Objectives , Principles, and Directions of Reform of the Labor Legislation in Russia

The draft has been compiled by Expert Fund of Labor Research "Elf".

Labor policy, the same as social policy on the whole, should be based in modern society not on "the protection from market-driven forces" but rather on "the protection within the market-driven environment" based on the maximum use of market-oriented mechanisms, mobilization of the individual initiative of citizens, and mechanisms of their collective self-organization. The ***"subsidiary state"*** and not the "welfare state" becomes the basic model of a social state.

Reform of labor legislation as the key element of the reform of labor relations should become an ***integral part*** of social and economic transformations targeted at the creation of an ***efficient economic*** system that will provide for ***social justice*** during the transition to the post-industrial stage of development in the economy and the society, which are undergoing the process of globalization. The strategic objective of the reform is a creation in Russia of an efficient and civilized labor market that will provide labor of the required qualification to the employer efficiently, and the employee - with a reasonable wage and appropriate labor environment.

The reform of labor relations will contribute to

- broadening the sphere of registered employment;
- reduction of long-term, stagnant unemployment;
- gradual extrusion of informal labor relations;
- higher flexibility of labor relations and their adaptability to changes in economic conditions;
- raising territorial, industrial, and professional labor mobility and the growth of its qualification;
- raising the level of wages in the registered sector and its share in the national income;
- gradual convergence of the levels of wages in the budgetary and the non-budgetary sectors;
- raising the compliance rate of personal income and social taxes contributed to the social funds;
- reduction of industrial traumatism and occupational diseases;
- improvement of the real protection of basic labor and social rights of the employee;
- strengthening of the labor movement;
- raising the labor productivity;
- structural reform of the economy, which will initiate economic growth;
- general reduction of social tensions and the transfer of labor conflicts to the legal channel of individual and collective labor disputes.

The labor law, as inherited from the Communist past, has a negative impact on the labor market and the development of labor relations in three main areas:

- It is overburdened with a huge volume of guarantees and allowances to the employee, the main burden of which is laid on the employer.
- It is highly inflexible on issues of employment and dismissal.
- Labor laws, the Labor Code included, are not the open act laws and the role of sub-legal normative acts is extremely high.

Measures for partial adjustment of the labor legislation (the introduction of amendments and additions to the Labor Code, primarily, in September 1992, the adoption of Laws "On Employment in the Russian Federation", "On Collective Contracts and Agreements", "On Procedures for the Resolution of Collective Labor Disputes (Conflicts)", etc.) violated the integrity of the labor legislation and created several contradictions in it. Besides a significant number of labor canons are included into various laws regulating individual industries, which makes the situation even more tangled.

The reform should tackle the labor law as a system of normative (legal, in the first place) acts, as well as mechanisms for the regulation of labor relations on the basis of legal acts and labor contracts.

In this context one should take into consideration the highly differentiated and segmented nature of the modern labor market, the existence on it of groups and sections of workers, which not only have qualification of different level but often belong to different epochs of technological development. This does not allow to establish uniform employment conditions without detriment to the interests of a significant share of workers and the reduction of incentives for economic growth and the development of science and technology.

Consequently, the reform should be targeted at raising the flexibility of labor relations and mechanisms for their regulation. The main stress should be made on the creation and the development of mechanisms of self-regulation on the labor market with the realistic level of government regulation subject to government possibilities and the designation of areas, where self-regulation turns out to be insufficient, ineffective or yields socially unacceptable consequences.

The main burden should be placed on the resolution of labor relations on the basis of contracts, narrowing the gap between the labor and the civil law on several relevant issues (considering the principle difference between two branches of law connected with structural inequality of the sides in labor relations, which makes it different from civil relations). The objective of legislation should be targeted at the definition of the ***basic labor rights*** and the suppression of discrimination in labor relations (with the exception of "positive discrimination"), the ***establishment of procedures and the maximum values of the material standards***, which determine labor conditions, rights and responsibilities of the employee and the employer (minimum wage and minimum holidays, maximum allowed working day, labor protection requirements and standards, prohibition on the inclusion of certain conditions into

labor contracts, etc.), and the required minimum of social guarantees for the employee in general and for separate categories of employees.

Form of organization (codification) of the labor law is a relevant problem. It seems that under the modern conditions the most acceptable way is ***a consecutive adoption of interrelated laws on separate objects of regulation with their subsequent unification into the Consolidated Labor Laws***. The Consolidated Labor Laws, unlike the Labor Code, could include "boundary" legal acts, which cover not only to the labor law but also the adjacent areas of legal regulation. As new legal acts are adopted the corresponding sections of the current Labor Code and other legal acts, which contradict the new legislation, will be cancelled. Thus, the reform of the labor legislation will be implemented without the creation of major gaps in the legislation.

The top priorities for the adoption (amendment) of the legislation are as follows:

- Law "On General Principles for the Regulation of Labor Relations",
- Law "On Labor Contracts",
- Law "On Labor Dispute Chambers"

Law "On General Principles for the Regulation of Labor Relations" should contain principles for the establishment of and the provision for guarantees and allowances to employees based on the assumption that the volume of such guarantees and allowances issued at the expense of the employer should be built down significantly and in cases, when such guarantees and allowances are determined by interests of the state, the latter should provide financial resources for their implementation.

With the objective of raising the flexibility of labor relations Law "On Labor Contracts" should increase the freedom of the sides in determination of the contents of labor contract. It should stipulate the mandatory minimum of the issues regulated by labor contract and the issues that may not be subject of labor contract.

The possibility for the use of term labor contracts is broadened. It is planned to increase the number of reasons for the cancellation of labor contract at the employer initiative. Possibility for the suspension of labor contract in certain cases, as well as reasons and procedures for its cancellation should be provided for.

Law "On Labor Dispute Chambers" should lay the basis for the creation of a system of the specialized labor jurisprudence, which cannot be established within the system of Federal Courts of the Russian Federation due to constitutional and financial reasons.

The Law is based on the following principles:

- Labor Dispute Chambers are jurisdictional agencies, i.e. they have the right to pass resolutions mandatory for the sides.

- Procedures for the creation of Chambers should be relatively simple and their number should be sufficient for providing access to all interested parties.
- Provision for a high qualification of experts who resolve labor disputes, as well as for the trilateral nature of the agency (representation of trade unions and employers besides professionals, who head the Chamber).
- Procedures for the consideration of cases by Chambers should be based on the Civil Code of Practice.
- Labor Dispute Chambers should be financially independent of the state budget and should be able to earn income.
- Citizens and organizations should have the right to appeal resolutions of a Labor Dispute Chamber in the court of general jurisdiction.

Creation of such system will allow to free courts of general jurisdiction from the consideration of labor disputes.

The high-priority tasks include also the amendment of

- Law "On Employment in the Russian Federation":
- streamlining of procedures for mass dismissals and reduction of the volume of guarantees and allowances to dismissed employees, which have to be issued by the employer;
- cancellation of the insurance principle for the payment of unemployment allowances (liquidation of the Employment Fund and transition to the payment of allowances from regional budgets, establishment of the uniform allowance amount, and the linkage of its disbursement to real needs of the unemployed);
- linkage of the allowance disbursement with the execution of a certain volume of public works;
- broadening of the notion "appropriate work".

It will be necessary to either adopt or amend the following legal acts in the future:

- Law "On Collective Contracts and Agreements",
- Law "On Procedures for the Resolution of Collective and Individual Labor Disputes",
- Law "On Working and Recreational Hours",
- Law "On Control and Supervision of Legal Acts on Labor and Labor Protection',
- Law "On Liability in Labor Relations".

Laws regulating collective labor relations and the resolution of labor disputes are the most relevant.

It necessary to develop in detail the definition of mechanisms for the representation of employees and employers. Mechanism should be established for the conclusion of collective contracts by the workers who do not belong to trade unions.

One has to streamline multiple collective labor contracts, which originate from the existing trade union pluralism, and to establish that collective labor contract covers only the workers, who authorized directly or indirectly (through the union membership) a corresponding trade union body to conduct collective bargaining on their behalf.

It is necessary to define mutual obligation of the parties for the execution of incurred liabilities more precisely.

As far as the conclusion of agreements at the level higher than organization is concerned, it should be established precisely that such cover exceptionally the employers, which authorized corresponding associations to conclude agreements on their behalf.

The law on resolution of labor disputes determines more precisely various types of conflicts with corresponding differences in resolution procedures, as compared with the current legislation. The following laws stand closely to this group of laws:

- "On Employers and Their Associations",
- "On Rights and Guarantees for the Activities of Trade Unions" (introduction of amendments into the current law).

Reflection in the labor legislation of ***peculiarities in the resolution of labor relations*** involving persons with specific legal rights and responsibilities or employed under specific conditions is a separate task. It includes both the development of special regulating canons for the definition of professional groups of employees (civil servants, sailors, rescuers, etc.), as well as additional norms and guarantees for several social categories (women and persons with family obligations, minors, invalids, unemployed, etc.).