FREEDOM OF ASSOCIATION: THE CASE OF RUSSIA

Nikita Lyutov†

The situation with freedom of association in Russia is not identical but in many aspects very much the same as in the Brazil described in the Gomes and Prado article.1 What is similar and what is different between the trade union systems in the two countries?

Russia does not have a formal unicity representation rule neither at the economy level, as in Brazil, nor at the enterprise level, as in the United States. There is also nothing like the Brazilian legal prohibition to form a union at the plant level. If one takes the plain text of ILO Conventions No. 87 and 98,2 and “forgets” about the ILO controlling bodies’ case law,3 it would be difficult to find any contradictions between internal Russian trade union legislation and the international standards on freedom of association. Nevertheless, the workers’ representation problems in Russia seem to be very similar to those in Brazil, but are hidden in other, more indirect legal provisions. There is no sense in describing Russian trade union legislation in detail—this is done in other papers,4 but some issues should be presented.

† Associate Professor of Labor and Social Security Law Chair, Moscow State Law Academy, Russia.

First of all, although the two countries are politically and geographically as distinct as may be, there are many striking parallels in their trade unionism history. Even the dates sometimes coincide. For example, Gomes and Prado note that the moment of liquidation of the independent trade unions in Brazil was in 1933—the year when trade unions had to be recognized by the Ministry of Labour.\(^5\) Up to that moment there were no really independent trade unions\(^6\) in the Soviet Union, but the year 1933 is known for liquidation of People’s Comissariat (Ministry) of Labor and transfer of all its functions and funds to VCSPS—Vsesoyuzniy Centralniy Sovet Profesionalih Soyuzov (the All-Union Central Council of Trade Unions). After that, trade unions became responsible for issues such as social security, leisure activities, and other areas of state activity. Obviously this was an important step in the closest linking of trade unions and the Soviet State.

In this sense it is not even important that Brazilian unions for some time had to prove that they had no links with communists, while the ones from the USSR had to meet the exact opposite requirement: Lenin required trade unions to be “transmission gear from the Communist party to masses [of workers – N.L.].”\(^7\) The labels are not important here: both systems were not based on freedom of association in the ILO meaning of term.

I. THE EXISTING PROBLEMS

The most important difference between the two systems should be borne in mind: while the Brazilian economy was based on plural property (whether there was a democracy or dictatorship period), the Soviet unions were inseparable from the state in the same way as employers that were totally State-owned.

The Soviet unions have been performing other kinds of functions than unions in the capitalist system. Although there were collective agreements (only at the enterprise level), they were not concluded as result of real collective bargaining in the Western sense. The main function of trade unions was “protection” instead of “representation,” which is traditional to

---


5. Gomes & Prado, supra note 1, at [PAGE NUMBER WILL BE INSERTED WHEN ISSUE IS PAGINATED].

6. Although formally they were separated from the state. For further information on this issue, see SOVETSKOE TRUDOOYE PRAVO [SOVIET LABOUR LAW] 179–84 (N.G. Alexandrov ed., 1972).

7. V.I. Lenin, Proekt tezisov o roli i zadachah profsoyuzov v usloviyah novoy economicheskoy politiki, 1921 [A Project of Theses on Role of Trade Unions in the New Economic Policy, 1921], in V.I. LENIN, POLNOE SOBRAVIE SOCHINENIY [COMPLETE WORKS] (5th ed. 1967), Moscow, Izdatelstvo politicheskoy literature [Political literature editors], Vol. 44, P. 349. (1967) [author, is this article in a book titled “Complete Works” or “Political Literature Editors”?—Ed].
market economy understanding. Soviet trade unions were a kind of intermediary between the workers and the state. For example, after 1956, trade union organizations of the plant-level were empowered to settle the labor disputes between employers and employees as a pre-court authority. It sounds absurd from the point of view of the tripartite model common to ILO: one can only dream to have his own advocate (a trade union) as a judge in his disputes with a counterpart (an employer). Obviously, Soviet trade unions were not exactly “advocates” of workers, but rather a kind of “social ministry.” Anyway, for better or worse this system was functioning until the end of Soviet era.

After the Soviet Union was crushed, the All-Union Central Council of Trade Unions didn’t vanish—it has been privatized as most of the other property in the country. VCSPS was transformed into FNPR (Federaziya Nezavisimyh Profsoyuzov Rossii—Federation of Independent Trade Unions of Russia). All the huge property of VCSPS (including stadiums, hospitals, hotels, other leisure objects, etc., i.e., the real estate worth billions of U.S. dollars) was inherited by this newly independent organization. In the 1990s, the time of almost total destruction of former state economy, humanitarian catastrophe, and social unrest, the trade union movement was divided into “old” (mostly FNPR affiliated unions) and “new,” independent unions representing the active minorities of workers.

While the “old” unions were taking their political niche by “pacifying” the discontented workers and urging them not to strike despite the months-long delays of the wages’ payment, the “new” were active antagonists to

---

8. It has become a mainstream in Western writing to praise the post-Soviet “transition” from the state-planned to market economy as a kind of socio-economic progress. It must be borne in mind that this “progress” inspired by the “democratic” Governments of 1990s and made according to the World Bank and other U.S.-dominated international institutions’ and councilors’ recipes of “shock therapy” had consequences comparable to a large-scale war. The life expectancy has decreased from 69.19 years in 1990 to 63.85 in 1994. Further, it has only recently recovered. See Rossiyskiy Statisticheskiy Ejeodnik, 2009. Moscow, 2009. [Russian Statistical Annual, 2009]. http://www.gks.ru/bgd/regl/b09_13/IssWWW.exe/Stg/html1/04-01.htm (in Russian). It is difficult to say how many human lives were taken by the “shock therapy” because it is impossible to find out the direct or indirect causes in each particular case. To be sure, however, the numbers are counted in millions. For more details, see Doklad Komissii po Voprosam Jenshin, Semyi i Demografiy Pri PrezidenteRossiyskoy Federatsii “O Sovremennom Sostoyanii Smertnosti Naseleniya Rossiyskoy Federatsii”, [President of Russia Commission on Gender, Family and Demography Issues Report “On Current Death Rate of the Russian Federation Population”] (1997). Instead of being a technologically advanced state Russia has made a huge step to a third world natural resources based economy direction. So, the word “catastrophe” is far from being too strong in description of social and economic situation of that time. See also J. Stiglitz, The Ruin of Russia, The Guardian, Apr. 9, 2003, available at http://www.guardian.co.uk/world/2003/apr/09/russia.artsandhumanities.


10. For statistics of strike activities in the 1990s, see G.V. Anisimova, Oplata truda i zabastovokhnya aktivnost’ trudyashchya v 1990–2000 gody [Wages payment and strike activity of
the government and the employers (both state and private). It is not difficult to understand why government preferred to support the “old” unions. In exchange for this support a new labor code[^11] was enacted in a way that has satisfied almost all parties: big trade unions, employers and the state.[^12] “Only” employees and independent unions were “forgotten” in this tacit deal.

The main features of the new labor legislation[^13] are several and will be outlined below. First is the diminishing of trade union rights, especially in the fields of collective bargaining and the right to strike. The collective bargaining rights, although officially declared,[^14] are not supported by the adequate implementation machinery.

Many gaps in the legislation on collective labor disputes and strikes were discussed by the group of labor law and sociology experts with governmental authority—the Russian Service on Labor and Employment (Rostrud) in 2008. The proposals on liberalization of law were summarized by the experts and published.[^15]

The proposals covered the following main issues:

1. The modification of “collective labor dispute” definition that is contained in article 398 of the Labor Code so that not only the employees of the employer (which may be company or person) but also of structural subdivisions (plants, business units, sectors, etc.) could be a party of a dispute. The right to strike is also supposed to be granted to workers of such subdivisions. Current legal practice knows the examples of court decisions declaring strikes illegal only because the employees were not able to prove that their structural...

[^12]: The adoption of the Code was preceded with about ten years of very intense debates within the society. Before the adoption, about twelve draft Codes were rejected by Duma and about four major drafts were discussed simultaneously.
[^14]: Konstituziya RF [Russian Const.] art. 37, ¶ 4, of the Constitution; TRUDOVOY KODEKS [TK] [Labor Code] art. 21 (Russ.)
subdivision was autonomous enough from the “main” employer’s business.16
2. The definition of collective labor dispute was also proposed to be widened from the point of view of its subject. Instead of the currently limited list of possible demands: “the establishment and modification of working conditions (including the wages), conclusion, modification and execution of collective accords and agreements and the refusal of the employer to take into account the employees’ representatives’ opinion in the process of adoption of employer’s acts”17 it is proposed to change it to an open list of any social and economic issues that have direct or indirect relation to the employees’ interests. The difference is quite significant and could lead to a much wider interpretation of right to strike.
3. A new article of the Labor Code that would allow the solidarity strikes and strikes aimed at changing of social and economic politics (i.e., the political strikes) is proposed. These proposals are made based on the position of the ILO Committee on Freedom of Association.18
4. According to the current reading of the Labor Code,19 only the employees themselves can take a decision to strike. The strike can be declared if no less than half of the employees present at the employees’ meeting or conference have voted for strike. The meeting quorum is half and conference quorum is two-thirds of the employees of the employer. This procedure makes it rather difficult to call a strike. Therefore it was proposed that a trade union itself could be a party of a strike. This proposal is also a reaction to the ILO recommendations concerning the Labor Code draft.
5. The implementation of the good faith principle with respect to collective bargaining and collective labor disputes resolution.20
6. The limitation of procedural requirements regarding the minimal services performed during the strike in a way that

17. Trudovoi Kodeks [TK] [LABOR CODE] art. 398 (Russ.).
19. Trudovoi Kodeks [TK] [LABOR CODE] art. 410 (Russ.).
these requirements would conform with standards of freedom of association set up by the ILO’s Committee on Freedom of Association.21

7. The facilitation of some formalities with respect to the representation of workers by the trade unions. However, the negotiations between the experts and government authorities didn’t lead to any changes in law.

In November, 2010, the draft law on amendment of the Labor Code was proposed22 to the State Duma by the Spravedlivaya Rossiya (Just Russia) political party. This draft law is aimed at establishing more fair rules of workers’ representation, facilitation of collective labor disputes’ performance, and liberalization of strike rules. Its contents are based on some of the ideas that were summarized in the experts’ conclusions of 2008. But this draft has practically no chance to become an actual law. The aim of its proposition to the Duma is political counterbalancing of the quite opposite initiative of Russian employers’ union aimed at flexibilization of labor law (see further about it).

Current collective bargaining and strike rules make legitimate performance of strikes practically impossible. Below are the official strike statistics of Russia since 2000:23

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009*</th>
<th>2010**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of strikes</td>
<td>817</td>
<td>291</td>
<td>80</td>
<td>67</td>
<td>5933</td>
<td>2575</td>
<td>8</td>
<td>7</td>
<td>4</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

It is obvious that this data cannot represent any kind of real picture. The period of the last ten years is known for its relative social stability. No dramatic events in 2004 and 2005 could be found to explain the rise of the strike record to four digit numbers and then its immediate decrease to single digits. The only explanation for such a strange picture can be found in the method of calculation. Since 2006, only the legal strikes are counted by the official statistics. For a country with over 140 million people, the statistics


25. Data covers only the first ten months of 2010.
for the last five years means that only in very exceptional cases are the conflicts of workers and employers being settled by means of law. Most conflict situations are being resolved outside the scope of law. The non-governmental organization—Centre for Social and Labor Rights—has been monitoring all actions of employees that have led to total or partial stoppage of the enterprise activity (strikes, work stoppages provoked by the wages’ non-payment, hunger-strikes, takeovers of the employer’s facilities, and any other actions—legal or illegal) since 2008. The information in the chart below was gathered through the internet, mass media, and internal communications with trade unions, non-governmental organizations, and other available sources.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of actions (including the first ten months of the year)</th>
<th>Monthly average (including the first ten months of the year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>60 (46)</td>
<td>5.0 (4.6)</td>
</tr>
<tr>
<td>2009</td>
<td>106 (95)</td>
<td>8.8 (9.5)</td>
</tr>
<tr>
<td>2010</td>
<td>76</td>
<td>7.6</td>
</tr>
</tbody>
</table>

The first thing that comes clearly from this data is that illegal protests that fall outside the official statistics happen much more frequently than legitimate strikes. It is also obvious that, contrary to the official data, the strike level has risen after the beginning of the economic crisis.

This latency of the labor conflicts can easily be explained by the restrictive legislation on collective bargaining and strikes and in the same time presents a very dangerous sign from social and political point of view. The most resonant conflicts not only go beyond the legal means of regulation, but also get outside the “walls” of the enterprise. There were two major labor conflicts in the last two years: at the Picalevo cement plant (in 2009) and at the Rapadskaya coalmine (in 2010). The first was provoked by the stoppage of business and non-payment of wages and led to the worker take-over of the federal route between Moscow and St. Petersburg. The second conflict was inspired by the catastrophe that has taken the lives of more than seventy miners and was supposedly a result of the safety rules breach by the mine management. In the second case, the town Mejdurehensk, where the miners lived, was affected by the protests

29. As of the writing of this article, the investigation is ongoing.
special police forces were called to pacify the protesting people. In both cases only the direct involvement of the Prime Minister Vladimir Putin stopped the protests.

These cases show that labor conflict that happens without a legal “safety valve” from its very beginning may very soon and unexpectedly grow beyond the scope of labor relations to the political unrest. This dangerous experience is very well known in Russian twentieth century history: two revolutions (of 1905 and 1917) were provoked by workers’ protests that were performed illegally because of the restrictive trade union legislation of that time.

Among the trade union rights, the least affected are the guarantees of financial independence of trade unions:30 this is a necessary condition of loyalty of the major “old” trade union institutions. But this in fact leads to the lack of control of the unions by its own members (more on that later).

Second is the “pro-majority union” structure of collective bargaining. Although more than one union is entitled to represent the employees of certain enterprise, a joint bargaining unit must be elected and this unit is entitled to sign a collective agreement that will cover all employees of the company, irrespective of the trade union membership. This structure makes a minority union quite powerless in collective bargaining issues. As a result of such a structure, the official collective bargaining coverage is rather high.31 Nevertheless, most collective agreements are declarative papers not made with a view to grant serious additional rights and benefits to the employees, but rather with purely demonstrative goals. In such cases the ineffective trade unions can show that they are doing something for the workers, and the employers are able to boast about their “social responsibility.” The active minority unions pretty much have only one means of protection of workers’ interests: illegal actions.

Third, collective agreements of any level cover workers of the company or the respective level of bargaining (branch of the economy, region, or Russia in whole)—the so-called erga omnes model is used.32 In situations where minority unions have little possibility to perform collective bargaining, this scheme additionally makes their effort legally useless: what is the sense for an employee to join a union that has bad relations with

30. According to paragraph 2 of article 24 of Act “On trade unions,” the financial control of trade unions’ funds except for the incomes for their commercial activities, is prohibited.

31. The exact statistical data is not available, but it is not very important taking into account erga omnes collective agreement coverage model (see point “c” further).

32. According to article 43 of the Labor Code, collective accord (i.e., collective agreement on a plant level) covers all workers of the company or the company branch; article 48 of the Labor Code stipulates that agreement (i.e. the multi-employer collective agreement) covers all workers of the employers that participate in this agreement. In both cases, the coverage doesn’t depend on any specific trade union membership.
the employer? If, by some miracle, that union would succeed and sign a collective agreement, this agreement will automatically cover everyone, irrespective of their trade union membership. If not, it is better for an employee not to take any risks by joining the union. Between 1992 and 2002, Russia had a mixed model of collective agreements coverage, while the general scheme was the same: collective agreements covered all workers of the respective level, and the minority union had right to conclude the agreement on behalf of its members. This scheme was not very effective either, because the quorum to organize a strike was (and is now) counted for all workers of the company, not members of the respective union. Therefore, such unions had a formal right to have the collective agreement for their own members but had no power to push the employer to sign it. After the adoption of the Labor Code in 2001 even this right has been taken away from them.

Fourth, the principle of independence of the trade unions from the state interference is paradoxically being extended to the independence from their own members. The legal regulation of internal union affairs is totally nonexistent. There is not a single requirement of internal trade union democracy, the election of trade union officials, of any legal mentioning of unions’ obligations toward their own members. All these issues are to be stipulated by the trade unions’ bylaws if the trade union considers this necessary. Such examples are not known to me.

Fifth, the absence of legislation concerning the conflict of interest in respect of collective bargaining and trade union membership. The only norm in this field is the “prohibition to the persons representing the employer to conduct collective bargaining on behalf of the employee.” For example, it is not forbidden for the company CEO to be the head of the company trade union. Even the bribery of trade union officials has very little chance of penalization. The bribery of such persons does not fit into definition of “bribery” in respect of civil servants (article 290 of the Penal Code, for taking the bribe; and article 291, for bribing). There is a separate article for “Commercial bribery” (article 204 of the Penal Code) that fits the bribing of trade union officials, but as long as any financial control of trade unions is forbidden, except for the funds that are collected as a result of trade union commercial activity (article 24, paragraph 2 of

33. According to paragraph 4, Article 6 of the Federal Act “On collective agreements and accords” of 1992, each trade union has had a right to conclude a collective agreement on behalf of its own members. Rossiyskaya Gazeta [Ross. Gazeta] [Russian Gazette] 1992, No. 98, [author, please provide item number, if possible.—Ed.].

34. Trudovoi Kodeks [TK] [LABOR CODE] art. 36, ¶ 2 (Russ.).

35. Ugolovniy Kodeks Rossiyskoy Federatsii [UK RF] [Penal Code of Russian Federation], Sobraniye Zakonodatelstva Rossiyskoy Federatsii [SZ RF] [Corpus of legislation of Russian Federation] 1996, No.25. art. 2954. [author, please provide item number if possible—Ed.]
Trade Unions Act),\textsuperscript{36} it is illegal to check how the employer’s donation to the trade union (represented by specific union official) is used: for actual trade union activities or just “privatized.”

Sixth, there are no rules on inter-union relations analogous to voluntarily established principles that exist, for example, in the United Kingdom.\textsuperscript{37} This gap results in the inter-union conflicts that further weaken the already weak system of the employees’ representation.

Finally, there are no compulsory representation mechanisms that could, in some way, compensate the weakness of trade unions or be a channel of mutual information and consultations between employers and employees analogous to the works councils system in the European Union. The implementation of the system of works councils or analogous structures deserves special mentioning. It is not very well known, but Russia seems to “hold a patent” for the invention of non-union representation of workers’ interests. After the Revolution of 1917, the Temporary Government of Russia adopted the Regulations on Works Council in Industrial Enterprises in April of 1917, granting a wide range of competences to the employees’ representatives in the workplace level. According to some Russian researchers, the Regulations were a model for German Act on Works Councils (Betriebsrätegesetz) of 1920.\textsuperscript{38} But the Russian Regulations were in force for only few months. After the October Revolution, works councils were merged into the trade unions system on the plant-level and were decomposed.

Many years later, in 1958, the so-called “permanent industrial council” was established in parallel with a system of trade unions. It was meant to represent the employees at the workplace-level. During the 1970s, these councils were a body with consulting competence subordinated to the trade unions’ system. At the same time, trade unions enjoyed a wide spectrum of rights of common decision-making with the employer. A big list of management decisions was subject to approval on behalf of trade unions.

In 1977, a new Constitution of the Soviet Union was adopted. It introduced a new subject of law called “a labor collective.” Unlike trade unions that were organized on membership principle, labor


\textsuperscript{38.} M.V. LUSHNIKOVA & A.M. LUSHNIKOV, OCHERKI TEORII TRUODOVOGO PRAVA [ESSAYS IN THE THEORY OF LABOR LAW] (2006).
collectives were uniting all workers of the enterprise. Their permanent managing structures—“councils of labor collectives” were
elected by all employees. Labor collectives have achieved many rights in
different fields not limited to labor relations. Over the following six years,
the Constitutional status of labor collectives was merely declarative, but in
1983 the Act “On labor collectives and the promotion of their role in the
enterprise management” was adopted. 39 Nearly one hundred rights of labor
collectives were non-binding upon the employer, but some of them (such as
the acceptance by the employer of the disciplinary statute upon the approval
of the labor collective) were of a binding character. The law was criticized
for both a lack of effectiveness and the consultation-character of labor
collective rights. In 1988 a new Chapter of Code of Laws on Labor was
adopted, 40 giving the binding effect to many decisions of the labor
collective. Some of the rights seem quite strange in the context of the
modern market economy. For example, company directors were elected by
the labor collectives. A permanent body—the “council of labor
collective”—was established. Most of decisions of this council were
binding to management. The rights of labor collectives could be divided
into four groups: a) organizational; b) control and supervision rights; c)
consultative; and, d) decisive rights. 41 In case of a contradiction between
management and council opinion, the issue had to be resolved in the
meeting or conference of the labor collective. Such a system of two parallel
managing structures undermined the possibility to manage the enterprises.
It also created a competition between councils and trade unions. 42
Therefore it was criticized both by the Soviet plant managers and the trade
unions.

After the dissolution of the Soviet Union, a new reading of the Code of
Laws on Labor was adopted in 1992. The powers of labor collectives were
now dependent on whether an employer was a private or state-owned
organization. There were certain rights belonging to labor collectives
regardless of whether the organization was private or state owned (the
conclusion of a collective agreement, the matters of self-government of a
labor collective, and the list and order of social benefits’ granting to

39. Zakon SSSR o trudovih kollektivah i povishenii ih roli v upravlenii predpriyatiyami,
uchrejdeniyami, organizatsiyamiVedomosti [Law of the USSR on Labor Collectives and the Promotion
of their Role in the Enterprise Management] 1983, No. 25, art. 383
41. A.M. KURENNY, PROIZVODSTVENNAYA DEMOKRATIYA I TRUDOVOYE PRAVO [INDUSTRIAL
42. I.I. Borodin, Problemy predstavitelstva rabotnikov v sisteme sozialnogo partnerstva na urovne
organizatsiy [Problems of workers’ representation in the social partnership at company level], in NOVIY
TRUDOVOY KODEKS ROSSIYSKOY FEDERATSII I PROBLEMY EGO PRIMENENIYA [NEW LABOUR CODE OF
workers from the funds of the labor collective among certain others). If the state owned more than 50% of the employer’s company or organization, labor collectives had the right to: consider and approve the changes in the employer’s by-laws; define the terms of contract of the employers’ Chief Executive Officer (jointly with the owner of the employer); take decisions regarding the separation of one or a few of the employer’s affiliated structures with a goal of creation of a new enterprise; and take part in decision-making concerning the privatization of the employer.

The new Labor Code of Russia, adopted in 2002, has totally abandoned the idea of labor collectives. A system of works councils that could substitute in some way the labor collectives, has not been established. Both information and consultation rights have been greatly diminished.

II. POSSIBLE SOLUTIONS

Unfortunately this situation of the lack of a real right of association was almost ignored by the ILO. Although there were complaints on behalf of the independent trade unions, the International Labor Office’s reaction was quite mild.

This may be explained by the very structure of the Organization. The tripartite structure of the ILO was absolutely innovative and unique in the beginning of the twentieth century. It is obvious that civil society representation must be a basic feature of the ILO in this century as well. However, the current workers’ representation system, which supposes that only the major trade unions and employers’ associations take part in the Governing Body activities and the International Labor Conferences ignores the fact of bureaucratization of the big traditional institutions. How can the smaller trade union associations competing with major structures present their voice and vision of the situation within the ILO, if the workers of their country are already “represented” in the ILO by their hostile competitor, in the Russian case—the FNPR? If the system of workers’ representation is ineffective because of lack of effectiveness of the big unions, their opponents have very little chance to be heard within the ILO. The situation of bigger unions satisfied with the ineffective workers’ representation system reminds one of the Brazilian situation described in the Gomes and Prado article.

43. See supra note 16.
44. Article 3, ¶ 5 of the ILO Constitution provides for the member countries’ obligation to nominate non-governmental delegates and advisers to the International Labor Conference chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries. No room for other organizations is left in such structure.
45. Gomes & Prado, supra note 1.
The problem of lack of voice for smaller active unions and non-governmental organizations within the ILO is correctly raised by Guy Standing. In such a situation, the ILO would be bound to stay “toothless” with regard to rather serious omissions in Russian legislation. And unfortunately I cannot share the Gomes and Prado optimism that the ILO can help significantly to resolve this sad state of affairs.

As long as the problems of legal representation are more or less obvious, the solution to them also seems to be obvious: change the legislation in a way that will eliminate these problems. It is not difficult to rewrite the law in such a way to give minority unions greater rights, to introduce a system of collective bargaining coverage that would motivate workers to join unions, to establish a system of representation that would motivate workers to join the unions, to put some basic rules of intra-union and inter-union relations, to create system of works councils, etc. But who will turn the legal scholars’ drafts into legislation in force? Who is supposed to lobby this? Trade unions?

Exactly as in Brazil, the most influential trade unions will be the last ones to support such legislative changes. It would be very naïve to equalize the interest of employees to be fairly represented and the personal interests of senior officials of big trade union organizations that are the participants of tripartite dialogue on national level. Such changes would benefit the minority unions but they do not have enough political power to push the modification of legislation. These unions are treated by the government as marginal oppositional political force that unworthy of serious dialogue. Such a governmental attitude is justified to some extent by the close link of such unions to radical opposition frequently protesting against any state actions just because they are performed by the hated state. Therefore, their initiative is treated as a kind of provocation and will not be seriously considered.

Can the state itself be a driver of changes in the situation? It seems that bureaucratic logic is rather simple: Stability is good. If one can avoid changing the system, it’s better to leave it as it is. No one can guarantee that a more effective and transparent system of workers’ representation will ensure political stability. If the state officials didn’t make any reforms in this direction for almost twenty years after the Soviet Union’s destruction, they would not do it now, taking into account that there is no significant organized political force putting a pressure on the government.

47. Gomes & Prado, supra note 1, at PAGE NUMBER WILL BE INSERTED WHEN ISSUE IS PAGINATED.
After the election of the new President Dmitry Medvedev, the new topic in the political discourse of Russia became very popular: economic modernization. Having that in mind, one could say that trade union rights and labor legislation in general are the equivalents of price of labor: the less flexible is legislation (or, more effectively, trade unions act), the more expensive is the labor. Cheap labor is a thing absolutely incompatible with a knowledge-based economy. The main driver of a knowledge-based economy is an internal demand that can be provided by the millions of well-paid employees. They can make themselves adequately paid if they have good channels of representation of their interests, either by the trade union or by the trade union plus the system of works councils.

However, the representatives of big business that have close ties with the government, announce the directly opposite logic. They claim that the biggest obstacle to innovative activity of Russian business is the low productivity of workers (which is true indeed). But further, they make the statement that this low productivity is a result of overly rigid labor legislation: if, to loosen the “legal restrictions” on business, such as freedom to dismiss workers without any cause and compensation, to modify the labor contracts at any time at the will of the employer, to conclude temporary contracts, etc., then the employers would be free to use the innovative technologies in their business. It leaves open the question of why the employers would spend the money on issues such as technology? If one has an abundant resource of cheap labor, what is the reason to spend the money on technologies that are aimed at economizing on expensive labor? Do multinational companies produce a lot of new technologies in the Export Processing Zones in the developing world, where they enjoy the “best” labor law flexibility? The answers are too obvious. Such “flexible labor law” philosophy seems to be one of the steps to finally de-modernize Russian economy. Unfortunately this absurd “flexible modernization logic” seems to be a mainstream idea for the governmental structures. I would be very glad to mistaken.

Only if the economic crisis worsens, will a threat of spontaneous protests of workers that are not “channeled” through adequate and truly representative trade union movement, would be a real possibility, a trade...


union movement that is not hostile to the Government, may be a good impetus for the government.

Paradoxically, the demand to establish the adequate workers’ representation mechanisms may in some way come from some of big employers’ part. In 2009–2010 I’ve consulted with one of the biggest Russian employers planning to establish a better workers’ representation system in the course of its collective bargaining campaign. Absolutely as was shown above, this employer had two unions: the “old” majority servile trade union, and the “new” minority, rival one. Because of the employer’s political and legal “heavy weight,” the rival union was made practically non-existent and possessed no real threat to the employer’s interests. The “old” union was ready to make very big compromises in the collective agreement, but that wasn’t the most important issue for the employer. The employer conducted several independent sociological studies in different affiliate structures all over the territory of its activity. One of the main results was that this majority union is not only mistrusted by workers (irrespective of the official membership in this union) but, it is not even informed about the real and actual problems, demands, and ideas of the workers. The employer announced that it requires a functional two-way communication between ordinary workers and higher management, understanding that current trade union representation is not able to fulfill this task. The lack of power of the union (one of the most influential and well-known Russian trade unions) was brightly illustrated by the fact that employer was ready to discuss any kind of trade union reform without even consulting the union that was supposed to be reformed. It was taken for granted that the employer has enough power to force the union to accept any changes demanded by the employer. Surprisingly, the employer was open to discussion of quite untraditional reforms in the relations between union and itself.

Anyway, this example seems to represent rather the exception (despite the big scale of the employer) than the rule. There is a big doubt that any organic reform of representation of workers can be performed through the opposite side of dialogue.

III. CONCLUSION

Two main conclusions may be made concerning the workers’ representation system in Russia. First, the system is quite far from being in conformity with the ideals of real freedom of association and collective bargaining. Second, it is quite unlikely that this situation will change fundamentally in the near future. Only major social unrest may provoke the liberalization of collective bargaining and collective labor disputes
legislation in Russia. The present state of affairs itself constitutes a threat to social stability and may trigger much more dangerous trends that it is now supposed to prevent.