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New Concept of Employment: Development of Labor Relations in the Digital Age



Natalia V. Zakaluzhnaya

Academy of Labor and Social Relations, 90 Lobachevskogo Str., Moscow 119454,
Russia, natzaklaw@yandex.ru



Abstract

The role and underlying functionality of labor law are radically changing in the current geopolitical and economic context. Though it gives rise of relations that follow specific rules non-standard forms of employment like outstaffing, gig employment, self-employment, spot employment etc., they may escape any regulation. At the same time, the role of integrative associations at work, transnational corporations is changing. The digitization in labor law is reaching a principally new level. While new methods of business cooperation and social communications will trigger the emergence of new effective forms of employment, the applicable labor law does not adequately follow realities of the day nor takes into account new and various forms of engaging people in specific activities including work. In December of 2022 a meeting on the draft “On Employment” was held at the State Duma. The draft had chapters addressing relations involved in platform work, non-standard forms of employment, etc. However, the draft raised a discussion and was revised, with outstaffing to be regulated under new principles. However, while the draft is not made effective, it can be amended and specified to make the proposed subject even more relevant. Therefore a need to conceptualize new forms of employment and to further improve the relevant legislation is a major area of action today. Moreover, automation at work, while bringing positive developments such as the use of robots able of better performing identical and repetitive tasks, is also fraught with various risks. At that, the increasing use of artificial intelligence is another threat to employment of the population. It is only logical that digitization at work entails non-standard forms of using classical institutions, opening up new possibilities to use social partnership, particularly, in the activities of sectoral unions for regulation of collective labor relations as discussed below in the paper. Author looks at issue of remote work and the nature of approaches to regulation of the underlying relations from a perspective of qualitative changes to regulation of electronic communication between workers

and employers as part of remote legal relationships. It is proposed to revise relevant areas of research of mentioned and other relations to address contemporary challenges emerging in the field of labor law in the digital age.



Keywords

digital age, labor relations, remote work, new forms of employment, automation, digital remote union.

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Introduction

The COVID-19 pandemic, automation of industries and of different spheres of social life, use of cognitive technologies and recruitment via digital platforms, geopolitical situation and other challenges in the context of economic war against Russia declared by the collective West have revealed a number of issues in the Russian labor and employment law including those of its inadequate flexibility. Thus it is currently important to conceptualize new forms of employment and to improve the employment law: approximately 30 thousand international companies that employed almost 2 million workers in Russia have suspended their operations.

While new methods of business cooperation and social communications will trigger the emergence of new effective forms of employment, current labor law does not adequately follow the realities of the day nor takes into account new and various forms of engaging people in specific activities including work. Indeed, informal employment merits a regulatory response.

It is necessary to timely assess and regulate such phenomena as gig and spot employment, just like other forms of employment emerging in the labor market, and also prevent the spreading of sham self-employment while avoiding to prohibit individual business activities. In 2017 the European Foundation for Improvement of Living and Working Conditions has published a report “Non-standard forms of employment: recent trends and future prospects”¹ noting an important phenomenon — characteristic of Russia as well — of the growing number of self-employed workers.

¹ Eurofound. Non-standard forms of employment: Recent trends and future prospects Background paper for Conference “Future of Work: Making It e-Easy”, 13–14 Sept. 2017.

A positive evolution of the labor market is ensured, among other things, by labor legislation. This requires comprehensive studies at the nexus of economics, jurisprudence and sociology due to implications of labor market development and structural transformation of labor relationships as a result of technological change and workings of the market. Moreover, the mechanisms of digitization of labor relations reach a new level.

1. Traditional and Non-Traditional Understanding of Employment

To define employment and its correlation with contractual employment, it has a sense to refer to concept of employment as established by law and interpreted by jurisprudence. Under the Federal Law on Employment of the Russian Federation of 19 April 1991 No. 1032-1²; hereinafter the Employment Law), employment is an activity that is normally gainful, related to satisfaction of individual and public needs and not contrary to law.

The concept provides a socioeconomic standard and defines work in the wider sense as:

labor activity: work under a contract (the concept is explained above);

business activity: independent and systematic operations of private entrepreneurs in which they engage for profit at own risk under statutory contracts (for work/services), copyright agreements, as well as operations of members of production cooperatives and founders (stakeholders) of for-profit organizations;

academic activity: in-person training including as referred by public employment agencies;

service: military, substitute civilian, police, fire fighting and penitentiary system;

other activities.

Overall, Article 2 of the Employment Law lists ten categories of individuals deemed employed without making a clear distinction between different forms and types of employment. Thus, one can admit that legal definition of employment is not correct as it does not make clear what employment is

Available at: URL: https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1746en.pdf. (accessed: 28.01.2023)

² Vedomosti RSFSR. 1991.No.18. Article 565.

meant — labor, academic or other. This systematization follows only from the fact that the authorities do not provide social assistance and support to all those employed.

As a party to social relations, an individual could be employed at a job not covered by provisions of the labor law. There are several views on the division of employment. For instance, according to S.H. Dzhioev, there are three main types of employment: academic; military (army, internal and railway forces, security and police forces); and labor, that is, public and individual employment in a form not contrary to law, irrespective of whether it generates earnings or other remuneration or not [Dzhioev S.H., 2006: 21].

A different approach is contained in manual “The Russian Labor Law” that, depending on the nature of underlying activities, distinguishes labor (public production) and non-labor employment. The former is divided into hired/dependent and own-account employment. Hired employment includes work under an employment contract; work under statutory contracts with labor as the subject; work under an election/assignment order; contracted military or equally treated service. Own-account employment includes membership with production cooperatives (guilds); work at subsidiary industries and contracted sale of products; business activities; unpaid contributing family work [Khokhlov E.B. et al., 2005: 229]. The latter classification is based on the resolution adopted by the 15th International Conference of Labor Statisticians in 1993 and used in international and domestic practice.

In international statistics the entire population is classified as economically active (supplying labor for production of goods and services) and economically inactive. Both the employed and unemployed persons are economically active population. While this division is important for assessing labor supply and its evolution, it will leave out those performing socially important activities such as care after the disabled and children, household chores and other paid work. Types and forms of employment are thus treated differently.

There is an interesting interpretation by O.V. Sobchenko whereby “dealing with forms of employment we mean primarily their economic parameters that reflect the thrust of public employment policies as such... What is important as applied to individuals is the division into types where employment is regarded in place and time. We suggest a twofold division: employment based on employment contracts and employment based on other legal evidence” [Sobchenko O.V., 2005: 6].

The definition of the “form of employment” is not only about economic characteristics. As observed by O.V. Motsnaya, “assuming that labor employment is a type of employment (along with training and office), the following forms can be obviously distinguished as part of this type depending on external manifestations: work under employment contracts; work under statutory contracts; work as a private entrepreneur, etc. Forms of labor employment are regulated by norms of different branches of law. Therefore, the concepts of “labor employment” and “employment based on employment contracts” correlate as the type and the form of employment, that is, external manifestation” [Motsnaya O.V., 2009: 39– 40].

As it turns out, only one of ten types of employment makes up contractual employment (including its non-standard forms) still prevalent in the postindustrial society. However, the totally new stage of digitization, in particular, as applied to employment is enforcing a new understanding of employment in the wider sense as any — normally gainful — activity of individuals aimed at satisfaction of personal and public needs which is regulated by provisions of the Russian law irrespective of sectoral association³. Employment thus comes to include non-standard forms as discussed below.

Atypical (non-standard) employment assumes some extent of deviation from typical (standard) employment down to informality. It appears that the spreading atypical employment, unlike typical labor relations, is understood as any form of engaging labor that deviates from traditional employment contract in its various combinations.

Atypical employment forms are many and involve both legal and those not covered by law. They include the types of work which deviate from classical types by one or more features: effective term (term employment contracts); working time (part-time); production site location (from traditional home-based to remote work, platform and spot employment); day work, call work; temporary agency work etc. Thus, atypical employment also includes the forms where people, instead of working directly for an employer, work via branches and entities which make up a group of companies (network employer); mediators (private employment agencies), subcontractors. Since these forms of employment are often prejudicial to workers, they are qualified as “precarious (forms of) employment”, a concept of judgmental colouring.

³ In the narrower sense the author of article proposes to treat employment as a subject of employment relations governed by provisions of labor and employment law.

A comparative study of “atypical form of employment” and “precarious form of employment” allows to expose how they relate to each other. From a perspective of formal logic, they relate in terms of content as the general and the particular. Thus, precarious employment is always atypical (non-standard) while the latter is not always precarious. For example, part-time employment as a subject of labor relations arising from an indefinite term employment contract is atypical but cannot be considered precarious.

In view of the partial overlap of non-standard and precarious employment, it was proposed to introduce atypical (non-standard) forms of employment as a more general term since it comprises a whole set of precarious forms of employment.

For a meaningful analysis of the subject, it is important to define the notion of atypical employment as such. It should be remembered, however, that economic literature with its rich tradition of looking into the nature of employment does not offer a single approach to terminology due to the fact that atypical employment is a rather recent phenomenon with quite visible variations depending on the country.

The International Labor Organization (ILO) qualifies non-standard jobs as “precarious employment”, a term often translated neutrally as “non-standard employment”, but has negative connotations as it is associated primarily with social implications of the labor market flexibility. However, in sociological terms as applied to non-standard labor relations this concept can be regarded, firstly, as a threat to livelihoods and incomes of the working population, and, secondly, as a problem of discrimination at work directed against those employed in this sector.

S.I. Kotova has proposed a good definition of labor market precarization by describing it as “a process of change to socioeconomic relations in the structure of the labor market under the effect of different external social risks in the form of economic, technological and demographic processes which results in lower social and economic statutory guarantees available to (potential) workers irrespective of the way they are engaged in work” [Kotova S.I., 2019: 16].

Under the Labor Code of Russia, the parties to labor relations include the worker (person contracted by the employer) and the employer (individual or legal entity contracting the worker). This is due to the fact that the Russian doctrine has faced atypical employment much later than countries in other parts of the world.

However, there are studies qualify employment as an important socio-economic category, with the focus, as economists believe, on standard employment characterized by three main features: work for one employer; standard workload over a day/week/year; work at the employer's production facilities.

In light of that foregoing, it appears that where any of these is lacking, this signals a non-standard (atypical or flexible) form of employment. A similar approach to the definition of standard employment is supported by V.E. Gimpelson and R.I. Kapelushnikov, both of whom believe it to be "full-time wage employment at an enterprise/organization under direct supervision of the employer or manager appointed by him based on indefinite term contract" [Gimpelson V.E., Kapelushnikov R.I., 2006: 16]. While this economic definition is quite widespread, the underlying criteria are not quite accurate from a perspective of the labor theory. For this reason, legal literature has a slightly different concept of standard employment.

The traditional model of long-term relations between subjects of the labor law is now complemented with a set of "atypical" forms of work that are in rapid progression in the current environment. The main issue here might be that employers will use atypical forms to get around the law by arranging work in a way as to move waged, part-time or term workers out of the coverage of the social protection system through the use of specific contracts. The qualification of certain types of labor relationships as atypical should not in principle restrict the rights at work since classical labor relationships allow to change certain attributes as long as this does not prejudice the rights guaranteed to workers.

It is noteworthy the concept of individual work should not be confused with that of private enterprise. Individual work is associated with a variety of areas such as the performance of work and provision of services subject to special legal regulation⁴. Both private enterprise and individual work currently share a common attribute — an individual engaged in this activity at his own risk as different from a worker instructed by his employer to perform a work function.

To finally distinguish individual work, it is important to describe its features: sole performance of all operations; private, own-account nature of

⁴ See, for example, Federal Law No. 307-FZ of 30 December 2008 "On Audit" // Collected Laws of the Russian Federation, 2009, No. 1, Article 15; Federal Law No. 63-FZ of 31 May 2002 "On Legal Practice and Advocacy in Russia" // Collected Laws of the Russian Federation, 2002, No. 23, Article 2102.

work at one's own discretion organized by the subject to the work process outside any production system; the outcome of work rather than production activities subject to regulation by law.

Labor relations have a social focus, assume the protection of public health and compliance with provisions of labor law. It appears that individual work today is own-account activities of individuals based on individual work and performed outside any production system [Savenko L.I., 1986: 42–47].

Thus dealing with employment covered by provisions of the labor law, the concept of atypical employment will apply to those forms that are based on labor and related relationships have specific attributes, as well as on relationships that do not exhibit the whole of the main attributes of a labor relationship. An atypical employment contract should be understood as an agreement between an atypical worker and/or atypical employer with regard to the work to be performed in atypical conditions (part-time employment, agency work, remote work, digital platform work etc.), i.e., the work which has the characteristic features of non-standard forms of employment.

All of the above-cited signals that the regulation of employment in Russia is inadequate to the emerging practice in this area⁵. Since atypical employment is a reality, it is important for the future to timely assess and regulate such emerging phenomena as gig and spot employment etc., and also to prevent the spreading of sham self-employment and informal employment while avoiding to prohibit individual economic activities.

2. Transformation of the Modern Understanding of Employment. The Place of Platform Employment and Labor Market Information Systems in the Regulatory System in Russia

Public employment policies have to be improved due to the progress of IT for employment promotion and electronic interagency operability, the need to remove interregional barriers to employment, staff recruitment and public service provision, as well as the need in comprehensive upgrad-

⁵ According to the data reported, for example, by the international audit consult network FinExpertiza, part-time employment in Russia grew by 22% year-on-year, an absolute maximum over the whole period of observation since 2013.

ing of the public employment service for the implementation of digitization mechanisms in Russia.

The proposed changes are needed to develop a mechanism for employment promotion services on the basis of an integrated digital platform, streamline the relationships between public employment centers and applicants, and also replace federal state standards with those promoting public employment and covering not only public services.

Efforts were also made to support employability of minors, for example, by providing a digital service for specialists at schools on the basis of the “Working in Russia” platform with a capability of displaying modern content on occupations.

The Ministry of Labor prepared a draft On Employment that by December of 2022 comprised nineteen chapters⁶ as a result of changes made in the course of coordination. It was announced to include the provisions establishing composition and range of those to be covered by the employment legislation, as well as defining relationships with the provisions of international law and preventing the dissemination of unreliable and discriminatory information on available vacancies. The draft had chapters on new relationships such as self-employment, platform employment and non-conventional employment; outstaffing was also regulated in the new light. The draft will radically change the concept of employment as such and the categories of those deemed to be employed. Thus, as understood in the draft, employment is a gainful activity of individuals for production of goods or provision of services not contrary to law⁷, with the following categories to be considered employed:

workers under an employment contract including working full-time or part-time for remuneration, as well as doing other paid work/service including seasonal and temporary work, except for public works and full-time (staff) office of election/referendum commission members with the right of decisive vote;

entrepreneurs, public notaries and lawyers engaged in private practice and other professional activities are to be registered and/or licensed under the federal law;

self-employed workers;

⁶ On 1 December 2022, a meeting of the working group to discuss the draft on employment was held at the State Duma of the Federal Assembly of Russia.

⁷ SPS Consultant Plus.

engaged in subsistence farming, popular craftwork, traditional work and crafts of indigenous ethnic groups and contractual sale of goods;

workers under statutory contracts for performance of work and provision of services, copyright agreements, as well as members of production cooperatives (guilds);

elected, appointed or approved to a paid office;

those on military, substitute civilian, police, fire fighting and penitentiary system service;

temporarily absent at jobs due to disability, leave, retraining, skills improvement, suspension of production as a result of a strike, reservist training, participation in the events related to the preparation for military/substitute civilian service, performance of other public or civic duties or other viable reason;

founders/stakeholders of organizations, except non-profit organizations of a form which does not envisage the right of founders/participants to operational profits including condominiums, members of housing, development, garage, other specialized consumer cooperatives established to satisfy members' needs and not to distribute operational profits;

members of a (peasant) farm⁸.

As follows from the list, there is a considerable change to the categories of those employed. There is a visible bias in favor of statutory regulation both in the concept of employment itself and in the list of workers deemed employed. Also it has come to include the category of self-employed workers (following success of a legal experiment with their taxation), while individuals on training were totally excluded.

Under the draft, self-employment is activities of (self-employed) individuals for own-account production of goods (provision of services) for regular income who are, however, not registered as private entrepreneurs nor hire workers for the purpose of self-employment. The following individuals are not deemed self-employed: those hiring workers on a contractual basis as employers; generating revenues in an amount lower or higher than established by the Government for calculation of the taxable base in the current calendar year; engaged in activity types to be established by the Government.

⁸ Draft of Federal Law "On Employment in the Russian Federation" // SPS Consultant Plus.

Since the digitization program is gaining momentum in all spheres of social life, the draft is expected to comprise Chapter 3 “Platform Employment in Russia” applicable to the activities of (platform) workers for own-account performance of work and/or provision of services as organized by a legal entity and/or private entrepreneur (digital labor platform operator — a legal entity and/or private entrepreneur operating a platform) on the basis of statutory contracts between a digital labor platform operator and platform workers (registered as private entrepreneur and/or self-employed worker for own-account performance of work and/or provision of services via the digital platform without engaging a third party) and between customers (individuals or legal entities placing orders for performance of work and/or provision of service on the digital labor platform) and platform workers⁹.

The digital labor platform was defined as a registered information system¹⁰ — an information system of interactions between customers, platform workers and digital labor platform via Internet to facilitate contracting for performance of work and/or provision of services. Access to the system is ensuring by platform operator. Such platform is also used to place orders platform workers can execute for remuneration to be calculated under the terms of statutory contracts concluded with customers and the platform operator taking into account the platform worker’s rating.

The drafters also attempted to identify a set of requirements to digital labor platforms including those applicable to the underlying operational technology, for example, a possibility to register someone as a platform worker (without requiring to possess skills or qualifications), and those ensuring functional comfort to workers, such as to exclude a possibility of limiting access of specific worker groups to orders posted by specific customers.

Without going into technical details of labor platform operation, it should be mentioned that the expert community has divided in their views on whether to qualify relationships of this sort as a form of employment long before this time. On the one hand, there is a common understanding that, once these relationships are a fact of life, it would be correct to provide at least minimum regulation in this sphere than to play them down or, worse still, deny their existence altogether (as was actually underlined in legal terms), like in the case of outstaffing in Russia today. Therefore, adequate regulation should follow but avoid a bias towards statutory regulation

⁹ 9 SPS Consultant Plus.

¹⁰ The register to be maintained by the Council for Digital Labor Platforms.

of the relationships involved in platform labor: it is important to identify social and labor rights, duties and guarantees available to the parties.

Changes proposed to the Employment Law draft discussed above were worked through and are currently considered in one more draft titled “On Employment in Russia”. However, concept of employment itself and list of those deemed employed (10 categories were left with those on training excluded), they have remained the same as in the previous draft. The terminology of self-employment and platform employment also is practically the same as in the discussed draft but placed in Article 2 of the new draft ¹¹.

It is noteworthy the chapters regulating self-employment and platform employment were removed from current draft of Employment Law whereas it just mentions that both are regulated by the legislation. This is likely to be the result of controversies occurring in respect of these categories, especially platform employment. While the relationships themselves are a fact of life, their regulation is lagging behind.

In regulating platform employment it is useful to study experience of other countries. For example, Italy and Spain have social partnership agreements concerning the occupational implications of the transition to digital technologies and the legal status of digital platform workers. In Italy there are local level agreements on working arrangements and conditions endorsed by institutional trade unions, autonomous worker groups and representatives of several platform companies of the food industry. In Sweden there are agreements in place at platform companies in the sector of transportation and education. A number of collective bargaining agreements — for example, in Denmark and Portugal — offer vocational training programs for productive use of labor in the digital sector. Collective bargaining agreements in Germany address the issue of protecting privacy of remote workers.

As reported by PWC, Russia ranked among the top ten countries in terms of the monetary value of the freelance market in 2020¹², with the

¹¹ Self-employment is an activity of individuals for own-account production of goods and/or provision of services for regular income. Platform employment is an activity of (platform) workers for own-account performance of work and/or provision of services on the basis of contracts facilitated by information systems (digital labor platforms) for web-based communication between platform workers, customers and digital labor platform operators.

¹² The labor market of the future: confronting trends to shape the work environment in 2030. Available at: URL: <https://e-cis.info/upload/iblock/89a/89aa34fc14f176de66a08197495a348e.pdf> (accessed: 04.11.2022)

growing number of people — normally of younger ages — choosing atypical employment.

This choice is explained by several things: firstly, as young people want to be free, they opt for an opportunity to work from anywhere in the world rather than to be waged workers. Secondly, as freelancing is believed to be a way to start one's own business, it provides a sort of launching pad. Thirdly, there is a category of those in permanent search for work they cannot find, only to be forced to resort to freelancing. As such, freelancing is gaining momentum, with nearly 3.5 million of self-employed workers in Russia in 2021¹³. Therefore, a well-designed legislative reform will provide a solid basis for regulation of this form of atypical employment.

It is worth noting the current draft provides a fairly good level of regulation of the status of information systems in the area of employment and labor relations. Thus, it contains the provisions governing:

Working in Russia, an integrated digital employment platform for employment relationships;

procedure and details of the interagency electronic communication system to be used by public employment services;

procedure of personal worker and employer e-files to be maintained by public employment services¹⁴.

Meanwhile, outstaffing to be regulated by the previous draft in Chapter 4, escapes the current draft for reasons yet unknown. In fact, the Labor Code of Russia (Chapter 53.1; hereinafter the Code)¹⁵ and still in force Employment Law (Article 18.1) provides only minimum regulation of these relationships.

Apparently, “the current labor law enforcement practices demonstrate that there is no effective mechanism to regulate the relations arising in connection with outstaffing by legal entities other than private employment agencies. There is, however, an objective need to legalize them as part of

¹³ The number of self-employed individuals has more than doubled in 2021 // Federal Tax Service. Available at: URL: https://www.nalog.gov.ru/rn77/news/activities_fts/11632019/ (accessed: 04.11.2022)

¹⁴ Personal worker/employer e-files are e-documents and/or details, and details of documents compiled, provided and/or received by public employment services in exercising their duties and implementing public guarantees of employment and protection from unemployment // SPS Consultant Plus.

¹⁵ Rossiyskaya Gazeta. No. 256. 31 December 2001.

holding companies and specific business entities, interrelated business groups and parties to shareholding agreements by providing certain rules including restrictions/preferences, defining the ground and details for using this construct, something that may be of enormous value for both protecting workers' interests and guaranteeing employers' right to re-allocate workers as part of holding companies and other organizations, affiliated business groups and parties to shareholding agreements using the mechanism for outstaffing workers to entities other than their proper employer.

Whereas retained workers are parties to the relations arising in connection with atypical forms of employment in the wider sense, workers seconded by legal entities and individuals under an outstaffing agreement are parties exclusively to labor relations.

This allows to assert existence of the so-called “external workers” as the parties to labor relations applicable to “outstaffed workers”.

To guarantee rights of the above workers, it is proposed to consider the following persons as affiliated with the outstaffing party:

capable of influencing the outstaffing party's operations,

whose operations can be influenced by the outstaffing party,

whose operations, just like those of the outstaffing party, can be influenced by a third party.

All of the said and other likely amendments to the Employment Law deserve a separate study. Since the draft has not yet in force, it can still be amended and specified.

There are also other factors negatively affect the labor market. As observed in the ILO report “World Employment and Social Outlook: Trends 2023”, there is a slowdown in employment growth worldwide with reduced opportunities for decent work and negative implications for social justice. Also, employment is projected to grow globally in 2023 by just 1 percent, twice lower than in 2022. Global unemployment is projected to edge up in 2023 by about 3 million to reach 208 million because of limited supply of labor in high-income countries¹⁶. While unemployment globally declined in 2020– 2022, there will be now 16 million more jobless than before the 2019 crisis. The automation of economic sectors with robots assuming functions earlier performed by man is yet another factor to potentially

¹⁶ Available at: URL: <https://www.ilo.org/global/research/global-reports/weso/wcms-865332/landeng- -enindex.htm> (accessed: 20.12.2022)

affect the regional rates of unemployment. In this context, it is especially important to have a well-designed law-making process and enforcement practices. A growing use of big data and artificial intelligence is equally fraught with implications for employment. These technologies are already being introduced, for example, into the processes of diagnostics and selection of medication. Driverless transportation is also a thing of the near future. Computers are capable of replacing cashiers and bank employees, and ensuring automatic operation of warehouses etc. [Eremin V.V., 2019: 27].

It is widely discussed that lawyers and judges may be replaced by artificial intelligence to issue standard documents and draft resolution part of decisions at courts [Kostoeva V., 2020]. A likely use of artificial intelligence for recruitment and relevant risks are a promising area of study [Khubulova M.I., 2022: 47]. Therefore studies of implementing artificial intelligence for recruitment and further placement and of the risks involved are especially relevant.

The use of robots and other automatic systems exempts employers from the duty to pay wages, taxes and insurance contributions, or to provide leaves.

One robot is estimated to replace 1.3 workers in the first year, with the ratio to further reach 1.6. Thus, the global GDP is expected to grow by 5 trillion USD by 2030 just through industrial automation alone. In this context, it is important for the legislator to maintain the balance between inevitable social changes favorable to businesses and society as a whole and those who will be potentially and actually affected by these changes.

The semiskilled workers will be at risk of unemployment whereas a majority of occupations not involving soft skills will become extinct. At the same time, changes to employment are hard to predict. Lost jobs may be compensated by new jobs in the emerging economic sectors and by potential restrictions on automation of, for instance, financial and legal jobs to even out the transition to automation.

Some concerns with regard to robotics were voiced already in the ILO report at the Davos Forum back in January 2019, in which the ILO made a point that industrial automation should not affect the rights of workers such as those to adequate subsistence minimum, maximum working hours, safe working conditions, freedom of association and collective bargaining. Also, there should be guarantees of protection from forced labor, child labor, from gender discrimination at work. In 2021, experts of the Forum

again presented a report stated a need to address job loss for middle class workers at the expense of new emerging types of work. They argued, in response to critics of the widespread use of artificial intelligence, that the so-called strong AI (capable of independent decision-making) would emerge already in the coming decades and would be able to replace human workers almost completely. In the middle case forecast, the full automation of work would take place in 125 years (counting from 2016) [Edovina T., 2021].

Apart from job loss, there are concerns over the use of artificial intelligence for workplace control. The capabilities for ongoing monitoring of worker actions and their automatic analysis do not only add to tension and stress at work, but also potentially upset the balance of interests between the worker and the employer that the labor legislation is called upon to maintain. Automation may also exacerbate inequalities between workers at higher or lower risk of being replaced with robotic systems. There are proposals within the expert community to introduce a tax on robots, a four-day working week or six-hour working day. Also, it has been proposed to establish a network of entrepreneurial universities that could create innovative companies.

While the National Program for Digital Economy currently implemented in Russia and incorporating the Federal Training Project for Digital Economy does not identify the risks of replacing human workers with robots, the Passport¹⁷ of this Project lists, in particular, the following tasks and deliverables:

- universities training programs/modules for digital economy developed;
- federal universities standards upgraded for digital economy;
- digital service forming personal competency profiles, personal development paths and lifelong learning;
- open-end format of competency profiles, development paths and formation procedures approved;
- network of digital transformation centers, Digital University and supporting centers, created on the basis of universities;
- trainees enrolled in university level IT programs to reach 120,000 by 2024;

¹⁷ Approved by the Presidium of the Council for Strategic Development and National Projects under the President of Russia // Minutes No. 7 of 04 June 2019.

practicians including CEOs of organizations and officers of public agencies and local governments trained in competencies and technologies demanded in the context of digital economy etc.

This national program obviously prioritizes lifelong training and education for digital economy, something able to protect workers from unemployment as a result of the growing robots use.

To improve the regulatory framework, researchers propose to complement the social partnership institution by adding a provision for prevention of arbitrary replacement of workers with AI, for instance, by requiring mandatory trade union approval [Filipova I.A., 2020: 162– 182]. However, since employers in Russia are anyway restricted in dismissing workers, is it reasonable to introduce additional constraints and thus slow down the development of capital goods and digital economy as such?

Besides, the introduction of robotic technologies will not only make one or another worker redundant, but also change their service function. For example, a lawyer will no longer have to draft documents but only to check those generated by the designated algorithms and to ensure basic maintenance of the software.

How will the employment contract change? For instance, it has been pointed out that Article 74 of the Labor Code was not correctly applied to the said cases, only to reveal a regulatory gap [Belozerova C.I., 2022: 95].

The development of technologies that augment rather than altogether replace human intelligence appears to be an all-around solution to the human replacement issue. State will have to assume an obligation to provide all those willing with jobs while developing new social protection mechanisms, in particular, that of minimum income security.

The problem of employment in the context of widespread automation is not yet critical in Russia. According to the International Federation of Robotics, while Asian countries such as China and Japan (ranking, respectively, first and second followed by the United States) lead in the robotics market, Russia is not among top ten¹⁸. Russians regard robots largely as conventional assistants to perform a limited range of tasks or fulfill elementary operations. However, the accelerating international trend suggests that

¹⁸ World Robotics Report. “All-Time high” with half a million robots Installed in one year // International Federation of Robotics. 13.10.2022. Available at: URL: <https://ifr.org/ifr-press-releases/news/wr-report-all-time-high-with-half-a-million-robots-installed> (accessed: 24.11.2022)

automation-related employment issues need to be addressed in our country as well.

This should, however, take into account the federal structure of Russia and a variety of regional economic and legal contexts such as unemployment rate, extent of digitization, potential for work process automation. A detailed study of new legislative solutions and federal programs is yet to be done.

3. New Digital Capabilities for Social Partnership and Teleworking

The digitization of labor relations logically entails atypical forms of using already familiar institutions, for example, by opening up new capabilities for social partnership, namely, for sectoral unions to regulate collective labor relationships.

Moreover, a “digital remote union” is understood by law exactly as a normal trade union would be, except for details related to the fact that it relies on digital equipment and operates from any location whatsoever.

This allows to improve union activities in workers’ interests, streamline and specify the workings of social partnership. Remote unionism will increase union membership, with the use of multiple distributed ledges to provide protection from hacking. “Digital remote unions” can be independent and objective in voicing their members’ concerns in the labor market by forming balanced opinions in the course of discussions of social programs and thus improving the mechanism for the exercise of the right to representation.

The digitization of unions means above all the formation of e-environment to put in place an integrated database/platform for record-keeping of members and covering the whole of the organization from grass root (local, district) to regional and interregional structures.

Digital technologies at trade unions should promote internal activism and institutional capacity building; shape enabling, organization-wise information environment for teamwork by way of promoting comfortable atmosphere and creating favorable conditions for performance of chairman offices through electronic record-keeping of members as a basis for boosting up motivation; introduce e-cards at trade unions in the form of virtual accounts activated via a mobile app, or in the form of a plastic card;

put in place an integrated electronic database of union members; create a passport for each union with an in-depth analysis of the social status of members; encourage workers (including in education) and students to join the union; establish environment for direct communication between the union's elected bodies and members (monitoring, polling etc.).

While the Russian economy recently was in the process of digitization, it was crucial to formulate principles and details of formalization of labor relations in the digital economy in terms of transition to electronic communication between workers and employers (introducing electronic employment contract, digitizing paperwork to be done by workers and employers etc.). Now a principally new stage of the "digital" development of social relations has begun.

Just like labor relations, teleworking is being constantly reformed under the impact of digitization of the economy. For this reason, it is important to study how the rights and duties of the parties to remote relations evolve, and to determine the legislative vector of development of their legal status since the effective law does not obviously address remote work in every detail.

At the same time, it follows from studying practices that work can be performed both remotely and at the employer's location. As workers, given the employer's consent, can combine both arrangements, it is relevant to study the opportunities for remote and fixed employment as part of the same relationship.

The system of atypical labor relations emerged in Russia in years of economic globalization and modernization, and development of ITC systems has determined further regulation of social relationships. Thus, as a result of adoption of Federal Law No. 60-FZ "On Amending Specific Regulations of the Russian Federation"¹⁹ (in force since 19 April 2013), the Labor Code has come to include Chapter 49.1 on remote workers due to the growing interest in the regulatory principles governing status of the parties to remote relationships and the nature of linkages between them.

This chapter did not have a clear bias towards protection of the interests of either party to labor relations. Both workers and employers have gained from the opportunity to use e-documents and/or mail under a formal procedure rather than communicate personally to conclude, amend or take

¹⁹ Collected Laws of Russia. 2013. No 14. Article 1668.

any other action to perform an employment contract. Workers adopting this regime were able to work freely with the maximum creative performance for decent, market-driven remuneration while transparent labor relations were to everyone's benefit.

Meanwhile, the outbreak of the COVID pandemic resulted in an expansion of offsite work and in promoting ITC-based labor relations between the parties for objective reasons, only to reveal conflicts between the actual processes at work and the Russian labor law, in particular, forms of employment and working-time regimes established by it.

The pandemic has revealed issues of the Russian law consisted in inflexibility and limited opportunities to apply ITC technologies to labor relations, with the following problems coming to the fore during this period:

Firstly, Chapter 49.1 of the Code on teleworking, in effect since 2013, was difficult to apply. As a result, very few workers and employers would use it. In 2019, according to Rosstat workforce survey, only 30.000 out of 67.1 million people worked remotely via Internet on the basis of a teleworking employment contract (telework), a tiny percentage compared to the known extent of remote and digital platform employment, and freelance web-based work.

Secondly, the Russian labor law turned out to be ill-prepared for a massive transfer of workers to remote work. Thus, various methods (e-mails, oral messages, CEO orders) were used to advise the affected workers, with orders on a new work regime rarely communicated for review and supplements to employment contracts on the regime and location of remote work concluded still rarely, despite being advised by majority of law experts. In fact, even such supplement proved impossible to conclude electronically, since it was not regulated by law²⁰.

The teleworking provisions were meant at one time to protect working remotely and communicating with the employer via generally available networks like Internet. Such workers include, for instance, journalists, web designers, programmers etc. However, the situation is now totally different. Remote workers are now covered by provisions of the labor law and related regulations subject to specific rules established by Chapter 49.1 of the Code. The recent amendments to the labor law, particularly the wording

²⁰ Explanatory note to the draft "On Amending the Labor Code of Russia Applicable to the Regulation of Teleworking and Remote Work" // SPS Consultant Plus.

of that Chapter (details of regulation of remote workers²¹) are devoted to electronic communication between workers and employers. Transactions to enter into electronic employment contracts and supplements thereto, financial liability agreements, on/off-the-job apprenticeship agreements, as well as to amend/terminate these by exchanging e-documents, require the use of an advanced qualified electronic signatures (of employer) and an advanced (non) qualified electronic signature (of worker) under the e-signature law of Russia. Each party is required to electronically confirm receipt of an e-document from the other party within dates established by a collective bargaining agreement, bylaw approved by a grass root trade union, employment contract or supplement thereto.

The remote worker and the employer may otherwise exchange e-documents through the use of other types of e-signature (forms of communication) envisaged by a collective bargaining agreement, bylaw approved by a grass root trade union, employment contract or supplement thereto which allow to establish that an e-document was received by the worker and/or employer. In this case, remote workers and employers will confirm the provision of information to each other by a procedure described above.

The following documents may be also communicated in an electronic form: staff regulations, other work-related bylaws, collective agreements (part 5, Article 312.2 of Code), employer orders/instructions, notices, requirements etc. to be served to workers (part 5, Article 312.3), documents to be submitted by workers prior to service under Article 65 (part 3, Article 312.2), explanations or other details to be reported by workers, certified copies of work-related documents to be issued to workers under Article 62, sickness certificate series/number to be provided by workers for payments under mandatory social insurance in case of temporary disability and maternity, outputs and progress reports requested by the employer (parts 6–9, Article 312.3).

As requested by a remote worker in writing, an employer shall forward (not necessarily by mail as the legislator does not establish or restrict the method of notice in the amended chapter in question — delivery service or a visit to the office etc. is also envisaged) a formalized duplicate (paper) copy of the employment contract (supplement thereto) within three business days from the date of request.

²¹ See Federal Law No. 407-FZ “On Amending the Labor Code of Russia Applicable to Regulation of and Temporary Transfer of Workers to Remote Work in Exceptional Cases at the Employer’s Initiative” of 8 December 2020 // Collected Laws of Russia, 2020, No. 50 (Part III), Article 8052.

If copies of work-related documents are requested by remote worker, a employer shall forward hard copies thereof or, if requested by worker, electronic copies in the same term, while worker may forward reports, explanations and other documents by any method adopted at the organization. E-signatures of remote worker (remotely employed individual) and employer shall be used as envisaged by Federal Law No. 63-FZ “On the Electronic Signature” of 6 April 2011”²².

However, since exchanging documents in this way is quite cumbersome and time-consuming, the legal practice (starting from enforcement in specific cases and ending with generalizations) specifies the fact of labor relations between the parties could be established in some situations on the basis of their electronic correspondence²³. The procedure for communication between remote worker and employer where standard electronic technologies cannot be normally used for this purpose for reasons beyond their control can also be added to the employment contract.

Apart from additional terms which should not change the worker’s situation for the worse under Article 57 of the Code, the teleworking employment contract may stipulate the worker’s duty to use hardware/software, data protection or other means provided or recommended by the employer for the performance of duties. In his turn, the employer will provide hardware/software, data protection and other means required to the remote worker for performance of functions (part 1, Article 312.6).

The procedure for contract termination notice/order to a remote worker has also changed. Under part 3, Article 312.8, where the termination notice of the contract for remote (permanent/temporary) performance of a work function is served in an electronic form, the employer shall mail a hard copy of the notice/order to the worker in three business days from the date thereof (previously this was to be done on the day of termination of the employment contract).

An electronic employment contract — or, more precisely, the information or the terms contained therein at the time of signing — may be amended under the procedure envisaged for a regular employment con-

²² Collected Laws of Russia, 2011, No. 15, Article 2036.

²³ See: Supreme Court of Russia Plenum Decision No. 15 of 29 May 2018 “On the practices of applying the provisions governing workers employed by individual employers and small businesses qualified as micro enterprises” // Supreme Court of Russia Bulletin, 2018, No. 7; Kirov District Court of Ekaterinburg, Sverdlovsk area, Decision of 06 July 2016, case No. 2-4775/2016 // SPS Garant.

tract while taking into account the details related to the electronic contract. This means that the parties should enter into a corresponding agreement for amending the terms of an electronic employment contract.

In the context of the worldwide calamity of 2020, it has become imperative to urgently transfer workers across different sectors to remote arrangements on an exceptional basis. Thus, procedure for temporary transfer of workers to remote regimes in exceptional cases at the employer's discretion is regulated by Article 312.9 added to the Code.

A study of labor law and practices allows to distinguish essentially different types of work — telework and remote work — presented as synonymous as a result of the labor law reform. In fact, an acceptable, not ideal definition of telework was proposed by the legislator in Federal Law No. 60-FZ, that is, in the Code, when this type of work was addressed for the first time.

While telework cannot be performed for objective reason at fixed workplace and/or at the location/territory of the employer or his structural divisions, remote work can be performed at or outside such location irrespective of whether there is a fixed workplace or not. In addition, remote work may be performed outside a fixed workplace (including outside the employer's location) on a permanent, temporary or recurrent basis.

In view of these features, it is proposed to define remote work as the performance of a work function envisaged by the employment contract outside the location of the employer, his branch, representation office or structural subdivision (including those located elsewhere) on a permanent, temporary or recurrent basis outside a fixed workplace, territory or facility controlled directly or indirectly by the employer, to be performed through (or without) the use of ITC networks such as the Internet or other public networks irrespective of the location of the employer and his subdivisions, and of the availability of fixed workplace.

For a systemic use of the labor law's conceptual framework, it is proposed to define telework as a work function envisaged by the employment contract to be permanently performed for objective reasons outside the location of the employer, his branch, representation office or structural subdivision (including those located elsewhere) through the use of ITC networks such as the Internet in absence of workplace controlled directly or indirectly by the employer. In context of digitization, technological aspects also need to be clarified for broader opportunities to use alternatives

to electronic signature for document exchange (such as messenger apps, corporate websites etc.).

There was a sense in the Russia Popular Front initiative in a letter to the Ministry of Labor proposed to introduce to the law a term “temporary remote work” to enable workers to perform work outside the office in several circumstances (traffic jams, personal situation etc.).

In this regard, the second part of Article 312.1 of Code logically evolved to provide that employment contracts (supplements thereto) may envisage the remote performance of a work function permanently (throughout the contract’s term) or temporarily (continuously over a period of maximum 6 months as defined by the employment contract or a supplement thereto, or recurrently with alternating periods of remote and fixed performance of a work function). That is, while the legislator proposed three remote work options, the content of these provisions need to be discussed.

Now the value of remote relations at work and a need in their careful regulation have become especially obvious. So, the Russian legislator has additionally identified temporary telework (maximum 6 months) and telework to be recurrently performed with alternating periods of remote and fixed performance of a work function.

In terms of scale, the development of remote labor relations follows that of the society. The criteria for classification of new forms of relations between the parties proposed by the ILO and European Union have been constantly evolving. The opportunity to work remotely for international corporations without leaving one’s country has given rise to virtual work teams created temporarily for specific tasks, with remote objective-based and result-based management allowing to steer work processes in a vast territory.

As N.L. Lutov has observed, “what is more important for regulation is not the alternation frequency or geographic coverage of workplaces, but the extent of attachment and thus the opportunity for the employer to control the process of work” [Lutov N.L., 2018: 34].

Meanwhile, neither the use of ITC nor the nature of work to be performed should affect the concept of telework for regulatory purposes: it is problematic to classify the work as remote on the basis of its frequency or technologies involved. In fact, there is no objective indicator for differentiation. “The use of ITC networks or better qualifications required for the job will not make the work as specific as to differentiate regulation to the point of establishing different rules for home workers and teleworkers.

Assuming that the frequency whereby a piece-rate worker and a web designer (both working remotely) use ITC networks differs significantly just like their skills, it follows that the use of technologies to perform work will not by itself entail a major change in the nature of relationships between the worker and the employer. The main factor here — both for the piece-rate worker and the web designer — is more independent work than envisaged by traditional labor relations as a result of change of the workplace” [Stepanov V.O., 2013: 9–12].

If to take ITC and/or skills as a criteria we will have to recognize someone working at home and sending the outcomes by e-mail as a home worker rather than teleworker as soon as he decides to use a delivery service while no major change has occurred in the nature of work.

An analysis of the EU legislation suggests that the issue of possibility to enter into an employment contract without specifying a workplace — the so-called “remote access” — merits special attention. Meanwhile, under the ILO Home Work Convention No. 177 the “remote access” work is not considered to be homework.

A study of international regulations could reveal different types of telework with characteristic features allowing to differentiate them by a number of criteria, in particular: remote employer, ITC technologies used outside a fixed workplace (spatial decentralization), form of contractual employment relations, workplace type, contents of work to be performed, risk factors, work on a permanent or temporary basis. Moreover, the classification of telework in light of different criteria can provide a methodological basis for structuring managerial decisions at the international, national, regional and enterprise levels.

Providing detailed regulation of labor relations will make regulation in Russia generally more flexible and strike the right balance between the parties thereto and the state. However, one should be also aware of possible occupational risks related to network threats, employer misconduct realized too late by the teleworker, inadequate communication within the team, reduced opportunities for social and labor adaptation etc.

Resolving a number of issues related to remote employment at the legislative level has allowed to view telework as an important innovative practice for the Russian society demanded by high technology sectors which require high mobility and creative activity of workers. Today the amendment of the law on telework has provided Russia with evident competi-

tive advantages to engage skilled workforce as a basis for technological and economic growth.

In the Guidelines for Implementation of the Digital Agenda up to 2025 of the Eurasian Economic Union, the promotion of remote employment and hire is incorporated into the digital program for transformation of the labor market²⁴.

As for a current form of social and labor relations, remote employment offers a valuable potential to satisfy a number of societal needs, address a host of social problems such as youth employment, reduction of unemployment etc. Telework is attractive to workers as it allows to work at remote locations, have a free hand in planning one's working time, be creative and mobile, and get paid as a function of one's own ideas and outcomes of work.

Conclusion

Since the geographic distribution of work is no longer important, it appears necessary to compensate for the operational expansion of transnational companies as this expansion upsets the balance between public law and private law regulation. This can be done by using compensational remedies available to both labor law and international private law. It is crucial to study the implications of the country's exit from any international association as well as disseminate the best practices of employer compliance with labor standards and of raising awareness of individuals of their labor rights.

Promoting labor standards as part of Russia's economic policies should be aimed at making sure that partner countries apply national labor and social security law more efficiently. An adequate development of the national labor and social security law by partner countries should follow in the wake of the development of international law and Russia's national law depending on the depth of integration with these countries.

The current law enforcement points to a lack of mechanism for regulation of relationships arising in outstaffing by legal entities other than private employment agencies. To support the right to outstaffing it is proposed to define the range of entities affiliated with the outstaffer.

Resolving issues of remote employment at the legislative level has allowed to view teleworking as an important innovative practice for the Rus-

²⁴ Section III "Guidelines for development of the digital economy".

sian society demanded by high technology sectors require high mobility and creative activity of workers. However, a study of law and practices allows to distinguish essentially various types of work — telework and remote work — presented as synonymous as a result of the labor law reform.

In the age of digitization technological aspects also need to be clarified for broader opportunities to use alternatives to electronic signature (messenger apps, corporate websites, etc.) for document exchange. One should be also aware of possible occupational risks related to network threats, employer misconduct realized too late by the teleworker, inadequate communication within the team, reduced opportunities for social and labor adaptation etc.

The development of technologies that augment rather than altogether replace human intelligence appears to be an all-around solution to the human replacement problem. State will have to assume an obligation to provide all those willing with jobs while developing new social protection mechanisms, in particular, that of minimum income security.

The digitization of labor relations logically entails atypical forms of using already familiar institutions, for example, by opening up new capabilities for social partnership, namely, for sectoral unions to regulate collective labor relationships.

While emerging new forms of employment in Russia and elsewhere is a dynamic process, employment as a category acquires a new meaning. A totally new stage of digitization, in particular, as applied to employment is enforcing a new understanding of employment in the wider sense as any, normally gainful, activity of individuals aimed at satisfaction of personal and public needs is regulated by Russian law irrespective of sectoral association. In this regard, it is relevant to regulate in detail status of the parties to different forms of employment including guarantees for employed in order to maximize regulation of these forms by labor and employment law not to refer these issues to other branches of law. The qualification of some types of labor relationships as atypical should not in principle restrict the rights at work since classical labor relationships allow to change attributes without harm to labor rights of workers.

The application and modernizing labor and employment law in the digital age are undoubtedly positive steps taken by legislator to regulate emerging and future relations in a new economy amidst the development of information and communication systems following the post-pandemic

recovery. However, the response should be rapid, with new forms of employment — in particular, platform employment, self-employment, etc. to be regulated in light of the best international experience.



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Information about the author:

N.V. Zakaluzhnaya — Doctor of Sciences (Law), MA in Economics and Pedagogy, Associate Professor.

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