 1 January 2001, to 300 starting from 1 July 2001 and to 450 roubles per month starting from 1 May 2002.
According to the early commentators of the new Code, the minimum monthly wage should not be lower than the minimum standard of living threshold and it should be indexed to the cost of living. Indeed, at least according to a few experts[32], the definition of the minimum monthly wage should not occur at the federal level and, pursuant to the new Code (cf. art. 133), but at the level of the individual members of the Federation, in order to be more closely suited to the specific needs of the different geographical areas of Russia.
The new Code also envisages a mechanism to reimburse employees in the event of delay in the receipt of their wages. If employers fail to pay wages in time they must compensate employees by 1/300 of the refunding rate set by the Central Bank for the daily amount not paid on time (the actual amount is set according to the collective contract and/or individual employment contract). Article 233 envisages that such a liability exists only when evidence is provided that it is the employer's fault, based on a very complicated mechanism[33]. If the delay exceeds 15 days, the employee can stop working until he/she is fully paid, subject to prior written notice.
But law does not clearly stipulate whether or not an employee is paid during periods in which they do not work. Traditionally such cases have been treated as though the employee was on strike (in which case they are not paid) or as if work ceased due to the fault of the employer (in which case employees are entitled to 2/3 of their pay).

Cessation of the work relationship: Title III contains a new provision regulating the cessation of employment relations. By pursuing the aim to introduce greater flexibility in to the management of labour relations, the list of reasons for dismissal has been

[32] Smirnov, *op. cit*, 250-251.
[33] Cf . Mersh ina, *Practica – Kritery Istini, (Practice is the criterion of truth),* 2002, http://www.akdi.ru/pravo/news/komm7_krf.htm.

substantially increased, thus raising a lot of criticism by many experts of the field and by the public[34].

Article 77 of the Code lists eleven general reasons for the cessation of the work relationship, including mutual consent among partners, expiry of the term, resignation, dismissal, termination of the contract, etc.; yet, it is a non-compulsory list. One cessation provision sets out that "the employment contract can be terminated also for reasons different from those envisaged by the Code or by another federal law". Article 81 lists, in particular, as many as fourteen specific reasons that make the employee dismissal legitimate. Yet, in this case, as well, it is not a compulsory list, the reasons being:

1) dissolution of the company or cessation of the activity by the employer (natural person);
2) staff reduction;
3) employee inadequacy at carrying out his/her task, on the grounds of:
   a) health status, confirmed by a medical certificate;
   b) insufficient qualification for doing the job;
4) change of ownership (this provision applies to managers, assistant managers and chief accountants);
5) failure by the employee to fulfil his/her obligations on more than one occasion, resulting in disciplinary sanctions;
6) serious violation, even on one single occasion, by the employee of his/her obligations, such as:
   a) absence from the workplace for more than 4 consecutive hours without a justified reason,
   b) presence at the workplace, under the effect of alcohol, substance abuse or any other form of intoxication;
   c) violation of the confidentiality rules or disclosure of trade secrets, protected by the law (state, trade, corporate law, etc.), learned by the employee on his/her job;
   d) theft at the workplace (even in the event of petty thefts) of other people's property, destruction or deliberate damage of company property, if this is confirmed by a Court's decision or by any other judgement passed by an authorised competent authority;

[34] Cf. Mironov, *Zakonotorchesky process v Gosudarstvennoy Dume (Legislative Process of Duma),* cit.

e) violation by the employee of the work protection rules in the event in which the conduct of the employee has entailed (even only potential) serious consequences.

7) detrimental actions committed by the employee, whose activity is linked to the management of valuable objects, to the extent of engendering a loss of confidence by the employers vis-à-vis the employee;
8) immoral actions committed by the employee, who performs an educational activity, such that it makes it impossible for him/her to continue that activity;
9) an erroneous or unjustified decision by the manager, assistant manager or chief accountant which has resulted in damage to the corporate property or the inappropriate use of such a property;
10) serious violation, even on one single occasion, by the manager or assistant managers of the company (or branch, or subsidiary) of their obligations;
11) submission of false documents by the employees when signing the employment contract;
12) discontinuation of access to State secrets if necessary for the performance of the activity set by the agreement;
13) all those cases envisaged by the employment contract entered into with the manager and with the members of the Board of Directors of the company;
14) all the other cases envisaged by the new Code or by other federal laws.

Critics have highlighted that this Code extends the list of reasons for dismissal by employers. Indeed, the Code has not included many new reasons, but it has simply put together the other reasons stated by other federal laws, such as, the law on "State secrets". Unlike the old code, the new Code also envisages the possibility of dismissing the manager, the assistant manager or the chief accountant. It should be clarified that recourse to this provision mainly refers to cases of privatisation or nationalisation of State enterprises, hence it applies to cases that are bound to become ever more rare.

5. The new Code undoubtedly contains many mechanisms intended to make labour relations and industrial relations in Russia much more flexible, so that, at least in rough terms, this process of labour law codification can truly be described as deregulation.

Yet, as has been emphasised in the first paragraph, formal innovations indeed are a true attempt – and not so paradoxically – to regulate the labour market. The labour market is broadly characterised by the adoption of *praeter et contra legem* contractual practices, with unsustainably high law evasion rates which are difficult to keep under control, exacerbated by the chronic weakness of trade unions, merely through a repressive and sanctioning approach.

Worker protection rules provided under the previous law have actually translated themselves into abstract normative policies that are destined to remain ineffective [35]. Only among civil servants working for public administration has a general implementation of the formal statutory rules been maintained. Yet, on the one hand, this has been accompanied by a slow but progressive reduction of wages and, on the other hand, a substantial reduction of efficiency in the system, which has rapidly led to an even greater drop in the quality of public services – which anyway had never been high, even during the Soviet regime.

By making employment contract management rules more flexible, the Russian Government has therefore launched a legislative political platform aimed at recovering the effectiveness and efficiency of statutory rules. The Government is trying to reach a "sustainable" and "realistic" balance between worker protection needs and companies' needs faced with the new social and market conditions. This attempt has been made in the full awareness that the return to the private law approach to be applied to the labour relations management cannot be the panacea to solve all the serious problems affecting the Russian economy and society[36].

If a criticism is to be levelled against the new Code approach, it is that of having looked for solutions that, from a formal point of view, are in line with the developments followed by the labour relations in the Western-European countries, especially in the Anglo-Saxon area. A greater attention to the social and economic needs of Russia – which is nevertheless a historically and culturally complex area, half European and half Asiatic [37] – might have better contributed to give rise to a more specific set

[35] Cf. Sil, *Privatisation, Labour Politics, and the Firm in Post-Soviet Russia: Non-market Norms, Market Institutions and the Soviet Legacy,* cit., spec. 228-231; Clarke, Cabalina, *Employment in the New Private Sector in Russia, Post-Communist Economies* 11, 4, 1999, 421- 43; M ironov, *Analysis of Legal Regulation of Labour in the Russian Federation (memorandum),* cit.

[36] Cf., among others, Mironov, *Analysis of Legal Regulation of labour in the Russian Federation (memorandum),* cit.

[37] For a thorough analysis of the specificity of the Russian social and economic system cf., in particular, Burawoy, *The Great Involution: Russia's Response to the Market*, cit.

of rules and regulations, thus being more suitable for labour relations.

Comparative studies themselves highlight the danger of a mere transposition of a model from one country to another[38]. To solve the serious problems affecting the economy and the labour market, Russia rapidly needs to find its own model, which will be different from both the continental European and from the Anglo-Saxon model.

[38] Cf., on the com parative research, Biagi, *Representation and democracy within the enterprise. Comparative Trade Union Law Profiles,* Maggioli, 1990, here 3, which refers to the teachings of Kahn-Freund on *The use and abuse of comparative law.*