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## **Social Guarantees in the Case of Employees' Dismissal in Russia: Comparative Legal Aspects of Russian and Foreign Labor Law**

### **Introduction**

Recently, increasing attention has been paid to the extraterritorial application of a labor rights, which is substantially connected with the activities of the multinational companies, and with the forming of transnational employment relationships.

The inclusion of Russia in the process of globalization caused the necessity of assessing and analyzing modern directions in the development of international and foreign labor rights. It is necessary to recognize that the experience in the legal regulation of wage labor that the world community has gained has a supranational value.

In this regard it is necessary to conduct complex research into: the problems of interaction between international and national labor rights; the international and national legal sources of labor rights; the problems arising in the process of implementing international labor standards in domestic labor law; and the results of their implementation in practice.

The practical significance of comparing Russian and international labor law is that this provides an opportunity to learn and make maximum use of the rich global experience in the field of labor regulation, in order to improve domestic legislation. For this purpose, it is necessary to compare Russian legislation with international labor standards and to emphasize those aspects of other countries' experience that can and should be taken into account in the process of lawmaking and law enforcement in the Russian Federation.

### **Social guarantees to workers in the case their employment contract being terminated**

Recently in Russian labor law theory there has been much active discussion concerning issues related to the expansion of the scope of the contractual method of regulating

labor relations. Therefore, the question of liberalization, including the dismissal of employees in compliance with certain guarantees from the employer, has gained particular relevance in Russia today. In this regard, labor law theorists are increasingly turning to international labor standards and the experience of other countries in regulating labor relations.

### **Fundamental documents of the ILO on the termination of an employment relationship**

One of the main sources for the international legal regulation of hired labor and the provision of the certain guarantees to employees upon the termination of employment relations are the acts adopted by the International Labor Organization (ILO).

In fact, international efforts have created a set of model instruments to be applied to labor relations, the creative development of which is a necessary condition for the development and improvement of the Russian system of labor law, which seeks to conform to recognized civilized standards. These instruments – hich are the object of careful study and are designed for practical use as a civilized world standard – act as a kind of international code of labor.<sup>1</sup>

The first fundamental document governing the termination of labor relations and establishing specific guarantees to workers is a recommendation adopted by the ILO on 26 July 1963 – No. 119 “On the termination of employment at the initiative of the entrepreneur.”<sup>2</sup> For the first time at the international level, the act contained provisions regarding the dismissal of workers or the reduction of the number or staff of workers of the organization: “dismissal may be permitted only if it is justified by a valid reason connected with the abilities or behaviour of the employee or due to operational requirements of the enterprises, institutions or services.” In addition, ILO Recommendation no. 119 introduced the concept of “reduction of the workforce” and established the rules for carrying out such a reduction, to balance the interests of employees and employers. ILO Recommendation no. 119 states that there must be a mandatory consultation with workers’ representatives and that the competent authorities must be informed about the upcoming large-scale downsizing. It was also necessary to develop criteria for the selection of employees to be affected by the reduction of the workforce, and these criteria included the need to ensure the efficiency of the enterprise, and the ability, experience, skill, seniority, age, marital status, etc. of the employees. In our opinion, of particular interest is the provision permitting the re-engagement of workers who have been previ-

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1 I. Kiselev, A. Lushnikov, *Labor law of Russia and foreign countries (international labor standards). Tutorial*, ed. M. Lushnikova, Moscow 2008, p. 480.

2 *The Convention and recommendations adopted by the International Labor conference*, vol. 2, Geneva 1991, p. 1381.

ously terminated on the basis of the aforementioned criteria (a similar provision is not reflected in national legislation).

It should be recognized that ILO Recommendation no. 119 was the basis for the subsequent adoption of the two basic acts regulating the termination of labor relations on an employer's initiative: the ILO Convention of 22 July 1982 no. 158 "On the termination of labor relations on the initiative of the entrepreneur",<sup>3</sup> and the Recommendations of 22 July 1982 no. 166<sup>4</sup> of the same name. The Convention contains a number of provisions that are guarantees for employees and defines the reasons for their dismissal which cannot be attributed to legitimate reasons. In ILO Recommendation no. 166 additional regulations established guarantees. This Recommendation complements the Convention and specifies its main principles. Currently, ILO Convention 158 is not ratified by Russia. However, the fact that Russia is a member of the ILO requires it to respect and implement the principles concerning fundamental rights which are the subject of non-ratified conventions. This is stated in § 2 of the ILO Declaration dated 18 June 1998 – "On fundamental principles and rights at work."<sup>5</sup> Meanwhile, the issue of the ratification of ILO Convention no. 158 has been raised many times and still remains open.<sup>6</sup>

Analysis of the current labor legislation of the Russian Federation shows that there are sufficient grounds for implementing the provisions of this Convention, making possible its ratification in the near future.

Thus, ILO Convention No. 158 fixed the basic provisions of the Recommendation of ILO No. 119 and gave them the status of an international treaty. It established a basic warranty according to which "The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service". As we can see, the term "performance standards" is replaced with the term "operational requirements," which is logical due to the fact that the latter is more objective. ILO Convention no. 158 retained the basic guarantees relating to the termination of employment for economic, technological, structural or similar reasons, by still requiring the employer to have mandatory consultations with workers' representatives (employees), and communicate with the competent authority concerning the possible dismissal of workers.

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3 ILO Convention no. 158 "On termination of labor relations", 1982; *The Convention and recommendations adopted by the International Labor conference in 2 vols*, vol. 2: 1957–1990, Geneva 1991, pp. 1983–1989.

4 ILO Recommendation no. 166 "On termination of employment at the initiative of the entrepreneur", 1982; International Labor Organization, *Conventions and recommendations 1919–1956*, vol. 2, Geneva 1991.

5 I. Protopopova, *Implementation of the international traditions of the Russian law on the issue of dismissal of the employee by the employer*, "Taxes" 2011, no. 13, p. 26.

6 N. Lutov, *The prospects of ratification of ILO conventions by Russia*, "Labor Law" 2010, no. 2, p. 94.

ILO Recommendation no. 166, the successor to ILO Recommendation no. 119 and a complement to ILO Convention no. 158, provides special safeguards to workers, in the form of additional measures to prevent the termination of employment relations or reducing the workforce. The recommendation suggests that the reduction in the number of employees must be gradual and this must take place over a certain (long) period of time. This contributes to natural redundancies, the transfer of employees within the enterprise, training and retraining, voluntary retirement before reaching pension age with the relevant provision of income, the restriction of overtime and the reduction of normal hours of work. Moreover, ILO Recommendation no. 166 provides a number of measures aimed at mitigating the consequences of employment termination, e.g. helping the workers affected find suitable alternative employment as soon as possible with vocational training or retraining, and providing some compensation for incurred expenditure in the search of a new job.

The analysis of these regulatory acts leads to the conclusion that, in the Conventions and Recommendations of the ILO, the dismissal of employees for economic, technological, structural or similar reasons are regarded as atypical situations in the enterprise, which are caused by objective reasons and problems of an essentially economic nature. Since dismissal is not connected with the misconduct of employees, it inevitably infringes on the rights of the employee, therefore international legal regulation is aimed firstly at avoiding such situations and secondly at minimizing the adverse effects of such dismissals and the establishment of certain guarantees for dismissed employees.

It should also be noted that the legal regulation of individual dismissals is almost entirely absent in the Russian Federation. Meanwhile, in some other countries this procedure is regulated in detail in their legislation, which contains a number of provisions that primarily take into account the interests of the employees being dismissed. In these cases, the development of the national legislation of these countries is based on the procedural norms contained in ILO Recommendation no. 166 (Articles 7 to 13).

### **Prevention term**

In many other countries, employees may only be dismissed with a warning of dismissal, and they get a salary for the entire period of notice. The exception to this rule is dismissal for gross misconduct committed by the employee. A warning of dismissal from the employer is a guarantee that the dismissal does not catch employees by surprise and give them an opportunity to find new job employment.

Normally the minimum period of notice the employer has to give is set by law, but it can be increased in collective bargaining or in an employment contract. In several countries specified in the act, the notice period applies only if there is no agreement between the parties, as the parties may agree on any duration of the period.

As a rule, the duration of the notice period in other countries depends on the seniority, the retirement age, and the schedule of wage payment. In some cases it is set by the agreement of the parties within the established minimum and maximum. Typically, such a period of notice for workers ranges from 1 week to 3 months, and for officials from 2 weeks to 6 months. For managers it can sometimes be up to 12 months or more.<sup>7</sup> The employer gives the employee a warning about the dismissal, and must pay employees not just wages for the period of notice, but must also reimburse them for certain losses (damages) incurred in connection with their dismissal.

In current Russian legislation (with rare exceptions) there is no requirement to warn employees about their dismissal by the employer. It should be recognized that the absence of such guarantees are not only at odds with international practice, but also violates international labor standards, for example, Article 11 of ILO Convention no. 158 and clause 4, Article 4 of the European social Charter.<sup>8</sup>

### **Release from work**

In other countries there is a norm which guarantees workers who are to be made redundant a mandatory exemption from work for a certain time within the notice period in order that they may seek other work. This time when employees are absent from work for the purpose of seeking a new job must be paid for by the employer. This guarantee is reflected in such international instruments as ILO Recommendation no. 166.

It should be noted that in ILO Recommendation no. 166 it is recommended that the employer give priority to rehiring workers whose employment was terminated for reasons of economic, technological, structural or similar nature if the enterprise is again hiring suitably qualified staff.

Previously, section 2 of Article 34 of the Labor code of the Russian Federation<sup>9</sup> stated that comparable qualifications and labor productivity established preferential rights for employees with long experience of continuous work at the enterprise, institution or organization to remain at work during staff reductions. It seems that long experience of continuous work for a given employer has an impact on quality and productivity. It would therefore be desirable to supplement part 2 of Article 179 of the labor Code of Russian Federation with the condition that provides that right for such workers to be given priority when selecting staff who will remain in employment during reduction.

In several European countries, when some employees are subject to dismissal there is an agreement concerning assistance in finding new employment. The parties to the

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7 I. Kiselev, *Labor law of Russia and foreign countries*, Moscow 2005, p. 357.

8 European social Charter (revised), ETS no. 164. Was adopted on 3 may 1996, Strasbourg.

9 The code of laws on labor of the Russian Federation of 9 December 1971 (repealed)

agreement are the employee, the employer and a private employment agency. The employer undertakes (guarantees) to pay the agency to find work for the employee, while the employee consents to the agency searching on their behalf, and undertakes not to refuse a suitable job. The agency also undertakes to find a job that will be suitable. Such an agreement remains in force for a certain period of time. After the agreement expires, however, employees may be dismissed by the employer, regardless of whether they found employment through the agency or the search for employment was not successful.

In some countries it is possible to avoid mass layoffs by implementing 'temporary layoffs.' In these situations workers are sent on a partially paid leave of absence for an indefinite period (which is paid for by the employer and national insurance funds). The employer uses such temporary layoffs to restructure production and to prevent a sudden increase in unemployment, and at the same time never actually terminating the employment relationship with employees.

The laws of Luxembourg also seek to reduce the effects of being made redundant. During the notice period for dismissal, employees have the right to request that the employer give them time off work to search for a new job. However, the duration of such leave may not exceed 6 working days.

In France, the employer pays (usually for a period of one year) a certain amount towards state unemployment benefits to persons dismissed due to staff reduction.

Unfortunately, Russian legislation does not provide employees with a guarantee of free days or even hours for the purpose of finding a new job within two months of the notice period. Therefore, if an employee unilaterally does not come to work on any of the days of the notice period and explains their absence as being due to the search for work, the jurisprudence views this as absence without leave.

However, individual organizations that recognize a local normative act or a collective agreement may allow their employees the right to free (paid or unpaid) days during the notice period for the purpose of searching for a new job and subsequent employment.

## **Dismissal wage**

ILO Convention no. 158 provides that the amount of severance benefits paid by an employer to an employee should depend on the level of wages for that employer, and, in certain cases, on the age of the employee.

Recently, severance benefits, which are considered as a form of "deferred" wages, have become increasingly common in some countries. The amount of the severance benefit depends primarily on the length of service, and is awarded not only to employees dismissed by the employer but also to employees terminating the employment relationship on their own initiative

The usual allowance in these countries is equal to a monthly salary for each year of service with that employer. However, the payment of such benefits does not deprive workers of the right to claim unemployment benefits.

Russian legislation guarantees that payment of severance pay will be paid to employees upon termination in certain cases. Article 178 of the Labor Code lists the conditions requiring payment of a dismissal allowance when an employment contract is terminated due to liquidation or termination (see also clause 1 and 2 of Article 81, § 7 to 9 of Article 77, clause 1, 2 and 5 of Article 83 of the LC RF), and this article also determines the indemnity (from two-week's earnings to the average monthly salary, depending on the reason for dismissal).

The employer's obligation to pay severance pay of the amount not lower than three of the employee's average monthly salaries is also provided by Article 181 of the Labor Code if the employment contracts of the head of the organization, his deputies and the chief accountant are cancelled, due to a change in the ownership of the organization (clause 4 of Article 81 of the LC RF).

Part 4 of Article 178 of the labor code stipulates that an employment or collective agreement may stipulate other cases of indemnity other than money (except for Article 178 of the LC RF). Thus, the legislation allows the contractual method to establish the obligation of the employer to pay the employee severance pay.

The peremptory norms of Article 178 of the LC RF stipulate the right to a dismissal wage following the termination of an employment contract. Therefore, no other circumstances can deprive the employee of the right to receive the statutory severance pay or limit it.

Following the dismissal of an employee, the amount of severance pay is determined based on the average earnings of the employee for a certain period. The labor code establishes a single procedure for calculating the size of the average wage (Article 139 LC RF).

With certain categories of employees, severance pay is not provided by the Labor Code of Russian Federation or other federal laws (the law regulating the relations in the sphere of public service can be included among such laws).

It should be recognized that in Russia employers make very small severance payments on their own initiative to employees after their dismissal. For an example and comparison we can look at the size of severance payments following dismissal in other countries.

For example, in Hungary the amount of severance pay is equal to from 1 to 6 monthly salaries, depending on seniority. While in Austria it is from 1 to 12 monthly wages, depending on seniority. In Spain the severance pay is 45 days of monthly earnings for each year of service in the enterprise, up to a maximum of 18-months salary.<sup>10</sup> This practice of paying severance pay to workers depending on their years of experience is established

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10 I. Kiselev, *Comparative and international labor law*, Moscow 1999, p. 160.

in many countries and meets the requirements of international standards. Consequently, ILO Convention no. 158 provides that the amount of severance payments should depend on seniority, which is perfectly logical. However, this regulation still has not been implemented in the Russian legislation.

It appears that it is desirable to expand the situations in which Russian employers are required to provide severance pay to workers, and most importantly to increase the amount. The amount of the severance pay must be differentiated depending on the employee's length of service for their employer and the employee's age, as well as on the causes and circumstances of dismissal.

However, such differentiation (the length of service and age) should not be considered as violating the principle of equality and justice. It needs to be considered from the point of view of the worker being able to compete on the job market, since age can be an obstacle to subsequent employment with another employer.

### **Suspension of employment contract**

In accordance with no. 1, Article 83 of the Labor Code of Russia, an employer terminates the employment contract if an employee is called for military service or the employee is required to perform alternative civic duties. However, such a rule is contrary to Article 5 (n. "B") of the ILO Recommendation no. 166, which provides that absence from work due to compulsory military service or the requirement to perform other civic duties cannot be a valid ground for dismissal. It should be noted that in many countries, compulsory military service or alternative civilian service does not constitute the end of an employment contract, but merely its suspension.<sup>11</sup> In order to perform various public functions (including military service) employees may also be granted leave without pay. The suspension of labor contracts is provided for in the labor law in many countries, and it involves the release of an employee from the obligation to perform work functions, while simultaneously maintaining the employment relationship.

Laws or collective agreements provide for the possibility of suspending employment at a specific time, on a variety of grounds. Such reasons may include: the mutual agreement of the parties of the labor contract; the fault of an employer (for example, downtime which is no fault of the employee); extraordinary events (force majeure), employee illness or disability, an accident at work, military service; vacation time, study, maternity leave and so on; temporary dismissal on various grounds (for example, production cuts), the removal of an employee from work for misconduct; election of the employee as

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<sup>11</sup> It should be noted that in the Russian legislation and national labor law theory does not pay much attention to such important legal construction like the suspension of the employment contract. It seems that for the development of this issue Russian legislator may use a wealth of international experience.

a member of parliament or for another elective office; the involvement of a worker in trade union in the enterprise; a strike in the enterprise; finally, an employee being in custody as a result of a criminal case (before sentencing) and others.

In each case, the law or other normative legal act defines the preservation of (full or partial) wages, or the termination of payment, in the period during which the employment contract is suspended. If the payment of wages is terminated, the employee usually receives benefits from social insurance funds.

In most countries, the employer pays fully for downtime caused through fault of their own and, as a rule, the employees' leave during this period. In the case of suspension from work as a result of extraordinary events, wages are not paid at all or are only paid for a short time. For military service and other similar obligations, employees are usually granted leave without pay.

In Japan, the suspension of employment contracts is governed by collective agreements and internal labor regulations. These usually indicate a period during which the employment contract is suspended - the employment contract remains in force, but the employee is not obliged to work and the employer is fully or partially exempt from the obligation to pay the employee wages. Typically, an employment contract is suspended in the following cases:

- as a form of punishment of the employee;
- if the employee is accused of a felony, and the court has not yet chosen the punishment. In such cases, the payment of wages to the employee is reduced depending on the situation.

An employment contract is also suspended if the employee is on leave due to illness, if an employee becomes a full-time union official, or attends to full-time training. The amount of wages to be paid in these cases is determined by the employer, but cannot be less than the amount prescribed by law. If the employment contract is suspended for reasons that depend only on the employer, the employees' wages cannot be lower than 60% of the average size of their salary.<sup>12</sup>

Russian legislation also allows employment to be suspended, but only for specific categories of workers. So, for example, in situations where the employer is unable to ensure the participation of an athlete in sport competitions, it is permitted by agreement that the athlete can, with written consent, be temporarily transferred to another employer for a period not exceeding one year (Article 348.4 of Labor Code of Russia). For the period of the temporary transfer, the original signed employment contract is suspended,

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<sup>12</sup> [http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS\\_158904/lang--en/index.htm](http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158904/lang--en/index.htm) [access: 20.09.2016].

in other words the parties suspend the implementation of the rights and obligations established by labor legislation and other regulatory legal acts. At the same time, the terms of the original employment contract are not interrupted.

For the period of the temporary transfer to the new employer, the new employer concludes a fixed-term employment contract with the athlete containing the conditions and safeguards established by labor legislation. In fact, such a transfer cannot change the working conditions of the athlete: only the employer changes. At the same time, improvement in the athlete's conditions compared with the original labor contract is allowed.

In practice, the conclusion of a temporary employment contract usually requires only the written consent of the athlete and his employers at the main place of work and the place of temporary work. At the same time, the employer at the main place of work sometimes does not even need to prove that he cannot provide "participation in sports" for their employee (athlete). However, it should be noted that the absence of such circumstances as a reason for the temporary transfer of the athlete is contrary to the order of the transfer (Article 348.4 of Labor Code of Russia).

The employer at the place of temporary work has no right to transfer the temporarily transferred athlete to another employer, even with the consent of all parties concerned.

A temporary employment contract may be terminated for any reason specified in the labor legislation. In the event of the early termination of a temporary contract, the original labor contract becomes effective again in full on the next working day after the calendar date, and from this day the temporary employment contract will be terminated.

If a temporary contract period has expired, and none of the parties has demanded its termination, the original labor contracts cease to have effect. The employment contract concluded for a period of temporary transfer is extended for a period determined by agreement between the parties, and in the absence of such an agreement - for an indefinite period (n. 7, Article 348.4 of Labor Code of Russia).

However, the legislation does not indicate on what grounds the employment contract with the athlete should be discontinued. As is known, the termination of an employment contract is possible only on the grounds specified the Labor Code or other federal laws. In our opinion, in this case the termination of previously concluded employment contract with the athlete is only possible with the agreement of the parties, and on the initiative of the athlete in the manner prescribed by law.

### **Reduction of normal working hours**

I would like to draw attention to one of the guarantees established in Article 22 ILO Recommendation no. 166, which allows the possibility of a temporary reduction of working hours, if this would prevent mass layoffs. This recommendation draws attention

to the need for partial reimbursement by the employer of the lost wages incurred by the employee for hours not worked compared to the normal workweek.

It must be admitted that Russian legislation covers this in n. 5, Article 74 of the Labor Code of Russia implemented Article 22 ILO Recommendation no. 166, but only in terms of the possibility of a temporary (six months) reduction of normal working hours. This opportunity is available to the employer when the issues related to organizational and technological changes in working conditions can lead to the mass dismissal of employees. However, the need for partial compensation of losses to the employee for hours not worked was ignored by the Russian legislator.

### **Financial compensation**

Attention should also be paid to international experience in addressing labor disputes. Compared to Russia, the courts of other countries make fewer decisions to reinstate workers in their previous posts, tending more often to award workers whose rights have been violated with compensation. Compensation for wrongful dismissal in other countries has increased substantially, and the amounts are large in cases which concern long seniority, elderly workers<sup>13</sup> or dismissal based on discrimination. Thus, in Sweden the amount of compensation to the employee for wrongful dismissal (depending on the length of service and age) is from 6 to 48-months salary.<sup>14</sup>

Sometimes employees appeal to the court, on the basis that their personal relationship with the employer is hopelessly corrupt, and the latter is still looking for a reason to get rid of them.<sup>15</sup> In such cases, monetary compensation would be more in line with protecting the interests of the employee (depending on the severity of the violation of the worker's rights).

In fairness, it should be noted that the first step in this direction is the norm of Article 394 of the Labor Code of Russia. According to this article, the body considering the individual labor dispute at the request of the employee cannot restore the employee to their previous work if the dismissal was illegal, and the body has to restrict itself to awarding compensation to the employee.

### **Replacing the employer in an employment contract**

Changes in an employment contract may relate to the employer. The labor law prohibits the replacement of the employee in the employment contract because labor relations

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<sup>13</sup> The chance of a real possibility to get a new job, for example, for people after 45–50 years, especially for a permanent job, in many foreign countries is close to zero.

<sup>14</sup> I. Kiselev, *Comparative labor law, op. cit.*, p. 144.

<sup>15</sup> B. Korabelnikov, *Labor relations in joint-stock companies*, Moscow 2001, p. 95.

are strictly personal in nature. However, in accordance with Art. 75 of the Labor Code of Russia it is permissible under certain circumstances to replace the employee in an employment contract.

It should also be noted that the Russian legislature has provided in the Labor Code of Russia, in some cases, a specific opportunity for an employer to terminate the employment contract with an employee unilaterally, without giving any reasons for dismissal, for example the head of the organization or individual employees, in the event of a change of ownership of the property of the organization.

It should be recognized that with today's dynamic economy, enterprise restructuring, changes of ownership, and various changes in the legal status of employers – this is quite a common phenomenon. Therefore, these kinds of changes affect a large number of workers.<sup>16</sup>

I would like to note that, at the present time, in the labor law of the European Union problems connected with the protection of the rights of employees during the transfer of the ownership of a business occupy an important position. With regard to this issue, the European Union adopted Directive number 2001/23/EC “On the transfer of businesses.”<sup>17</sup> The main purpose of the Directive – the preservation of the prior rights and responsibilities of employees during the transfer of ownership of a business or its parts to a new purchaser (employer). The directive focuses on regulating the rights arising from labor relations in accordance with collective agreements. In the event of a change in ownership, the working conditions agreed in any previous collective agreement continue to apply. They cannot be changed until the adoption of a new collective agreement in the prescribed manner. Termination of the employment contract in connection with the transfer of ownership of a business from one owner to another is considered invalid.

The period during which employees can contest their rights violated by the employer may not exceed one year.

If the transfer of the ownership of a business from one owner to another leads to a substantial change in working conditions, the employer is considered responsible for terminating the contract and the employee shall be paid monetary compensation or the employee receives the right to purchase insurance against unemployment.

Extensive jurisprudence of the European Court of Justice<sup>18</sup> is devoted to the issues concerning the application of this Directive in European countries.

On the basis of the Directive “On the transfer of a business” European countries have adopted legislation implementing the provisions of this Directive at the national level.

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16 The Russian Federation owns a large number of federal state unitary enterprises. Nowadays, there is also active process of privatization of these objects. Because of that we can only guess how many Russian workers may face various problems in the process of privatization.

17 ABI, 2001, L82/16.

18 Also known as the Court of Justice of the European Communities (established in 1958).

What are the basic guarantees provided to employees if a business changes ownership under Russian law (Article 75 of the Labor Code of Russia)?

Legislation concerning the transfer of ownership of a business focuses on, in particular:

- During the privatization of state or municipal property. The alienation of property owned by the Russian Federation, its constituent entities, municipalities, property of individuals or legal entities;
- When accessing the property owned by the organization, in public ownership;
- The transfer of public enterprises to the municipal property and vice versa;
- The transfer of a federal state enterprise to the ownership of the subject of the Russian Federation and *vice versa*.<sup>19</sup>

Thus, the content of Article 75 of the Labor Code of Russia applies to a fairly narrow range of circumstances which enables us to describe there being a real transfer of the ownership a business. In order to talk about a transfer of the ownership of a business, it is necessary to identify the specific organizational and legal form of the legal entity and the constitution of its property.<sup>20</sup>

It should be borne in mind that a joint stock company established through the transformation of a state unitary enterprise, in accordance with the legislation on privatization, after its state registration in the Unified State Register of Legal Entities, becomes an owner as a successor of the owner of the property included in the privatization plan, or transfer Act.<sup>21</sup>

With regard to the employees of the organization, they cannot be dismissed due to a transfer of ownership. This is expressly provided for in n. 2 Article 75 of the Labor Code of Russia, which found that the transfer of the ownership of a business is not grounds for terminating employment contracts. Exceptions to this rule are only the heads of the organization, their deputies and the chief accountant. Labor relations with other workers continue under the new owner. The previous employment contract is not terminated under these circumstances, a new labor agreement is not concluded, and all the conditions set out by the previous contract are to be performed. Thus no additional employment paperwork is required.

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19 V. p. 32 Resolution of the Plenum of the Supreme Court N.2 from 17.03.2004 “On application by the courts of the Labor Code of the Russian Federation” (Bulletin of the Supreme Court of the Russian Federation) 2004, no. 6.

20 V. G. Soifer, O. B. Zheltov, *Problems termination of employment with the change of ownership of the organization*, “Employment Law” 2003, no. 11, p. 24.

21 V. p. 11 Resolution of the Plenum of the Supreme Court of the Russian Federation no. 10, Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation no. 22 from 29 April 2010 “On some issues arising in judicial practice in the resolution of disputes relating to the protection of property rights and other proprietary rights”, “Bulletin of the Supreme Court of the Russian Federation” July 2010, no. 7.

Terminating the employment contracts with the heads of organizations, their deputies and chief accountants can be carried out by new owners within three months of their becoming owners. If during this period these workers have not been dismissed on this ground, then the new owner (employer) may terminate the employment contracts with them only in general terms.

## Conclusions

It can be noted that Russian labor law has at its disposal a rather large array of international legal instruments containing the fundamental principles and norms intended to provide the legal regulation of labor and associated relations in Russia. These rules and principles in accordance with Article 15 of the Constitution and Article 10 of the Labor Code of Russia have legal supremacy over the Russian legal system and should be applied directly.

However, it should be recognized that current Russian legislation (with some exceptions) does not provide for the obligatory warning of employee dismissal. It is not only at odds with international practice, but also violates international labor standards, such as Article 11 ILO Convention no. 158 and n. 4 of Article 4 of the European Social Charter.<sup>22</sup>

The role given to severance pay in Russian legislation is insignificant, and the amounts are small. It seems that analysis of international experience and practice should encourage the Russian legislature to reform this area, as such a guarantee for the worker as financial compensation in the case of dismissal is important, and most importantly will increase its size and importance.

It is necessary to expand the number applications for employee severance pay and tie the amount to the length of service. It appears that the size of the severance pay must also be differentiated, depending on the cause and circumstances of the dismissal.

ILO Recommendation no. 166, admits the possibility of a temporary reduction of employee's working hours if that will prevent mass layoffs. At the same time, ILO Recommendation no. 166 (v. 22) draws attention to the need for partial reimbursement for the lost wages incurred by the employee due to reduced working hours compared to the normal workweek. It seems that such compensation should be established under Russian labor law for Russian employees too.

It is worth noting that n. 6 Article 74 of the Labor Code of Russia is in conflict with Article 19 ILO Recommendation no. 18223, which provides that an employee's refusal

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<sup>22</sup> European Social Charter (revised). It was adopted on 3 May 1996 in Strasbourg, "Bulletin of International Agreements" 2010, no. 4.

<sup>23</sup> ILO Recommendation no. 182 from 24 June 1994, "On the work part-time."

to work normally (i.e. for the complete duration of the working week), after switching to part-time work cannot serve as the basis for subsequent dismissal.

## Literature

- Kiselev I., *Comparative and international labor law*, Moscow 1999.
- Kiselev I., *Labor law in Russia and foreign countries*, Moscow 2005.
- Kiselev I., Lushnikov A., *Labor law in Russia and foreign countries (international labor standards)*, ed. M. Lushnikova, Moscow 2008.
- Korabelnikov B., *Labor relations in joint-stock companies*, Moscow 2001.
- Lutov N., *Prospects Russia's ratification of ILO conventions*, "Employment Law" 2010, no. 2.
- Protopopova I., *Implementation of international traditions in the Russian labor legislation on dismissal of an employee by the employer*, "Taxes" 2011, no. 13.
- Soifer V., Zheltov O., *Problems termination of employment with the change of ownership of the organization*, "Labor Law" 2003, no. 11.

## SUMMARY

### **Social Guarantees in the Case of Employees' Dismissal in Russia Comparative Legal Aspects of Russian and Foreign Labor Law**

The main purpose of the article is to identify the contradictions and problems arising when both international labor standards and Russian labor law are applied and separate guarantees to workers are provided in the case of their dismissal. The object of the research is the employment relationship which arises between the employer and the employee when social guarantees are given to the workers when the employment relations are terminated. This article considers the regulations of Russian and foreign labor law which provide workers with certain guarantees if the employment contract is terminated at the initiative of the employer. For the first time, these guarantees are considered from a comparative legal perspective. Specific recommendations about improvement of the Russian labor law and its enforcement.

Keywords: guarantees, privileges, benefits, denunciation of the labor contract, dismissal pays, severance pays

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